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The trial court heard and observed all of the witnesses, carefully reviewed all of the relevant jurisprudence in this area, and issued a thorough and well-reasoned opinion addressing the legal requirements imposed on grandparents in the Vrtatkos' position and the evidence adduced in this case. The trial court concluded that the Vrtatkos failed to adduce clear and convincing evidence that they had a significant beneficial relationship with Kaylee, based on their very limited contact with her, and it concluded that they failed to adduce clear and convincing evidence that judicially imposing more of a relationship at the present time was in Kaylee's best interests when opposed by the wishes of Karri, a fit natural parent. We cannot conclude that this decision is an abuse of discretion.

V. CONCLUSION

This case presents an unusual and difficult factual situation, where the natural father of the minor child passed away during the first few years of the child's life and after having only a brief relationship with the natural mother. The child's paternal grandparents desire to have a relationship with the child, but the mother has resisted court-ordered grandparent visitation rights. We certainly do not dispute the potential importance of relationships between children and their grandparents, but the law imposes a substantial burden on grandparents seeking court-ordered visitation rights, and the trial court's conclusion after seeing and hearing the witnesses and weighing the evidence is entitled to deference. In this case, we find no abuse of discretion, and we affirm the district court's decision.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V.
RICHARD R. HARPER, APPELLANT.
800 N.W.2d 683

Filed July 12, 2011. No. A-10-257.

1. **Motor Vehicles.** Neb. Rev. Stat. § 60-696(1) and (2) (Cum. Supp. 2008) sets forth two separate and distinct offenses.

2. ____. Neb. Rev. Stat. § 60-696 (Cum. Supp. 2008) establishes that a driver involved in an accident has separate and distinct responsibilities, depending on whether the other vehicle involved is attended or unattended.
3. **Motor Vehicles: Legislature: Misdemeanors.** Neb. Rev. Stat. § 60-696 (Cum. Supp. 2008) is drafted such that each violation is its own separate subsection, and the Legislature noted that a person violating either is guilty of a Class II misdemeanor.

Appeal from the District Court for Lancaster County, KAREN B. FLOWERS, Judge, on appeal thereto from the County Court for Lancaster County, JEAN A. LOVELL, Judge. Judgment of District Court reversed and remanded with directions.

Randall Wertz and John F. Recknor, of Recknor, Wertz & Associates, for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

INBODY, Chief Judge, and IRWIN and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Richard R. Harper appeals an order of the district court for Lancaster County, Nebraska, affirming an order of the county court convicting and sentencing him on a charge of leaving the scene of an accident with an unattended vehicle. This appeal presents two issues. The first issue is whether Neb. Rev. Stat. § 60-696(1) and (2) (Cum. Supp. 2008) creates a single offense that can be committed in multiple ways or creates separate offenses. The second issue is the meaning of the phrase "unattended vehicle" in the context of § 60-696(2), leaving the scene of an accident with an unattended vehicle. On review, we conclude that § 60-696(1) and (2) creates separate offenses and that the evidence was insufficient to support a conviction under § 60-696(2), the provision Harper was charged and tried under. We therefore reverse the district court's order and remand the matter to the district court with directions to reverse the county court's order and remand the matter to the county court with directions to dismiss.

II. BACKGROUND

The events giving rise to this action occurred in the evening hours of February 14, 2009, outside a bar in Lincoln, Nebraska. On that evening, Nathan Eilers was at the bar with a group of people to wish farewell to an individual who was being deployed in the military. Eilers received a call on his cellular telephone and stepped outside of the bar to take the call. While Eilers was outside the bar and talking on his cellular telephone, he observed Harper in a "white pickup" and observed Harper back his vehicle and strike a parked vehicle.

Eilers testified that he did not actually know the name of the owner of the struck vehicle, but believed it belonged to the person who was being deployed. Other evidence at trial indicated that it belonged to another member of the group. Nonetheless, Eilers approached Harper and knocked on the passenger side window of Harper's vehicle. Eilers told Harper that the struck vehicle belonged to Eilers.

According to Eilers, he told Harper that he wanted to notify law enforcement of the accident and wanted to "get [Harper's] plate number first." Harper testified that he and Eilers looked at the damage caused to the struck vehicle and that Harper then offered to give Eilers his insurance information, but that Eilers did not take the insurance information. After taking Harper's license plate number, Eilers went inside the bar. Eilers testified that he told Harper to wait outside. Eilers testified that he went back outside the bar after about "three minutes" and that Harper was gone.

