

## LEGISLATIVE BILL 538

Approved by the Governor May 10, 1995

Introduced by Beutler, 28

AN ACT relating to courts; to amend sections 25-2737, 30-1601, 43-112, and 77-2023, Reissue Revised Statutes of Nebraska, and sections 25-1901, 25-2728, 25-2729, 25-2730, and 25-2733, Revised Statutes Supplement, 1994; to change provisions relating to certain appeals from the county court; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-1901, Revised Statutes Supplement, 1994, is amended to read:

25-1901. A judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court, ~~other than a juvenile court as defined in section 43-245,~~ may be reversed, vacated, or modified by the district court, except that the district court shall not have jurisdiction over appeals from a juvenile court as defined in section 43-245 or appeals from a county court in matters arising under the Nebraska Probate Code or in matters involving adoption or inheritance tax.

Sec. 2. Section 25-2728, Revised Statutes Supplement, 1994, is amended to read:

25-2728. (1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) ~~In cases of appeals from adoption proceedings and proceedings under the Nebraska Probate Code, an appeal may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.~~

(3) ~~In cases of appeals from inheritance tax matters, an appeal may also be taken by any person dissatisfied with and affected by the appraisal or assessment.~~

(4) Sections 25-2728 to 25-2738 shall not apply to:

(a) ~~Appeals~~ appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) ~~Appeals or to appeals~~ in proceedings in the county court sitting as a juvenile court as provided in sections 43-287.01 to 43-287.06, 43-2,106, and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in adoption proceedings as provided in section 43-112; and

(e) Appeals in inheritance tax proceedings as provided in section 77-2023.

Sec. 3. Section 25-2729, Revised Statutes Supplement, 1994, is amended to read:

25-2729. (1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the rendition of the judgment or making of the final order complained of:

(a) File with the clerk of the county court a notice of appeal; and

(b) Deposit with the clerk of the county court a docket fee in the amount of the filing fee in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) The time of rendition of a judgment or making of a final order is the time at which the action of the judge in announcing the judgment or final order is noted on the trial docket or, if the action is not noted on the trial docket, the time at which the journal entry of the action is filed.

(4) ~~The appealing party shall also within the time fixed by subsection (1) of this section:~~

(a) ~~In matters arising under the Nebraska Probate Code only, when the appeal is by someone other than an executor, administrator, personal representative, conservator, trustee, guardian, or guardian ad litem, deposit with the clerk of the county court a cash bond or undertaking in such sum as~~

the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (2) of section 25-2737, unless the court directs that no cash bond or undertaking need be deposited; and

(b) In appeals from the Small Claims Court only, the appealing party shall also, within the time fixed by subsection (1) of this section, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

(5) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the rendition of the judgment or making of the final order shall be treated as filed or deposited after the rendition of the judgment or making of the final order and on the day thereof.

(6) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of record. Proof of service shall be filed with the notice of appeal.

(7) If an appellant fails to comply with any provision of subsection (4) or (6) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Sec. 4. Section 25-2730, Revised Statutes Supplement, 1994, is amended to read:

25-2730. (1) In cases involving a money judgment or a judgment for the possession of specified personal property, no appeal shall operate as a supersedeas unless the appellant within thirty days after the rendition of the judgment deposits with the clerk of the county court a cash bond or an undertaking with at least one good and sufficient surety approved by the court. In cases involving a money judgment, the bond or undertaking shall be in the amount of the judgment, costs, and estimated interest pending appeal and conditioned that the appellant shall pay the judgment, interest, and costs adjudged against him or her on appeal. In cases involving a judgment for the possession of specified personal property, the bond or undertaking shall be in an amount at least double the value of the property and conditioned that the appellant shall pay all costs and damages adjudged against him or her on appeal and deliver the property in accordance with the judgment on appeal.

(2) In appeals in matters arising under the Nebraska Probate Code except appeals pursuant to sections 30-2601 to 30-2661, the appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, no appeal shall operate as a supersedeas unless the appellant within thirty days after the rendition of the judgment deposits with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641.

(3) In appeals in cases of forcible entry and detainer, no appeal shall operate as a supersedeas unless the party appealing shall deposit an undertaking or cash bond in accordance with section 25-21,234.

