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electricity should not be deducted from her income when computing her share of medical expenses under Medicaid. The judgment of the district court is reversed, and the cause is remanded with directions to reverse the determination made by DHHS and to remand the cause to DHHS for a determination of benefits consistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

ESTATE OF DONNA MAE HANSEN, BY AND THROUGH ITS SPECIAL ADMINISTRATOR, PEGGY ANN WIMER, AND ESTATE OF GEORGE ALFRED HANSEN, BY AND THROUGH ITS SPECIAL ADMINISTRATOR, PEGGY ANN WIMER, APPELLANTS, V. DONALD L. BERGMEIER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALBERTA J. BERGMEIER, DECEASED, APPELLEE.

825 N.W.2d 224

Filed January 8, 2013. No. A-12-186.

1. **Summary Judgment.** Summary judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Judgments: Appeal and Error.** To the extent issues of law are presented, an appellate court has an obligation to reach independent conclusions irrespective of the determinations made by the court below.
3. **Decedents' Estates: Claims.** The Nebraska Probate Code provides two methods of presenting a claim against a decedent's estate: Under Neb. Rev. Stat. § 30-2486(1) (Reissue 2008), a claim can be presented by filing a written statement thereof with the clerk of the probate court, or under § 30-2486(2), a claim can be presented by commencing a proceeding against the personal representative in any court which has jurisdiction.
4. **Decedents' Estates: Liability: Damages.** The potential liability of a decedent, without establishment of liability and amount of damage, does not constitute a direct legal interest in the estate of the deceased.
5. **Decedents' Estates: Limitations of Actions: Insurance.** The time limits under Neb. Rev. Stat. § 30-2485 (Cum. Supp. 2012) for presentation of claims are not applicable when the recovery sought is solely limited to the extent of insurance protection.
6. **Decedents' Estates: Limitations of Actions: Liability: Insurance: Notice.** A claimant who has a claim for the proceeds of a decedent's liability insurance under Neb. Rev. Stat. § 30-2485(c)(2) (Cum. Supp. 2012) is entitled to have the

estate reopened for the limited purpose of service of process in the civil action filed to establish liability and liability insurance coverage.

7. **Decedents' Estates: Executors and Administrators: Statutes.** A personal representative is not a natural person, but, rather, an entity created by statute through a court order of appointment.
8. **Decedents' Estates: Executors and Administrators: Claims: Insurance.** A closed estate, with a discharged personal representative, must be reopened and a personal representative appointed (or reappointed) before suit can be filed, even when seeking only liability insurance proceeds.
9. **Decedents' Estates: Limitations of Actions: Executors and Administrators.** Neb. Rev. Stat. § 30-2485(c)(2) (Cum. Supp. 2012) does not allow the institution of proceedings against a discharged personal representative while the estate is closed.
10. **Courts: Jurisdiction: Decedents' Estates: Claims: Executors and Administrators.** The county court, upon an alleged creditor's request, has the jurisdiction to appoint a personal representative for the purpose of the proper presentation of a claim against a decedent whose estate has been previously closed and the personal representative discharged.
11. **Limitations of Actions: Waiver: Pleadings.** The benefit of the statute of limitations is personal and, like any other personal privilege, may be waived and will be unless pleaded.

Appeal from the District Court for Gage County: PAUL W. KORSLUND, Judge. Affirmed.

Steven H. Howard, of Dowd, Howard & Corrigan, L.L.C., for appellants.

Colin A. Mues, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellee.

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

SIEVERS, Judge.

On January 9, 2006, an automobile accident occurred in Beatrice, Gage County, Nebraska. One vehicle was driven by Alberta J. Bergmeier and the other by George Alfred Hansen, with his wife, Donna Mae Hansen, in the passenger seat. A lawsuit for the Hansens' predeath personal injuries was filed January 7, 2010, in the district court for Gage County. At the time the suit was filed, Alberta, George, and Donna were all deceased from causes unrelated to the automobile accident. The issue before us is whether Donald L. Bergmeier—who was previously the personal representative of the estate of

Alberta, his mother—was timely and properly sued for the Hansens' personal injuries resulting from the automobile accident. Donald filed a motion for summary judgment, which was sustained, and the suit was dismissed. The district court found that the lawsuit was time barred after consideration of the statutory procedures applicable to the filing of a claim against a deceased person's closed estate and the discharged personal representative. Peggy Ann Wimer, the Hansens' daughter, has appealed as the special administrator of each of her parent's estates. For ease of discussion, we will refer to Wimer in this opinion as the sole appellant.

