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CONCLUSION

Because Choctaw was not served with summons and a copy of the complaint within 6 months from the date the complaint was filed, this action was dismissed by operation of law before any issue was submitted to the district court. The judgment entered in favor of Davis was therefore null and void. We therefore reverse, and remand with directions to the district court to vacate its judgment and to enter an order that Davis' complaint stands dismissed under § 25-217.

REVERSED AND REMANDED WITH DIRECTIONS TO VACATE AND DISMISS.

IN RE ADOPTION OF DAVID C.
MISTY R. AND JEREMY R., APPELLEES, V. JERAD F., APPELLANT.

790 N.W.2d 205

Filed October 29, 2010. No. S-09-1044.

1. **Adoption: Appeal and Error.** Appeals in adoption proceedings are reviewed by an appellate court for error appearing on the record.
2. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
3. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken.
4. **Final Orders: Appeal and Error.** The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered.
5. **Words and Phrases.** A substantial right is an essential legal right, not a mere technical right.
6. **Final Orders: Appeal and Error.** A substantial right is affected if an order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to an appellant prior to the order from which an appeal is taken.
7. **Adoption: Abandonment: Proof.** The issue of abandonment in an adoption proceeding must be established by clear and convincing evidence.
8. **Abandonment: Intent.** The question of abandonment is largely one of intent to be determined in each case from all the facts and circumstances.

Appeal from the County Court for Lincoln County: KENT D. TURNBULL, Judge. Affirmed.

Daniel W. Ryberg for appellant.

R. Bradley Dawson, of Lindemeier, Gillett, Dawson & Troshynski, for appellees.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

WRIGHT, J.

NATURE OF CASE

The putative father, Jerad F., appeals from the finding of the Lincoln County Court that he abandoned David C. The court determined that a petition for stepparent adoption could proceed without Jerad's consent.

SCOPE OF REVIEW

[1] Appeals in adoption proceedings are reviewed by an appellate court for error appearing on the record. *In re Adoption of Kailynn D.*, 273 Neb. 849, 733 N.W.2d 856 (2007).

FACTS

David was born in Omaha, Nebraska, on September 30, 2005, to Misty R. and Jerad, who have never been married to each other. There is no dispute that Jerad is David's biological father. After David's birth, Misty moved to North Platte, Nebraska, to be near her family. On March 7, 2008, Misty married Jeremy R., who seeks to adopt David.

On June 26, 2009, Misty and Jeremy filed a petition for stepparent adoption. The petition alleged that Misty and Jeremy were married and that Jeremy wanted to adopt David, thereby "conferring upon [David] all of the rights and duties as if [he] had been born to [Jeremy]." Misty identified Jerad as David's father in the "Affidavit of Identification" attached to the petition.

The petition alleged that Jerad knew of David's birth on September 30, 2005, and had abandoned David for at least 6 months next preceding the filing of the petition, that Jerad failed to provide reasonable financial support for the child and

did not establish any relationship with said child, and that Jerad acted "in a manner evidencing a settled purpose to be rid of all parental responsibilities and obligations" involving David. The petition asked that Jeremy be allowed to adopt David and that his last name be changed.

Jerad's answer admitted that Misty was David's natural mother, that David was born to Misty and Jerad, and that Misty had identified Jerad as the father in the "Affidavit of Identification" attached to the petition. Jerad denied that he abandoned David and claimed that his attempts to have a relationship with David were thwarted by Misty. He requested that the petition for stepparent adoption be dismissed.

The county court found by clear and convincing evidence that Jerad abandoned David and that Jerad's consent was not needed for the adoption. It concluded the evidence was undisputed that Jerad had no contact with David and had provided no financial, emotional, or parental support from February 2006 until the filing of the petition on June 26, 2009. Jerad voluntarily discontinued contact with Misty and David when the child was no more than 6 months old.

The county court found no evidence of duress, fraud, or subterfuge perpetrated by Misty against Jerad. It found by clear and convincing evidence that Jerad had failed to demonstrate any plan to fulfill his parental responsibilities and obligations and that he had withheld his presence, care, love, concern, protection, and maintenance of David without just cause or excuse and failed to avail himself of any opportunity to display parental affection.

The county court determined that Jerad was not a fit and proper parent or suitable custodian for David because Jerad had abandoned David; had no contact with David for more than 3 years; and had provided no financial, emotional, or parental support even though he knew he had a son and the son's location. It concluded that the matter should proceed to adoption without Jerad's consent. We affirm.

