

NEBRASKA SUPREME COURT

State of Nebraska on behalf of Marcelo K. and Rycki K., minor
children v. Ricky K. and Belinda D.

State on behalf of Marcelo K. & Rycki K. v. Ricky K., 300 Neb. 179 (2018) · No. S-17-723 · Decided June 8, 2018

SUMMARY

The Nebraska Supreme Court dismissed the State's appeal for lack of jurisdiction. The district court's order disestablishing paternity as to one child was not a final, appealable order under Neb. Rev. Stat. § 25-1315 because multiple claims remained unresolved and the court had not expressly directed entry of judgment or determined that there was no just reason for delay.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Daugherty, District Judge
JURISDICTION	Nebraska
DECIDED	June 8, 2018
DOCKET	S-17-723
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed from a district court order disestablishing Ricky K.'s paternity of Marcelo K. while leaving other claims unresolved.
STANDARD OF REVIEW	A jurisdictional question that does not involve a factual dispute is determined by the appellate court as a matter of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	State of Nebraska on behalf of Marcelo K. and Rycki K., minor children v. Ricky K., Belinda D.

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure
- family law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction over an appeal from an order resolving fewer than all claims in an action involving multiple parties and claims.
2. Whether the district court's June 19, 2017, order was a final, appealable order under Neb. Rev. Stat. §§ 25-1315 and 25-1902.

HOLDINGS

1. The court lacked appellate jurisdiction because the order resolved fewer than all claims and parties and the district court did not expressly direct entry of judgment or expressly determine that there was no just reason for delay.
2. An appellate court must determine its jurisdiction before reaching the legal issues presented for review.
3. An appellate court and the tribunal appealed from do not have jurisdiction over the same case at the same time.

KEY QUOTATIONS

“And, where this statute is implicated, we have held that one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of Neb. Rev. Stat. § 25-1902 (Reissue 2016) as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal.” (300 Neb. at 183-84)

“In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties” (300 Neb. at 184)

FACTUAL BACKGROUND

The State sought to establish child support for two children based on notarized acknowledgments identifying Ricky K. as their father. Ricky sought to disestablish paternity as to Marcelo after genetic testing excluded him as Marcelo's biological father, and he separately sought custody and visitation concerning Rycki. The district court granted disestablishment as to Marcelo but left the support, custody, and visitation claims unresolved and did not expressly direct entry of judgment.

PROCEDURAL HISTORY

The State brought an action to establish child support for Marcelo and Rycki based on notarized acknowledgments of paternity. Ricky filed counterclaims seeking disestablishment of paternity as to Marcelo and custody and visitation concerning Rycki. The district court entered an order granting disestablishment as to Marcelo but did not resolve the remaining claims or expressly direct entry of judgment under Neb. Rev. Stat. § 25-1315. After the appeal was filed, the district court entered a decree addressing the remaining claims concerning Rycki. The Nebraska Supreme Court dismissed the appeal for lack of appellate jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Deleon v. Reinke Mfg. Co., 287 Neb. 419, 843 N.W.2d 601 (2014)
- Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018)
- Blue Cross and Blue Shield v. Dailey, 268 Neb. 733, 687 N.W.2d 689 (2004)
- Currie v. Chief School Bus Serv., 250 Neb. 872, 553 N.W.2d 469 (1996)
- State Bank of Beaver Crossing v. Mackley, 118 Neb. 734, 226 N.W. 318 (1929)
- State v. Harris, 267 Neb. 771, 677 N.W.2d 147 (2004)
- Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017)
- Streck, Inc. v. Ryan Family, 297 Neb. 773, 901 N.W.2d 284 (2017)

OPINION

PER CURIAM.

Nebraska Supreme Court Online Library www.nebraska.gov/apps-courts-epub/ 07/06/2018 09:11 AM CDT - 179 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 State of Nebraska on behalf of Marcelo K. and Rycki K., minor children, appellant, v. Ricky K. and Belinda D., appellees. ___ N.W.2d ___ Filed June 8, 2018.

No. S-17-723. 1. Jurisdiction: Appeal and Error. A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law. 2. ____: _____. Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. 3. Actions: Parties: Final Orders: Appeal and Error.

One may bring an appeal pursuant to Neb. Rev. Stat. § 25-1315 (Reissue 2016) only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of Neb. Rev. Stat. § 25-1902 (Reissue 2016) as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal.