FACTUAL AND PROCEDURAL BACKGROUND

The following pertinent facts in this case are undisputed. Alberta died on May 25, 2007, and Donald was appointed personal representative of her estate on August 20. In that estate, notice by publication was given to known creditors on August 20, stating that all claims must be filed with the court no later than October 29 or be forever barred. Additionally, on August 29 and again on September 5 and 12, notice to creditors of the estate was published in a local newspaper pursuant to the Nebraska Probate Code. See Neb. Rev. Stat. § 30-2483 (Reissue 2008).

On August 30, 2007, the attorney for Alberta's estate mailed a copy of the registrar's statement of informal probate and notice to creditors to the known creditors of the estate. Diligent investigation and inquiry by the estate's attorney did not identify George or Donna as having any direct legal interest in the estate, and accordingly, neither was mailed a notice to creditors. Wimer does not claim that there was anything improper about such notice to creditors, nor does she assert that either she or the Hansens had a "direct legal interest" in Alberta's estate which would entitle them to personal notice. See Neb. Rev. Stat. § 25-520.01 (Reissue 2008).

On February 5, 2008, the county court for Gage County found that Donald had properly collected and managed the assets of the estate, filed an inventory and final accounting, paid all lawful claims against the estate, and performed all

other acts required under Nebraska law. Donald was ordered by the county court to deliver the estate's assets according to the distribution schedule. The court also approved and ratified distributions that Donald had previously made on behalf of the estate. On September 18, the county court terminated Donald's appointment as personal representative of Alberta's estate and further discharged him "from further claim or demand of any interested person." While the estate was open and under administration, neither George nor Donna, nor anyone acting on their behalf, filed a claim against Alberta's estate. Nor did George or Donna, while the estate was open and being administered, file any lawsuit against Donald as personal representative of Alberta's estate for injuries arising out of the accident of January 9, 2006.

However, on January 11, 2010, the estates of George and Donna filed a statement of claim in the county court against the estate of Alberta for personal injury arising out of the January 9, 2006, accident. A joint stipulation was filed in the county court on May 4, 2010, to "stay all further Probate proceedings until such time as there is a judicial determination in the separate civil case presently pending" in the Gage County District Court involving the accident of January 9, 2006. On May 6, 2010, the county court entered an order staying all further probate court proceedings until there had been a judicial determination in the district court as to whether the Hansen estates were "legally entitled to recover damages from Alberta" as a result of the automobile accident of January 9, 2006.

The district court action referenced in the stay is the instant lawsuit that was first filed on January 7, 2010, by Wimer as the special administrator of the Hansen estates, which was followed by an "amended complaint" on January 11. The only material difference between the two complaints is that the amended complaint added two specifications of negligence. This suit was filed against Donald, designating him as "personal representative" of Alberta's estate, seeking damages for personal injuries sustained by George and Donna in the January 9, 2006, automobile accident. It is this district court case that is now before us.

Donald's answer was filed in district court on April 15, 2010. Donald alleged that he was the duly appointed personal representative of Alberta's estate, but that the estate was formally closed and a decree of final discharge of the personal representative was entered by the county court on September 18, 2008, at which time his appointment terminated and he was discharged from further claims or demands of any interested persons. The answer admitted the occurrence of the accident on January 9, 2006, alleged that the complaint failed to state a claim upon which relief could be granted, denied that Alberta was negligent, alleged contributory negligence of George, and stated that the claims asserted in the lawsuit were barred by the applicable statute of limitations and the provisions of Neb. Rev. Stat. § 30-2485 (Cum. Supp. 2012).

On September 8, 2011, Donald filed a motion for summary judgment in the district court case, alleging that there was no genuine issue of material fact and that he was entitled to judgment as a matter of law. The district court rendered its decision on the motion for summary judgment on February 6, 2012. The court first articulated that, despite argument and briefing on other timing issues related to the presentation of a claim in the estate by written statement pursuant to Neb. Rev. Stat. § 30-2486(1) (Reissue 2008), the case before the court involved only whether, under Nebraska law, "a claimant may present and enforce a claim by commencing a proceeding under [§] 30-2486(2) against a discharged personal representative." Therefore, the court limited its decision to whether the district court lawsuit was proper under § 30-2486(2) and declined to comment upon or discuss a potential claim presented under § 30-2486(1) in the estate proceeding in the county court.

