Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 08:27 AM CST

action taken because of the Form U-5 filing. We rejected that argument in *Knights of Columbus Council 3152*.[21] Because the appellants failed to allege that they received statements made in the Form U-5, the court did not err in (1) granting KFS BD summary judgment, (2) excluding exhibit 30, and (3) denying leave to file a third amended complaint.

VI. CONCLUSION

We conclude that the appellants' negligent misrepresentation claim fails as a matter of law. We reverse, however, the court's order dismissing the appellants' fraudulent misrepresentation and fraudulent concealment claims. And we reverse the court's dismissal of their claim against Mutual to the extent that the appellants premised their claim upon Mutual's direct participation in Kirkpatrick Pettis' alleged misrepresentations or fraudulent concealment. We remand the cause for further proceedings consistent with this opinion.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WRIGHT and STEPHAN, JJ., not participating.

---

[21] See *id.*

FELICIA WRIGHT, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CHASITY WRIGHT, APPELLANT, V. OMAHA PUBLIC SCHOOL DISTRICT, APPELLEE.

PORTIA DENAY LOYD, A MINOR, BY AND THROUGH HER MOTHER AND NEXT FRIEND, DEIDRA LOYD, APPELLANT, V. OMAHA PUBLIC SCHOOL DISTRCT, APPELLEE.

791 N.W.2d 760

Filed December 10, 2010. Nos. S-10-048, S-10-067.

1. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.
2. ____: ____. A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.

3. ____: ____. An appellate court acquires no jurisdiction unless the appellant has satisfied the statutory requirements for appellate jurisdiction.
4. **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 court from which the appeal is taken. Conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders.
5. **Jurisdiction: Appeal and Error.** When an appellate court is without jurisdiction to act, the appeal must be dismissed.

Appeals from the District Court for Douglas County: SANDRA L. DOUGHERTY, Judge. Appeals dismissed.

Melany S. O'Brien and Terry Anderson, of Hauptman, O'Brien, Wolf & Lathrop, P.C., Christopher P. Welsh and James R. Welsh, of Welsh & Welsh, P.C., L.L.O., and Mandy L. Strigenz, of Sibbernsen & Strigenz, P.C., for appellants.

Patrick B. Donahue and Ronald F. Krause, of Cassem, Tierney, Adams, Gotch & Douglas, for appellee.

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

STEPHAN, J.

In these consolidated actions, appellants alleged that the Omaha Public School District (OPS) negligently failed to protect two of its students from harm. They appeal from orders of the district court entering summary judgment in favor of OPS in each case. We conclude that because the notices of appeal were untimely filed, we lack jurisdiction to reach the substantive issues presented.

BACKGROUND

Separate complaints were filed in the district court for Douglas County by Felicia Wright (Wright), individually and as special administrator of the estate of Chasity Wright (Chasity), deceased, and by Portia Denay Loyd (Portia), a minor, by and through her mother and next friend, Deidra Loyd (Loyd). The defendants in each action were OPS and Simmonds Restaurant Management, Inc., doing business as Burger King (Simmonds). The cases arose from an incident which occurred on June 25, 2004. On that day, Chasity and Portia were attending summer school at Omaha South High School. During their lunch break,

they left the school building and went to a nearby restaurant operated by Simmonds. In the parking lot of the restaurant, Chasity and Portia were assaulted by four or five females, at least two of whom had also attended classes at Omaha South High School that day. Chasity died from an asthma attack precipitated by the assault, and Portia sustained injuries.

In their complaints, appellants alleged that OPS was negligent in failing to protect Chasity and Portia from harm and that Simmonds was negligent in failing to take measures to prevent the assaults on its premises. OPS and Simmonds filed answers denying that they were negligent. Simmonds also filed a third-party complaint against one of the alleged perpetrators of the assault.

