

SUPREME COURT OF NEBRASKA

In re Grand Jury of Douglas County

In re Grand Jury of Douglas Cty., 302 Neb. 128 (2019) · No. No. S-18-328 · Decided January 25, 2019

SUMMARY

The Nebraska Supreme Court dismissed the State’s appeal from an order making grand jury transcripts and exhibits available for public review following indictments arising from an in-custody death. The court held that the disclosure proceeding was a special proceeding but that the order did not affect a substantial right and therefore was not a final, appealable order.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	January 25, 2019
DOCKET	No. S-18-328
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed a district court order overruling its motion to prevent public disclosure of grand jury transcripts and exhibits. The Nebraska Supreme Court first considered whether the order was final and appealable.
STANDARD OF REVIEW	A jurisdictional question that does not involve a factual dispute is reviewed as a matter of law, independently of the lower court’s decision.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	State of Nebraska v. Douglas County District Court et al., Omaha World-Herald, KETV Channel 7

TOPICS

[appellate jurisdiction](#)[final judgment rule](#)[appellate procedure](#)[grand jury](#)[statutory interpretation](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction over the district court's order concerning public disclosure of grand jury documents.
2. Whether the district court's order was a final, appealable order under Neb. Rev. Stat. § 25-1902.
3. Whether the disclosure proceeding constituted a special proceeding and, if so, whether the order affected a substantial right.

HOLDINGS

1. An appellate court has a duty to determine whether it has jurisdiction before addressing the legal issues presented for review.
2. A hearing on a motion concerning public disclosure of grand jury documents under Neb. Rev. Stat. § 29-1407.01(2)(b) is a special proceeding.
3. The order overruling the State's motion to prevent public disclosure of the grand jury transcript and exhibits was not a final, appealable order because it did not affect a substantial right.
4. The district court had jurisdiction to consider motions pertaining to incidental matters within the scope of its jurisdiction over disclosure of grand jury records.

KEY QUOTATIONS

"An order is final for purposes of appeal under § 25-1902 if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered." (133)

"In a special proceeding, an order is final and appealable if it affects a substantial right of the aggrieved party." (135)

"For the reasons stated above, we dismiss the appeal for lack of jurisdiction." (137)

FACTUAL BACKGROUND

The Douglas County District Court convened a grand jury to investigate the in-custody death of Zachary Bearheels and appointed a special prosecutor from the Nebraska Attorney General's Office. The grand jury returned true bills indicting two police officers. The district court sua sponte ordered the grand jury transcript and exhibits made available for public review under Neb. Rev. Stat. § 29-1407.01(2)(b), and later overruled the special prosecutor's motion to prevent disclosure.

PROCEDURAL HISTORY

The Douglas County District Court impaneled a grand jury to investigate an in-custody death. After the grand jury returned indictments against two police officers, the district court ordered the grand jury transcript and exhibits made available for public review. The special prosecutor moved to seal the materials, but the district

court overruled the motion. The State appealed, and the Nebraska Supreme Court dismissed the appeal for lack of appellate jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Fidler v. Life Care Centers of America, 301 Neb. 724, 919 N.W.2d 903 (2018)
- State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018)
- In re Grand Jury of Lancaster Cty., 269 Neb. 436, 693 N.W.2d 285 (2005)
- In re Grand Jury of Douglas Cty., 263 Neb. 981, 644 N.W.2d 858 (2002)
- In re Grand Jury of Douglas Cty., 244 Neb. 798, 509 N.W.2d 212 (1993)
- In re Guardianship of Sophia M., 271 Neb. 133, 710 N.W.2d 312 (2006)
- In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006)
- In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011)
- State v. Guatney, 207 Neb. 501, 299 N.W.2d 538 (1980)
- Williams v. Baird, 273 Neb. 977, 735 N.W.2d 383 (2007)
- State v. Silvers, 255 Neb. 702, 587 N.W.2d 325 (1998)
- State v. McNerny, 239 Neb. 887, 479 N.W.2d 454 (1992)
- City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996)
- Deines v. Essex Corp., 293 Neb. 577, 879 N.W.2d 30 (2016)
- State v. Jackson, 291 Neb. 908, 870 N.W.2d 133 (2015)
- State v. Dixon, 282 Neb. 274, 802 N.W.2d 866 (2011)