The district court cited our decision in *Mach v. Schmer*, 4 Neb. App. 819, 550 N.W.2d 385 (1996), for its conclusion that a potential claimant cannot bring a claim against a former personal representative while the estate remains closed. The special administrator of the Hansen estates, Wimer, now appeals.

ASSIGNMENTS OF ERROR

Wimer's assignments of error, restated, are (1) that the district court erred in granting summary judgment; (2) that the district court erred in determining that reopening Alberta's estate and the appointment of a successor personal representative were conditions precedent to the filing of this case in district court; (3) that the district court erred in determining that a claim filed against the estate was necessary, when the only recovery sought was from Alberta's automobile liability insurance carrier and not from any assets of her estate; (4) that the district court erred in determining that the claim filed in the probate case was untimely and inappropriate; and (5) that the district court erred in determining that Alberta's estate was not reopened, when it should have found that it was merely "inactive."

STANDARD OF REVIEW

[1] Summary judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Marksmeier v. McGregor Corp.*, 272 Neb. 401, 722 N.W.2d 65 (2006).

[2] To the extent issues of law are presented, an appellate court has an obligation to reach independent conclusions irrespective of the determinations made by the court below. *Griess v. Griess*, 9 Neb. App. 105, 608 N.W.2d 217 (2000).

ANALYSIS

The pertinent facts are undisputed, and we see this appeal as purely a question of law. The claim in Alberta's estate was filed after Alberta's estate was closed and the personal representative was discharged. The district court suit was filed against the discharged personal representative without Alberta's estate being reopened, and the operative amended complaint in district court does not limit the recovery sought to only the available automobile insurance coverage that Alberta had in effect at the time of the accident.

[3,4] With this procedural posture in mind, the broad issue and proper starting point for the analysis of this appeal is whether Wimer has ever properly presented her deceased parents' personal injury claims against Alberta's estate. The Nebraska Probate Code provides two methods of presenting a claim against a decedent's estate: Under § 30-2486(1), a claim can be presented by filing a written statement thereof with the clerk of the probate court, or under § 30-2486(2), a claim can be presented by commencing a proceeding against the personal representative in any court which has jurisdiction. See *Mach v. Schmer*, 4 Neb. App. 819, 550 N.W.2d 385 (1996). Section 30-2485 contains the general time limitations within which a claimant must present the claim against an estate. If the personal representative complies with the notice provisions of §§ 25-520.01 and 30-2483, a claim must be presented within 2 months after the date of the first publication of notice to creditors. Wimer makes no argument that notice was not proper, or that her parents had a direct legal interest in the estate which would have entitled them to notice. See *Farmers Co-op. Mercantile Co. v. Sidner*, 175 Neb. 94, 120 N.W.2d 537 (1963) (potential liability of decedent, without establishment of liability and amount of damage, does not constitute direct legal interest in estate of deceased). It is undisputed that neither the Hansens, while still living, nor Wimer, as their estates' appointed representative, presented any claim under § 30-2486(1) within the time limits found in § 30-2485. The claim that was filed in Alberta's estate was filed long after Alberta's estate was closed and Donald was discharged as personal representative.

[5] Wimer's claim presentation under the alternative procedure under § 30-2486(2), the instant case, was accomplished on January 7, 2010, when she filed this lawsuit against Donald as personal representative of Alberta's estate, although Alberta's estate had not been reopened, nor had Donald been reappointed as personal representative. We note that the time limits under § 30-2485 for presentation of claims are not applicable when the recovery sought is solely limited to the extent of "insurance protection," see § 30-2485(c)(2), but no allegation limiting the claim to liability insurance is found in the

complaint filed January 7 or in the amended complaint filed 4 days later.

[6] Nebraska law is quite clear that a claimant who has a claim for the proceeds of a decedent's liability insurance under § 30-2485(c)(2) is entitled to have the estate reopened for the limited purpose of service of process in the civil action filed to establish liability and liability insurance coverage. See *Tank v. Peterson*, 214 Neb. 34, 332 N.W.2d 669 (1983). We applied *Tank* in *Mach, supra*, where Dean E. Mach and Carolyn Mach presented their personal injury claims flowing from the alleged negligence of the decedent, Floyd S. Schmer, almost a year after Schmer's estate was closed and the personal representative had been discharged. However, the Machs did not seek to have the Schmer estate reopened, as *Tank* clearly allows and requires, but, rather, the Machs simply filed suit against the estate's former personal representative, just as occurred in the present case. In *Mach*, we made note of the *Tank* court's holding that neither the probate claims statute, § 30-2485, nor the closing of the estate can bar a claim. This proposition needs the caveat that the deceased was protected by liability insurance, assuming that the applicable statute of limitations has not run. We then said:

> *Tank* does not, however, provide that a claimant may institute proceedings against a discharged personal representative while the estate is closed. According to the Supreme Court's holding in *Tank*, a claimant who possesses a claim for the proceeds of liability insurance under § 30-2485(c)(2) is entitled to have the estate reopened for the limited purpose of service of process in the civil action to establish liability and liability insurance coverage. [The Machs] did not proceed to have the estate reopened, however, and instead attempted to proceed while the estate remained closed.

Mach v. Schmer, 4 Neb. App. 819, 829, 550 N.W.2d 385, 392 (1996).

[7] Therefore, we found that Schmer's personal representative was entitled to summary judgment because she had previously been discharged and her appointment had terminated. We then said that any claims the Machs had, other than a

claim under § 30-2485(c)(2), were barred by the time limits of § 30-2485, often referenced as "the nonclaim statute." As in *Tank, supra*, Alberta's estate has never been reopened, meaning that Donald was not the personal representative of Alberta's estate when he was sued in this case. In *Mach*, we affirmed the trial court's summary judgment for the former personal representative of Schmer's estate. Accordingly, it would appear that the same result as in *Mach* is required in the instant case. The unstated rationale behind the result in *Mach* is that a personal representative is not a natural person, but, rather, an entity created by statute through a court order of appointment. See *Pilger v. State*, 120 Neb. 584, 585, 234 N.W. 403, 404 (1931) ("[e]xecutors and administrators in Nebraska are creatures of statute"). Thus, it naturally follows that when the estate is closed and the personal representative is discharged, there is no viable entity or person to sue, because the tort-feasor is deceased, his or her estate is closed, and there is no longer a personal representative.

However, for completeness, we turn to the arguments offered by Wimer as to why the trial court erred in granting the summary judgment. Wimer offers three arguments as to why summary judgment against her is wrong under the rubric of her five assignments of error: (1) There was automobile liability insurance coverage, no assets of the estate are affected, and therefore her claim is not barred; (2) Wimer is entitled to her day in court on the merits of the tort claims; and (3) Alberta's estate had "active and ongoing proceedings" at the time the summary judgment was granted. Brief for appellants at 7.

Presence of Automobile Liability Insurance.

[8] Wimer's brief asserts that this action was filed within the 4-year statute of limitations for torts found in Neb. Rev. Stat. § 25-207 (Reissue 2008). We agree that this suit was filed within 4 years of the accident. We also agree that the evidence shows that on the date of the accident, Alberta had in full force and effect a policy of automobile liability issued by State Farm Mutual Automobile Insurance Company (State Farm) with

limits of $100,000 per person and $300,000 per occurrence. Wimer's brief states: "The Hansen Estates' claims against [Alberta's] Estate were specifically limited to that State Farm automobile liability insurance coverage. . . . The only dollars at risk are those belonging to State Farm." Brief for appellants at 8. In the record is the Gage County Court transcript of the proceedings and filings in Alberta's estate. Included therein is a statement of claim filed January 11, 2010, by which the estates of George and Donna each assert a claim of $300,000 against Alberta's estate for "[c]laims arising out [sic] automobile accident on 1/9/06." Also filed on the same date in the closed estate was a "Notice of Claims" by Wimer as administrator of the estates of "now deceased" George and Donna. The notice provides: "Claims are hereby made for an amount to be determined by a Court of Law to the extent of, and equal to available automobile insurance coverage." But, contrary to those claims in the estate, the lawsuit with which we are dealing in this opinion fails to allege that the claims being asserted are limited to recovery of only liability insurance coverage. That shortcoming in the complaint would seem to be fatal when one is seeking to avoid the rather rigorous claims deadline in estate proceedings by limiting the recovery sought to only liability insurance as allowed by § 30-2485(c)(2). However, we need not decide that issue, because the law is that a closed estate, with a discharged personal representative, must be reopened and a personal representative appointed (or reappointed) before suit can be filed, even when seeking only liability insurance proceeds. In short, the procedural posture of this case provides a complete resolution. *Mach v. Schmer*, 4 Neb. App. 819, 550 N.W.2d 385 (1996), has the identical procedural facts as the instant case with respect to the claim against the estate filed in district court, because there, the personal representative was discharged and the estate was closed, just as is true here. Therefore, in *Mach*, we held: "Accordingly, [Schmer's personal representative] was entitled to judgment as a matter of law in that the probate code does not authorize [the Machs] to bring the present claim against a *former* personal representative while the estate remains closed." 4 Neb. App. 828, 550 N.W.2d 391-92.