ASSIGNMENTS OF ERROR

Jerad assigns the following errors: The county court (1) lacked jurisdiction due to a failure to comply with prepetition

notice requirements; (2) erred in deciding that the adoption should proceed without the consent of the district court; (3) erred in determining that Jerad had abandoned David; (4) erred in bifurcating the proceedings and denying an evidentiary hearing on the best interests of David, depriving Jerad of his constitutional right to due process; and (5) erred in determining that it was in David's best interests to proceed with the adoption.

ANALYSIS

JURISDICTION

[2,3] The parties question whether this court has jurisdiction because the order determining that Jerad had abandoned David was not a final, appealable order. Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *Carmicheal v. Rollins, ante* p. 59, 783 N.W.2d 763 (2010). For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken. *Id.*

Neb. Rev. Stat. § 43-112 (Reissue 2008) provides that an appeal may be taken from any final order, judgment, or decree of the county court rendered under the adoption statutes to the Nebraska Court of Appeals. In this case, no adoption decree has been entered. Rather, the county court found that Jerad abandoned David, and Jerad has appealed from that determination.

[4] The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered. *Steven S. v. Mary S.*, 277 Neb. 124, 760 N.W.2d 28 (2009). Since the order in the case at bar did not determine the action and prevent a judgment, nor was it made on summary application in an action after judgment was rendered, we consider whether the order was made during a special proceeding and affected a substantial right.

This court has construed the term "special proceeding" to include every special civil statutory remedy not encompassed in the civil procedure statutes that is not in itself an action. *Id.* "An action is any proceeding in a court by which a party prosecutes another for enforcement, protection, or determination of a right or the redress or prevention of a wrong involving and requiring the pleadings, process, and procedure provided by the statute and ending in a final judgment." *Id.* at 128-29, 760 N.W.2d at 32. Every other legal proceeding in which a remedy is sought by original application to a court is a special proceeding. *Id.*

The statutes regulating adoption in Nebraska are not contained within the civil procedure statutes. Adoption proceedings are governed by Neb. Rev. Stat. § 43-101 et seq. (Reissue 2008 & Supp. 2009). Thus, they are special proceedings. See, e.g., *In re Adoption of Krystal P. & Kile P.*, 248 Neb. 907, 540 N.W.2d 312 (1995).

[5,6] A substantial right is an essential legal right, not a mere technical right. See *Steven S., supra*. A substantial right is affected if the order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to an appellant prior to the order from which an appeal is taken. See *id.* "'"[W]hether a substantial right of a parent has been affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which the parent's relationship with the juvenile may reasonably be expected to be disturbed."'" *Id.* at 130, 760 N.W.2d at 34, quoting *In re Interest of Borius H. et al.*, 251 Neb. 397, 558 N.W.2d 31 (1997), and *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991).

In the case at bar, the county court found that Jerad abandoned David and that Jerad was not a fit and proper parent due to the abandonment. It concluded that Jerad's consent to the adoption was not required, and it ordered the matter to proceed to adoption without Jerad's consent.

This order affected a substantial right and was therefore final and appealable. An order of abandonment disturbs the parent's relationship with the child forever because the parent no longer has any right to be a part of the adoption proceedings. Once the

relationship is terminated, the parent has no standing to object to the adoption. Because the order affects Jerad's substantial right, it is final and appealable and this court has jurisdiction to review it.

Finding of Abandonment

[7] We next consider the merits of the county court's order, in which the court found by clear and convincing evidence that Jerad had abandoned David and that Jerad's consent was not needed for the adoption. The issue of abandonment in an adoption proceeding must be established by clear and convincing evidence. See *In re Guardianship of T.C.W.*, 235 Neb. 716, 457 N.W.2d 282 (1990), citing *In re Adoption of Simonton*, 211 Neb. 777, 320 N.W.2d 449 (1982).

Misty testified that Jerad made no attempt to establish a relationship with David. She did not hear from Jerad during her pregnancy even though she maintained the same telephone number she had while she and Jerad were dating. He did not ask to be informed of David's birth and was not present when David was born. Because Misty's family was in North Platte, she decided to move there to raise David.

After David was born, Misty received a snowsuit for David in the mail, but there was no name on the package, so she did not know whether it came from Jerad. Jerad did not send any other gifts for David or provide any financial support for him. Jerad did not register with the biological father registry. Misty denied Jerad's claims that she refused to make arrangements for visitation, that he offered money and clothing for David, and that she thwarted his attempts to have a relationship with David.

