

SUPREME COURT OF NEBRASKA

Veronica R. Robertson v. Benjamin D. Rose, 270 Neb. 466

704 N.W.2d 227 (2005) · No. No. A-04-449 · Decided October 7, 2005

SUMMARY

The Supreme Court of Nebraska dismissed Benjamin D. Rose’s petition for further review as untimely. Although Rose tendered the petition within 30 days of the Nebraska Court of Appeals’ decision, he did not pay the required \$50 docket fee until two days after the filing deadline. The court held that timely payment of the docket fee was mandatory and jurisdictional.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 7, 2005
DOCKET	No. A-04-449
DISPOSITION	dismissed
PROCEDURAL POSTURE	The appellee petitioned the Nebraska Supreme Court for further review of a Nebraska Court of Appeals memorandum opinion that had reversed the district court's denial of the appellant's motion for a new trial and remanded for a new trial. The Supreme Court dismissed the petition as untimely because the required docket fee was not paid when the petition was initially tendered.
STANDARD OF REVIEW	The court reviewed whether the petition for further review was timely and properly filed under the governing statute and court rule.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Nebraska
PARTIES	Veronica R. Robertson v. Benjamin D. Rose

TOPICS

- appellate procedure
- appellate jurisdiction
- costs
- civil procedure
- negligence

PRACTICE AREAS

appellate procedure

civil procedure

negligence

QUESTIONS PRESENTED

1. Whether a petition for further review is properly filed when tendered within 30 days but without the statutorily required docket fee.
2. Whether Rose's August 24 petition for further review was timely after the initial August 22 submission lacked the required docket fee.

HOLDINGS

1. Payment of the \$50 docket fee required by Neb. Rev. Stat. § 33-103 and Nebraska Court Rule of Practice 2F(1) is mandatory and jurisdictional; a petition tendered without the fee is not properly filed.
2. Rose's petition for further review was untimely because the petition was not accompanied by the required docket fee until August 24, after the August 22 deadline.

KEY QUOTATIONS

“A petition for further review, albeit tendered to the clerk within 30 days after the Court of Appeals has issued its decision, is not properly filed unless and until the required docket fee is timely paid.” (704 N.W.2d 229)

FACTUAL BACKGROUND

Robertson sued Rose after a motor vehicle accident, and a jury returned a verdict in Rose's favor. The district court denied Robertson's motion for a new trial, but the Nebraska Court of Appeals reversed and remanded for a new trial. Rose attempted to petition for further review on the final day of the filing period without paying the newly required \$50 docket fee and paid the fee two days later.

PROCEDURAL HISTORY

Following a jury verdict for Rose in a motor vehicle negligence action, the district court for Box Butte County denied Robertson's motion for a new trial. Robertson appealed, and the Nebraska Court of Appeals reversed and remanded for a new trial on July 22, 2005. Rose attempted to file a petition for further review on August 22 without the required \$50 docket fee, then paid the fee and resubmitted the petition on August 24. The Nebraska Supreme Court held the petition untimely and dismissed it.

DISPOSITION

dismissed

CASES CITED

- Ackerman v. Nebraska Dept. of Corr. Appeals Bd., 256 Neb. 896, 593 N.W.2d 728 (1999)
- Martin v. McGinn, 267 Neb. 931, 678 N.W.2d 737 (2004)
- State v. Parmar, 255 Neb. 356, 586 N.W.2d 279 (1998)

- In re Interest of Noelle F. & Sarah F., 249 Neb. 628, 544 N.W.2d 509 (1996)
- American Legion Post No. 90 v. Nebraska Liquor Control Commission, 199 Neb. 429, 259 N.W.2d 36 (1977)
- In re Guardianship & Conservatorship of Woltemath, 268 Neb. 33, 680 N.W.2d 142 (2004)

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