Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 10:27 AM CST

accrued in this case, we reverse the judgment and remand the cause for further proceedings.

CONCLUSION

We do not reach the constitutionality of the ordinance in this appeal. The harm to Lindner's rights allegedly occurred when appellees declined to pay for the offstreet parking facilities through special assessments and instead paid for the costs through a general property tax levy or sales tax revenues drawn from municipal general funds. Because we cannot tell from the face of Lindner's complaint when that decision was made or when it was implemented and, thus, when Lindner's cause of action accrued for purposes of the running of the statute of limitations, we reverse the judgment of the district court and remand the cause for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

STATE OF NEBRASKA, APPELLEE, V.
EDWARD ROBINSON, JR., APPELLANT.
827 N.W.2d 292

Filed March 8, 2013. No. S-12-135.

1. **Postconviction: Proof: Appeal and Error.** A defendant requesting postconviction relief must establish the basis for such relief, and the findings of the district court will not be disturbed unless they are clearly erroneous.
2. **Effectiveness of Counsel.** A petitioner's claim that his or her defense counsel provided ineffective assistance presents a mixed question of law and fact.
3. **Constitutional Law: Effectiveness of Counsel.** An ineffective assistance of counsel claim alleges a violation of the fundamental constitutional right to a fair trial.
4. **Effectiveness of Counsel: Proof: Appeal and Error.** To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. An appellate court may address the two prongs of this test, deficient performance and prejudice, in either order.
5. **Effectiveness of Counsel: Proof: Words and Phrases.** To show prejudice under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the petitioner must demonstrate a reasonable probability that but for his

or her counsel's deficient performance, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

6. **Motions for New Trial: Juror Misconduct: Proof.** In order for a new trial to be granted because of a juror's use of extraneous information, the party claiming the misconduct has the burden to show by a preponderance of the evidence that prejudice has occurred.
7. **Jury Misconduct: Proof.** Extraneous material or information considered by a jury can be prejudicial without proof of actual prejudice if (1) the material or information relates to an issue submitted to the jury and (2) there is a reasonable possibility that it affected the jury's verdict to the challenger's prejudice.
8. **Trial: Effectiveness of Counsel: Witnesses.** The decision to call, or not to call, a particular witness, made by counsel as a matter of trial strategy, even if that choice proves unproductive, will not, without more, sustain a finding of ineffectiveness of counsel.
9. **Effectiveness of Counsel.** A counsel's duty to investigate is the duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.
10. **Postconviction: Effectiveness of Counsel: Appeal and Error.** Although a motion for postconviction relief cannot be used to secure review of issues which were or could have been litigated on direct appeal, when a defendant was represented both at trial and on direct appeal by the same lawyer, the defendant's first opportunity to assert ineffective assistance of counsel is in a motion for postconviction relief.
11. **Trial: Attorneys at Law.** Trial counsel is afforded due deference to formulate trial strategy and tactics.

Appeal from the District Court for Douglas County: GREGORY M. SCHATZ, Judge. Affirmed.

Sarah M. Mooney, of Mooney Law Office, for appellant.

Jon Bruning, Attorney General, and Kimberly A. Klein for appellee.

WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ., and MOORE, Judge.

WRIGHT, J.

I. NATURE OF CASE

Edward Robinson, Jr., was charged with and convicted of first degree murder and use of a deadly weapon to commit a

felony. He was sentenced to life in prison on the first degree murder conviction and, as a habitual criminal, to 10 years' imprisonment on the conviction of the use of a deadly weapon to commit a felony, with the sentences to be served consecutively. He appealed the convictions and sentences to this court, and we affirmed. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006) (*Robinson I*), *abrogated, State v. Thorpe*, 280 Neb. 11, 783 N.W.2d 749 (2010). Robinson brought this action for postconviction relief based upon his claims relating to ineffective assistance of his trial and appellate counsel. After an evidentiary hearing, the district court denied postconviction relief. He now appeals from the order denying postconviction relief.

