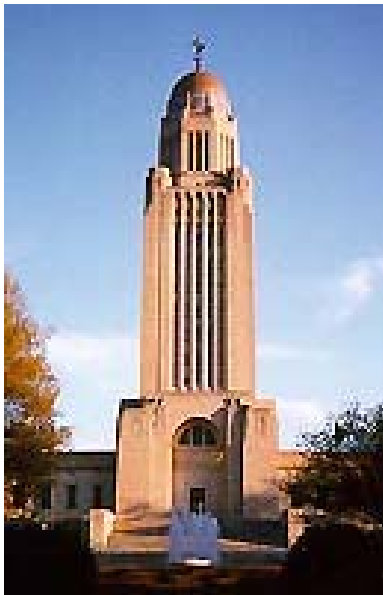


Trial Judge's Role in Nebraska Appellate Jurisdiction

Nov 2006



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What Orders May be Appealed?
How Can Staid "Jurisdiction" Spring?
What "Good Practices" can be used?





We Have A Problem, Judges!

- Constant Confusion
 - Imprecise Language & Practice
 - Appellate Cautions Not Heeded
- 190 Opinions this Millennium!
 - Potential 100 malpractice claims?
 - And why?



Learning v Myth



- Law is Old ... as old as statehood
 - Problem is old: 1 Neb 371
 - Language is old: “Render” & “Enter”
- Myths are old:
 - Judge can *enter* judgment. Wrong!
 - Judgment *entered* when order signed. Wrong!

“Rendition” & “Entry” of Judgment

§ 25-1302:

- Rendition: Judicial Act: written notice of relief granted or denied.
- Entry: Clerical Act: placing file stamp & date.
- “Entry” fixes effective date; not “Rendition”



Powers in Chambers

§ 24-732:

- “Render”, but not “Enter” Judgment.
- Limitation impacts:
 - Effective Date of Judgment.
 - Time Available for Appeal.



New Issues. Old Problems.

- What can be appealed?
 - Judgments Rendered, Final Orders Made. § 25-1911
 - But only after they are Entered. § 25-1912
- What is a “Final Order”? § 25-1902.
 - *Smith v Sahler*, 1 Neb 371 (1871).
 - *State v Vela*, 272 Neb 287 (2006).



Classes of Appealable Orders

§ 25-1902



1. Substantial Right: not a technicality, e.g.:
 - Trial Attendance
 - Witness Attendance... (?)
 - Denial Speedy Trial
2. Determines Action; Prevents Judgment, e.g.:
 - Decrees, Judgments after trial
 - Dismissals denying leave to amend

Classes of Appealable Orders

§ 25-1902



3. Determines a Special Proceeding:
 - ~ Contempt. Receivership. Post-Conviction
 - ~ A Statutory Remedy not Itself An Action

- 3A. Summary Application After Judgment:
 - ~ Execution. Garnishment.
 - ~ Writ of Assistance. Order of Sale.
 - ~ Query: Order for debtor's exam?

Springing Jurisdiction

- Rendition Complete, Entry Unfinished
- Appellate Court:
 - Lacks Jurisdiction
 - But, Clerk Stamps Judgment *after* Notice of Appeal filed.
- Is Appeal Notice defective? or
- Does Jurisdiction “Spring”?





§ 25-1912(2): partial cure

- Premature Notice deemed filed after *entry* occurs
- Great for Cases filed in District Court.
- Does not save County Court appeals.
 - If district court never got jurisdiction, cure in county court does not cure above.
- No substitute for *Rendition* and *Entry*.





Appealable Collateral Orders

- Disqualification of Counsel
- Denial of Motion Compelling Arbitration

~/~

- Denial of Jury Trial?
- Other constitutional rights?

Hallie Mgmt v Perry, 272 Neb 81 (2006).



Possible Language

- This Order / Judgment / Decree
 - ___ is ___ is not a Final Order disposing of substantial rights or determining the case.
 - There ___ is ___ is not just reason to delay appeal under § 25-1315.[Just reason is:_____]



Use § 25-1315 for More Than One Key Decision Per Case

- Does Order Dispose of Some, not All
 - Claims?
 - Parties?
 - Counterclaims, Crossclaims?
- If so, is there a Just Reason for Delay?
 - What is it?
- Does Order “determine the action” for those affected?

Please Do Not

- Write Letters. [Write Orders!]
- Decide Orally. [Write Orders!]
- Decide Tidbits. [Write Complete Orders!]
 - Decide to make Something easy early.
- Write Orders Re Future Events
- Be Obtuse or Indirect



An Order Should Decide:



- Who is bound ?
- What is required?
- Where must action be done?
- When must required steps be done?
- Why this Order? Legally? Factually?
- How does Order impact Appeal?
- What remains to be done below?



Spread the Word



- Teach at Motion Day, Bar gatherings
- Standardize Forms: Orders, Judgments
- Ask Clerks. Inform Lawyers
- Read Seminar Paper
- Take Pride in Decisions
 - Be ever mindful of decision's duration.

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Thank you.