In May 2009, Misty contacted Jerad to inform him that her husband, Jeremy, wanted to adopt David. Jerad gave Misty his contact information so she could send the relinquishment forms. A few days later, Jerad's wife contacted Misty and said she and Jerad wanted to be a part of David's life. Jerad's wife offered to pay Misty $100 per month in child support. Misty said she was surprised that Jerad wanted to start a relationship with David at that time because Jerad had never sent cards or

gifts for David's birthday or at Christmas and had never called and asked to speak to David on the telephone.

Jerad testified that his relationship with Misty ended when she learned she was pregnant. Jerad said Misty did not want anything to do with him, in part because of religious differences. Jerad said that a friend called to let him know of David's birth and that he went to the hospital that day. Jerad claimed he was not allowed to see David, but he did not contact social services at the hospital for assistance.

Within the first months after David's birth, Jerad saw David on one occasion for about 1½ hours at the home of a friend who was related to Misty. Other visitations were scheduled, but they were canceled by Misty because she had car trouble or her daughter was sick.

Jerad said he contacted Misty by telephone in February 2006 and offered her health insurance and money but that she refused to accept it. Misty denied that she had refused Jerad's offer to provide support or health insurance for David. Around the same time, Jerad contacted an attorney for help with visitation, but the attorney produced no results. Jerad testified that he did not attempt to visit David after February 2006. Jerad said that in the 3 months prior to the hearing on the adoption petition, he tried to negotiate with Misty so he could be a part of David's life, but Misty refused. After Misty contacted Jerad at the end of May 2009 about the adoption, Jerad contacted an attorney. The State filed a paternity action in district court, and Jerad filed an answer requesting genetic testing. An order for genetic testing was entered in the district court, and it was pending at the time of the hearing in the adoption case.

Jerad admitted that he had not seen David after February 2006 and had not sent any cards or letters. Jerad said he was waiting until David was "old enough to know what was going on." He had Misty's telephone number, which had not changed since David was born. He was not "trying to be the bad guy" but was trying to negotiate and "work things out." He was not aware that he could acknowledge paternity within the first days after David's birth.

[8] "The question of abandonment is largely one of intent to be determined in each case from all the facts and circumstances." *In re Guardianship of T.C.W.*, 235 Neb. 716, 720, 457 N.W.2d 282, 285 (1990).

> "Willful abandonment has been defined as 'a voluntary and intentional relinquishment of the custody of the child to another, with the intent to *never again* claim the rights of a parent or perform the duty of a parent; or, second, an intentional withholding from the child, without just cause or excuse, by the parent, of his presence, his care, his love and his protection, maintenance, and the opportunity for the display of filial affection . . . .' . . ."

In re Application of S.R.S. and M.B.S., 225 Neb. 759, 765, 408 N.W.2d 272, 276 (1987), quoting *In re Adoption of Simonton*, 211 Neb. 777, 320 N.W.2d 449 (1982).

Although § 43-104 specifies the 6 months preceding the filing of the petition as the critical period of time during which abandonment must be shown, we have stated that this statutory period need not be considered in a vacuum. See *In re Adoption of Simonton, supra*. "One may consider the evidence of a parent's conduct, either before or after the statutory period, for this evidence is relevant to a determination of whether the purpose and intent of that parent was to abandon his child or children." *Id*. at 783, 320 N.W.2d at 453. The parental obligation "requires continuing interest in the child and a genuine effort to maintain communication and association with that child. Abandonment is not an ambulatory thing the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child." *Id*. at 784, 320 N.W.2d at 454.

The record supports by clear and convincing evidence that Jerad abandoned David. Jerad had no contact with and offered no parental support for David from February 2006 until the filing of the petition in June 2009. Misty moved to North Platte with David soon after his birth. She did not attempt to hide her location from Jerad, and she retained the same telephone number she had when they were dating. She traveled to Omaha at least once to allow Jerad to visit the child. There is no evidence that Jerad made any attempt to visit David in North Platte.

The last time Jerad attempted to contact David was in February 2006. He took no further action until the petition was filed in June 2009. No cards, letters, or gifts were sent, and Jerad provided no financial support.