II. SCOPE OF REVIEW

[1] A defendant requesting postconviction relief must establish the basis for such relief, and the findings of the district court will not be disturbed unless they are clearly erroneous. *State v. Lee*, 282 Neb. 652, 807 N.W.2d 96 (2011).

[2] A petitioner's claim that his or her defense counsel provided ineffective assistance presents a mixed question of law and fact. *State v. Edwards*, 284 Neb. 382, 821 N.W.2d 680 (2012). We review factual findings for clear error. *Id*. Whether the defense counsel's performance was deficient and whether the petitioner was prejudiced by that performance are questions of law that we review independently of the lower court's decision. *Id*.

III. FACTS

The facts underlying Robinson's convictions are set forth in detail in our opinion resolving his direct appeal and need not be fully reiterated here. We summarize only those facts from *Robinson I* and the record which relate directly to this postconviction proceeding.

1. Death of Herbert Fant

Herbert Fant is the victim in this case, and his wife and Robinson's wife are cousins. On February 24, 2003, Fant became agitated with his domestic situation. After an argument with his wife, Fant attempted to contact Robinson's wife.

He went to Robinson's wife's house, argued with her, and then left.

Robinson was informed that his wife and Fant had been in an argument, and he began looking for Fant. Both men ended up at a fast-food restaurant around 10 p.m. They were fighting in the parking lot when Robinson, who had obtained a gun, shot Fant. Fant tried to get into his vehicle, but Robinson followed him and continued shooting. Police apprehended Robinson a few hours later at an automobile body shop. Robinson's nephew was also found at the shop. His nephew was wearing "a black leather type coat with a hood on it" lined with a synthetic fur, which matched eyewitness descriptions of apparel worn by the individuals who were present at the scene of the shooting.

2. Murder Trial

An amended information charged Robinson with one count of first degree murder, one count of use of a deadly weapon to commit a felony, and being a habitual criminal.

Testimony was offered by both sides regarding the vehicles driven by Fant and Robinson. Fant's vehicle was a green Chevrolet Caprice that had been painted orange. However, it was identified by a State witness as a Chevrolet Impala. Robinson's vehicle was a cream-colored GMC Yukon Denali, but an eyewitness testified that it was a white Cadillac Escalade.

Robinson filed a pretrial motion in limine to exclude the use of cellular telephone evidence, which motion the court overruled. At trial, numerous objections to the cellular telephone evidence were overruled. During closing argument, the State referred to cellular telephone evidence in an attempt to show when and where Robinson used his cellular telephone on the night of the murder. This evidence was used to place him in certain locations based on the cellular telephone tower utilized to make the call.

The State made several comments during closing argument, informing the jury that the cellular telephone records were unimpeachable third-party independent evidence that pinpointed a person's exact location and time. Robinson claims the State also made generalizations that were not in evidence

or supported by the evidence. Robinson's counsel objected on several occasions but did not move for mistrial.

During the trial, two jurors were dismissed. Juror No. 3 knew Fant's wife, who had waved at juror No. 3. Later, juror No. 3 informed the court she felt uncomfortable serving on the jury because she knew Fant's wife, and when asked to be dismissed, she was excused. Juror No. 22 was excused after being given a general admonishment because he was sleeping during key witness testimony.

The State had offered in evidence a coat that matched the description given by witnesses as the coat worn by the shooter the night Fant was killed. Robinson's nephew had been wearing this coat when the two were arrested. During deliberations, the bailiff was called into the jury room and informed that the jury had found a marijuana cigarette in a pocket of the coat. The marijuana cigarette had not been offered into evidence by either party, and presumably neither party knew it was there. There was conflicting evidence as to what persons the bailiff informed of the discovery, but both parties' attorneys were notified. The jury continued to deliberate and shortly thereafter announced its guilty verdict.

Robinson was found guilty of first degree murder and use of a deadly weapon to commit a felony. His motion for new trial was overruled. He was sentenced to life in prison on the conviction of first degree murder and, as a habitual criminal, to 10 years' imprisonment on the conviction of the use of a deadly weapon to commit a felony, with the sentences to be served consecutively.