(4) (3) In appeals in criminal cases, the execution of judgment and sentence, other than any sentence to a period of confinement, shall be suspended during the appeal. Execution of a sentence to a period of confinement shall be suspended only if (a) the county court, in its discretion, allows the defendant to continue at liberty under the prior recognizance or bail or (b) the defendant enters into a written recognizance to the State of Nebraska, with surety or sureties approved by the county court or with a cash bond, filed with the clerk of the county court. The condition of the recognizance shall be that the defendant will prosecute the appeal without delay and abide and perform the judgment and sentence of the district court. Upon the filing of the notice of appeal, the county court shall fix the amount of the recognizance or cash bond, which shall be a reasonable amount. The cash bond shall be returned upon the fulfillment of the conditions of the bond.

(5) (4) In appeals in cases under the Uniform Residential Landlord and Tenant Act, no appeal shall operate as a supersedeas of any writ of restitution unless the defendant deposits an undertaking or cash bond in accordance with section 76-1447.

(6) (5) In all other cases, perfection of an appeal shall not stay the proceedings.

(7) (6) In any case, the district court, on motion after notice and hearing and upon such terms as justice shall require, may stay any order or judgment appealed from, order a renewal or additional surety of an undertaking, or order the amount of the undertaking or recognizance increased

or decreased. The action of the district court shall be certified by the clerk to the clerk of the county court. In those cases in which the order or judgment appealed from was entered by a municipal court prior to July 17, 1985, the action of the district court shall be certified by the clerk to the clerk of the county court in the district in which the municipal court was located.

Sec. 5. Section 25-2733, Revised Statutes Supplement, 1994, is amended to read:

25-2733. (1) In all cases other than appeals from the Small Claims Court, the district court shall review the case for error appearing on the record made in the county court. The district court shall render a judgment which may affirm, affirm but modify, or reverse the judgment or final order of the county court. If the district court reverses, it may enter judgment in accordance with its findings or remand the case to the county court for further proceedings consistent with the judgment of the district court. Within two judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate in appeals from the county court and transmit the mandate in appeals to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of such decision.

(2) The bill of exceptions, if filed with the clerk at or before the hearing, shall be considered admitted in evidence on the hearing of the appeal unless the court on objection by a party excludes all or part of it.

(3) In all cases other than appeals in adoption proceedings and appeals under the Nebraska Probate Code, the judgment of the district court shall vacate the judgment in the county court. The taxation of costs in the district court shall include the costs in the county court. If a judgment of the county court is affirmed or affirmed but modified, interest on the amount of the judgment in the district court that does not exceed the amount of the judgment in the county court shall run from the date of the judgment appealed from the county court.

(4) In all appeals in adoption proceedings and appeals under the Nebraska Probate Code, the judgment of the district court shall be certified without cost to the county court for further proceedings consistent with the determination of the district court.

Sec. 6. Section 25-2737, Reissue Revised Statutes of Nebraska, is amended to read:

25-2737. (1) In all cases involving a money judgment, if any person appealing from a judgment rendered in his or her favor shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, such appellant shall pay the costs of such appeal.

(2) In all matters arising under the Nebraska Probate Code, if it shall appear to the district court that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the district court, and any bond required under subdivision (4)(a) of section 25-2729 shall be liable therefor.

Sec. 7. Section 30-1601, Reissue Revised Statutes of Nebraska, is amended to read:

30-1601. (1) In all matters arising under the Nebraska Probate Code, appeals shall be allowed as provided in sections 25-2728 to 25-2738 may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the rendition of the judgment or making of the final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) Except for appeals pursuant to sections 30-2601 to 30-2661, the appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, no appeal shall operate as a supersedeas unless

the appellant within thirty days after the rendition of the judgment deposits with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Sec. 8. Section 43-112, Reissue Revised Statutes of Nebraska, is amended to read:

43-112. An appeal shall be allowed from any final order, judgment, or decree, rendered under the authority of sections 43-101 to 43-115, from the county court to the district court as provided in sections 25-2728 to 25-2738 Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby. The judgment of the Court of Appeals shall not vacate the judgment of the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

Sec. 9. Section 77-2023, Reissue Revised Statutes of Nebraska, is amended to read:

77-2023. An appeal may be taken from the determination of the tax due made by the county court to the district court as provided in sections 25-2728 to 25-2738 Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

Sec. 10. Original sections 25-2737, 30-1601, 43-112, and 77-2023, Reissue Revised Statutes of Nebraska, and sections 25-1901, 25-2728, 25-2729, 25-2730, and 25-2733, Revised Statutes Supplement, 1994, are repealed.