

NEBRASKA SUPREME COURT

Glasson v. Board of Equal. of City of Omaha

302 Neb. 869 (2019) · No. Nos. S-18-472, S-18-474 · Decided April 12, 2019

SUMMARY

The Nebraska Supreme Court affirmed dismissal of Robert E. Glasson’s consolidated appeal challenging special assessments imposed by the City of Omaha. The court held that Nebraska law required Glasson to execute and file an appeal bond with the city clerk within 20 days of the final assessment ordinance, and that failure to do so deprived the district court of jurisdiction. The court also declined to address arguments concerning indigency and mailed notice that were either unsupported by the record or not properly preserved.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 12, 2019
DOCKET	Nos. S-18-472, S-18-474
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Douglas County District Court's dismissal of Glasson's consolidated challenges to special assessments for lack of subject matter jurisdiction.
STANDARD OF REVIEW	A jurisdictional question that does not involve a factual dispute is a matter of law reviewed independently of the lower court's decision.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Robert E. Glasson v. Board of Equalization of the City of Omaha, City of Omaha

TOPICS

- appellate procedure
- subject matter jurisdiction
- statutory interpretation
- municipal law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 14-813 required Glasson to execute and file an appeal bond with the Omaha city clerk within 20 days after the assessment ordinance became final.
2. Whether Omaha Municipal Code § 26-121 altered or eliminated the statutory 20-day bond-filing requirement.
3. Whether Glasson's failure to timely file the appeal bond deprived the district court of subject matter jurisdiction.
4. Whether Glasson's arguments concerning indigency and lack of notice required reversal of the dismissal.

HOLDINGS

1. Neb. Rev. Stat. § 14-813 requires an appellant challenging a special assessment to execute an appeal bond with sufficient surety, approved by the city clerk, and file it within 20 days after the date of the final order.
2. The January 23, 2018, ordinance levying the special assessments was the final order, and the 20-day period for filing the appeal bond ran from that date.
3. Timely filing of the required appeal bond is a jurisdictional prerequisite to initiating the appellate process; failure to comply requires dismissal for lack of subject matter jurisdiction.
4. The district court properly dismissed the consolidated appeal for lack of subject matter jurisdiction because the appeal bond was not filed within the statutory period.

KEY QUOTATIONS

“Under our jurisprudence, as a general rule, the word “shall” in a statute is considered mandatory and is inconsistent with the idea of discretion.” (875)

“When a provision of a statute is plain and unambiguous on its face, this court must apply the provision as written.” (876)

“The statutory scheme requires that an appellant execute a bond with the city clerk within 20 days of the final order, which Glasson did not do.” (877)

FACTUAL BACKGROUND

The Omaha City Council, sitting as a board of equalization, denied Glasson's protest to proposed special assessments for litter removal on his property. The city enacted the assessment ordinance on January 23, 2018, making the ordinance final and binding under Neb. Rev. Stat. § 14-547. Glasson attempted to file the required appeal bond with the city clerk on February 13, 2018, 21 days after the ordinance, and then filed a petition in error in district court on February 20. The district court dismissed the appeal because the bond was untimely and because Glasson's earlier appeals had been filed before a final appealable order existed.

PROCEDURAL HISTORY

Glasson protested special assessments imposed by the Omaha City Council sitting as a board of equalization. He filed some appeals before the assessment ordinance was enacted and later attempted to file an appeal bond 21 days after the ordinance became final. The Douglas County District Court dismissed the consolidated appeal for lack of jurisdiction, and the Nebraska Supreme Court moved the consolidated appeals from the Court of Appeals to its own docket and affirmed.

DISPOSITION

affirmed

CASES CITED

- Pestal v. Malone, 275 Neb. 891, 750 N.W.2d 350 (2008)
- Jackson v. Board of Equal. of City of Omaha, 10 Neb. Ct. App. 330, 630 N.W.2d 680 (2001)
- State v. Irish, 298 Neb. 61, 65, 902 N.W.2d 669, 672 (2017)
- Black v. State, 218 Neb. 572, 575, 358 N.W.2d 181, 183 (1984)
- State v. Havorka, 218 Neb. 367, 355 N.W.2d 343 (1984)