[9] Our opinion in *Mach* then explored the "what if" situation in dicta. We said that the personal representative of Schmer's estate had provided proper notice and that as a result, the Machs' claim was barred by the nonclaim statute, § 30-2485, unless the exception stated in § 30-2485(c)(2) was applicable. In that situation, the general time limitations of the nonclaim statute do not apply to a proceeding to establish liability of the decedent or personal representative for which there is liability insurance. Nonetheless, we found in *Mach* that the § 30-2485(c)(2) exception does not allow the institution of proceedings against a discharged personal representative while the estate is closed, citing *Tank v. Peterson*, 214 Neb. 34, 332 N.W.2d 669 (1983). Thus, we affirmed the summary judgment that dismissed the suit filed against Schmer's discharged personal representative. Clearly, this is exactly the posture of the district court case now before us.

To summarize, this lawsuit is a proceeding contemplated by § 30-2485(c)(2), when the nonclaim statute has barred a direct claim against the estate. But, given that Alberta's estate was still closed and there was no personal representative, this lawsuit is not a valid presentation of the claim, even if the claim was intended to be limited to recovery against Alberta's automobile liability insurer—although there is no such allegation in the amended complaint. Therefore, the holdings of *Tank, supra*, and *Mach, supra*, are on point, and seemingly controlling.

Wimer as Personal Representative Is Entitled to Day in Court.

The answer to this argument against the summary judgment is relatively straightforward. Certainly, Wimer is entitled to her day in court, but like many instances in the law, one's "day in court" is subject to certain predicate procedural steps being properly completed. In this case, those steps were the reopening of Alberta's closed estate and the reappointment of Donald as personal representative, or a successor. As such steps were not accomplished, this argument is unavailing.

Was Alberta's Estate Opened "By Activity," or Was There Waiver of Reopening Requirement?

Wimer argues that the fact that responsive pleadings and court orders were filed in the estate after her claim was filed means that there was a "de facto reopening of [Alberta's] Estate." Brief for appellants at 9. The filings were a disallowance of the claim by Donald to the extent that Wimer's claim sought assets of the estate and an "Objection to Petition For Allowance" by State Farm, designating itself as an "interested party" because it issued an automobile liability policy to Alberta. Wimer and State Farm filed a joint stipulation for the county court to stay "further Probate proceedings until such time as there is a judicial determination in the separate civil case" in the district court as to whether the Hansen estates are entitled to recover damages and, if so, the amount thereof. Wimer further points to the order of the Gage County Court providing that "the Petition for Allowance shall come on for consideration . . . on the 4th day of May, 2010," as well as the county court order of May 6, 2010, staying the claim proceedings per the parties' stipulation pending judicial determination by the district court of the "separate civil case," i.e., this district court case. Thus, Wimer concludes that "[Alberta's] Estate remains open and subject to further proceedings specifically based upon the out[come of] proceedings in [the] district court of Gage County." Brief for appellants at 11.

No authority is cited for such a "de facto reopening" of a closed probate estate, nor do we know of any. While the case before us is the dismissal of the district court case, it was dismissed on the ground that suit cannot be filed against a discharged personal representative in a closed estate. Thus, to this extent, the status of Alberta's estate is in issue. That said, all that happened in response to Wimer's attempt to file a claim was that the former personal representative denied the claim if it sought any recovery from estate assets, and State Farm asserted that any recovery by the Hansen estates was dependent on the district court proceeding—which is now this appeal. Finally, as quoted above, Wimer acknowledges in her brief that

anything that happens in the estate is ultimately dependent on what happens with the instant case.

The filings by Donald and State Farm were merely "protective" and meant to ensure that the final resolution of the personal injury claims would occur in the district court, given that the estate was closed, and in any event, the nonclaim statute's time limits barred asserting any claim in the estate. As to the court orders, the county court would not have jurisdiction, i.e., the power, to enter substantive orders in a closed estate, unless and until there was a motion or application to reopen the estate. Thus, the attempt to assert a claim against a closed estate and its discharged personal representative is a nullity, and so were the county court's orders.

