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infer that he must have meant it because somebody actually started a fire at the repair shop 2 days later. Such an inference, without any evidence to connect Thomas to the subsequent fire, is certainly prejudicial and suggests a finding of guilt on improper grounds.

Because there was no connection between Thomas and the subsequent fire, we conclude that there was little or no probative value to the fire evidence, and any minimal probative value would be outweighed by the danger of unfair prejudice. See *State v. Sellers, supra* (evidence of handguns located at time of defendant's arrest lacked probative value and was unfairly prejudicial because there was no connection between handguns and defendant). The district court abused its discretion in not excluding this evidence, and this error requires that we reverse, and remand for a new trial.

V. CONCLUSION

The district court erred in overruling Thomas' objections to the State's proffer of evidence concerning the fire at Haynes' repair shop, because there was no evidence linking Thomas to the fire. We reverse, and remand for a new trial.

REVERSED AND REMANDED FOR A NEW TRIAL.

MICHAEL TURNBULL, APPELLANT, V. COUNTY OF PAWNEE, NEBRASKA, APPELLEE.

810 N.W.2d 172

Filed May 31, 2011. No. A-10-489.

1. **Judgments: Appeal and Error.** Neb. Rev. Stat. § 25-1901 (Reissue 2008) provides for a district court to review the judgment rendered or final order made by a tribunal inferior in jurisdiction and exercising judicial functions.
2. **Administrative Law: Public Officers and Employees: Claims: Notice: Breach of Contract: Appeal and Error.** Where an original breach of contract action requires compliance with the county claims statute, Neb. Rev. Stat. § 23-135 (Reissue 2007), to provide sufficient notice to a county of the claim, when an employee seeks judicial review of a final order rendered by an administrative body, the county is on full notice of the claim by virtue of the employee's compliance with agreed-upon procedures for asserting the claim at the administrative level.

3. **Judgments: Appeal and Error.** Neb. Rev. Stat. § 25-1901 (Reissue 2008) specifically provides that a judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court.
4. ____: ____. Neb. Rev. Stat. § 25-1903 (Reissue 2008) provides that proceedings to obtain reversal, vacation, or modification of the judgment or final order of an inferior tribunal, board, or officer exercising judicial functions shall be by petition entitled "petition in error," setting forth the errors complained of.
5. **Records: Appeal and Error.** Neb. Rev. Stat. § 25-1905 (Reissue 2008) provides that a plaintiff in error shall file with his or her petition a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings.
6. **Records: Judgments: Appeal and Error.** Neb. Rev. Stat. § 25-1905 (Reissue 2008) provides that the transcript required to be filed with a petition in error shall contain the final judgment or order sought to be reversed, vacated, or modified.
7. **Administrative Law: Appeal and Error.** A board or tribunal exercises a judicial function if it decides a dispute of adjudicative fact or if a statute requires it to act in a judicial manner.
8. **Evidence: Proof: Words and Phrases.** Adjudicative facts are facts which relate to a specific party and are adduced from formal proof.
9. ____: ____: ____. Adjudicative facts pertain to questions of who did what, where, when, how, why, and with what motive or intent. They are roughly the kind of facts which would go to a jury in a jury case.
10. **Appeal and Error.** To perfect a petition in error, Neb. Rev. Stat. § 25-1903 (Reissue 2008) directs the petitioner to file the petition to the district court setting forth the errors complained of.
11. **Jurisdiction: Appeal and Error.** Compliance with Neb. Rev. Stat. §§ 25-1903 and 25-1905 (Reissue 2008) is jurisdictional.

Appeal from the District Court for Pawnee County: DANIEL E. BRYAN, JR., Judge. Affirmed.

Timothy S. Dowd, of Dowd, Howard & Corrigan, L.L.C., for appellant.

Christine A. Lustgarten and Sophia M. Alvarez, of Dornan, Lustgarten & Troia, P.C., L.L.O., for appellee.