On March 31, 2009, the district court entered summary judgment in favor of OPS in each case, reasoning that "OPS did not owe a duty to supervise and protect Chasity and Portia from the off-campus assault . . . as the assault was unforeseeable as a matter of law." On June 30, the district court overruled motions to reconsider filed in each case, specifically stating, "This order shall not be considered a final judgment for purposes of appeal as defined in § 25-1315 (R.R.S. 2008)." On January 4, 2010, the district court entered orders pursuant to stipulations dismissing each case with prejudice as to Simmonds only. Wright filed a notice of appeal on January 13, and Portia filed a notice of appeal on January 20. Both notices indicated that the appeals were taken from the orders sustaining the motions for summary judgment filed by OPS. Neither party challenged the dismissal of Simmonds.

On March 12, 2010, the Court of Appeals summarily dismissed both appeals for lack of jurisdiction because there had been no adjudication of the third-party complaint and there had been no express determination pursuant to Neb. Rev. Stat. § 25-1315 (Reissue 2008). In both appeals, appellants filed motions for rehearing which included, as attached exhibits, orders entered by the district court on March 19 dismissing the third-party complaints. Those orders were subsequently included in supplemental transcripts filed in each appeal.

On April 27, 2010, the Court of Appeals entered in each appeal a minute order which stated:

> Motion of appellant for rehearing sustained in part; appeal reinstated and jurisdictional issue reserved pending final submission of appeal. Parties directed to address jurisdictional issue in their briefing on appeal. See Neb. Rev. Stat. § 25-1912(2) (Reissue 2008); Ferer v. Aaron Ferer & Sons Co., 16 Neb. App. 866, 755 N.W.2d 415 (2008).

On the same date, the Court of Appeals consolidated the two appeals for purposes of briefing, oral argument, and disposition. We subsequently moved the consolidated appeals to our docket on our own motion, based on our statutory authority to regulate the caseloads of the appellate courts of this state.[1]

ASSIGNMENTS OF ERROR

Appellants assign, restated, that the district court erred in (1) sustaining a motion in limine filed by OPS, (2) finding that OPS had no duty as a matter of law to supervise and protect Chasity and Portia, (3) finding that the assault was not foreseeable as a matter of law, and (4) granting OPS' motion for summary judgment.

STANDARD OF REVIEW

[1,2] Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.[2] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.[3]

ANALYSIS

[3,4] An appellate court acquires no jurisdiction unless the appellant has satisfied the statutory requirements for appellate jurisdiction.[4] Generally, for an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the

---

[1] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

[2] *In re Estate of Hockemeier, ante* p. 420, 786 N.W.2d 680 (2010); *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 772 N.W.2d 872 (2009).

[3] *Malolepszy v. State*, 270 Neb. 100, 699 N.W.2d 387 (2005); *In re Guardianship & Conservatorship of Woltemath*, 268 Neb. 33, 680 N.W.2d 142 (2004).

[4] *In re Estate of Chrisp*, 276 Neb. 966, 759 N.W.2d 87 (2009).

court from which the appeal is taken. Conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders.[5] The question of when final orders were entered in these cases is governed by § 25-1315(1), which provides:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

In cases involving multiple claims or parties, we have interpreted this statute to require

> an explicit adjudication with respect to all claims or parties or, failing such explicit adjudication of all claims or parties, an express determination that there is no just reason for delay of an appeal of an order disposing of less than all claims or parties and an express direction for the entry of judgment as to those adjudicated claims or parties.[6]

In these cases, the district court did not make a determination pursuant to § 25-1315 when it entered summary judgment for OPS in each case, and it specifically stated that its orders overruling the motions to reconsider entry of summary judgment were not final orders as defined by § 25-1315. Nor did the district court make determinations pursuant to § 25-1315

---

[5] *State of Florida v. Countrywide Truck Ins. Agency*, 270 Neb. 454, 703 N.W.2d 905 (2005).

[6] *Malolepszy v. State, supra* note 3, 270 Neb. at 108, 699 N.W.2d at 392.

when it ordered the dismissal of Simmonds on January 4, 2010. Thus, when the notices of appeal were filed on January 13 and January 20, the cases stood in the same procedural posture as in *Malolepszy v. State*,[7] where we held that the pendency of an unresolved third-party complaint in the absence of a determination and direction pursuant to § 25-1315(1) precluded our jurisdiction over an appeal from the entry of summary judgment in favor of the defendant.