4. Jurisdiction: Appeal and Error. An appellate court and the tribunal appealed from do not have jurisdiction over the same case at the same time. Appeal from the District Court for Douglas County: Marlon A. Polk, Judge. Appeal dismissed. Theodore P. Arndt, Authorized Attorney for the State of Nebraska, for appellant. Willow T. Head, of Law Offices of Willow T. Head, P.C., L.L.O., for appellee Ricky K. - 180 - Nebraska Supreme Court Advance Sheets 300 Nebraska R

REPORTS STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, and Papik, JJ., and Daugherty, District Judge.

Cassel, J. INTRODUCTION The State of Nebraska initiated a proceeding to establish support for two children, based upon notarized acknowledgments of paternity. Ultimately, the pleadings framed multiple claims. After the district court entered an order disestablishing paternity of one child and taking no action on the other claims, the State purported to appeal.

Because our statute¹ governing multiple parties and multiple claims dictates that the order was not final or appealable, we dismiss the appeal for lack of jurisdiction. BACKGROUND The State brought an action against Ricky K., the acknowledged father of Marcelo K. and Rycki K., to establish child support for the two minor children. Belinda D., the mother of the minor children, was joined in the initial complaint, which styled her as a “Third Party Defendant.” Ricky filed an amended answer and counterclaim and cross-claim (styled as a cross-complaint, despite seeking relief against both the State and Belinda) in which he alleged that he was not the biological father of Marcelo, that Belinda fraudulently coerced him into signing the minor child’s birth certificate, and that there was a material mistake of fact and fraud based on her representations.

For these reasons, he sought a disestablishment of paternity as to Marcelo. As to Rycki, Ricky admitted he was Rycki’s biological father and sought joint legal and physical custody of the minor child. The counterclaim and cross-claim set forth two “causes of action” separately raising Ricky’s claims regarding Marcelo and Rycki, respectively. 1 Neb. Rev. Stat. § 25-1315 (Reissue 2016). - 181 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 The district court did not officially bifurcate the matter, but the issues pertaining to the disestablishment of paternity of Marcelo, including appointment of a guardian ad litem, were referred to the district court referee.

After genetic testing was done, but before hearing on the disestablishment issue, the referee appointed a guardian ad litem. After an evidentiary hearing on disestablishment, the referee found that the genetic testing excluded Ricky from being Marcelo’s biological father.

However, because the referee determined that both Ricky and Belinda signed the acknowledgment of paternity knowing that Ricky was not Marcelo’s biological father, it concluded that the evidence was insufficient to satisfy the required showing of fraud, material mistake of fact, or duress. Consequently, the referee determined that Ricky had failed to meet his burden of proof and recommended denying disestablishment.

Ricky filed exceptions to the referee’s report and requested that the issue be considered by the district court. After a hearing, the district court sustained the exception to the referee’s recommendations and rejected its analysis and conclusion.

The court made independent findings and concluded that the statutory requirements to set aside the acknowledgment of paternity as to Marcelo on the basis of fraud had been met. The court entered this order on June 19, 2017. This order purported to set aside the prior legal determination establishing Ricky's paternity of Marcelo and ordered that Ricky shall have no legal obligation of a parent or be recognized as a parent to Marcelo.

The order was silent as to Rycki, the other child. On July 17, 2017, the State purported to appeal from the June 19 order. In due course, the appeal was docketed and we moved it to our docket.² 2 See Neb. Rev. Stat. § 24-1106(3) (Supp. 2017). - 182 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 On September 6, 2017, the district court entered a decree of paternity addressing the remaining claims against Ricky concerning the minor child Rycki.

The decree stated in part, "[Ricky] is found not to be the biological father of [Marcelo], and [Ricky] filed to disestablish paternity of [Marcelo].... [A]fter a hearing, the Court found that fraud existed and disestablishment was in the best interest of [Marcelo], and granted disestablishment of paternity as it pertains to [Marcelo]." The record does not show any appeal or attempt to appeal from the September 6 decree.

ASSIGNMENTS OF ERROR The State assigns that the district court abused its discretion when it determined that Ricky successfully challenged a notarized acknowledgment of paternity and met his burden to show fraud, duress, or a material mistake of fact in the signing of the acknowledgment. STANDARD OF REVIEW [1] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.³ ANALYSIS [2] Ricky asserts that there is "an issue whether or not [this court] has jurisdiction based on whether the Order dated June 19, 2017 is the final order."⁴ Ricky does not explain why this is so, but before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.⁵ Therefore, we must first determine whether we have appellate jurisdiction to review the district court's order disestablishing Ricky's paternity of Marcelo.

³ DeLeon v. Reinke Mfg. Co., 287 Neb. 419, 843 N.W.2d 601 (2014). ⁴ Brief for appellee at 1. ⁵ See Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018). - 183 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 Appellate courts have jurisdiction to review the judgments and final orders of the district court.⁶ A "judgment" is "the final determination of the rights of the parties in an action."⁷ The pleadings set forth three claims: the State's claim to establish child support as to both children, Ricky's "cause of action" for disestablishment of Marcelo, and his "cause of action" for custody and visitation of Rycki.

