Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/02/2026 07:43 AM CST

court apparently used a "made whole" or "priority" concept as its starting point for making a division of the settlement proceeds. Second, the district court erred in two respects in its determination of the amount that was available for division under § 48-118.04(2): The amount actually available for distribution was $55,801.42 ($80,000 minus $22,802.66 for attorney fees and $1,395.92 for costs), rather than "approximately $32,900.00" as the district court found, because we also find that excluding unreimbursed lost wages is improper in addition to the error regarding attorney fees. Because the district court's finding of the amount available for a "fair and equitable" division of the settlement was substantially wrong, and the lesser amount clearly was a material finding and predicate in the trial court's ultimate decision that American Family would receive nothing from the settlement, we conclude that the district court did not make a "fair and equitable" division of the settlement. This would be true even if the district court did not intend to employ a "made whole" rationale in its distribution—despite the language clearly indicating such rationale. In short, for a number of reasons, the district court's division of the settlement was untenable and an abuse of discretion. Accordingly, we reverse, and remand for further proceedings on the record previously made.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

STATE OF NEBRASKA, APPELLEE, V.
JOSE L. ZAMARRON, APPELLANT.
806 N.W.2d 128

Filed November 15, 2011. No. A-11-378.

1. **Statutes: Appeal and Error.** Statutory interpretation is a question of law that an appellate court resolves independently of the court below.
2. **Sentences.** Whether a defendant is entitled to credit for time served is a question of law.
3. **Statutes: Legislature: Intent.** When construing a statute, courts look to give effect to the legislative intent of the enactment.
4. **Statutes.** Courts generally give words in a statute their ordinary meaning.

5. ____. It is not within the province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute.
6. **Bail Bond.** A deposit of cash in lieu of or in support of bail under Neb. Rev. Stat. § 29-901 (Cum. Supp. 2010) is for the purpose only of ensuring the defendant's appearance in court when required; and upon full compliance with any such court orders and release of bail, the statutory refund must be made.

Appeal from the District Court for Hall County: TERESA K. LUTHER, Judge. Affirmed as modified.

Gerard A. Piccolo, Hall County Public Defender, for appellant.

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

IRWIN, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

In this appeal from the sentence imposed in a criminal case, Jose L. Zamarron challenges the district court's (1) application of his appearance bond to the costs and (2) refusal to apply "extra" good time credit to the costs. Because the only purpose of the bond was to ensure Zamarron's appearance and he appeared as ordered, the court erred in peremptorily applying Zamarron's bond to costs. Although our statutes allow for good time credit on presentence incarceration, they do not provide for extra time in custody to be applied to costs. Thus, the court did not err in refusing Zamarron's request to apply credit for time served against costs. Accordingly, we affirm the court's judgment as modified.

BACKGROUND

Zamarron pled no contest to theft by unlawful taking in return for the State's agreement to recommend a sentence of time served. Zamarron requested that his good time credit be applied to any fine and costs. The court sentenced Zamarron to confinement in the county jail for 43 days, with credit given for 43 days of time served. The court ordered Zamarron to pay the costs of the action, ordered that Zamarron's bond be applied to court costs, and released any remaining bond.

Zamarron timely appeals. Pursuant to Neb. Ct. R. App. P. § 2-111(E)(5)(a) (rev. 2008), no oral argument was allowed.

ASSIGNMENTS OF ERROR

Zamarron alleges that the district court erred in (1) applying bond proceeds to the costs of the action and (2) not allowing him credit against court costs for the time he already served in jail.

STANDARD OF REVIEW

[1,2] Statutory interpretation is a question of law that an appellate court resolves independently of the court below. *State v. Becker*, 282 Neb. 449, 804 N.W.2d 27 (2011). Whether a defendant is entitled to credit for time served is a question of law. *Id.*

ANALYSIS

Statutory Interpretation.

[3-5] Before addressing Zamarron's assignments of error, we recall basic precepts of statutory interpretation. When construing a statute, courts look to give effect to the legislative intent of the enactment. *State v. Becker, supra*. Courts generally give words in a statute their ordinary meaning. *Id.* It is not within the province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute. *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009).

Applying Bond to Costs.

Zamarron first argues that the district court erred in applying his bond to costs. The record shows that Zamarron appeared in court on April 21, 2011, and acknowledged that he was indebted to the State in the amount of 10 percent of $10,000

> to be made and levied on [his] respective goods, chattels, lands and tenements; to be void, however, if [Zamarron] fails to appear before the [judge] on [a specified date] and as further instructed by the [c]ourt . . . until final judgment or as directed by said [c]ourt, until finally discharged, to answer the charges stated above.

Thus, this document constituted an appearance bond as provided for in Neb. Rev. Stat. § 29-901(3)(a) (Cum. Supp. 2010). That statute states, in part, that 90 percent of the cash deposit is to be returned to the defendant upon the performance of the appearance or appearances and 10 percent is to be retained by the clerk as appearance bond costs.

[6] An appearance bond must be refunded (less any applicable statutory fee) after full compliance with all court orders to appear. In *State v. McKichan*, 219 Neb. 560, 364 N.W.2d 47 (1985), the trial court ordered that a bail bond be released, but that the clerk of the court hold the proceeds to apply to the costs of the defendant's appeal to the Nebraska Supreme Court. The Supreme Court considered what authority the trial court had over a bail deposit under § 29-901(3)(a) and held that "the deposit of cash in lieu of or in support of bail under § 29-901 is for the purpose only of ensuring the defendant's appearance in court when required; and upon full compliance with any such court orders and release of bail, the statutory refund must be made." *State v. McKichan*, 219 Neb. at 563, 364 N.W.2d at 49. Thus, the Supreme Court modified the judgment to refund the statutory amount.

