

SUPREME COURT OF NEBRASKA

State v. Fredrickson

306 Neb. 81 (2020) · No. No. S-19-1083 · Decided June 5, 2020

SUMMARY

The Nebraska Supreme Court dismissed the State’s appeal from an order allowing the defendant to proceed in forma pauperis with his criminal appeal. The court held that the order was not a judgment or final order because it did not finally determine the amount of fees and costs for which the county would be responsible, and therefore the court lacked appellate jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	June 5, 2020
DOCKET	No. S-19-1083
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed from a district court order allowing Fredrickson to proceed in forma pauperis with his criminal appeal and requiring the county to pay associated appellate fees and costs.
STANDARD OF REVIEW	A jurisdictional issue that does not involve a factual dispute is reviewed as a matter of law, independently of the trial court.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of Nebraska v. Richard A. Fredrickson

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- criminal procedure
- standard of review

PRACTICE AREAS

- Appellate procedure
- Criminal procedure
- Indigency and in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction over the State's appeal from an order granting Fredrickson permission to proceed in forma pauperis with his criminal appeal.
2. Whether the district court's in forma pauperis order was a final order under Neb. Rev. Stat. § 25-1902 because it affected a substantial right.

HOLDINGS

1. An appellate court must determine whether it has jurisdiction before addressing the legal issues presented for review.
2. The order granting Fredrickson permission to proceed in forma pauperis was neither a judgment nor a final order appealable under Neb. Rev. Stat. § 25-1902.
3. Whether the in forma pauperis application was properly granted does not affect perfection of Fredrickson's criminal appeal, which is perfected by timely filing a notice of appeal and an affidavit of poverty.

KEY QUOTATIONS

“Thus, the order granting Fredrickson’s application to proceed in forma pauperis was not a final order and we lack jurisdiction to consider this appeal.” (90)

“The order granting Fredrickson the right to proceed with his criminal appeal in forma pauperis is not a judgment nor is it a final order.” (90)

FACTUAL BACKGROUND

Fredrickson was charged with robbery-related offenses, pleaded no contest to robbery, and was sentenced to 20 to 38 years' imprisonment. Although he had assets, including proceeds from the sale of real property, the district court found him indigent for purposes of appointed appellate counsel and later permitted him to proceed with his criminal appeal in forma pauperis. The State challenged that order, arguing that Fredrickson had sufficient assets to pay appellate fees and costs, but the mandate specifying the total amount due for the appeal had not yet issued.

PROCEDURAL HISTORY

Fredrickson was convicted following a no contest plea and sentenced to 20 to 38 years' imprisonment. The district court appointed appellate counsel at county expense and later granted Fredrickson's application to proceed in forma pauperis. The State appealed the in forma pauperis order. The Nebraska Supreme Court concluded that the order was not a final order or judgment affecting a substantial right and dismissed the appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020)
- State v. Fredrickson, No. A-19-633, 2020 WL 2643875 (Neb. App. May 26, 2020)
- Priesner v. Starry, 300 Neb. 81, 912 N.W.2d 249 (2018)
- State v. Jones, 264 Neb. 671, 650 N.W.2d 798 (2002)
- Glass v. Kenney, 268 Neb. 704, 687 N.W.2d 907 (2004)
- In re Interest of N.L.B., 234 Neb. 280, 450 N.W.2d 676 (1990)
- In re Interest of Noelle F. & Sarah F., 3 Neb. App. 901, 534 N.W.2d 581 (1995)
- In re Claim of Rehm and Faesser, 226 Neb. 107, 410 N.W.2d 92 (1987)

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