The June 19, 2017, order addressed only one of the three claims. Because the June 19 order did not finally determine the rights of the parties in the paternity action, it was not a “judgment.” [3] Another statute provides: When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.⁸ And, where this statute is implicated, we have held that one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of Neb. Rev. Stat. § 25-1902 (Reissue 2016) as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal.⁹ [4] In the present case, there were multiple parties and multiple claims.

However, the district court did not make an express direction for the entry of judgment. 6 See Neb. Rev. Stat. § 25-1911 (Reissue 2016). 7 Neb. Rev. Stat. § 25-1301(1) (Reissue 2016). 8 § 25-1315(1). 9 See *Blue Cross and Blue Shield v. Dailey*, 268 Neb. 733, 687 N.W.2d 689 (2004). - 184 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 express direction for the entry of judgment.

Presumably the district court did not intend the June 19, 2017, order to be final, because it retained jurisdiction over the case after the State appealed and entered the paternity decree on September 6. It no doubt was aware of the longstanding principle that an appellate court and the tribunal appealed from do not have jurisdiction over the same case at the same time.¹⁰ Therefore, without the district court’s express direction for the entry of judgment, we have no jurisdiction to review the June 19 order.

Nonetheless, the State responded at oral argument that the disestablishment order was a final order, because it was an order affecting a substantial right made during a special proceeding, or perhaps, the State argued, made when such order in effect determined the action and prevented a judgment.¹¹ But the State does not explain how this would avoid the effect of § 25-1315.

That section states, “In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties....”¹² Even if disestablishment was fully adjudicated by the June 19, 2017, order, it was asserted with other claims in the overall proceeding.

Because the June 19 order did not adjudicate those other claims, it did not “terminate the action as to any of the claims or parties,” including the disestablishment claim. For the sake of completeness, we note that in three limited instances, we have found § 25-1315 to not apply in

the case of a special proceeding. But, we find the present case 10 See, *Currie v. Chief School Bus Serv.*, 250 Neb. 872, 553 N.W.2d 469 (1996); *State Bank of Beaver Crossing v. Mackley*, 118 Neb. 734, 226 N.W.

318 (1929). 11 See § 25-1902. 12 § 25-1315(1). - 185 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 distinguishable. First, we have declined to apply § 25-1315 to a postconviction order granting an evidentiary hearing on some issues and denying a hearing on others.¹³ Although we followed pre-§ 25-1315 precedent, we should have explained that a postconviction proceeding does not raise multiple claims within the meaning of § 25-1315, but may assert multiple grounds for a prisoner's claim of a "denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States."¹⁴ Here, in contrast, multiple claims were presented.

Second, we have declined to apply § 25-1315 to an order determining title in a partition proceeding where the parties have united the issues of title and the right to partition.¹⁵ Because an order in such a case affirmatively disposes of all title claims of all interested parties, it does not implicate § 25-1315 which only applies where there is a final order "as to one or more but fewer than all of the claims or parties."¹⁶ But, as we have explained, § 25-1315 is implicated in the present case, because it involved multiple parties and multiple claims and resolved fewer than all of the causes of action or parties.

Finally, we have declined to apply § 25-1315 in the context of an order denying intervention.¹⁷ In that circumstance, we have found that the plain language of § 25-1315 is not implicated, because although it references claims, counter-claims, cross-claims, and third-party claims, it does not mention complaints in intervention. Without plain language to the 13 See *State v. Harris*, 267 Neb. 771, 677 N.W.2d 147 (2004).

14 Neb. Rev. Stat. § 29-3001(1) (Reissue 2016). 15 See *Guardian Tax Partners v. Skrupa Invest. Co.*, 295 Neb. 639, 889 N.W.2d 825 (2017). 16 § 25-1315(1) (emphasis supplied). 17 See *Streck, Inc. v. Ryan Family*, 297 Neb. 773, 901 N.W.2d 284 (2017). - 186 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE ON BEHALF OF MARCELO K. & RYCKI K. v. RICKY K. Cite as 300 Neb. 179 contrary, we shall continue to apply preexisting final order jurisprudence to orders denying intervention.

But, as here, where the language of § 25-1315 is implicated, we must apply the requirements of that section in order to find a final, appealable order. CONCLUSION Because the State appealed from an order deemed to be nonfinal under § 25-1315, we lack jurisdiction over the appeal.

Accordingly, the appeal must be dismissed. Appeal dismissed.

