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DANIEL A. MEINTS, APPELLANT, V. CITY OF BEATRICE, NEBRASKA, APPELLEE.

820 N.W.2d 90

Filed August 21, 2012. No. A-11-683.

1. **Administrative Law: Judgments: Appeal and Error.** Neb. Rev. Stat. § 25-1901 et seq. (Reissue 2008) 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.
2. ____: ____: ____. 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.
3. **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.
4. **Evidence: Proof: Words and Phrases.** Adjudicative facts pertain to questions of who did what, where, when, how, why, and with what motive or intent.
5. **Administrative Law: 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.
6. **Administrative Law: Records: Appeal and Error.** Neb. Rev. Stat. § 25-1905 (Reissue 2008) 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.
7. **Administrative Law: Jurisdiction: Appeal and Error.** Compliance with Neb. Rev. Stat. §§ 25-1903 and 25-1905 (Reissue 2008) is jurisdictional.
8. **Administrative Law: Jurisdiction: Records: Appeal and Error.** The plain language of Neb. Rev. Stat. § 25-1905 (Reissue 2008) 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.
9. **Administrative Law: Final Orders: Records: Appeal and Error.** Neb. Rev. Stat. § 25-1905 (Reissue 2008) plainly indicates that the transcript required to be filed with a petition in error must contain the final judgment or order sought to be reversed, vacated, or modified.
10. **Legislature: Courts: Pleadings: Appeal and Error.** Neb. Rev. Stat. § 25-1937 (Reissue 2008) provides that when the Legislature enacts a law providing for an appeal, but without providing the procedure therefor, the procedure for appeal to the district court shall be the same as for appeals from the county court to the district court in civil actions, and that trial in the district court is to be de novo upon the issues made up by the pleadings.

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

Terry K. Barber, of Barber & Barber, P.C., L.L.O., for appellant.

Torrey L. Janus Gerdes, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Daniel A. Meints appeals an order of the district court for Gage County, Nebraska, dismissing Meints' complaint seeking judicial review of a decision of the City of Beatrice board of appeals (Board of Appeals). The district court dismissed Meints' complaint, because the court found that Meints had failed to present either a transcript of the proceedings conducted before the Board of Appeals or a praecipe requesting such transcript. We find no error and affirm.

II. BACKGROUND

In March 2009, the City of Beatrice, Nebraska (the City), issued Meints a notice concerning certain real property in Beatrice, owned by Meints, and ordering the demolition of a structure on the property. Meints appealed that notice and order to the City's Board of Appeals. In April, the Board of Appeals met and considered Meints' appeal, denied the appeal, and upheld the City's notice and order.

In May 2009, Meints filed a pleading in the district court for Gage County, captioned "Complaint and Praecipe." In his complaint, Meints alleged that the City and the Board of Appeals had erred in ordering demolition of the structure on his property, alleged that he had been denied due process related to the Board of Appeals' proceedings, and sought "judicial review" of the action of the City and the Board of Appeals. Meints did not include any transcript of the proceedings conducted by the Board of Appeals, nor did he include any praecipe requesting the preparation of such transcript of proceedings. In February 2010, Meints filed another pleading, captioned "Amended Complaint." In the amended complaint, Meints made substantially the same assertions; he again did not include a transcript

or a praecipe for the preparation of a transcript of the proceedings conducted by the Board of Appeals.

In June 2011, the City moved for summary judgment. The City alleged that Meints' action was properly considered a petition in error under Neb. Rev. Stat. § 25-1901 et seq. (Reissue 2008) and alleged that because Meints had failed to file a transcript or a praecipe for transcript containing the Board of Appeals' determination, the district court was without jurisdiction. On July 13, the district court found that it lacked jurisdiction and dismissed Meints' action. This appeal followed.

III. ASSIGNMENT OF ERROR

Meints' sole assignment of error is that the district court erred in finding that it lacked jurisdiction and in dismissing his action.

IV. ANALYSIS

Meints asserts that the district court erred in finding that he was required to comply with the jurisdictional prerequisites of § 25-1901 et seq. He asserts that the court should have found that his request for judicial review was appropriate under alternative means, such as Neb. Rev. Stat. § 25-1937 (Reissue 2008). We find no merit to Meints' assertions.

[1] The district court concluded that § 25-1901 et seq. applied to Meints' 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. As we recently noted in *Turnbull v. County of Pawnee*, 19 Neb. App. 43, 810 N.W.2d 172 (2011), § 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 Meints' action, because the City's Board of Appeals exercised judicial functions. We also conclude that contrary to Meints' assertions on appeal, § 25-1937 did not provide an alternative process for Meints to seek judicial review of the Board of Appeals' decision.

1. Section 25-1901 et seq.

We first find that § 25-1901 et seq. did apply to Meints' attempt to secure judicial review of the Board of Appeals' decision, because the information available to us on appeal indicates that the Board of Appeals performed judicial functions. As a result, § 25-1903 imposed an obligation on Meints to present a transcript or praecipe for transcript of the proceedings before the Board of Appeals, and Meints' failure to do so was a jurisdictional defect.

[2-4] Section 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. *Turnbull v. County of Pawnee, supra*. 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. *Id*.; *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs*., 17 Neb. App. 76, 758 N.W.2d 653 (2008). 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*.

The notice and order sent by the City to Meints in this case is contained in the bill of exceptions, and it indicates that the City determined a residential structure on Meints' property was unsafe, unfit for human occupancy, not sufficiently maintained or in sufficient state of repair, and dangerous. Pursuant to that notice, Meints was ordered to demolish the structure. Meints then appealed to the Board of Appeals.

