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that one breach foreshadows another and serves as a basis for McKinnis to demand assurance and avoid its duty under the awning contract was not reasonable. Hicks has not breached the roof contract or repudiated the awning contract. The prepayment by McKinnis was not warranted, and Hicks' refusal of the demand was not a breach of the awning contract.

The district court's findings show that Hicks stood ready to perform his obligations under the awning contract and that, inter alia, in the absence of a breach of the roof contract by Hicks, McKinnis was not justified in seeking prepayment contrary to the payment terms and schedule in paragraph 15 of the awning contract. Hicks' refusal to prepay for the awning job was not a breach by Hicks.

The district court erred when it determined that Hicks breached the awning contract.

CONCLUSION

Hicks did not breach the roof contract or the awning contract. We therefore reverse the order of the district court and remand the cause with directions to vacate the judgment entered on McKinnis' behalf and to enter judgment in favor of Hicks.

REVERSED AND REMANDED WITH DIRECTIONS.

ELIZABETH GRANT JOHNSON, APPELLEE, V. KARI JOHNSON, APPELLANT.

803 N.W.2d 420

Filed August 12, 2011. No. S-10-1092.

1. **Service of Process: Waiver: Time.** A voluntary appearance signed the day before the petition is filed waives service of process if filed simultaneously with or after the petition.
2. **Motions to Vacate: Proof: Appeal and Error.** An appellate court will reverse a decision on a motion to vacate only if the litigant shows that the district court abused its discretion.
3. **Judgments: Jurisdiction.** A jurisdictional issue that does not involve a factual dispute presents a question of law.
4. **Judgments: Appeal and Error.** An appellate court independently reviews questions of law decided by a lower court.

5. **Jurisdiction: Service of Process: Waiver.** Proper service, or a waiver by voluntary appearance, is necessary to acquire personal jurisdiction over a defendant.
6. **Judgments: Jurisdiction.** A judgment entered without personal jurisdiction is void.
7. **Judgments: Collateral Attack.** A void judgment may be attacked at any time in any proceeding.

Appeal from the District Court for Douglas County: J. PATRICK MULLEN, Judge. Affirmed.

Virginia A. Albers, of Lieben, Whitted, Houghton, Slowiaczek & Cavanagh, P.C., L.L.O., for appellant.

Christine A. Lustgarten, of Dornan, Lustgarten & Troia, P.C., L.L.O., for appellee.

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

CONNOLLY, J.

[1] Kari Johnson seeks to have a dissolution decree vacated. He argues that because he signed his voluntary appearance before his wife had filed her petition, he did not effectively waive service of process and thus the court did not have personal jurisdiction over him. We disagree and hold that a voluntary appearance signed the day before the petition is filed waives service of process if filed simultaneously with or after the petition. We affirm.

BACKGROUND

On November 23, 2009, Kari and his wife, Elizabeth Grant Johnson, went to a self-help legal clinic for assistance in filing a dissolution action. With the help of the clinic, Elizabeth prepared several documents, including a petition for dissolution, a voluntary appearance for Kari, an application for support, a motion for default judgment, and a proposed dissolution decree. Under a notary's supervision, Kari signed the voluntary appearance and the proposed decree. Both of these documents were dated November 23, 2009.

The next day, Elizabeth filed the petition for dissolution and Kari's voluntary appearance in the district court. The time

stamps on the two documents reflect that the documents were filed simultaneously.

On January 27, 2010, the court held a hearing in which it reviewed the proposed decree with Elizabeth. Kari did not attend the hearing, but the court found that the voluntary appearance Kari had signed established personal jurisdiction. After a few modifications, the court entered the decree that the parties had signed. Among other things, the decree required Kari to pay child support and alimony to Elizabeth.

In September 2010, Kari moved to vacate the decree of dissolution. He argued that the decree was void because the court lacked personal jurisdiction over Kari when it entered the decree. He argued that his voluntary appearance, which he signed before Elizabeth's filing of the petition, did not establish jurisdiction. Further, he argued that he had done nothing else that would waive his objection to insufficiency of service. The court denied this motion.

ASSIGNMENT OF ERROR

Kari assigns that the district court erred in refusing to vacate the dissolution decree, because the court did not have personal jurisdiction over him when Elizabeth failed to serve him with process and he never waived service.

STANDARD OF REVIEW

[2] We will reverse a decision on a motion to vacate only if the litigant shows that the district court abused its discretion.[1]

[3,4] A jurisdictional issue that does not involve a factual dispute presents a question of law.[2] We independently review questions of law decided by a lower court.[3]

ANALYSIS

Kari argues that Elizabeth never served him with process and that his voluntary appearance was not effective to waive

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[1] See, e.g., *Destiny 98 TD v. Miodowski*, 269 Neb. 427, 693 N.W.2d 278 (2005).

[2] *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011).

[3] *Id.*

process. So, he argues, the court never acquired personal jurisdiction and the decree is void.

