

SUPREME COURT OF NEBRASKA

State v. McColery

297 Neb. 53 (2017) · No. No. S-16-1017 · Decided June 23, 2017

SUMMARY

The Nebraska Supreme Court dismissed Scott McColery’s appeal as premature. The court held that an order denying release of appearance-bond funds to McColery’s attorney was not a final, appealable order because it did not determine the parties’ rights to the funds or affect a substantial right. The court noted that the attorney could assert ownership in later garnishment proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	June 23, 2017
DOCKET	No. S-16-1017
DISPOSITION	dismissed
PROCEDURAL POSTURE	McColery appealed the Lancaster County District Court's order overruling his motion to release appearance-bond funds to his attorney. The Nebraska Supreme Court dismissed the appeal for lack of a final, appealable order.
STANDARD OF REVIEW	A jurisdictional issue not involving a factual dispute is a question of law reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Scott McColery v. State of Nebraska

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- child support
- third party practice

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Child support
- Criminal procedure

QUESTIONS PRESENTED

1. Whether the district court's order overruling McColery's motion to release appearance-bond funds was a final, appealable order.
2. Whether the order affected a substantial right so as to confer appellate jurisdiction under Nebraska's final-order statute.

HOLDINGS

1. The order overruling the motion to release the bond funds was not a final, appealable order because it did not affect a substantial right or determine the parties' rights to the funds.
2. The appeal was premature and had to be dismissed because the State had not yet initiated garnishment proceedings and the challenged order did not resolve the parties' rights to the bond funds.
3. An appellate court must independently determine whether it has jurisdiction before reaching the legal issues presented, regardless of whether the parties raise the jurisdictional issue.

KEY QUOTATIONS

“Because the order merely holds the funds in the court, it does not diminish McColery’s or his attorney’s claim to the funds or eliminate any objection he or his attorney might have to the State’s garnishment of the funds for child support.” (56)

“Because we find that the order does not affect a substantial right, it is not a final, appealable order. We therefore dismiss.” (56)

FACTUAL BACKGROUND

McColery was charged with strangulation and posted a \$5,000 appearance bond. He later assigned the bond funds to his private attorney. The State filed an affidavit of lien asserting that the funds were subject to garnishment for more than \$18,000 in overdue child support. After McColery was convicted, the district court denied his motion to release the funds to his attorney, but the order did not determine ownership of the funds or authorize the State to obtain them.

PROCEDURAL HISTORY

McColery posted a \$5,000 appearance bond and later assigned the bond funds to his attorney. The State filed an affidavit of lien concerning overdue child support. After McColery was convicted, he moved to release the funds to his attorney; the district court overruled the motion on October 20, 2016. The Nebraska Supreme Court dismissed the appeal as premature because the order did not affect a substantial right and was not final.

DISPOSITION

dismissed

CASES CITED

- Big John's Billiards v. State, 283 Neb. 496, 811 N.W.2d 205 (2012)

- Sutton v. Killham, 285 Neb. 1, 825 N.W.2d 188 (2013)
- Carlos H. v. Lindsay M., 283 Neb. 1004, 815 N.W.2d 168 (2012)
- Pearce v. Mutual of Omaha Ins. Co., 293 Neb. 277, 876 N.W.2d 899 (2016)
- Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016)

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