

SUPREME COURT OF NEBRASKA

Haber v. V & R Joint Venture

263 Neb. 529 (2002) (Neb. 2002) · No. No. S-00-930 · Decided March 29, 2002

SUMMARY

The Supreme Court of Nebraska dismissed an appeal and cross-appeal for lack of appellate jurisdiction. The court held that the appellant's notice of appeal, filed before the complete disposition of the appellee's motion for new trial, was of no effect under Neb. Rev. Stat. § 25-1912(3), and that neither party filed a new notice of appeal after the motion was resolved.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	March 29, 2002
DOCKET	No. S-00-930
DISPOSITION	dismissed
PROCEDURAL POSTURE	Haber appealed from the district court's denial of her motion for new trial, and V & R cross-appealed from the denial of portions of its motion for new trial. The Nebraska Supreme Court dismissed both the appeal and cross-appeal for lack of appellate jurisdiction because the notice of appeal was filed before complete disposition of V & R's terminating motion for new trial and no new notice of appeal was filed thereafter.
STANDARD OF REVIEW	Statutory interpretation presents a question of law. Statutory language is given its plain and ordinary meaning absent anything to the contrary. Before reaching the merits, an appellate court independently determines whether it has appellate jurisdiction.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Nebraska
PARTIES	Gladys Haber v. V & R Joint Venture

TOPICS

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motion for new trial

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QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction when the notice of appeal was filed before the district court completely disposed of a timely motion for new trial.
2. Whether a new notice of appeal was required after the district court entered its order completely disposing of the terminating motion for new trial.

HOLDINGS

1. Under Neb. Rev. Stat. § 25-1912(3), a notice of appeal filed before the court announces its decision on a timely terminating motion for new trial has no effect. Because V & R's motion had not been completely resolved when Haber filed her notice of appeal, the notice was ineffective.
2. The court lacked jurisdiction over both the appeal and cross-appeal because neither party filed a new notice of appeal after the district court completely disposed of V & R's motion for new trial.

KEY QUOTATIONS

"Pursuant to § 25-1912(3), Haber's September 5, 2000, notice of appeal was of 'no effect.'" (641 N.W.2d at 33)

"Because Haber's notice of appeal was premature and no notice of appeal was filed by either party subsequent to the complete resolution of the motions for new trial, this court lacks jurisdiction to entertain the appeal and crossappeal." (641 N.W.2d at 34)

FACTUAL BACKGROUND

Haber was injured in an automobile accident and later signed an assignment transferring to V & R a portion of the proceeds from her personal-injury settlement, up to the amount of rent she owed under a lease. After Haber settled her claim, the insurer issued a settlement check payable to Haber, her attorney, and V & R's attorney. Haber then sought a declaration that the assignment was void because a bodily-injury tort claim was not assignable, while V & R pursued a cross-petition for money had and received.

PROCEDURAL HISTORY

Haber filed a declaratory judgment action in the Douglas County District Court challenging the validity of an assignment of personal-injury settlement proceeds to V & R. V & R filed a cross-petition in assumpsit. After trial, the district court found the assignment valid and enforceable, denied portions of both parties' motions for new trial, and later completely disposed of V & R's motion on September 27, 2000. Haber had filed her notice of appeal on September 5, before that complete disposition, and neither party filed a new notice of appeal after September 27.

DISPOSITION

dismissed

CASES CITED

- Hunt v. Trackwell, 262 Neb. 688, 635 N.W.2d 106 (2001)
- Hatcher v. Bellevue Vol. Fire Dept., 262 Neb. 23, 628 N.W.2d 685 (2001)
- Rodriguez v. Monfort, Inc., 262 Neb. 800, 635 N.W.2d 439 (2001)
- Wilcox v. City of McCook, 262 Neb. 696, 634 N.W.2d 486 (2001)
- State ex rel. Fick v. Miller, 252 Neb. 164, 560 N.W.2d 793 (1997)

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