[5-7] Kari is correct in that proper service, or a waiver by voluntary appearance,[4] is necessary to acquire personal jurisdiction over a defendant.[5] And we have stated that a judgment entered without personal jurisdiction is void.[6] As mentioned, Kari signed a voluntary appearance, but did so before Elizabeth filed the petition. If we conclude that this voluntary appearance is insufficient to waive service of process, the court's decree is void. And a void judgment may be attacked at any time in any proceeding.[7]

Kari argues that a voluntary appearance cannot be signed before an action is filed, because there is no pending action in which to enter an appearance at that point. Kari views the operative time for a voluntary appearance as the point at which he signed the document—not when Elizabeth filed it with the court. And because Kari signed his appearance before the petition was filed, he argues his appearance does not establish personal jurisdiction.

But as a general rule, documents are given effect as of the date and time they are filed. For example, an action is commenced on the day that the complaint is filed.[8] Similarly, we look to the date of filing for other matters of procedure, such as a motion to alter or amend a judgment[9] or a notice of appeal.[10]

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[4] See Neb. Rev. Stat. § 25-516.01 (Reissue 2008).

[5] See, e.g., *Holmstedt v. York Cty. Jail Supervisor*, 275 Neb. 161, 745 N.W.2d 317 (2008); *Nebraska Methodist Health Sys. v. Dept. of Health*, 249 Neb. 405, 543 N.W.2d 466 (1996). See, also, 49 C.J.S. *Judgments* § 32 (2009).

[6] See, e.g., *Cave v. Reiser*, 268 Neb. 539, 684 N.W.2d 580 (2004); *State v. Roth*, 158 Neb. 789, 64 N.W.2d 799 (1954); *Ehlers v. Grove*, 147 Neb. 704, 24 N.W.2d 866 (1946). See, also, 49 C.J.S. *supra* note 5, § 30.

[7] *Ryan v. Ryan*, 257 Neb. 682, 600 N.W.2d 739 (1999).

[8] See, *Fox v. Nick*, 265 Neb. 986, 660 N.W.2d 881 (2003); Neb. Rev. Stat. § 25-217 (Reissue 2008).

[9] See Neb. Rev. Stat. § 25-1329 (Reissue 2008).

[10] See, Neb. Rev. Stat. § 25-1912 (Reissue 2008); *State v. Parmar*, 255 Neb. 356, 586 N.W.2d 279 (1998).

We see nothing in § 25-516.01(1) that leads us to conclude that the Legislature wanted a voluntary appearance to take effect at a time other than its filing.

We also note that other courts considering similar facts have likewise ruled that the voluntary appearance signed before a party filed a petition effectively waives service. For instance, in *Vayette v. Myers*,[11] the Illinois Supreme Court ruled that the voluntary appearance of the defendant was valid when it was filed the same day as the complaint—even though it was signed the day before. The Missouri Court of Appeals has held that the "entry of appearance, even though signed before the suit was actually filed, was sufficient to confer jurisdiction."[12] A Georgia Supreme Court decision states that a waiver of service may occur before filing if the waiver is "strictly limited to a specific suit in the minds of both parties at the time and . . . is filed in due course and without reasonable delay."[13] Most courts that have considered this question hold that a voluntary appearance under such circumstances is valid.[14]

Admittedly, some of these cases highlight issues that may, in the future, lead to a different result. For example, in some cases, no suit was filed for months or years after the appearance was signed.[15] Whether an appearance signed long before the suit was filed would be valid is a question we need not consider because the record shows that Elizabeth filed the petition the next day. Other cases have limited an effective appearance to those situations in which it is clear that the appearance was

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[11] *Vayette v. Myers*, 303 Ill. 562, 136 N.E. 467 (1922).

[12] *Shields v. Shields*, 387 S.W.2d 242, 245-46 (Mo. App. 1965).

[13] *Adair v. Adair*, 220 Ga. 852, 856, 142 S.E.2d 251, 254 (1965). See, also, *Russell v. Russell*, 257 Ga. 177, 356 S.E.2d 884 (1987).

[14] See, *Drinkwater v. Drinkwater*, 111 F. Supp. 559 (D.D.C. 1953); *Withers v. Starace*, 22 F. Supp. 773 (E.D.N.Y. 1938); *Kirk v. Bonner*, 186 Ark. 1063, 57 S.W.2d 802 (1933); *In re Adoption of Matthew B.-M.*, 232 Cal. App. 3d 1239, 284 Cal. Rptr. 18 (1991); *Estate of Raynor*, 165 Cal. App. 2d 715, 332 P.2d 416 (1958); *Joaquin v. Joaquin*, 5 Haw. App. 435, 698 P.2d 298 (1985); *Jacobs v. Ellett*, 108 Utah 162, 158 P.2d 555 (1945). See, also, 24 Am. Jur. 2d *Divorce and Separation* § 264 (2008); Annot., 159 A.L.R. 111 (1945).

[15] See, e.g., *Reagan v. Reagan*, 22 Ill. App. 3d 211, 317 N.E.2d 581 (1974).

filed in a case that the parties had been contemplating.[16] Here, Kari knew that Elizabeth intended to file the voluntary appearance with the dissolution petition, which she filed the next day. We conclude that the voluntary appearance waived service and thus the court had jurisdiction. We affirm.

AFFIRMED.

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[16] See, e.g., *Adair, supra* note 13.