IRWIN, SIEVERS, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Michael Turnbull is an employee of Pawnee County, Nebraska (the County). He used an administrative grievance process to

challenge discipline his employer had imposed. Dissatisfied with the result of that process, he brought an action in district court. The district court dismissed Turnbull's action, concluding that Turnbull was required to comply with the petition in error statutes, Neb. Rev. Stat. § 25-1901 et seq. (Reissue 2008). Specifically, the district court concluded Turnbull had failed to provide a record of the proceedings held before the administrative body, as required by § 25-1905. On the record provided to us, we affirm the trial court's conclusion that Turnbull failed to comply with the jurisdictional prerequisites of § 25-1901 et seq. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

II. BACKGROUND

We initially note that this case presents the court with some peculiar and difficult issues concerning the record and attempting to stitch together what actually happened below. Categorically unnecessary effort, time, and resources were expended by the clerk of the Court of Appeals, Court of Appeals staff, and others to finally retrieve what record was made by the court reporter of the district court. In addition, Turnbull's brief contains very little reference to the record to indicate the source of facts represented as the chronology of the case. Additionally, the unusual procedural history of this case and the lack of any meaningful record of what occurred at the administrative level, as discussed more fully below, have further contributed to the challenges in properly representing the background of this case.

In March 2006, the Nebraska Public Employees, Local No. 251, union and the County executed a collective bargaining agreement concerning, among other things, wages, hours, and terms and working conditions for employees of the Pawnee County Road Department. The agreement was to be in force from and after January 1, 2006, until December 31, 2008. Article 21 of the agreement sets forth the parties' agreement concerning discipline and specifies that "[a]ny disciplinary action or measure imposed upon an employee may be processed as a grievance through the grievance procedure

. . . .” Article 23 of the agreement sets forth the grievance procedure.

On May 28, 2009, the County notified Turnbull by letter that an allegation was made against him and that he was potentially subject to disciplinary action. The County informed Turnbull that an informal hearing was scheduled for June 3 and that he would have an opportunity to respond to the allegations, that he was entitled to attend the hearing with a union or legal representative, and that he was entitled to “present evidence of mitigation” at that time. Turnbull has not provided this court with any record of the hearing or what transpired at the hearing, other than the disciplinary letter discussed below and “[t]yped notes” taken by Turnbull’s union representative.

On June 11, 2009, the County notified Turnbull by letter that he was being suspended without pay for 30 days. In the letter, the County indicated that Turnbull was found to have violated safety policies set forth in the “Pawnee County Handbook.” The letter also detailed Turnbull’s actions that constituted the violation. The letter indicated that there had been two witnesses of the event. The letter also indicated that Turnbull had been present at the informal hearing and set forth what Turnbull had admitted and what he had denied concerning the allegations.

On June 22, 2009, Turnbull executed an official grievance form, authorizing the union to act as his representative in the disposition of his grievance. According to article 23 of the collective bargaining agreement, the grievance process for challenging discipline is a multistep process. The first step requires the grievant to attempt to resolve the matter with the county highway superintendent. The second step requires the grievant to present a formal written grievance to the County’s board of commissioners (the Board). The third step provides that the grievant “may appeal” the decision of the Board through voluntary binding arbitration or that, in cases where the grievant elects not to participate in arbitration, the case “may be processed through the Pawnee County District Court.”

On June 22, 2009, Turnbull’s grievance was presented to his supervisor, the county highway superintendent, in accordance with step one of the grievance process. On June 27, the

supervisor denied the grievance. We have not been provided any record of whether Turnbull had any type of hearing before the supervisor or what actually happened during that step of the grievance process.

On June 30, 2009, Turnbull's grievance was presented to the Board, in conjunction with step two of the grievance process. On July 7, the Board notified Turnbull by letter that the Board would hear his grievance on July 14. On July 14, the Board denied the grievance. We have been presented with no substantial record of what happened during that step of the grievance process, other than the portions of "[t]yped notes" taken by Turnbull's union representative. Those notes indicate that the Board was asked to overturn the discipline and that the Board indicated it would take no action on that date.