The bill of exceptions in this case includes an affidavit of Meints' counsel. In that affidavit, Meints' counsel stated that he appeared and represented Meints at the Board of Appeals hearing and that the Board of Appeals received exhibits during the hearing, including more than 20 photographs of the structure Meints had been ordered to demolish. In addition, Meints' counsel's affidavit included as an attachment the minutes from the Board of Appeals meeting, which minutes indicate that the Board of Appeals also heard from a building inspector and a code enforcement officer and that after Meints and his counsel had presented their case, the Board of Appeals voted

unanimously to affirm the notice and order provided to Meints to demolish the structure.

The questions resolved by the Board of Appeals, concerning whether the residential structure on Meints' property was unsafe and dangerous and in need of demolition, were adjudicative in nature, and the Board of Appeals engaged in a judicial function in hearing Meints' appeal of the City's notice and order. As a result, the petition in error statutes were applicable to Meints' attempt to secure judicial review of the City's and the Board of Appeals' orders, and the petition in error statutes dictated the proper steps for perfecting jurisdiction in the district court. See *Turnbull v. County of Pawnee*, 19 Neb. App. 43, 810 N.W.2d 172 (2011).

[5-7] 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); *Turnbull v. County of Pawnee, supra*. 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*; *Turnbull v. County of Pawnee, supra*. The Nebraska Supreme Court has held that compliance with these statutory provisions is jurisdictional. *Id*.

There is no dispute in this case that Meints filed a complaint in the district court purporting to set forth the errors complained of. There is also no dispute in this case that Meints did not file a transcript of the proceedings held before the Board of Appeals, nor did he file a praecipe directing the Board of Appeals to prepare a transcript of the proceedings.

[8,9] The plain language of § 25-1905 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. See, *River City Life Ctr. v. Douglas Cty. Bd. of Equal.*, 265 Neb. 723, 658 N.W.2d 717 (2003); *Turnbull v. County of Pawnee, supra*. Section 25-1905 also plainly indicates that the transcript must contain the final judgment or order sought to be reversed, vacated, or modified.

See, *River City Life Ctr. v. Douglas Cty. Bd. of Equal., supra*; *Turnbull v. County of Pawnee, supra*. Meints' failure to comply with the plain language of these provisions precluded jurisdiction from being conferred on the district court under the petition in error statutes.

2. Alternative Basis for Jurisdiction

Meints asserts that even if § 25-1901 et seq. is applicable to his case, as we have found it is, the district court should be found to have had jurisdiction to hear his complaint under an alternative basis; namely, Meints asserts that § 25-1937 should be found to provide for the district court's jurisdiction over Meints' complaint in this case. We disagree.

In *In re Application of Olmer*, 275 Neb. 852, 752 N.W.2d 124 (2008), the Nebraska Supreme Court addressed the question of whether, in a particular case, both §§ 25-1901 et seq. and 25-1937 might provide alternative bases for district court jurisdiction to judicially review lower tribunal proceedings. In *In re Application of Olmer*, the Supreme Court concluded that the lower tribunal, a county board of commissioners, had exercised judicial functions and that § 25-1901 et seq. was applicable to provide a basis for district court jurisdiction. The Supreme Court also concluded, however, that the petition in error statutes were not the sole method of appeal available to the plaintiff, because the court concluded that the facts of the case demonstrated that § 25-1937 was also applicable.

[10] Section 25-1937 provides that when the Legislature enacts a law providing for an appeal, but without providing the procedure therefor, the procedure for appeal to the district court shall be the same as for appeals from the county court to the district court in civil actions, and that trial in the district court is to be de novo upon the issues made up by the pleadings. In *In re Application of Olmer, supra*, the Supreme Court found that the Legislature had specifically provided in Neb. Rev. Stat. § 23-114.01(5) (Reissue 2007) that an aggrieved party had a right to appeal a decision by the county planning commission or county board of commissioners regarding conditional use or special exceptions and that the appeal was to be made to the district court. The Legislature, however, did not prescribe the proper procedure for doing so. As a result,

§ 25-1937 was also applicable to the plaintiff's action in district court and provided him with two alternative means of seeking judicial review.

The same is not true in Meints' case. There is no legislative grant of a right to appeal a decision of a board of appeals in a city of the first class, as the City is in this case. As a result, distinguishable from *In re Application of Olmer, supra*, Meints' case is not one where the Legislature has specifically provided a right for him to appeal the Board of Appeals' decision but has not prescribed the proper method for taking such an appeal. Section 25-1937 does not apply to provide an alternative basis for the district court's jurisdiction in the present case, and we find Meints' assertions to the contrary to be without merit.

V. CONCLUSION

Meints sought judicial review of the City's Board of Appeals' decision to uphold the notice and order that Meints demolish a structure on residential property. Meints sought judicial review of an order of a lower tribunal that had performed judicial functions, and the provisions of § 25-1901 et seq. were applicable, including the requirement that Meints file with his petition in error a transcript of the lower tribunal proceedings or a praecipe requesting the preparation of such a transcript. Meints failed to comply with this jurisdictional prerequisite, and the district court did not err in dismissing his action. We affirm.

AFFIRMED.

CYNTHIA A. FRIEDMAN, APPELLEE, V.
BRUCE R. FRIEDMAN, APPELLANT.
819 N.W.2d 732

Filed August 21, 2012. No. A-11-747.

1. **Jurisdiction.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
2. **Jurisdiction: Appeal and Error.** Notwithstanding whether or not the parties raise the issue of jurisdiction, an appellate court has a duty to raise and determine the issue of jurisdiction sua sponte.