

LEGISLATIVE BILL 689

Approved by the Governor May 26, 1999

Introduced by Robak, 22

AN ACT relating to court procedure; to amend sections 25-2301 to 25-2307, 25-2309, 25-2310, 29-2306, 30-2620.01, and 30-2643, Reissue Revised Statutes of Nebraska, and section 25-1912, Revised Statutes Supplement, 1998; to change and eliminate in forma pauperis provisions; to define terms; to harmonize provisions; to repeal the original sections; and to outright repeal section 25-2308, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 25-1912, Revised Statutes Supplement, 1998, is amended to read:

25-1912. (1) The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the rendition of such judgment or decree or the making of such final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record and, except as otherwise provided in sections 25-2301 to 25-2310 and sections 3 and 4 of this act and sections 29-2306 and 48-641, by depositing with the clerk of the district court the docket fee required by section 33-103.

(2) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a motion for a new trial under section 25-1143 if such motion is filed by any party within ten days after the verdict, report, or decision was rendered or (b) by a motion to set aside the verdict or judgment under section 25-1315.02 if such motion is filed by any party within ten days after the receipt of a verdict, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a) or (b) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time from the ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(3) Except as otherwise provided in subsection (2) of this section and sections 25-2301 to 25-2310 and sections 3 and 4 of this act and sections 29-2306 and 48-641, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court, and after being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

(4) The clerk of the district court shall forward such docket fee and a certified copy of such notice of appeal to the Clerk of the Supreme Court, and the Clerk of the Supreme Court shall docket such appeal.

(5) Within thirty days from the date of filing of notice of appeal, the clerk of the district court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The Supreme Court shall, by rule, specify the method of ordering the transcript and the form and content of the transcript. Neither the form nor substance of such transcript shall affect the jurisdiction of the Court of Appeals or Supreme Court.

(6) Nothing in this section shall prevent any person from giving supersedeas bond in the district court in the time and manner provided in section 25-1916 nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Court of Appeals or Supreme Court.

Sec. 2. Section 25-2301, Reissue Revised Statutes of Nebraska, is amended to read:

25-2301. For purposes of sections 25-2301 to 25-2310 and sections 3

and 4 of this act:

(1) Case includes any suit, action, or proceeding; and

(2) In forma pauperis means the permission given by the court for a party to proceed without prepayment of fees and costs or security. Any court of the State of Nebraska, except the Nebraska Workers' Compensation Court, or of any county shall authorize the commencement, prosecution, or defense of any suit, action, or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay such costs or give security. Such affidavit shall state the nature of the action, defense, or appeal and affiant's belief that he or she is entitled to redress. An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Sec. 3. Any county or state court, except the Nebraska Workers' Compensation Court, may authorize the commencement, prosecution, defense, or appeal therein, of a civil or criminal case in forma pauperis. An application to proceed in forma pauperis shall include an affidavit stating that the affiant is unable to pay the fees and costs or give security required to proceed with the case, the nature of the action, defense, or appeal, and the affiant's belief that he or she is entitled to redress.

Sec. 4. (1) An application to proceed in forma pauperis shall be granted unless there is an objection that the party filing the application: (a) Has sufficient funds to pay costs, fees, or security or (b) is asserting legal positions which are frivolous or malicious. The objection to the application shall be made within thirty days after the filing of the application. Such objection may be made by the court on its own motion or on the motion of any interested person. The motion objecting to the application shall specifically set forth the grounds of the objection. An evidentiary hearing shall be conducted on the objection unless the objection is by the court on its own motion on the grounds that the applicant is asserting legal positions which are frivolous or malicious. If no hearing is held, the court shall provide a written statement of its reasons, findings, and conclusions for denial of the applicant's application to proceed in forma pauperis which shall become a part of the record of the proceeding. If an objection is sustained, the party filing the application shall have thirty days after the ruling or issuance of the statement to proceed with an action or appeal upon payment of fees, costs, or security notwithstanding the subsequent expiration of any statute of limitations or deadline for appeal. In any event, the court shall not deny an application on the basis that the appellant's legal positions are frivolous or malicious if to do so would deny a defendant his or her constitutional right to appeal in a felony case.

(2) In the event that an application to proceed in forma pauperis is denied and an appeal is taken therefrom, the aggrieved party may make application for a transcript of the hearing on in forma pauperis eligibility. Upon such application, the court shall order the transcript to be prepared and the cost shall be paid by the county in the same manner as other claims are paid. The appellate court shall review the decision denying in forma pauperis eligibility de novo on the record based on the transcript of the hearing or the written statement of the court.

