Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 08:25 AM CST

and regulations.[37] Martha, Karlie's grandmother, wishes to care for and ultimately adopt Karlie. The record shows that Martha is physically, financially, and in all other ways able to care for Karlie on a permanent basis, and we are not convinced by the State's arguments otherwise. Karlie's best interests are served by placement with Martha.

V. CONCLUSION

We conclude that the juvenile court's order was a final, appealable order. And in our de novo review of the record, we find that the placement of Karlie with her grandparents is in her best interests. We affirm the judgment of the juvenile court.

AFFIRMED.

[37] 390 Neb. Admin. Code, ch. 7, § 004.01A (2000).

NEBRASKA REPUBLICAN PARTY, APPELLANT, V.
JOHN A. GALE, SECRETARY OF STATE OF THE
STATE OF NEBRASKA, APPELLEE, AND
BOB KERREY, INTERVENOR-APPELLEE.
812 N.W.2d 273

Filed March 26, 2012. No. S-12-237.

Appeal from the District Court for Lancaster County: STEVEN D. BURNS, Judge. Appeal dismissed.

Steve Grasz, of Husch Blackwell, L.L.P., and, of Counsel, Bobby R. Burchfield and Brandon H. Barnes, of McDermott, Will & Emery, L.L.P., for appellant.

Andre R. Barry, of Cline, Williams, Wright, Johnson & Oldfather, L.L.P., and Alan E. Peterson for intervenor-appellee.

Robert F. Bartle and Jeffry D. Patterson, of Bartle & Geier Law Firm, for appellee.

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

PER CURIAM.

This is an appeal from a March 21, 2012, order of the district court for Lancaster County in a special proceeding brought pursuant to Neb. Rev. Stat. § 32-624 (Reissue 2008). That order dismissed with prejudice a "Petition for Review of Secretary of State Determination Opinion" filed by appellant, the Nebraska Republican Party, against the Nebraska Secretary of State, John A. Gale.

The district court proceeding arose from a March 6, 2012, objection filed by appellant with the Nebraska Secretary of State in which it challenged, pursuant to § 32-624, the candidate filing of Bob Kerrey for the U.S. Senate. On March 16, the Secretary of State issued his determination opinion concluding that Kerrey's name could appear on the May 15, 2012, primary election ballot.

On March 20, 2012, appellant herein filed its petition in the district court for review of the Secretary of State's determination opinion. Section 32-624 permits a "political party committee or other interested party" to file an "application" for a summary review of the Secretary of State's decision to "a judge of the county court, district court, Court of Appeals, or Supreme Court." The petition filed in this case avers that pursuant to § 32-624, the "statutory deadline for reversing a finding by Secretary Gale is fifty-five days prior to the primary election, or March 21, 2012." An expedited summary adjudication was sought in the district court. A judgment was filed by the district court at 7:18 p.m. on March 21, 2012, with the case being dismissed with prejudice.

Upon filing of that March 21, 2012, judgment, the Nebraska Republican Party electronically filed a notice of appeal and docket fee in the district court on that same date. On March 22, the district court for Lancaster County electronically filed the appeal with the Clerk of the Supreme Court, and the appeal was then docketed in the Nebraska Court of Appeals on March 22. This court thereafter, on its own motion, moved the appeal

to its docket pursuant to its authority under Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

For the sake of completeness, the court notes that appellant filed in this court a notice pursuant Neb. Ct. R. App. P. § 2-109(E) (rev. 2008) and asserts therein that this is an appeal which "involves the constitutionality of Nebraska statutes." Appellant's brief on appeal fails to assign as error an issue regarding the unconstitutionality of any specific state statute.[1] This court finds that this is not an appeal involving the constitutionality of a Nebraska statute.

This court entered an order to show cause on March 22, 2012, directing that the parties address its jurisdiction in this matter. Further, the parties were ordered to address the issue of whether § 32-624, which requires that an order shall be made by a judge "'on or before the fifty-fifth day preceding the election'" in order to reverse a decision of the Secretary of State, would prohibit this court from granting relief to appellant after that 55-day limitation period had run, because such relief would violate the legislative mandate of § 32-624.

In response to the order to show cause, all parties responded to the court's order and the issues raised therein.