Harper testified that he did not wait very long after Eilers went back inside the bar, but that he knew that Eilers had his license plate number before he left. Harper also testified that he called the police on February 16, 2009, which was a Monday, approximately 36 hours after the accident, and made a report of it. He offered evidence of his telephone records, showing that he placed a telephone call to the police station at that time and that the telephone call lasted for approximately 4 minutes. The State offered testimony from a police officer who testified that he had been unable to locate any report of the accident by Harper in the police database.

The evidence adduced at trial indicated that the damage caused by Harper's collision with the parked vehicle was approximately $800. The damage was repaired and paid for by insurance in Harper's name.

Approximately a week after the accident, a police officer looked up Harper's license plate number as provided by Eilers and made contact with Harper. Harper told the officer that he had spoken with somebody he believed was the owner of the struck vehicle immediately after the accident, that the person had gone into the bar and not come back out, and that he had called the police station and reported the accident. The officer gave Harper a citation charging him with leaving the scene of an accident, pursuant to § 60-696(2), and unsafe backing, pursuant to Neb. Rev. Stat. § 60-6,169 (Reissue 2010).

At trial, Harper moved to dismiss the charge related to leaving the scene of an accident with an unattended vehicle. Harper argued that he had been charged with violating the specific prohibition of leaving the scene of an accident with an unattended vehicle and that the uncontroverted evidence offered by the State demonstrated that the vehicle Harper had struck was not unattended, because Eilers witnessed the accident, spoke with Harper, and affirmatively represented to Harper that he was the owner of the struck vehicle. The State argued that "whether it [was] an unattended vehicle is not really relevant as far as dismissal, because [Harper] didn't" comply with either the provision in § 60-696(2) dealing with unattended vehicles or in § 60-696(1) dealing with attended vehicles. The court specifically commented that it believed there was evidence to support a finding that the other vehicle was unattended and overruled the motion to dismiss.

The county court found Harper guilty on both charges set forth in the citation. The court sentenced Harper to 7 days in jail and imposed a 1-year license revocation for the violation of § 60-696(2), although the court later ordered the jail sentence to be served under house arrest.

On September 29, 2009, Harper filed a notice of appeal to the district court. Harper, however, failed to file a statement of errors. As a result, the district court limited its review to a

review for plain error. The district court found no plain error and affirmed. This appeal followed.

III. ASSIGNMENT OF ERROR

Harper's assignments of error on appeal can all be restated as an assertion that the district court erred in not finding that there was insufficient evidence adduced at trial to sustain the county court's conviction on the alleged violation of § 60-696(2).

IV. ANALYSIS

1. § 60-696(1) AND (2)

The first issue we must address in this appeal is whether § 60-696(1) and (2) creates a single offense that can be committed in multiple ways or creates separate offenses. The citation issued to Harper in this case, which served as the charging document, specifically indicated that he was being charged with violation of § 60-696(2), which prohibits leaving the scene of an accident with an unattended vehicle. As discussed more fully below, we conclude that there was insufficient evidence to support a conviction under § 60-696(2). During oral argument, the State asserted that such insufficiency should not matter because § 60-696(1) and (2) creates a single offense, leaving the scene of an accident, that can be committed in multiple ways and because there was sufficient evidence to support a conviction under § 60-696(1). We disagree.

Section 60-696 governs a driver's obligation to stop, furnish information, and report accidents. Section 60-696(1) provides as follows:

> Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

Section 60-696(2) provides as follows:

> The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting

> in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate police officer.

Section 60-696(4) provides that any person violating subsection (1) or (2) is guilty of a Class II misdemeanor.

[1-3] We conclude that § 60-696(1) and (2) sets forth two separate and distinct offenses. Section 60-696 establishes that a driver involved in an accident has separate and distinct responsibilities, depending on whether the other vehicle involved is attended or unattended. Section 60-696 is drafted such that each violation is its own separate subsection, and the Legislature noted that a person violating either is guilty of a Class II misdemeanor.

