



Supreme Court Considers Appeal Related to Sovereign Immunity Claims

In *E.D. v. Bellevue Pub. Sch. Dist.*, 299 Neb. 621, --- N.W.2d --- (2018), a student brought suit against a school district and teacher under the Political Subdivisions Tort Claims Act (PSTCA). The Supreme Court considered an appeal and cross-appeal from an order overruling claims of sovereign immunity in separate motions to dismiss. The Court found because an appeal from the order at issue is not statutorily authorized, it dismissed the appeal and cross-appeal.

In November 2016, the student filed a complaint in district court alleging various negligence claims against the school and teacher. In the complaint, the student alleged among other things, the following: While a teacher of the school and while the individual was a student, above the age of legal consent, the teacher made nonconsensual sexual contact with the student that began a nearly yearlong nonconsensual sexual contact with the two occurring primarily on school premises.

The student's negligence claims assert, generally, that the school breached its duty to provide a safe environment to students and to enact reasonable policies governing an extracurricular teacher's aide program, which paired the student and teacher, to protect students. The student claims that her harm was a foreseeable result of the schools' negligence.

The school and teacher filed separate motions to dismiss claiming sovereign immunity under the PSTCA's intentional tort exception (Neb. Rev. Stat. § 13-910(7)), which motions the court denied. The teacher filed a motion to reconsider or to alter or amend, which the court also denied. The school filed a timely appeal, and the teacher cross-appealed.

The Nebraska Court of Appeals dismissed the schools' appeal for lack of jurisdiction, under Neb. Ct. R. App. P. § 2-107(A)(2) (rev. 2017), finding the ruling on the motion to dismiss was not a final, appealable order. The school filed a motion for reconsideration. The Court of Appeals granted the motion for reconsideration and reinstated the appeal. The Supreme Court removed the case to its docket on its own motion pursuant to its authority to regulate the caseloads of the Court of Appeals and the court.

The Supreme Court has long held that appellate jurisdiction in Nebraska is purely statutory and an appellate court acquires no jurisdiction unless the appellant has satisfied the statutory requirements for appellate jurisdiction. For an appellate court to acquire jurisdiction of an appeal, the party must be appealing from a final order or a judgment. The Legislature has defined a "judgment" as "the final determination of the rights of the parties in an action." Conversely, every direction of a court or judge, made or entered in writing and not included in a judgment, is an order.

The Court went on to explain, "The three types of final orders that an appellate court may review are (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered." In contrast, if an order is interlocutory, immediate appeal from the order is disallowed so that courts may avoid piecemeal review, chaos in trial procedure, and a succession of appeals granted in the same case to secure advisory opinions to govern further actions of the trial court.

The Court held that in this case, as is typical, the overruling of a motion to dismiss is not a final order. Further the court distinguished how this holding differed from previously decided cases determining in part, "The intent of the Legislature is expressed by omission as well as by inclusion." Therefore, the Court treating the doctrine as an exception to this statute or, effectively, as a fourth type of final order amounted, instead, to impermissible judicial legislation.

As outlined in the decision, the Court overruled *StoreVisions v. Omaha Tribe of Neb.*, 281 Neb. 238, 795 N.W.2d 271 (2011), *modified on denial of rehearing* 281 Neb. 978, 802 N.W.2d 420, to the extent that it authorized appellate jurisdiction in the absence of a judgment or final order and without specific statutory authorization.

The Supreme Court concluded because this appeal was from a nonfinal order and because it overruled the application of the collateral order doctrine to the extent that it authorizes an interlocutory appeal from a denial of sovereign immunity, the Court dismissed the appeal and cross-appeal.

Editor's Note: Legal Line is a feature that will periodically appear in NACO E-Line. This article has been prepared by Elaine Menzel of the NACO legal staff. Legal Line is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which will be discussed in future issues relates to your county, consult your county attorney or personal counsel.