Past reported decisions of the Nebraska Supreme Court support the view that appellate jurisdiction seems to exist in this "§ 32-624" type of proceedings, albeit under the predecessor statutes to current Nebraska law, at least where such appeal is taken from a judge of the district court.[2]

---

[1] See *Alegent Health Bergan Mercy Med. Ctr. v. Haworth*, 260 Neb. 63, 615 N.W.2d 460 (2000) (where brief contains no assignment of error based upon alleged unconstitutionality of statute, argued error will not be considered by appellate court).

[2] See, *State, ex rel. Quinn, v. Marsh*, 141 Neb. 436, 3 N.W.2d 892 (1942); *State, ex rel. Meissner, v. McHugh*, 120 Neb. 356, 233 N.W. 1 (1930) (single-justice opinion); *Porter v. Flick,* 60 Neb. 773, 84 N.W. 262 (1900). But see *State ex rel. Chambers v. Beermann*, 229 Neb. 696, 428 N.W.2d 883 (1988) (special proceeding resulting in October 18, 1988, order of Acting Chief Justice Boslaugh denying appeal to full court from order of single justice of Supreme Court under Neb. Rev. Stat. § 32-517 (Reissue 1984), predecessor statute to § 32-624, stating "[n]o procedure for appeal to this or any other court is authorized by [§ 32-517]").

Despite the uncertainty in our case law and orders of this court in appeals from such proceedings, we will assume without deciding that subject matter jurisdiction does exist in the matter before this court today. But the relief sought by appellant is not available under the election scheme as provided for by the Legislature.

A court may have subject matter jurisdiction in a matter over a certain class of case, but it may nonetheless lack the authority to address a particular question or grant the particular relief requested.[3] We have stated:

> Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action or proceeding before the court and the particular question which it assumes to determine. But the question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases. It also involves determining whether a court has authority to address a particular question that it assumes to decide or to grant the particular relief requested.[4]

Section 32-624 directs that a decision of the Secretary of State shall become final unless an order shall be made by a judge "on or before the fifty-fifth day preceding the election" changing that decision. An order by any court made after that time period would violate such legislative mandate, and no relief may be afforded to the party from such an order after the 55th day.

In election cases, this court has no authority to grant relief where the Legislature has established by statute strict deadlines which must be met in order to guarantee that the state's election process is safeguarded against uncertainty and disruption.

---

[3] *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011). See, also, *In re Estate of Hockemeier*, 280 Neb. 420, 786 N.W.2d 680 (2010).

[4] *In re Interest of Trey H., supra* note 3, 281 Neb. at 766, 798 N.W.2d at 613. See, *State ex rel. Lamm v. Nebraska Bd. of Pardons*, 260 Neb. 1000, 620 N.W.2d 763 (2001); *Ryan v. Ryan*, 257 Neb. 682, 600 N.W.2d 739 (1999).

Section 32-624 and Neb. Rev. Stat. § 32-801 (Reissue 2008) are such statutes. As stated in the affidavit of the Secretary of State, attached to his response to this court's order to show cause,

> [i]n reliance on Neb. Rev. Stat. § 32-624, and on the Order of the District Court for Lancaster County entered March 21, 2012, [he] began certification of the May 15, 2012 primary election ballot at approximately noon on Thursday, March 22, and completed the process of ballot certification on that same day for all 93 Nebraska counties at approximately 1:30 p.m.

That certification duty is imposed upon the Secretary of State by § 32-801, and no one asserts he should disregard that statutory obligation.

Thus, for the reasons stated above, this court determines that under the statutory procedure established by the Legislature, it lacks authority to grant the relief sought by appellant. This appeal is therefore dismissed.

APPEAL DISMISSED.

WRIGHT and STEPHAN, JJ., not participating.

STATE OF NEBRASKA, APPELLEE, V.
TYLER W. BRITT, APPELLANT.
813 N.W.2d 434

Filed March 30, 2012. No. S-10-998.

1. **Constitutional Law: Appeal and Error.** An appellate court reviews de novo a trial court's determination of the protections afforded by the Confrontation Clause and reviews the underlying factual determinations for clear error.
2. **Constitutional Law: Hearsay.** Where testimonial statements are at issue, the Confrontation Clause demands that such out-of-court hearsay statements be admitted at trial only if the declarant is unavailable and there had been a prior opportunity for cross-examination.
3. ____: ____. Statements that are nontestimonial can be admitted without further Confrontation Clause analysis.
4. ____: ____. The initial step in a Confrontation Clause analysis is to determine whether the statements at issue are testimonial in nature and subject to a Confrontation Clause analysis. If the statements are nontestimonial, then no further Confrontation Clause analysis is required.