On July 21, 2009, Turnbull notified the County by letter that he had "chosen to appeal the Board['s] decision to deny [his] grievance and proceed to Pawnee [County] District Court." On July 30, Turnbull filed a complaint in the district court in which he alleged that the County's discipline of him was a "breach of contract." Turnbull affirmatively alleged that he had complied with the grievance procedure set forth in the collective bargaining agreement, that his grievance was denied, and that he had elected to proceed to the district court as opposed to binding arbitration. Turnbull made no allegations concerning due process or denial of the opportunity to present evidence or have a meaningful hearing at the administrative level. On August 10, the County filed an answer in which it generally admitted the allegations of the complaint, but denied that the discipline imposed constituted a breach of contract.

On April 12, 2010, the parties appeared before the district court. The court initially noted that "[t]his [case] is a review . . . regarding a disciplinary action against . . . Turnbull." Neither party objected to the case's being characterized as a review of a disciplinary proceeding. The court then proceeded to conduct a full evidentiary trial on Turnbull's complaint. The parties stipulated to the introduction of a variety of exhibits, including the collective bargaining agreement and the letters and documents indicating Turnbull's compliance with the grievance procedure that are discussed above. None of the exhibits

offered by either party, however, constituted a transcript of the proceeding before the Board, and the record from the district court does not include such a transcript of the proceeding before the Board. See § 25-1905 (requiring party filing petition in error to also file transcript of proceeding occurring before board). At the conclusion of the trial, the district court took the matter under advisement.

On April 16, 2010, the district court entered an order dismissing Turnbull's complaint. In the order, the district court addressed the issue of jurisdiction, noting that the court was obligated to determine whether it had jurisdiction before proceeding to the merits of the complaint. The court noted that cases of this sort, appealing discipline imposed by administrative bodies, are usually received by the district court through petition in error proceedings under § 25-1901 et seq.

The district court then determined that Turnbull's complaint needed to be considered either (1) an action at law for breach of a contract or (2) a request for review of an administrative action for discipline. The court concluded that it lacked jurisdiction under either characterization. First, the court concluded that if Turnbull's action were considered an action at law for breach of contract, Turnbull would be required to comply with statutory provisions for bringing a claim against a county, including notice provisions that are required to confer jurisdiction on the district court. See *Jackson v. County of Douglas*, 223 Neb. 65, 388 N.W.2d 64 (1986). Next, the court concluded that if Turnbull's action were considered a review of a disciplinary proceeding, Turnbull would be required to comply with statutory provisions for bringing a petition in error, including jurisdictional requirements set forth in § 25-1901 et seq.

The district court ultimately concluded that Turnbull's complaint should be characterized not as an original breach of contract action, but, rather, as seeking a review of disciplinary action taken by his employer. As such, the court concluded that Turnbull was required to comply with statutory provisions for bringing a petition in error. The court then noted that the parties had failed to provide a transcript of the proceedings that occurred before the Board, that its review was limited to

the record created before that tribunal, and that without such a record, it lacked jurisdiction. Having taken the matter under advisement after completion of the trial, the court ultimately dismissed the complaint. This appeal followed.

III. ASSIGNMENT OF ERROR

Turnbull's sole assignment of error is that the district court erred in dismissing his complaint for lack of jurisdiction.

IV. ANALYSIS

This case began, at the administrative level, with Turnbull's contention that the discipline imposed upon him by his employer, the County, was inappropriate. Turnbull followed the procedures outlined in the collective bargaining agreement for challenging that discipline. At its core, this action is an appeal from the administrative denial of Turnbull's grievance related to the discipline imposed. Turnbull's attempt to cast this case as a breach of contract action does not change the fact that at its core, the action was brought in the district court to appeal the decision of the administrative body, the Board, denying his grievance.

[1,2] In *Pierce v. Douglas Cty. Civil Serv. Comm.*, 275 Neb. 722, 748 N.W.2d 660 (2008), the Nebraska Supreme Court recognized the difference between an original breach of contract action filed in the district court contending a breach of a collective bargaining agreement and a review of an administrative decision on a grievance related to employee discipline. Although *Pierce* involved a county of more than 300,000 inhabitants, for which some specific statutory guidance exists in Neb. Rev. Stat. § 23-2501 et seq. (Reissue 2007), the fundamental difference between the two types of proceedings is equally applicable here. As noted in *Pierce*, when an employee brings an original breach of contract action, the employee is not appealing from a final order of the administrative body, especially where the administrative body has no authority to hear appeals unrelated to disciplinary actions. In contrast, § 25-1901 provides for a district court to review the judgment rendered or final order made by a tribunal inferior in jurisdiction and exercising judicial functions. Where an