3. Direct Appeal

Robinson appealed, and we affirmed his convictions and sentences. See *Robinson I*. He was represented by the same counsel during trial and his direct appeal.

In his direct appeal, Robinson claimed, among other things, that the trial court erred when it (1) admitted the evidence of the cellular telephone records, (2) overruled his objection to the coat found in the possession of his nephew, (3) failed to find that the State committed misconduct during closing argument in regard to the cellular telephone evidence and

the identification of Fant's and Robinson's vehicles, and (4) delayed the removal of the juror who knew Fant's wife and the juror who slept during the trial.

We held that the cellular telephone records were properly admitted under the business records exception to the hearsay rule and that Robinson had the opportunity to cross-examine all the communication company witnesses.

The State offered the fur-lined leather coat because it matched the descriptions given by witnesses and was found on Robinson's nephew at the time of the arrests that occurred only a few hours after the shooting. We concluded that the evidence regarding the coat was relevant and that this evidence was not unfairly prejudicial.

Robinson claimed that certain statements made by the State during closing argument constituted prosecutorial misconduct. After reviewing the State's closing argument, we determined that the State did not misstate the law, did not act improperly, and did not mislead the jury.

As to the two jurors who were removed, we found the trial court did not abuse its discretion in removing jurors Nos. 3 and 22.

4. Postconviction Evidentiary Hearing

Robinson's motion for postconviction relief alleged that he was denied effective assistance of counsel when counsel failed to (1) request a mistrial after she was informed that the jury found a marijuana cigarette in an exhibit, (2) call a witness to establish an alibi defense, (3) enter evidence regarding the makes and models of Fant's and Robinson's vehicles, (4) investigate a Crimestoppers telephone call, (5) challenge the cellular telephone evidence, (6) move for mistrial during the State's closing argument or the conduct of two jurors, and (7) timely move for rehearing in Robinson's direct appeal.

At the evidentiary hearing on postconviction, the court took judicial notice of the bill of exceptions, the exhibits, and the entire file, including our opinion in *Robinson I*. Robinson also offered the deposition testimony of the trial judge's bailiff and Robinson's trial counsel, in addition to Robinson's testimony.

(a) Marijuana Cigarette

In analyzing the claim regarding the marijuana cigarette found in the coat, the court concluded that both the prosecution and the defense had argued that the coat belonged to Robinson's nephew. It found there was "no evidence that the jury could have reasonably presumed that the coat belonged to [Robinson]" or that he "had anything to do with the improper extrinsic evidence discovered by" the jury. Robinson's trial counsel testified that she had not moved for mistrial because she did not think it would have affected the outcome of the trial. Based on the totality of the evidence presented to the jury regarding guilt, the court concluded that Robinson failed to show there was a reasonable probability the outcome of the trial would have been different but for trial counsel's failure to move for mistrial or to include this issue in a motion for new trial.

(b) Identification of Vehicles

The court determined that Robinson failed to show why the outcome of his trial would have been different had his counsel obtained copies of the registrations of the vehicles identified inconsistently at trial.

(c) Crimestoppers Tip and Witness

The court determined that Robinson failed to show the result would have been different if a Crimestoppers tip would have been pursued or why he was prejudiced because counsel did not call a particular witness for the defense.

(d) Cellular Telephone Records

The court concluded that Robinson did not show prejudice from his counsel's failure to challenge cellular telephone records as irrelevant and unduly prejudicial, or why counsel should have offered an alternative expert opinion to refute the cellular telephone evidence.

(e) Closing Argument, Removal of Jurors, and Rehearing

The court determined that Robinson failed to show he was prejudiced by his counsel's failure to move for mistrial regarding the prosecution's closing argument, to move for removal

of the two jurors, or to timely move for rehearing on direct appeal.

Because Robinson could not show deficient performance, prejudice, or a reasonable probability that the outcome of his trial would have been different, the court denied postconviction relief.

