

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)

OPINION

PER CURIAM.

704 N.W.2d 227 (2005) 270 Neb. 466 Veronica R. ROBERTSON, appellant, v. Benjamin D. ROSE, appellee. No. A-04-449. Supreme Court of Nebraska. October 7, 2005. James L. Zimmerman, of Zimmerman Law Firm, P.C., L.L.O., Scottsbluff, for appellant. Leland K. Kovarik, of Kovarik, Ellison, Mathis & Weimer, P.C., Gering, for appellee. *228 HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ. PER CURIAM.

This matter is before us on a petition for further review filed by Benjamin D. Rose, appellee. Because we conclude the petition was not timely filed, the petition is dismissed. This is a motor vehicle accident negligence case in which Veronica R. Robertson, appellant, sued Rose. Following a jury verdict in favor of Rose, the district court for Box Butte County denied Robertson's motion for new trial.

Robertson appealed. On July 22, 2005, the Nebraska Court of Appeals, in a memorandum opinion, reversed the judgment of the district court which had denied Robertson's motion for a new trial. The Court of Appeals remanded the cause for a new trial.

On August 22, 2005, Rose attempted to file a petition for further review. That same day, the Clerk of the Supreme Court returned the petition for further review to Rose with a letter explaining that the petition was being returned because Rose had failed to include either the \$50 docket fee required as of July 1, 2005, pursuant to Neb.Rev.Stat. § 33-103 (Reissue 2004) as amended by 2005 Neb. Laws, L.B.

348, § 6, or an application to proceed in forma pauperis and a poverty affidavit as required by Neb.Rev.Stat. § 25-2301.01 (Cum.Supp.2004). On August 24, Rose returned the petition for further review to the clerk's office along with a check for the \$50 docket fee.

As noted in the clerk's letter to Rose, § 33-103 was amended by L.B. 348, § 6, effective July 1, 2005, to provide in relevant part: "At the time of filing a petition for further review to the Supreme Court from the Court of Appeals, there shall be paid to the clerk the sum of fifty dollars as a docket fee in lieu of any other filing fees." Further, Neb. Ct.

R. of Prac. 2F(1) (rev.2002) was amended June 15, 2005, to provide in relevant part: As of July 1, 2005, pursuant to Neb.Rev.Stat. § 33-103 as amended by L.B. 348, § 6, a docket fee of \$50 shall be paid to the Clerk of the Supreme Court at the time of the filing of the petition for further review.

This docket fee shall be waived for an indigent person who has been granted leave to proceed in forma pauperis on appeal by the trial court.

The record shows that in this case, the minute entry that was provided to the parties when the Court of Appeals' memorandum opinion was filed on July 22, 2005, contained a legend as follows: "NOTICE Docket Fee for Petitions for Further Review."

The notice stated: "Pursuant to L.B. 348, § 6, which was signed by the Governor on June 2, 2005, as of July 1, 2005, a docket fee of fifty dollars shall be paid to the Clerk of the Supreme Court at the time of filing a Petition for Further Review." Neb.Rev.Stat. § 24-1107 (Reissue 1995) provides that "[w]ithin thirty days after the Court of Appeals has issued its decision in a case, any party to the case may petition the Supreme Court for further review of the decision in the manner prescribed by the rules of the Supreme Court."

Rule 2F(1) states a petition for further review "must be filed within 30 days after the release of the opinion of the Court of Appeals or the entry of the order of the Court of Appeals finally disposing of the appeal, whichever occurs later."

We have held that a petition for further review not filed within 30 days is untimely and should be dismissed. See *Ackerman v. Nebraska Dept. of Corr. Appeals Bd.*, 256 Neb. 896, 593 N.W.2d 728 (1999). *229 In the context of the filing of an appeal, we have held that the filing of both a notice of appeal and the docket fee required by statute is mandatory and jurisdictional.

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). See, also, *In re Guardianship & Conservatorship of Woltemath*, 268 Neb. 33, 680 N.W.2d 142 (2004).

In a like manner, the payment of the \$50 fee to docket a petition for further review is now mandated by § 33-103 and is therefore deemed jurisdictional. See, also, rule 2F(1). 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.

In the present case, the Court of Appeals' memorandum opinion was released July 22, 2005. Because the 30th day following July 22 fell on a weekend, the final day to timely file a petition for further review was Monday, August 22.

Although Rose attempted to file a petition for further review on August 22, the petition was not accompanied by the required docket fee. Rose did not file a petition for further review accompanied by the required docket fee until August 24.

Therefore, the petition for further review was not properly filed within 30 days as required under § 24-1107 and rule 2F(1). Rose's petition for further review is untimely. Accordingly, the petition is dismissed. PETITION FOR FURTHER REVIEW DISMISSED.

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