

LEGISLATIVE BILL 33

Approved by the Governor February 12, 1987

Introduced by Labeledz, 5, Chairperson, Executive Board

AN ACT relating to appeals; to amend sections 25-1914, 25-1920, 25-1931, 29-2306, 29-2315.01, 29-2317, 31-433, 46-210, 46-568, and 59-823, Reissue Revised Statutes of Nebraska, 1943, and section 42-372, Revised Statutes Supplement, 1986; to harmonize appeal procedures with former acts of the Legislature; and to repeal the original sections.

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

Section 1. That section 25-1914, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1914. On appeal in any case taken from the district court to the Supreme Court the appellant or appellants shall, within ~~one month next~~ thirty days after the rendition of the judgment or decree or the making of the final order, sought to be reversed, vacated, or modified, or within ~~one month~~ thirty days from the overruling of a motion for a new trial in said such cause, (1) file in the district court a bond or undertaking in the sum of seventy-five dollars to be approved by the clerk of the district court, conditioned that the appellant shall pay all costs adjudged against him or her in the Supreme Court, or (2) ; or, in lieu thereof, shall make a cash deposit with said the clerk of at least seventy-five dollars for the same purpose. If ; PROVIDED, that if a supersedeas bond is executed no bond for costs shall be required. The giving of either form of bond or the making of such deposit shall be certified to by the clerk of the district court in the transcript for the Supreme Court. The appeal may be dismissed on motion and notice in the Supreme Court if no bond has been given and certified in the transcript, or within such additional time as may be fixed by the Supreme Court for good cause shown.

Sec. 2. That section 25-1920, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1920. In all actions in which a temporary injunction has been granted and entered in the district

court, which ~~said~~ order allowing the temporary injunction is or has been superseded for by law, and in which action the trial court, on the merits, determined that ~~said the~~ temporary injunction ought not to have been granted and a permanent injunction was refused in such action, ~~said such~~ cause shall be advanced by the Supreme Court for hearing. ~~In 7 PROVIDED; in~~ all such actions, if the relief demanded involves the delivery of irrigation water and the Director of Water Resources, as defined in section 25-1062.01, is a party, any appeal from the judgment or decree of the district court shall be perfected within ~~one month thirty days~~ after the rendition of such judgment or decree, or the making of a final order by the district court, and the cause shall be advanced for hearing before the Supreme Court.

Sec. 3. That section 25-1931, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1931. ~~No proceedings~~ Proceedings for reversing, vacating, or modifying judgments or final orders shall be commenced ~~unless~~ within ~~one calendar month thirty days~~ after the rendition of the judgment or making of the final order complained of, ~~7~~ except that when the person entitled to such proceedings is an infant, ~~a person of unseound mind mentally incompetent,~~ or imprisoned, he ~~or she~~ shall have one year, exclusive of the time of his ~~or her~~ disability, within which to commence such proceedings.

Sec. 4. That section 29-2306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2306. In case a defendant in a criminal case shall, within ~~one month thirty days~~ after the rendition of the judgment, order, or sentence, file an affidavit with the clerk of the district court that he or she is unable by reason of poverty to pay the costs, then no payment of the docket fee shall be required of him or her. The clerk of the district court shall forward a certified copy of such affidavit to the Clerk of the Supreme Court. ~~In and in~~ cases when such affidavit is filed, the Supreme Court shall acquire jurisdiction of the case when the notice of appeal is filed with the clerk of the district court. In cases in which such affidavits of poverty have been filed, the amount of the costs shall be endorsed on the mandate and the same shall be paid by the county in which the indictment was found.

Sec. 5. That section 29-2315.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

29-2315.01. The county attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to docket an appeal to the Supreme Court with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the county attorney as to the part of the record he or she proposes to present to the Supreme Court. Such application shall be presented to the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth ~~he or she~~ the judge of the trial court shall sign the same, and shall further indicate thereon whether in his or her opinion the part of the record which the county attorney proposes to present to the Supreme Court is adequate for a proper consideration of the matter. The county attorney shall then present such application to the Supreme Court within one month thirty days from the date of the final order. ~~If the application is, and if it be granted the~~ county attorney shall within one month thirty days from such granting order a bill of exceptions in accordance with section 29-2020, if such bill of exceptions is desired, and otherwise proceed to obtain a review of the case in the Supreme Court as provided in section 25-1912.