In contrast, in Neb. Rev. Stat. § 60-6,196 (Reissue 2010), the Legislature set forth a single violation, driving under the influence of alcoholic liquor or any drug, which can be committed in multiple ways. See *State v. Kuhl*, 276 Neb. 497, 755 N.W.2d 389 (2008) (driving under influence violation is single offense that can be proven in more than one way). Section 60-6,196(1) provides as follows:

> It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:
>
> (a) While under the influence of alcoholic liquor or of any drug;
>
> (b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or
>
> (c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

Section 60-6,196(2) provides that any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) shall be guilty of a crime and punished according to separate statutory provisions.

Unlike § 60-696, the Legislature drafted § 60-6,196 in such a fashion to indicate that driving under the influence was a single violation, but that it could be proven in multiple ways, either through evidence that the driver was under the influence or through evidence of prohibited concentrations of alcohol in the driver's blood or breath. In § 60-696, the Legislature separately specified a driver's obligations when involved in an accident, depending upon whether the other vehicle was attended or unattended—specifying different obligations for each.

We additionally note that our review of the bill of exceptions in this case makes it apparent that Harper's defense at trial was premised entirely on the notion that he was specifically charged with violating § 60-696(2) and that the vehicle he had struck was not an unattended vehicle. The evidence adduced by the State at trial was clearly intended to prove a violation of § 60-696(2), as the State attempted to demonstrate that he failed to leave a written notice on the vehicle and failed to sufficiently report the accident to law enforcement without unnecessary delay, both of which are exclusive to § 60-696(2). The State's closing argument to the trial court was almost entirely concerned with assertions that Harper had failed to timely report the accident to law enforcement, a requirement exclusive to § 60-696(2). The charging document in this case specified that Harper was being charged under § 60-696(2), the evidence adduced at trial was intended to prove a violation of § 60-696(2), Harper defended specifically against a violation of § 60-696(2), and when he moved to dismiss for insufficiency of the evidence, the court even commented that there was sufficient evidence to support a finding that the vehicle was unattended.

We decline to address the question of whether a citation generally alleging violation of § 60-696, without specifying subsection (1) or (2), would be sufficient under separate factual circumstances. On the specific facts of the present case, the charging document alleged a violation of § 60-696(2) and trial was had on an alleged violation of § 60-696(2), and we are unpersuaded by the State's assertion during oral argument on appeal that it is sufficient to evaluate the sufficiency of the

evidence adduced to demonstrate a violation of either subsection (1) or (2). We conclude that Harper's conviction can be upheld only if there was sufficient evidence to demonstrate a violation of § 60-696(2).

2. Sufficiency of Evidence

On appeal, Harper's assertions of error all challenge the sufficiency of the evidence adduced by the State at trial to prove beyond a reasonable doubt that he had violated the statutory provision for which he was cited, § 60-696(2). Specifically, he has challenged the sufficiency of the evidence to demonstrate that he had an accident with an unattended vehicle, which evidence is a prerequisite to the obligations imposed by § 60-696(2). We find that the evidence adduced at trial was insufficient, and we find such insufficiency to be plain error.

We initially note that our review in this case is limited to reviewing for plain error. Harper did not file a statement of errors when he appealed the judgment of the county court to the district court. Where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. *State v. Burns*, 16 Neb. App. 630, 747 N.W.2d 635 (2008). Plain error will be noted where an error is evident from the record, prejudicially affects a substantial right of a litigant, and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *State v. Thorpe*, 280 Neb. 11, 783 N.W.2d 749 (2010). We conclude that if the evidence adduced by the State was legally insufficient to support Harper's conviction, such insufficiency would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process.

In this case, the citation issued to Harper specifically charged him with violation of § 60-696(2). As noted above, that section provides as follows:

> The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall

> immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing [his or her name, address, telephone number, and operator's license number]. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

A plain reading of § 60-696(2) reveals that the threshold matter that triggers a driver's obligation to provide written notice of the required information and to report the accident to law enforcement is that the driver be involved in an accident with "an unattended vehicle or property." As such, the State was obligated to demonstrate that Harper was, in fact, involved in an accident with an unattended vehicle before Harper's failure to provide written notice of the required information would constitute a violation of the statute and before it would become necessary to determine whether Harper reported the collision to law enforcement without unnecessary delay.