The same situation applies in the case before us. Just as in *McKichan*, the bond in this case was to secure Zamarron's appearance in court. Because Zamarron appeared as ordered and judgment had been entered against him, the remainder of his bond should have been released to him.

The State argues that the judgment for costs was a lien on Zamarron's property. Indeed, Neb. Rev. Stat. § 29-2407 (Reissue 2008) provides in part that "[j]udgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case . . . ." The State contends that because Zamarron owed costs to the court and the court owed Zamarron the proceeds of his bond, there was a right of setoff.

However, the State's argument violates a basic rule of statutory construction. As we recognized above, it is not within the province of the courts to read a meaning into a statute that is not there. See *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009). We see nothing in the statutes authorizing a setoff

under these circumstances. Accordingly, we conclude that the district court erred in applying the bond proceeds to the costs. We modify the judgment to refund to Zamarron the remaining 90 percent of the bond posted.

Credit for Time Served Against Costs.

Zamarron next argues that the court erred by not allowing good time credit for his time served to be applied against the court costs.

Under Neb. Rev. Stat. § 47-502 (Cum. Supp. 2010):

> Any person sentenced to a city or county jail shall, after the fifteenth day of his or her confinement, have his or her remaining term reduced one day for each day of his or her sentence during which he or she has not committed any breach of discipline or other violation of jail regulations.

Section 47-502 is applicable to time spent in the county jail awaiting sentencing. See *Williams v. Hjorth*, 230 Neb. 97, 430 N.W.2d 52 (1988). Under § 47-502, if no good time has been lost, a 43-day sentence would result in actual incarceration of 29 days. Thus, Zamarron contends that he served an extra 14 days because he already served the full 43 days. He requests that these extra 14 days of incarceration be applied to court costs.

We reject Zamarron's assertion that he is entitled to credit of $90 per day against costs, as it is contrary to the plain language of the statute. He relies upon Neb. Rev. Stat. § 29-2412(3) (Cum. Supp. 2010), which states:

> Any person *held in custody for nonpayment of a fine or costs* or for default on an installment shall be entitled to a credit on the fine, costs, or installment of ninety dollars for each day so held. In no case shall a person held in custody for nonpayment of a fine or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

(Emphasis supplied.) As the emphasized language shows, the statute expressly limits the credit to the situation where the person is "held in custody for nonpayment." However,

Zamarron was not held in custody for nonpayment of costs. He was incarcerated prior to conviction based upon the theft charge. And Zamarron does not direct us to any law authorizing the conversion of extra days of incarceration to dollars that can then be credited against costs. "The Legislature has demonstrated that it can and will specify when credit should be given for similarly imposed restrictions—when it wishes to do so." *State v. Nelson*, 276 Neb. 997, 1003, 759 N.W.2d 260, 266 (2009). The plain language of § 29-2412 simply does not provide for a $90-per-day credit against costs for Zamarron's "extra" time incarcerated prior to sentencing. It is not within an appellate court's province to read a meaning into a statute that is not there. *State v. Nelson, supra*.

We note that the Nebraska Supreme Court has considered two cases in which a trial court ordered that credit for time served be applied to satisfy a fine, and in both instances, the Supreme Court determined that the trial court erred. In *State v. Holloway*, 212 Neb. 426, 322 N.W.2d 818 (1982), the defendant had been in jail for 393 days prior to sentencing. After the defendant pled no contest, the court imposed a sentence of 20 months' to 5 years' imprisonment and a $7,500 fine. The judgment provided that the defendant be given a credit of 93 days on the sentence and that the fine be satisfied by being given credit for 300 days of jail time. On appeal, the defendant sought to have all 393 days credited on his sentence of imprisonment. The Supreme Court stated that the statutes did not authorize a court to require a fine be satisfied by applying the jail time served without giving the defendant an opportunity to pay in the manner provided by statute. The Supreme Court modified that part of the judgment which required the fine to be satisfied by the credit for 300 days of jail time. In *State v. Brumfield*, 212 Neb. 605, 324 N.W.2d 407 (1982), the trial court gave the defendant credit for 182 days in custody prior to sentencing and applied the credit at a rate of $25 a day to the $5,000 fine. The defendant appealed. The Supreme Court concluded that the issue was controlled by *State v. Holloway, supra*, and that the defendant must be afforded an opportunity to pay the fine.

Although in these cases the Supreme Court did not specifically hold that credit for presentence incarceration can never be used to satisfy a fine, the court also did not mandate that such credit must be allowed. The court's determination that credit could not be given without giving the defendant an opportunity to pay does not necessarily mean that a trial court must apply presentence incarceration time toward court costs. Thus, these cases do not support Zamarron's argument in the instant appeal. Because we cannot read into a statute a meaning that is not there, see *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009), and because the plain language of § 29-2412 does not provide for credit against costs under the circumstances present here, we conclude that the district court did not err in refusing to apply any credit for time served against costs.

CONCLUSION

We conclude that the district court erred in applying Zamarron's bond to costs, but that it did not err in refusing to apply credit for time served before sentencing against costs. Accordingly, we affirm the district court's judgment, but modify it to refund to Zamarron the remaining 90 percent of his bond rather than applying it to costs.

AFFIRMED AS MODIFIED.

IN RE ESTATE OF E. MAXINE ROSS, DECEASED. PORTER ROSS, APPELLANT, V. SCOTT HODSON AND CONNIE GROVE, APPELLEES.

810 N.W.2d 435

Filed November 22, 2011. No. A-11-210.

1. **Decedents' Estates: Appeal and Error.** An appellate court reviews probate cases for error appearing on the record made in the county court.
2. **Decedents' Estates: Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Decedents' Estates: Appeal and Error.** An appellate court, in reviewing a probate court judgment for errors appearing on the record, will not substitute its