IV. ASSIGNMENTS OF ERROR

Robinson claims, restated, that the postconviction court erred when it ruled that his counsel was not ineffective because she (1) did not request a mistrial or inform Robinson that the jury had discovered a marijuana cigarette in an exhibit, (2) failed to call a specific defense witness or investigate a Crimestoppers telephone call, (3) did not properly handle the cellular telephone evidence, (4) failed to establish the importance of the vehicle identification, and (5) did not move for mistrial or timely file a motion for rehearing in Robinson's direct appeal.

V. ANALYSIS

All of Robinson's postconviction claims are based upon alleged ineffective assistance of counsel. Because Robinson's trial counsel was also his appellate counsel, this is his first opportunity to assert his claims relating to ineffective assistance of his trial and appellate counsel. See *State v. Edwards*, 284 Neb. 382, 821 N.W.2d 680 (2012).

[3,4] Whether the defense counsel's performance was deficient and whether the petitioner was prejudiced by that performance are questions of law that we review independently of the lower court's decision. *Id.* An ineffective assistance of counsel claim alleges a violation of the fundamental constitutional right to a fair trial. *Id.* To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. *Id.* An appellate court may address the two prongs of this test, deficient performance and prejudice, in either order. *Id.*

[5] We address whether Robinson was prejudiced by his counsel's performance at trial and on direct appeal. In addressing the "prejudice" component of the *Strickland* test, we focus on whether a trial counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair. *Id*. To show prejudice under the prejudice component of the *Strickland* test, the petitioner must demonstrate a reasonable probability that but for his or her counsel's deficient performance, the result of the proceeding would have been different. *Id*. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id*.

1. Marijuana Cigarette Found in Coat Pocket of Exhibit

[6] Robinson claims his trial counsel should have moved for mistrial when the jury found a marijuana cigarette in the coat pocket. In order for a new trial to be granted because of a juror's use of extraneous information, the party claiming the misconduct has the burden to show by a preponderance of the evidence that prejudice has occurred. *State v. Williams*, 253 Neb. 111, 568 N.W.2d 246 (1997).

During jury deliberations, at least one juror, and probably all the jurors, became aware of the marijuana cigarette in the pocket of the coat worn by someone at the scene on the night of Fant's death. The juror alerted the bailiff, who informed the attorneys of the discovery. Shortly thereafter, the jury returned a guilty verdict. Robinson's trial counsel did not include the discovery of the marijuana cigarette in a motion for mistrial or motion for new trial and did not include this claim on direct appeal.

[7] Extraneous material or information considered by a jury can be prejudicial without proof of actual prejudice if (1) the material or information relates to an issue submitted to the jury and (2) there is a reasonable possibility that it affected the jury's verdict to the challenger's prejudice. *State v. Thorpe*, 280 Neb. 11, 783 N.W.2d 749 (2010). The extraneous information was a marijuana cigarette found in a pocket of a coat matching the description of a coat worn by someone at the scene of

the shooting on the night of the murder. Robinson was on trial for first degree murder. He was not on trial for possession of illegal drugs. The extraneous information found by the jury was not related to the charges Robinson was facing. Therefore, prejudice cannot be presumed in this situation.

The postconviction court found that a verdict was announced shortly after the bailiff was alerted to the discovery of the marijuana cigarette, which indicated that "a verdict had been determined by the jury prior to the question of the juror regarding the contents of the coat." It concluded that based on the totality of the evidence presented to the jury on Robinson's guilt, Robinson had failed to show that there was a reasonable probability that the outcome of his trial would have been any different had his attorney moved for mistrial or made the extrinsic evidence part of a motion for new trial.

Robinson has the burden to prove prejudice, which means that but for his counsel's ineffective assistance, the outcome of the trial would have been different. There were numerous facts in evidence that pointed toward his guilt. Robinson had a motivation for the killing, he pursued Fant, and they were arguing at the time of the shooting. And one eyewitness identified Robinson as the killer.

Robinson did not show there was a reasonable probability that the discovery of the marijuana cigarette affected the jury's determination of his guilt of first degree murder. And we agree with the district court's determination that Robinson has not shown the discovery of the marijuana cigarette was prejudicial. Robinson failed to carry his burden to show the outcome would have been different but for his attorney's failure to move for mistrial. The court did not err in rejecting Robinson's ineffective assistance of counsel claim on this issue.

