

SUPREME COURT OF NEBRASKA

Nichols v. Nichols

288 Neb. 339 (2014) · No. S-13-841 · Decided June 13, 2014

SUMMARY

The Nebraska Supreme Court dismissed Bonnie Nichols’ appeal from an order dismissing her complaint seeking dissolution of an Iowa same-sex marriage. The court held that the district court’s order, which allowed time to file an amended complaint and stated that the matter would be dismissed if no amendment was filed, was conditional and therefore not a final, appealable judgment. Because no final judgment had been entered, the court lacked appellate jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Pirtle, Judge
JURISDICTION	Nebraska
DECIDED	June 13, 2014
DOCKET	S-13-841
DISPOSITION	dismissed
PROCEDURAL POSTURE	Bonnie Nichols appealed from a Lancaster County District Court order granting Margie Nichols's motion to dismiss the complaint but allowing Bonnie 15 days to amend. Because no amended complaint was filed, the order stated that the matter would stand dismissed in the future. The Nebraska Supreme Court dismissed the appeal for lack of jurisdiction because the order was conditional and no final judgment had been entered.
STANDARD OF REVIEW	Questions of jurisdiction are questions of law reviewed independently of the trial court. The existence of appellate jurisdiction is determined independently and must be considered before reaching the merits, whether or not the parties raise the issue.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; binding precedent in Nebraska.
PARTIES	Bonnie Nichols v. Margie Nichols

TOPICS

family law procedure dissolution of marriage appellate jurisdiction final judgment rule
motions to dismiss

PRACTICE AREAS

family law appellate procedure civil procedure constitutional law

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction over an appeal from a conditional order granting a motion to dismiss while allowing time to amend the complaint.
2. Whether Nebraska's conditional-order jurisprudence remained valid after Nebraska's shift from code pleading to notice pleading.
3. Whether an order that purports to dismiss a complaint automatically upon the expiration of a period for amendment constitutes a final judgment or appealable order.

HOLDINGS

1. The Supreme Court lacked appellate jurisdiction because Bonnie appealed from a conditional order rather than a final judgment.
2. A conditional order does not automatically become a final judgment upon the occurrence of the specified condition.
3. No appeal can be taken from an order granting a motion to dismiss a complaint but allowing time to file an amended complaint; the order is conditional and is not a judgment.
4. Nebraska's adoption of notice pleading did not change the rule that an order dismissing a complaint while allowing time to amend is not a final, appealable judgment.

KEY QUOTATIONS

“Thus, no appeal can be taken from an order that grants a motion to dismiss a complaint but allows time in which to file an amended complaint; such a conditional order is not a judgment.” (288 Neb. at 347)

“Because Bonnie appealed from a conditional order and not a final judgment, we lack jurisdiction over the appeal. Therefore, we must dismiss the appeal.” (288 Neb. at 347)

FACTUAL BACKGROUND

Bonnie and Margie Nichols were married in Iowa in 2009. In 2012, Bonnie filed a Nebraska complaint seeking dissolution of the marriage, custody and parenting time concerning their child, and equitable division of property. The district court granted Margie's motion to dismiss for lack of subject matter jurisdiction, gave Bonnie 15 days to amend, and stated that the matter would stand dismissed with prejudice if she did not amend; Bonnie did not amend, and the court entered no later judgment.

PROCEDURAL HISTORY

Bonnie filed a complaint seeking dissolution of an Iowa same-sex marriage, custody and parenting time, and equitable distribution of property. The district court granted Margie's motion to dismiss for lack of subject matter jurisdiction, allowed Bonnie time to amend under a different legal theory, and did not enter a subsequent judgment after Bonnie failed to amend. Bonnie appealed, and the Nebraska Supreme Court granted her petition to bypass the Court of Appeals before dismissing the appeal.

DISPOSITION

dismissed

CASES CITED

- In re Estate of McKillip, 284 Neb. 367, 820 N.W.2d 868 (2012)
- Carney v. Miller, 287 Neb. 400, 842 N.W.2d 782 (2014)
- Jacobitz v. Aurora Co-op, 287 Neb. 97, 841 N.W.2d 377 (2013)
- Strunk v. Chromy-Strunk, 270 Neb. 917, 708 N.W.2d 821 (2006)
- Fitzgerald v. Community Redevelopment Corp., 283 Neb. 428, 811 N.W.2d 178 (2012)
- Federal Land Bank of Omaha v. Johnson, 226 Neb. 877, 415 N.W.2d 478 (1987)
- Schaad v. Simms, 240 Neb. 758, 484 N.W.2d 474 (1992)
- County of Sherman v. Evans, 247 Neb. 288, 526 N.W.2d 232 (1995)
- Snell v. Snell, 230 Neb. 764, 433 N.W.2d 200 (1988)
- Building Systems, Inc. v. Medical Center, Ltd., 228 Neb. 168, 421 N.W.2d 773 (1988)
- Fritch v. Fritch, 191 Neb. 29, 213 N.W.2d 445 (1973)
- State ex rel. Jacob v. Bohn, 271 Neb. 424, 711 N.W.2d 884 (2006)
- Waite v. City of Omaha, 263 Neb. 589, 641 N.W.2d 351 (2002)
- DMK Biodiesel v. McCoy, 285 Neb. 974, 830 N.W.2d 490 (2013)
- Jung v. K. & D. Mining Co., 356 U.S. 335, 78 S. Ct. 764, 2 L. Ed. 2d 806 (1958)
- Federal Land Bank of Omaha v. Johnson, 226 Neb. 877, 415 N.W.2d 478 (1987)
- Hunt v. Hopkins, 266 F.3d 934 (8th Cir. 2001)
- Trotter v. Regents of University of New Mexico, 219 F.3d 1179 (10th Cir. 2000)
- Santoro v. CTC Foreclosures Services Corp., 193 F.3d 1106 (9th Cir. 1999)
- Bastian v. Petren Resources Corp., 892 F.2d 680 (7th Cir. 1990)
- Blanco v. United States, 775 F.2d 53 (2d Cir. 1985)
- Richards v. Dunne, 325 F.2d 155 (1st Cir. 1963)
- Groves v. City of Darlington, S.C., 346 Fed. Appx. 965 (4th Cir. 2009)
- Anastasiadis v. S.S. Little John, 339 F.2d 538 (5th Cir. 1964)
- Azar v. Conley, 480 F.2d 220 (6th Cir. 1973)
- Phonometrics v. Hospitality Franchise Systems, 203 F.3d 790 (Fed. Cir. 2000)
- Albiero v. City of Kankakee, 122 F.3d 417 (7th Cir. 1997)

- Schuurman v. Motor Vessel Betty K V, 798 F.2d 442 (11th Cir. 1986)
- Frederico v. Home Depot, 507 F.3d 188 (3d Cir. 2007)
- Borelli v. City of Reading, 532 F.2d 950 (3d Cir. 1976)
- Day v. Coffey, 68 N.C. App. 509, 315 S.E.2d 96 (1984)
- Purnell v. Covington County Bd. of Educ., 519 So. 2d 560 (Ala. Civ. App. 1987)
- Garver v. Public Service Company of New Mexico, 77 N.M. 262, 421 P.2d 788 (1966)
- Avin v. Verta, 106 A.2d 145 (D.C. 1954)

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