original breach of contract action requires compliance with the county claims statute, Neb. Rev. Stat. § 23-135 (Reissue 2007), to provide sufficient notice to the county of the claim, when an employee seeks judicial review of a final order rendered by the administrative body, the county is on full notice of the claim by virtue of the employee's compliance with agreed-upon procedures for asserting the claim at the administrative level. See *Pierce v. Douglas Cty. Civil Serv. Comm., supra*.

[3-6] Although § 23-2501 et seq. specifically includes provisions that clearly provide that an employee's request for review of a final decision of the civil service commission in a county of more than 300,000 inhabitants is to be by way of a petition in error pursuant to § 25-1901 et seq., the lack of such specific provisions in Neb. Rev. Stat. § 23-2534 et seq. (Reissue 2007) governing counties of under 150,000 inhabitants does not cause us to conclude that Turnbull was not required to follow the petition in error provisions of § 25-1901 et seq. Section 25-1901 specifically provides that "[a] judgment rendered or final order made by *any* tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court . . . ." (Emphasis supplied.) Section 25-1903 provides that the proceedings to obtain reversal, vacation, or modification "shall be by petition entitled petition in error," setting forth the errors complained of. Section 25-1905 provides in part that "[t]he plaintiff in error *shall file with his or her petition a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings*." (Emphasis supplied.) Section 25-1905 also provides that the transcript "*shall contain the final judgment or order sought to be reversed, vacated, or modified*." (Emphasis supplied.)

The district court concluded that § 25-1901 et seq. applied to Turnbull's action and that his failure to comply with the statutory prerequisites for properly bringing a petition in error prevented the court from obtaining jurisdiction. We agree. Section 25-1901 et seq. statutorily mandates that a party seeking judicial review of an administrative determination must

comply with the petition in error prerequisites when the review sought is of a final order made by a tribunal, board, or officer exercising judicial functions. We conclude that these provisions are applicable to Turnbull's actions because the Board exercised judicial functions.

[7-9] A board or tribunal exercises a judicial function if it decides a dispute of adjudicative fact or if a statute requires it to act in a judicial manner. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008). Adjudicative facts are facts which relate to a specific party and are adduced from formal proof. *Id.* Adjudicative facts pertain to questions of who did what, where, when, how, why, and with what motive or intent. *Id.* They are roughly the kind of facts which would go to a jury in a jury case. *Id.*

In the present case, Turnbull was accused of violating a safety provision. He first received an informal hearing, and when provided notice of the hearing, he was informed that he would have an opportunity to respond to the allegations, have a union or legal representative, and present evidence of mitigation. We have no formal record of what happened at the informal hearing, but Turnbull was suspended without pay for 30 days after the hearing. Turnbull then filed a grievance, as provided for in the collective bargaining agreement. Turnbull's grievance was heard first by his supervisor and then by the Board. We have no formal record of what happened at either step of the grievance process, but the questions to be resolved at each stage involved Turnbull's alleged actions and pertained to questions of what he did, where, when, how, why, and with what motive or intent; the questions concerned whether Turnbull violated a safety provision, whether there was any mitigating evidence, and the appropriate discipline to be imposed. As such, the questions being resolved at each stage of the grievance process were adjudicative in nature.

Because the questions being resolved were adjudicative in nature and because the Board was engaging in a judicial function in hearing Turnbull's appeal of the denial of his grievance related to the discipline imposed, the petition in error statutes were applicable and dictated the proper steps for perfecting jurisdiction in the district court.

[10,11] To perfect a petition in error, § 25-1903 directs the petitioner to file the petition to the district court setting forth the errors complained of. *McNally v. City of Omaha*, 273 Neb. 558, 731 N.W.2d 573 (2007). In addition, § 25-1905 directs the petitioner to file with his or her petition a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings. *McNally v. City of Omaha, supra*. The Nebraska Supreme Court has held that compliance with these statutory provisions is jurisdictional. *Id.*

A review of the transcript in this case indicates that Turnbull filed a complaint in the district court purporting to set forth a claim for breach of contract. Although he recounted in the complaint that he had filed a grievance and that it had been denied, he did not assert anywhere in the complaint that the Board had committed any errors to be complained of. Even when the complaint is read very liberally to impliedly assert that the Board generally erred in denying his grievance, Turnbull did not file with his complaint a transcript of the proceedings or a praecipe directing the Board to prepare a transcript of the proceedings.