2. Trial Counsel Did Not Inform Robinson of Discovery of Marijuana Cigarette Until After Direct Appeal

Because we have concluded there was no error regarding the discovery of the marijuana cigarette, there can be no error in not informing Robinson of the discovery until after his appeal.

Robinson cannot prove that but for the failure to inform him of the discovery of the marijuana cigarette, the outcome of the trial or appeal would have been different.

3. Calling Specific Witness

Robinson claimed that trial counsel was ineffective for not calling Shamika Brown as a witness. Brown was Robinson's brother's fiance. She would have testified that she was not at the murder scene the night Fant was shot. She stated that she was with Robinson's brother at his house on the night Fant died. This would have disputed the testimony of the prosecution eyewitness who testified that Brown was present at the shooting of Fant. Brown would have testified that this witness was upset with the Robinson family and that in her opinion, the witness "pretty much had it out for them."

Brown was arrested for witness tampering in connection with the case. Those charges were eventually dropped against her, but they may have been pending during Robinson's trial. Robinson's trial counsel testified that she did not call Brown as a witness because she did not think her testimony would have added anything.

[8] The decision to call, or not to call, a particular witness, made by counsel as a matter of trial strategy, even if that choice proves unproductive, will not, without more, sustain a finding of ineffectiveness of counsel. *State v. Thomas*, 278 Neb. 248, 769 N.W.2d 357 (2009). Robinson has not shown that calling Brown as a witness would have changed the result.

4. Investigation of Crimestoppers Telephone Call

The court concluded that Robinson had not set forth specific allegations regarding the testimony of a witness who should have been called or how the information from a Crimestoppers tip might have been received in evidence at his trial.

[9] A counsel's duty to investigate is the duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. See *State v. Palmer*, 257 Neb. 702, 600 N.W.2d 756 (1999). In any ineffectiveness case, a particular decision not to investigate

must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. *Id*.

The record indicates that the Crimestoppers telephone call was an anonymous call, in which the caller claimed to have overheard a young girl on a schoolbus say that her mother's boyfriend had killed Fant. No other information was provided to prove the accuracy or credibility of the statements, and no other reports came in through the hotline. At the hearing, Robinson did not produce any evidence regarding the girl on the schoolbus or what course of investigation trial counsel could have pursued. Under these circumstances, Robinson cannot show that the testimony from an unknown person would have changed the result.

5. Assignments of Error Addressed on Direct Appeal

[10] Although a motion for postconviction relief cannot be used to secure review of issues which were or could have been litigated on direct appeal, when a defendant was represented both at trial and on direct appeal by the same lawyer, the defendant's first opportunity to assert ineffective assistance of counsel is in a motion for postconviction relief. *State v. McKinney*, 279 Neb. 297, 777 N.W.2d 555 (2010). Robinson had the same attorney for his trial and direct appeal. Therefore, his postconviction motion is his first opportunity to raise some of his claims of ineffective assistance of counsel. However, we will not readdress issues we have already decided on his direct appeal. He raises four such claims in his postconviction motion. We address each in turn.

(a) Cellular Telephone Evidence at Trial

At the trial, the State introduced evidence related to the use of cellular telephones in an attempt to place Robinson and Fant in the same area at the time of the murder by using signals from different cellular telephone towers. On direct appeal, we concluded that the records were properly admitted, because nothing indicated the cellular telephone records were

not trustworthy. Thus, this part of the claim was previously decided on direct appeal.

Counsel also claimed the records should have been excluded as irrelevant and unduly prejudicial. However, on direct appeal, we refused to consider the argument because counsel had not properly preserved it by objection at trial.

[11] Trial counsel is afforded due deference to formulate trial strategy and tactics. See *State v. Timmens*, 282 Neb. 787, 805 N.W.2d 704 (2011). Robinson's trial counsel objected to the cellular telephone evidence on numerous occasions and on different grounds, and the objections were overruled. Robinson claims that because counsel did not object to the evidence as irrelevant and unduly prejudicial, he was prejudiced. However, he has not shown that the evidence was not relevant or that it was unfairly prejudicial. He has not shown that the outcome of the trial would have been different if trial counsel had objected to the admission of the telephone records as irrelevant and unduly prejudicial.