Finality was achieved in these cases on March 19, 2010, when the district court entered orders dismissing the third party complaints. Neb. Rev. Stat. § 25-1912(1) (Reissue 2008) provides that in order to obtain appellate reversal of a judgment or final order entered by a district court, a party must file a notice of appeal "within thirty days after the entry of such judgment, decree, or final order." In these cases, there were no notices of appeal filed *after* the entry of the final orders on March 19. Appellants rely upon the notices of appeal which they filed *before* entry of that order to establish appellate jurisdiction.

The Nebraska Court of Appeals addressed a similar sequence of events in *Ferer v. Aaron Ferer & Sons Co.*[8] In that case, a notice of appeal was filed from a summary judgment order which disposed of some but not all of the appellant's claims and the district court did not make a determination pursuant to § 25-1315. In response to a show cause order entered by the Court of Appeals, the appellant produced an order from the district court dismissing all claims against all defendants and indicating that its prior order was intended to have this effect. The appellant did not file a new notice of appeal after this order, but argued that his previously filed notice of appeal related forward under § 25-1912(2), which provides:

> A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment, decree, or final order shall be

---

[7] See *id.*

[8] *Ferer v. Aaron Ferer & Sons Co.*, 16 Neb. App. 866, 755 N.W.2d 415 (2008).

> treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry.

In rejecting this argument, the Court of Appeals held that § 25-1912(2) applied only to the specific circumstance of a notice of appeal filed after the announcement of a decision or final order, but before entry of judgment, and was "not intended to validate anticipatory notices of appeal filed prior to the announcement of a final judgment."[9]

Appellants attempt to distinguish their cases from *Ferer* by arguing that the Court of Appeals reinstated these appeals in response to their motions for rehearing. They rely upon *State v. Craig*,[10] in which the Court of Appeals dismissed for lack of jurisdiction, but then reinstated the appeal in response to the appellant's motion for rehearing. But in its opinion, the Court of Appeals specifically analyzed the order from which the appeal was taken and concluded that it constituted a final and appealable order. The notice of appeal was filed on the day after the order was entered. The reinstatement of the appeal in *Craig* was irrelevant to the court's ultimate determination that there was a final, appealable order from which a timely appeal was taken. Thus, *Craig* provides no support for appellants' argument that this case is distinguishable from *Ferer*.

Nor are we persuaded by appellants' argument that any jurisdictional defect was in some way resolved by the Court of Appeals' reinstatement of these appeals in response to the motions for rehearing. We note that the reinstatement orders were entered on April 27, 2010, more than 30 days following the final orders entered by the district court on March 19, so there is no basis for any argument that appellants were somehow led to believe that they were not required to file timely notices of appeal *after* the final orders of the district court. To the contrary, the orders reinstating these appeals specifically reserved the jurisdictional issue "pending final submission of appeal" and directed the parties to address the jurisdictional issue in their briefs.

---

[9] *Id.* at 870, 755 N.W.2d at 418.

[10] *State v. Craig*, 15 Neb. App. 836, 739 N.W.2d 206 (2007).

Finally, appellants cite cases from other jurisdictions in support of their argument that reinstatement of an appeal following dismissal necessarily cures a jurisdictional defect. We need not discuss those cases, because the question of appellate jurisdiction in the cases before us is necessarily dependent upon the provisions of Nebraska statutes as interpreted and applied by the appellate courts of this state. We conclude that the reasoning of the Nebraska Court of Appeals in *Ferer* is correct and directly applicable to the jurisdictional issue presented in these appeals. Notices of appeal were not filed within 30 days after entry of the final orders on March 19, 2010, as required by § 25-1912(1), and therefore we do not have appellate jurisdiction.

CONCLUSION

[5] When an appellate court is without jurisdiction to act, the appeal must be dismissed.[11] Accordingly, we dismiss these appeals.

APPEALS DISMISSED.

---

[11] *Malolepszy v. State, supra* note 3; *In re Guardianship & Conservatorship of Woltemath, supra* note 3.