The plain language of the statutes requires that for jurisdiction to attach, the transcript of proceedings or praecipe must be filed specifically with the petition in error in the court requested to review such judgment. *River City Life Ctr. v. Douglas Cty. Bd. of Equal.*, 265 Neb. 723, 658 N.W.2d 717 (2003). Section 25-1905 also plainly indicates that the transcript must contain the final judgment or order sought to be reversed, vacated, or modified. *River City Life Ctr. v. Douglas Cty. Bd. of Equal., supra.* Turnbull's failure to comply with these provisions precluded jurisdiction from being conferred on the district court, and the court correctly concluded that it lacked jurisdiction.

On appeal, Turnbull has asserted that he was not required to comply with the petition in error statutes and that he was authorized to file an original breach of contract action because the parties had contractually agreed to such action in the collective bargaining agreement. Without addressing the question of whether the parties could have so contracted to authorize a

grievant to forgo the statutory petition in error procedure, we disagree with Turnbull's characterization of the collective bargaining agreement.

Turnbull asserts that "[t]he parties contractually agreed that if this issue could not be resolved under the first two (2) steps of the Grievance procedure, then it would be treated as a breach of contract action, thereby allowing the employee to file a breach of contract action in the District Court . . . ." Brief for appellant at 6. The language of the collective bargaining agreement, however, does not indicate that the parties had agreed that the matter would be treated as a breach of contract action. Rather, the relevant language of the agreement indicates merely that "[c]ases where the grievant chooses not to participate in binding arbitration may be processed through the Pawnee County District Court." There is no mention whatsoever of "breach of contract" or any right to file an original action at law. Indeed, as the agreement states, actions properly following the petition in error statutes would be "processed through the [relevant county's d]istrict [c]ourt." We thus find no merit to this assertion of Turnbull.

Similarly, we find no merit to Turnbull's assertion that the Nebraska Supreme Court's decision in *Transport Workers of America v. Transit Auth. of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979), somehow supports Turnbull's notion that it is proper to challenge the discipline imposed and the denial of his grievance by way of an original breach of contract action. That case involved a suit by a union asserting that an employer had failed to provide short-term disability benefits as contractually agreed to in a collective bargaining agreement. The union sought a declaratory judgment and an accounting, and it instituted its proceedings before the Commission of Industrial Relations. The Nebraska Supreme Court held that the Commission of Industrial Relations was without authority to grant declaratory or equitable relief and had no authority to hear a breach of contract action.

The present case is markedly distinguishable from *Transport Workers of America*. Unlike the issue in that case, the issue in the present case is purely one of the appropriateness of discipline imposed upon a finding that an employee violated safety

policies. The issues do not involve declaratory relief, equitable relief, or traditional damages matters inherent in breach of contract actions. Moreover, in the present case, the collective bargaining agreement specifically set forth the grievance process and specifically provided for a process of appealing adverse decisions; there is no indication in the Supreme Court's opinion in *Transport Workers of America* that any such provisions existed in that case. Although *Transport Workers of America* might stand for the proposition that a breach of contract action is properly brought in district court, its holding does not support Turnbull's attempt to appeal his discipline under the guise of a breach of contract action in the present case. We find this assertion to be without merit.

We also note that Turnbull also asserts that the proceedings before the Board in step two of the grievance process did not involve an evidentiary hearing or an adjudication hearing in which an aggrieved employee could compel witnesses to testify or subject adversarial witnesses to cross-examination. Turnbull asserts that the only opportunity he had to introduce evidence establishing his position was at the hearing in district court.