(b) Identification of Vehicles

On direct appeal, we did not specifically address the importance of vehicle identification. We discussed the identification of the vehicles in the context of the prosecutor's comments made during closing argument. Although the prosecutor went beyond the facts in his closing argument by mentioning that Robinson's vehicle was customized, we did not find that a miscarriage of justice occurred as a result of the State's objectionable references to the customization of Robinson's vehicle. We concluded that because there was no miscarriage of justice and because Robinson did not make a timely motion for mistrial based on prosecutorial misconduct, his assignment of error was without merit.

We are left to determine whether Robinson was unfairly prejudiced because his counsel did not offer certified copies of the titles or registrations of the vehicles at issue in trial so that counsel could then object when witnesses misidentified the vehicles as a Chevrolet Impala instead of a Caprice and a Cadillac Escalade instead of a GMC Yukon Denali. Robinson argues that his trial counsel should have offered certified copies

of the titles or registrations of Fant's and Robinson's vehicles so as to prevent the State from referring to the vehicles as different models. Robinson has not shown how the outcome of his trial could have been different if the makes and models of the vehicles were in evidence. He has failed to show how he was prejudiced because his trial counsel did not offer the vehicle registrations.

(c) Motions for Mistrial During Closing Argument

Robinson's trial counsel objected to parts of the prosecution's closing argument, and two of those objections were overruled. On direct appeal, we rejected Robinson's claim of prosecutorial misconduct. We concluded that the prosecutor did not misstate the law and did not mislead the jury. Because trial counsel did not move for mistrial after these statements were made, absent plain error, we would not consider the assignments on direct appeal. *Robinson I*. In his postconviction claim, Robinson argues that because counsel did not make a motion for mistrial, he was prejudiced. This assignment has been decided on direct appeal.

Robinson's trial counsel objected to certain parts of the prosecutor's closing argument and did not object to other parts. Trial counsel did not make any motions for mistrial after the prosecution's closing argument. We rejected Robinson's claim of prosecutorial misconduct on direct appeal. Therefore, Robinson's claim on this issue is procedurally barred.

(d) No Motion for Mistrial for Jury Misconduct

There were separate issues regarding two jurors during the course of the trial. Juror No. 3 knew Fant's wife through church, eventually told the trial court she felt uncomfortable serving on the jury, and said she wanted to be removed from the jury. Her request was granted. Juror No. 22 fell asleep during portions of the trial. The jury was given a general admonishment, but the juror continued to fall asleep and was removed from the jury. Both jurors were removed from the jury before the case was submitted to the jury.

On direct appeal, we concluded that in respect to juror No. 3, the record did not suggest that there was any misconduct on the juror's part, much less prejudicial misconduct. We concluded the record did not suggest Robinson was prejudiced by the removal of the juror who slept during parts of the testimony.

On direct appeal, we concluded the court did not abuse its discretion in removing the two jurors. Robinson is procedurally barred from reasserting this claim.

6. Motion for Rehearing on Direct Appeal

Robinson claims his counsel was ineffective by not timely filing a motion for rehearing after we affirmed Robinson's convictions and sentences on direct appeal. Motions for rehearing are discretionary with this court. On postconviction, Robinson has not shown that we would have granted his motion for rehearing or that if the motion had been granted, we would have changed our opinion and granted him redress.

VI. CONCLUSION

Because Robinson cannot establish that he was prejudiced by his counsel's representation, we find no merit to his assignments of error. We affirm the district court's denial of Robinson's motion for postconviction relief.

Affirmed.

Heavican, C.J., not participating.

Butler County Dairy, L.L.C., appellant, v. Butler County, Nebraska, and Township of Read, Butler County, Nebraska, appellees, and Township of Summit, Butler County, Nebraska, intervenor-appellee.

827 N.W.2d 267

Filed March 8, 2013. No. S-12-173.

1. **Statutes: Appeal and Error.** To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below.