There appears to be no prior authority in Nebraska addressing what constitutes an unattended vehicle. Similarly, our review of authority outside of Nebraska concerning other states' statutes similar to the one involved in this case reveals very little discussion of what constitutes an unattended vehicle. One case we have found addressing the issue, although not designated for publication, provides some helpful discussion that is consistent with a plain meaning understanding of the term "unattended vehicle." See *Kirby v. State*, No. 12-01-00081-CR, 2002 WL 1163795 (Tex. App. May 31, 2002) (not designated for publication).

In *Kirby v. State*, the Texas Court of Appeals reviewed a defendant's conviction in county court for violating his legal duty under a Texas statute setting forth the duties when one strikes an unattended vehicle. The statute imposed a duty upon a driver colliding with and damaging an unattended vehicle to locate the owner of the vehicle or to leave in a conspicuous place a written notice giving the name and address of the operator of the vehicle that struck the unattended vehicle. See Tex. Transp. Code Ann. § 550.024 (Vernon 1999).

Similar to the case at bar, one of the issues in *Kirby v. State* was whether the vehicle struck by the defendant was an unattended vehicle. In *Kirby v. State*, the evidence indicated that a welding truck was parked in front of a residence and that the defendant collided with the welding truck. The evidence indicated that, although nobody was outside and present near the welding truck at the time of the accident, there were people inside the residence who heard the crash, went outside upon hearing it, and observed that the defendant's vehicle had collided with the welding truck.

The Texas Court of Appeals noted that the word "attend" means "to be present at." See Webster's Encyclopedic Unabridged Dictionary of the English Language 96 (1994). The court concluded that because nobody was present to see the accident, the welding truck was an unattended vehicle for purposes of the statute.

In the present case, the uncontroverted evidence adduced by the State and by Harper is that Eilers was physically present at the time of the accident, witnessed the accident, approached and spoke with Harper, and affirmatively represented to Harper that Eilers was the owner of the damaged vehicle. Eilers then took down Harper's license plate number. On these facts, we conclude that the vehicle Harper collided with cannot reasonably be construed to have been an unattended vehicle giving rise to the specific obligations of § 60-696(2). The evidence at trial was legally insufficient to prove beyond a reasonable doubt the threshold matter in the statute.

Our resolution of this case should in no way be construed as condoning Harper's conduct of leaving the scene of this accident without providing additional information, nor do we reach the issue of whether Harper actually reported the accident to law enforcement approximately 36 hours later, as he has asserted, or whether such would constitute reporting without unnecessary delay. It may well be the case that Harper's conduct was in violation of § 60-696(1). However, in this case, Harper was specifically cited and charged with violating only § 60-696(2), concerning accidents with unattended vehicles. Our narrow ruling is only that the State failed to demonstrate

beyond a reasonable doubt that Harper violated the specific provision he was cited and charged with violating.

Harper was cited and charged with violating a specific statute, and the evidence adduced by the State was insufficient to prove beyond a reasonable doubt the threshold matter that Harper was involved in a collision with an unattended vehicle. We find this insufficiency to be plain error. We therefore reverse the district court's order affirming the conviction and remand the matter to the district court with directions to reverse the county court's order and remand the matter to the county court with directions to dismiss.

REVERSED AND REMANDED WITH DIRECTIONS.

CHRISTINE A. WILSON, APPELLANT, V.
TERRY P. WILSON, APPELLEE.
803 N.W.2d 520

Filed July 12, 2011. No. A-10-969.

1. **Courts: Jurisdiction: Divorce: Judgments: Alimony: Child Support.** A trial court retains jurisdiction to determine the amounts due for alimony and child support and to enforce its prior judgment, and included in that power to enforce its judgment is power to determine any amounts due under the initial decree.
2. **Modification of Decree.** Material changes in circumstances and developments not contemplated are at the heart of proceedings to modify dissolution decrees.
3. ____. A party seeking to modify a dissolution decree must show a material change of circumstances which occurred subsequent to the entry of the original decree or a previous modification which was not contemplated when the prior order was entered.
4. **Modification of Decree: Words and Phrases.** In the context of marital dissolutions, a material change of circumstances means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently.

Appeal from the District Court for Douglas County: THOMAS A. OTEPKA, Judge. Reversed and remanded with directions.

Frederick D. Stehlik and Francie C. Riedmann, of Gross & Welch, P.C., L.L.O., for appellant.

Terry P. Wilson, pro se.