Sec. 6. That section 29-2317, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2317. (1) A prosecuting attorney, including any county attorney, city attorney, or designated assistant, may take exception to any ruling or decision of the county court made during the prosecution of a cause by presenting to the court a notice of intent to take an appeal to the district court with reference to the rulings or decisions of which complaint is made.

(2) The notice shall contain a copy of the rulings or decisions complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the district court. The notice shall be presented to the court within twenty days after the final order is entered in the cause. If ~~and, if~~ the court finds it is in conformity with the

truth, the judge shall sign it and shall indicate thereon whether, in his or her opinion, the part of the record which the prosecuting attorney proposes to present to the district court is adequate for a proper consideration of the matter.

(3) The prosecuting attorney shall then file the notice in the district court within one month thirty days from the date of final order and within one month thirty days from the date of filing the notice shall file a bill of exceptions covering the part of the record referred to in the notice. Such appeal shall be on the record.

Sec. 7. That section 31-433, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-433. Any appeal to the Supreme Court on any matter herein ~~must~~ shall be taken within one month thirty days after the rendition of the judgment or decree, or the making of such final order, or within one month thirty days from the overruling of a motion for a new trial in such cause. Any, but any such appeal shall not operate to stay proceedings.

Sec. 8. That section 42-372, Revised Statutes Supplement, 1986, be amended to read as follows:

42-372. (1) A decree dissolving a marriage shall become final and operative, except for the purpose of review by appeal, without any further action of the court on (a) the date of death of one of the parties to the dissolution or (b) six months after the decree is rendered, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties to the dissolution, the decree shall be treated as if it became final and operative the date it was rendered.

(2) For the purpose of review by appeal, the decree shall be treated as a final order as soon as it is rendered. If an appeal is instituted within one month thirty days of the date the decree is rendered, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted within such one-month thirty-day period, the court may, at any time within such six months, vacate or modify its decree.

Sec. 9. That section 46-210, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-210. If any county, party, or parties interested in irrigation or water power work affected thereby shall be dissatisfied with the decision or with

any order adopted, such dissatisfied county, party, or parties may institute proceedings in the Supreme Court of Nebraska to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Water Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court to the Supreme Court of Nebraska. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for perfecting such appeal shall be limited to one month thirty days after the rendition of such decision or order and the Supreme Court shall advance such appeal to the head of its docket.

Sec. 10. That section 46-568, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-568. The board may, in its discretion, at any time file a petition in the court, praying a judicial examination and determination of (1) any power conferred hereby by any amendment hereto, (2) or of any tax or assessment levied, or of (3) any act, proceeding, or contract of the district, whether or not said the contract shall have been executed, including proposed contracts for the acquisition, construction, maintenance, or operation of works for the district. Such petition shall set forth the facts whereon on which the validity of such power, assessment, act, proceeding, or contract is founded and shall be verified by the president of the board. Notice of the filing of said the petition shall be given by the clerk of the district court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts, therein mentioned, in the petition may be examined. Said The notice shall be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located, and by posting the same in the office of the district at least thirty days prior to the date fixed in said the notice for the hearing on said the petition. Any owner of property in the district or

person interested in the contract or proposed contract may appear and demur to or answer ~~said the~~ petition at any time prior to the date fixed for ~~said the~~ hearing or within such further time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail ~~se~~ to appear. The ~~said~~ petition and notice shall be sufficient to give the court jurisdiction. Upon and upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, ~~shall~~ make such findings with reference thereto, and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment and decree of the court may be had as in other similar cases but ~~shall must~~ be commenced within one month thirty days after the rendition of the judgment or decree, or the making of the final order complained of. The code of civil procedure shall govern in matters of pleading and practice where not otherwise specified herein in this section. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Sec. 11. That section 59-823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-823. When any suit in equity is brought in any court under sections 59-801 to 59-828, ~~wherein~~ in which the state is complainant, the Attorney General may file with the clerk of such court a certificate that, in his or her opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court ~~will~~ shall lie only to the Supreme Court and ~~must shall~~ be taken within one month thirty days after the rendition of such decree, or the making of a final order, or within one month thirty days from the overruling of a motion for a new trial in ~~said~~ such cause.

Sec. 12. That original sections 25-1914, 25-1920, 25-1931, 29-2306, 29-2315.01, 29-2317, 31-433, 46-210, 46-568, and 59-823, Reissue Revised Statutes of Nebraska, 1943, and section 42-372, Revised Statutes Supplement, 1986, are repealed.