As we have noted above, we have no record of what occurred at the informal hearing before Turnbull's supervisor, although the notice of hearing indicated to Turnbull that he would have an opportunity to present mitigating evidence at that hearing. We have no record of what occurred at step one or step two of the grievance process, although the collective bargaining agreement specifies that at step two, the Board is required to "confer" with the grievant and to "consult[] with all necessary levels of supervision" in the preparation of its response. The collective bargaining agreement does not appear to require the conducting of an evidentiary hearing by the Board, but it also does not foreclose such a hearing or indicate that the grievant is not allowed to present evidence, compel witnesses, or cross-examine adversaries. We have no record of what occurred at the hearing before the Board, and on the record presented to us, there is no way for us to conclude whether the lack of a record is a result of Turnbull's failing to attempt to make a record or request a record or a result of the Board's not permitting such a record.

We have concluded above that Turnbull failed to satisfy the jurisdictional prerequisites for perfecting a petition in error proceeding by failing to file a proper petition setting forth the assertions of error committed by the Board and by failing to file a transcript of the proceedings that included the final order of the Board. Had Turnbull cleared those jurisdictional hurdles, there might have arisen a subsequent issue concerning the lack of a record from the hearing before the Board because, as the district court found, when reviewing a petition in error, the district court is restricted to the record created before the lower tribunal. See *Crown Products Co. v. City of Ralston*, 253 Neb. 1, 567 N.W.2d 294 (1997). If Turnbull was denied the opportunity to make a proper record or to present evidence in his defense before the Board, he may well have been able to raise due process concerns before the district court. See *id.*

In the present case, however, we conclude that Turnbull failed to perfect jurisdiction in the district court even aside from the lack of presentation of any record of what actually happened in the hearing before the Board. Moreover, as noted above, Turnbull's complaint in the district court raised no due process assertions of his being denied the opportunity to receive a fair and meaningful hearing or to present evidence before the Board. We find no merit to Turnbull's assertions that his only opportunity to present evidence was in the district court.

Finally, we note that the process advocated by Turnbull would arguably render meaningless the grievance process agreed to by the parties in the collective bargaining agreement. Turnbull has attempted to frame his proceedings in the district court as an original law action for breach of contract, requiring no review of the lower tribunal proceedings and no deference to the administrative conclusions concerning his discipline and his grievance. In a proper petition in error proceeding, the district court determines whether the lower tribunal acted within its jurisdiction and whether the tribunal's decision is supported by sufficient relevant evidence; the review accords substantial deference to the administrative body. See *Crown Products Co. v. City of Ralston, supra*. To permit Turnbull to simply disregard the entire grievance process and start entirely

anew with an evidentiary trial before the district court would be tantamount to encouraging grievants to simply go through the motions of the grievance process and then seek to litigate employee disciplinary matters in the district court. We conclude not only that such action would ignore the intent of the grievance process set forth in the collective bargaining agreement, but also that it would endorse a legal course of action that does not appear to have ever before been endorsed in our jurisdiction. We have discovered no prior authority for litigating under the guise of breach of contract an employee's dissatisfaction with his discipline, and Turnbull has pointed us to none. This further reaffirms our conclusion that Turnbull's action should properly be considered as an appeal of the discipline imposed and the denial of his grievance and not as an original breach of contract action.

V. CONCLUSION

We conclude that Turnbull's "breach of contract" action is more properly characterized as an attempt to appeal the administrative denial of his grievance concerning discipline imposed for his violation of safety policies. As a result, Turnbull was obligated to satisfy statutory prerequisites for perfecting jurisdiction in the district court through petition in error proceedings. He failed to do so, and the district court properly dismissed his action for want of jurisdiction. We affirm.

AFFIRMED.

MODEL INTERIORS, APPELLEE AND CROSS-APPELLANT, V. 2566 LEAVENWORTH, LLC, A CORPORATION, AND MICHAEL MAPES, AN INDIVIDUAL, APPELLANTS AND CROSS-APPELLEES.

809 N.W.2d 775

Filed May 31, 2011. No. A-10-776.

1. **Breach of Contract: Damages.** A suit for damages arising from breach of a contract presents an action at law.
2. **Judgments: Appeal and Error.** The trial court's factual findings in a bench trial of an action at law have the effect of a jury verdict and will not be set aside unless clearly erroneous.