[10] As support for this conclusion, and our ultimate affirmance of the district court's grant of summary judgment and dismissal of the district court case, we briefly discuss the Nebraska Supreme Court's decision in *Babbitt v. Hronik*, 261 Neb. 513, 623 N.W.2d 700 (2001). In *Babbitt*, the appellant, Barbara A. Babbitt, was involved in an automobile collision with Blanche M. Hronik, who died of unrelated causes shortly after the collision. Hronik's estate was closed, and the personal representative of the estate was discharged. On September 9, 1998, after the personal representative's discharge, Babbitt sued Hronik individually without seeking reappointment of the personal representative. Babbitt appealed the district court's order which granted the personal representative's motion for summary judgment. The Supreme Court affirmed for at least three reasons. The court noted that the personal representative of Hronik's estate had been discharged over 3 years before the suit was filed, and held that the Nebraska Probate Code provides the procedure for bringing a claim against an estate. Specifically, Neb. Rev. Stat. § 30-2404 (Reissue 2008) provides in part:

> No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article.

The *Babbitt* court then reasoned that under § 30-2404, Babbitt's claim against Hronik's estate could not have been commenced before the county court reappointed the personal representative on February 4, 1999, which was nearly 5 full months after the suit was filed in district court. In support of this rationale, the Supreme Court cited *Tank v. Peterson*, 214 Neb. 34, 332 N.W.2d 669 (1983), and *Mach v. Schmer*, 4 Neb. App. 819, 550 N.W.2d 385 (1996), which we have discussed previously at length, as well as our decision in *In re Estate of Wilson*, 8 Neb. App. 467, 594 N.W.2d 695 (1999) (affirming county court's emergency appointment of special administrator, without notice, in order that claimants would be able to file claim when statute of limitations on claim was to run in 12 days). *In re Estate of Wilson* stands for the proposition that the county court, upon an alleged creditor's request, such as Wimer, has the jurisdiction to appoint a personal representative for the purpose of the proper presentation of a claim against a decedent whose estate has been previously closed and the personal representative discharged.

[11] In this district court action, Wimer has sued Donald, designating him as personal representative of Alberta's estate, and claims that the defendant is Alberta's estate. This was a closed estate when the suit was filed, and insofar as the record shows, the estate has never been reopened for purposes of this lawsuit. "The benefit of the statute of limitations is personal and, like any other personal privilege, may be waived and will be unless pleaded." *Vielehr v. Malone*, 158 Neb. 436, 439, 63 N.W.2d 497, 501 (1954). Donald filed an answer by counsel which alleges as an affirmative defense that the action is "barred by the applicable statute of limitations and by the provisions of Neb. Rev. Stat. §30-2485." There is no statutory or case law authority for "de facto reopening" of an estate, or waiver of the applicable limitations statutes, and the defense was affirmatively alleged. Thus, there is no waiver of the defense. This ground for reversal of the district court's decision is without merit. It is abundantly clear that the authority cited and discussed throughout our opinion fully supports the grant of summary judgment and dismissal of the lawsuit.

CONCLUSION

Therefore, we affirm the district court's decision in all respects. We note that the provision for "subsequent administration" after the closure of an estate, Neb. Rev. Stat. § 30-24,122 (Reissue 2008), contains an express provision that "no claim previously barred may be asserted in the subsequent administration." It goes without saying that Wimer's claim on behalf of her deceased parents arising out of the automobile accident of January 9, 2006, is forever barred, given that, at the time of oral argument of this case, some 6 years and 10 months had elapsed since the accident and the applicable statute of limitations is 4 years.

AFFIRMED.

IN RE INTEREST OF DIANA M. ET AL., CHILDREN UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. MARIA C., APPELLANT.

825 N.W.2d 811

Filed January 15, 2013. No. A-12-151.

1. **Juvenile Courts: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.
2. **Juvenile Courts: Jurisdiction: Appeal and Error.** In a juvenile case, as in any other appeal, 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.
3. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken.
4. **Final Orders: Appeal and Error.** The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered.
5. **Juvenile Courts: Appeal and Error.** A proceeding before a juvenile court is a "special proceeding" for appellate purposes.
6. **Juvenile Courts: Parental Rights: Final Orders.** Whether a substantial right of a parent has been affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which