

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

appellate jurisdiction

final judgment rule

appellate procedure

motion for new trial

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

contracts

torts

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)

OPINION

MILLER-LERMAN, J.

641 N.W.2d 31 (2002) 263 Neb. 529 Gladys HABER, Appellant and Cross-Appellee, v. V & R JOINT VENTURE, a general partnership, Appellee and Cross-Appellant. No. S-00-930. Supreme Court of Nebraska. March 29, 2002. Norman Denenberg, Omaha, for appellant. Frank Meares, Omaha, for appellee. *32 HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ. MILLER-LERMAN, J. NATURE OF CASE Gladys Haber filed a declaratory judgment action in the district court for Douglas County.

V & R Joint Venture (V & R) filed a cross-petition based on assumpsit. Following trial, the district court found generally in favor of V & R, concluding that Haber had validly assigned proceeds from a personal injury action to V & R in satisfaction of a debt Haber owed V & R. Haber appeals the district court's denial of her motion for new trial. V & R crossappeals, challenging the district court's denial of its motion for new trial.

Because Haber's notice of appeal was filed prior to the complete disposition of V & R's motion for new trial, the notice of appeal was premature and this court lacks appellate jurisdiction. Accordingly, we dismiss the appeal and cross-appeal. STATEMENT OF FACTS Haber was injured in an automobile accident on May 31, 1995.

In an unrelated matter, on July 5, 1996, V & R recovered a judgment in the amount of \$6,813.88 against Haber and another individual for rent due under a lease. In an effort to satisfy V & R's judgment, Haber signed a document entitled "Assignment," which by its terms assigned to V & R a portion of the proceeds from her personal injury settlement as a result of the May 31, 1995, automobile accident.

The assignment provided in pertinent part as follows: The undersigned, Gladys Haber, assigns all her right and interest in and to a personal injury action... to V & R Joint Venture up to the amount

of rent due on the certain lease... at the time of settlement. I direct my attorney... after deduction of his attorney fee, to pay the then balance due in accordance with the terms of the rental agreement.

V & R notified Metropolitan Property and Casualty Insurance Company and Affiliates (Metropolitan), the insurance carrier handling Haber's personal injury claim, of the assignment. Haber settled her claim with Metropolitan.

In 1997, Metropolitan mailed a settlement check to Haber's attorney, made payable to Haber, her attorney, and the attorney for V & R, in the amount of \$5,737.46. On March 2, 1998, Haber filed a declaratory judgment action, seeking a declaration that the assignment in favor of V & R was "void, illegal and a nullity because a tort claim for bodily injury is not assignable."

On May 27, V & R filed an "Answer and Cross Petition." V & R's cross-petition sounded in assumpsit "for money had and received in the sum of \$5737.46" and other relief. The matter was tried to the district court on June 19, 2000.

In an order filed June 28, the district court concluded that Haber had validly assigned proceeds from the personal injury action to V & R and that the assignment was enforceable. Although V & R was successful in its cross-petition with respect to the money owed, the district court denied the remainder of the relief V & R sought in its cross-petition.

The parties filed cross-motions for new trial which came on for hearing on August 9, 2000. In an order filed August 18, the district court overruled Haber's motion for new trial. In its August 18 order, the district court also overruled a portion of V & R's motion for new trial and set the remainder for hearing on September 27.

Thus, in its August 18 order, the district *33 court did not completely dispose of V & R's motion for new trial. On September 5, 2000, Haber filed her notice of appeal. Thereafter, on September 27, following a hearing, the district court filed its order, finally disposing of all of the issues raised in V & R's new trial motion. No new notice of appeal was filed by either Haber or V & R subsequent to the district court's September 27 order.

ASSIGNMENTS OF ERROR In her appeal, Haber assigns as error the district court's conclusion that the assignment of her personal injury cause of action was valid and enforceable. In its cross-appeal, V & R assigns four errors, claiming the district court erred (1) in failing to award attorney fees pursuant to Neb.Rev.Stat. § 25-824 (Reissue 1995), (2) in failing to assess all costs against Haber, (3) in failing to award V & R prejudgment interest, and (4) in ordering that the check which was the subject of V & R's cross-petition in assumpsit be filed with the clerk of the district court.

STANDARDS OF REVIEW Statutory interpretation presents a question of law. *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). In the absence of anything to the contrary, statutory language is to be

given its plain and ordinary meaning. *Rodriguez v. Monfort, Inc.*, 262 Neb. 800, 635 N.W.2d 439 (2001).

ANALYSIS 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. *Wilcox v. City of McCook*, 262 Neb. 696, 634 N.W.2d 486 (2001). Neb.Rev.Stat. § 25-1912(3) (Cum. Supp.2000) governs the running of the time for filing a notice of appeal when a motion for new trial has been filed.

The statute was amended effective July 13, 2000, and as amended provides, in pertinent part, as follows: (3) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a timely motion for a new trial under section 25-1144.01... and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a)... of this subsection.

When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion.

In this case, Haber filed a notice of appeal on September 5, 2000, which was prior to the order resolving V & R's terminating motion and was, thus, of no effect. The record shows that in its order filed on August 18, the district court overruled Haber's new trial motion in its entirety and ruled in part and reserved ruling in part on V & R's motion for new trial.

The district court set the hearing on the remainder of V & R's motion for new trial for September 27, upon which date, the district court completely disposed of V & R's motion for new trial. Thus, the district court had not finally disposed of V & R's motion for new trial at the time Haber filed her notice of appeal on September 5. Pursuant to § 25-1912(3), Haber's September 5, 2000, notice of appeal was of "no effect."

Further, neither Haber nor V *34 & R filed a new notice of appeal as required by § 25-1912(3), which provides that a "new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the [terminating] motion." (Emphasis supplied.) This court has previously stated that "[i]t is axiomatic that for an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken; conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders."

State ex rel. Fick v. Miller, 252 Neb. 164, 165, 560 N.W.2d 793, 795 (1997). In this case, the August 18, 2000, order, disposing of one but not both new trial motions, did not entirely dispose of the terminating motion. See § 25-1912(3).

The August 18 order was not a final, appealable order. In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. *Rodriguez v. Monfort, Inc.*, 262 Neb. 800, 635 N.W.2d 439 (2001).

Under a plain reading of § 25-1912(3), Haber's notice of appeal filed on September 5, 2000, before complete disposition of V & R's motion for new trial, was of "no effect." Contrary to § 25-1912(3), neither party filed a new notice of appeal after the district court completely disposed of V & R's new trial motion, and this court did not acquire jurisdiction over the appeal.

See *State ex rel. Fick v. Miller*, supra. **CONCLUSION** The district court's August 18, 2000, order did not completely dispose of V & R's motion for new trial and was not a final, appealable order. Pursuant to § 25-1912(3), Haber's notice of appeal filed September 5 was of "no effect." Contrary to § 25-1912(3), neither Haber nor V & R filed a new notice of appeal following the district court's September 27 order, which completely disposed of V & R's motion for new trial.

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. **APPEAL DISMISSED.**