

SUPREME COURT OF NEBRASKA

Heckman v. Marchio

296 Neb. 458 (2017) · No. No. S-16-379 · Decided April 21, 2017

SUMMARY

The Nebraska Supreme Court dismissed an appeal from an order disqualifying counsel because the order was not a final order and no statute authorized an interlocutory appeal. The court held that appellate jurisdiction in Nebraska is purely statutory and overruled Richardson v. Griffiths and related decisions to the extent they authorized appellate jurisdiction without a judgment or final order and specific statutory authorization.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	April 21, 2017
DOCKET	No. S-16-379
DISPOSITION	dismissed
PROCEDURAL POSTURE	Marchio appealed from an order of the Dodge County District Court disqualifying her privately retained counsel in a paternity, custody, and support action. The Nebraska Supreme Court dismissed the appeal for lack of appellate jurisdiction.
STANDARD OF REVIEW	A jurisdictional issue that does not involve a factual dispute presents a question of law that the appellate court independently decides.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Regina M. Marchio v. Bryan R. Heckman

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- separation of powers

PRACTICE AREAS

- appellate procedure
- civil procedure
- constitutional law
- family law

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction over an appeal from a district court order disqualifying counsel when the order was not a final order.
2. Whether the court's prior decision in *Richardson v. Griffiths* could authorize an interlocutory appeal without specific statutory authorization.
3. Whether *Richardson v. Griffiths* and cases relying on it should be overruled to the extent they authorized appellate jurisdiction absent a judgment or final order and specific statutory authorization.

HOLDINGS

1. The Nebraska Supreme Court lacks appellate jurisdiction unless the appeal is specifically authorized by statute and is taken from a judgment or final order.
2. The Nebraska Supreme Court may not create an exception to the statutory final-order requirement and may not allow an appeal that is not authorized by statute.
3. *Richardson v. Griffiths* and cases relying on it are overruled to the extent they authorized appellate jurisdiction in the absence of a judgment or final order and without specific statutory authorization.

KEY QUOTATIONS

“The right of appeal in Nebraska is “purely statutory.”” (296 Neb. at 461)

“Through the enactment of statutes, the Legislature has prescribed when a court may exercise appellate jurisdiction; the judicial branch may not circumvent such statutory authorization.” (296 Neb. at 464-465)

“An appellate court is empowered to construe a statute governing when an appeal may be taken, but it may not engage in judicial legislation by proclaiming an exception contrary to statute.” (296 Neb. at 466)

“Because this appeal was not taken from a final order and because we overrule our line of decisions purporting to authorize an interlocutory appeal, we dismiss the appeal.” (296 Neb. at 468)

FACTUAL BACKGROUND

Bryan R. Heckman brought an action against Regina M. Marchio to establish paternity, custody, and support of a minor child. Marchio moved to disqualify Heckman's privately retained counsel, and after a hearing the district court entered an order granting the motion to disqualify Marchio's attorney. The district court denied Marchio's motion to reconsider, and she appealed from that order.

PROCEDURAL HISTORY

Heckman filed a complaint seeking to establish paternity, custody, and support of a minor child. The district court granted Heckman's motion to disqualify Marchio's attorney and denied Marchio's motion to reconsider. Marchio filed a purported appeal, which the Nebraska Supreme Court moved to its docket and then dismissed because the disqualification order was not a final order and no statute authorized the interlocutory appeal.

DISPOSITION

dismissed

CASES CITED

- Maddocks v. Ricker, 403 Mass. 592, 531 N.E.2d 583 (1988)
- Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997)
- Addy v. Lopez, 295 Neb. 635, 890 N.W.2d 490 (2017)
- Huskey v. Huskey, 289 Neb. 439, 855 N.W.2d 377 (2014)
- The Sioux City and Pacific R. R. v. Washington County, etc., 3 Neb. 30 (1873)
- Irwin v. Calhoun & Croxton, 3 Neb. 453 (1873)
- From v. Sutton, 156 Neb. 411, 56 N.W.2d 441 (1953)
- Nichols v. Nichols, 288 Neb. 339, 847 N.W.2d 307 (2014)
- Adams v. State, 293 Neb. 612, 879 N.W.2d 18 (2016)
- Wright v. Omaha Pub. Sch. Dist., 280 Neb. 941, 791 N.W.2d 760 (2010)
- Fitzgerald v. Fitzgerald, 286 Neb. 96, 835 N.W.2d 44 (2013)
- Morrill County v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933)
- Trainum v. Sutherland Assocs., 263 Neb. 778, 642 N.W.2d 816 (2002)
- Jacob North Printing Co. v. Mosley, 279 Neb. 585, 779 N.W.2d 596 (2010)
- Richardson-Merrell Inc. v. Koller, 472 U.S. 424, 105 S. Ct. 2757, 86 L. Ed. 2d 340 (1985)
- State v. Burlison, 255 Neb. 190, 583 N.W.2d 31 (1998)
- State v. Hausmann, 277 Neb. 819, 765 N.W.2d 219 (2009)
- Citizens United v. Federal Election Comm'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)

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