David was nearly 4 years old at the time the adoption petition was filed. The evidence clearly and convincingly supports a finding that Jerad abandoned David by voluntarily discontinuing any contact with David when the child was no more than 6 months of age. The county court was correct in finding abandonment and in concluding that Jerad's consent to the adoption was not required.

Remaining Assignments of Error

Jerad claims that the county court lacked jurisdiction because prepetition notice requirements were not met. He claims that the court erred in (1) deciding that the adoption should proceed without the consent of the district court, (2) bifurcating the proceedings and denying an evidentiary hearing on David's best interests, and (3) determining that David's best interests would be served by proceeding with the adoption.

We find no merit to these assigned errors because Jerad lacks standing to raise them. This case comes to us following the county court's finding of abandonment. No decree of adoption has been entered. Once the court found that Jerad had abandoned David, Jerad no longer had standing to raise objections.

Consent shall not be required of any parent who has abandoned a child for at least 6 months next preceding the filing of the adoption petition. § 43-104. At any hearing to determine the parental rights of a putative biological father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the court

> shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:
>
> (1) The father abandoned or neglected the child after having knowledge of the child's birth;
>
> . . . .

> (3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child.

See § 43-104.22. The effect of a finding of abandonment is that the putative biological father has no further standing to raise objections in the matter of the adoption.

The same is true of Jerad's claim that this adoption may not proceed because there has been no consent by the district court. Given the finding of abandonment, Jerad has no standing to object to any issues of consent.

Jerad objects to the county court's decision to bifurcate the proceedings and deny an evidentiary hearing on David's best interests. He also argues that the county court erred in determining that David's best interests were to proceed with the adoption.

A trial judge has broad discretion over the conduct of a trial, and absent abuse, that discretion should be respected. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009). Bifurcation of a trial may be appropriate where separate proceedings will do justice, avoid prejudice, and further the convenience of the parties and the court. *Id*. Bifurcation is particularly proper where a potentially dispositive issue may be decided in such a way as to eliminate the need to try other issues. *Id*.

In this case, the county court first considered the question of abandonment. Once the court determined that issue, it could proceed to consider whether the adoption of David by Jeremy was in David's best interests. The court found that Jerad had abandoned David, and at that time, Jerad no longer had standing to object to the adoption. It was reasonable, and more efficient, for the court to divide the proceedings. See *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991) (no error in dividing trial into relinquishment phase and best interests phase). Although the county court made a finding as to David's best interests, Jerad has no standing to object to the court's finding. We conclude that Jerad's assignments of error are without merit.

CONCLUSION

The decision of the county court is affirmed.

AFFIRMED.

STATE OF NEBRASKA EX REL. L. TIM WAGNER, DIRECTOR OF INSURANCE OF THE STATE OF NEBRASKA, APPELLEE, V. AMWEST SURETY INSURANCE COMPANY, APPELLEE, AND FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER FOR NETBANK, F.S.B., CLAIMANT, APPELLANT.

790 N.W.2d 866

Filed October 29, 2010. No. S-09-1128.

1. **Insurance: Equity: Appeal and Error.** An insurer liquidation proceeding lies in equity, and an appellate court reviews a liquidation court's determination of claims disputes de novo on the record.
2. **Contracts: Time.** In the absence of a stated time for performance, the law will imply a time of performance within a reasonable time under the circumstances.
3. **Uniform Commercial Code: Security Interests: Notice.** The Uniform Commercial Code is a "pure race" statute in which a subsequent creditor's notice of prior creditors is irrelevant.
4. **Security Interests.** As to priority, conflicting perfected security interests rank in the order in which they are filed or perfected.
5. **Security Interests: Time.** Delays in perfecting a security interest measured in months or years are unreasonable.
6. **Waiver: Words and Phrases.** A waiver is a voluntary and intentional relinquishment of a known right, privilege, or claim, and may be demonstrated by or inferred from a person's conduct.
7. **Waiver: Estoppel.** To establish a waiver of a legal right, there must be a clear, unequivocal, and decisive act of a party showing such a purpose, or acts amounting to an estoppel on his or her part.
8. **Waiver.** A waiver requires that the waiving party have full knowledge of all the material facts.

Appeal from the District Court for Lancaster County: JOHN A. COLBORN, Judge. Reversed and remanded.

Robert B. Bernstein, of Vandenberg & Feliu, L.L.P., James G. Powers and Michael T. Eversden, of McGrath, North, Mullin & Kratz, P.C., L.L.O., and William V. Custer, LeeAnn