Sec. 5. Section 25-2302, Reissue Revised Statutes of Nebraska, is amended to read:

25-2302. In any civil or criminal case in which a party is permitted to proceed in forma pauperis, the court shall, upon filing of a like affidavit, direct the responsible officer of the court to issue and serve all the necessary writs, process, and proceedings, and perform all such duties without charge.

Sec. 6. Section 25-2303, Reissue Revised Statutes of Nebraska, is amended to read:

25-2303. In any civil or criminal case in which a party is permitted to proceed in forma pauperis, the court shall, upon filing of a like affidavit, direct that the expense of process by publication, if such process is required by the court, be paid by the county in the same manner as other claims are paid.

Sec. 7. Section 25-2304, Reissue Revised Statutes of Nebraska, is amended to read:

25-2304. In any civil or criminal case in which a party is permitted to proceed in forma pauperis, the court may, upon the filing of a like affidavit, order witnesses to be subpoenaed, if the court finds that they have evidence material and necessary to the case, and that they are within the judicial district in which the court is held, or within one hundred miles of the place of trial. In such case the process and the fees of the witnesses shall be paid by the county in the same manner as other claims are paid.

Sec. 8. Section 25-2305, Reissue Revised Statutes of Nebraska, is amended to read:

25-2305. In civil or criminal cases in which a party is permitted to proceed in forma pauperis, the court shall, ~~upon filing of a like affidavit,~~ direct that the expenses of printing the record on appeal, if such printing is required by the appellate court, be paid by the county in the same manner as other claims are paid.

Sec. 9. Section 25-2306, Reissue Revised Statutes of Nebraska, is amended to read:

25-2306. In any civil or criminal case in which a party is permitted to proceed in forma pauperis, the court shall, ~~upon filing of a like affidavit,~~ order transcripts to be furnished without cost if the suit or appeal is not frivolous, but presents a substantial question, and if the transcript is needed to prepare, present, or decide the issue presented by the ~~suit case~~ or appeal. Such costs shall be paid by the county in the same manner as other claims are paid.

Sec. 10. Section 25-2307, Reissue Revised Statutes of Nebraska, is amended to read:

25-2307. In any civil or criminal case in which a party is permitted to proceed in forma pauperis, on appeal, ~~upon the filing of a like affidavit,~~ the court shall direct that the expense of printing of the appellate briefs, if such printing is required by the court, be paid by the county in the same manner as other claims are paid.

Sec. 11. Section 25-2309, Reissue Revised Statutes of Nebraska, is amended to read:

25-2309. In the event any person prosecutes or defends ~~an action or proceeding~~ a case in forma pauperis successfully, any and all cost deferred by the court under ~~the provisions of~~ sections 25-2301 to 25-2310 and sections 3 and 4 of this act shall be first satisfied out of any money paid in satisfaction of judgment.

Sec. 12. Section 25-2310, Reissue Revised Statutes of Nebraska, is amended to read:

25-2310. Anyone who fraudulently ~~invokes~~ fails to disclose material assets or income for the purpose of invoking the privileges of sections 25-2301 to 25-2310 and sections 3 and 4 of this act is ~~shall be~~ guilty of perjury and shall, upon conviction thereof, be punished as provided in section 28-915.

Sec. 13. Section 29-2306, Reissue Revised Statutes of Nebraska, is amended to read:

29-2306. If a defendant in a criminal case files, within thirty days after the rendition of the judgment, order, or sentence, an ~~affidavit application to proceed in forma pauperis in accordance with sections 25-2301 to 25-2310 and sections 3 and 4 of this act 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 ~~unless the defendant's application to proceed in forma pauperis is denied.~~ The clerk of the district court shall forward a certified copy of such application, including the affidavit, to the Clerk of the Supreme Court. If ~~such affidavit~~ an application to proceed in forma pauperis is filed and granted, the Court of Appeals or 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~~ an application to proceed in forma pauperis is granted, 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. 14. Section 30-2620.01, Reissue Revised Statutes of Nebraska, is amended to read:

30-2620.01. The reasonable fees and costs of an attorney, a guardian ad litem, a physician, and a visitor appointed by the court for the person alleged to be incapacitated shall be allowed, disallowed, or adjusted by the court and may be paid from the estate of the ward if the ward possesses an estate or, if not, shall be paid by the county in which the proceedings are brought or by the petitioner as costs of the action. An action under sections 30-2601 to 30-2661 may be initiated or defended in forma pauperis in accordance with sections 25-2301 to 25-2310 and sections 3 and 4 of this act. The court may assess attorney's fees and costs against the petitioner upon a showing that the action was frivolous in accordance with sections 25-824 to 25-824.03.

Sec. 15. Section 30-2643, Reissue Revised Statutes of Nebraska, is amended to read:

30-2643. The reasonable fees and costs of an attorney, a guardian ad litem, a physician, a conservator, a special conservator, and a visitor

appointed by the court for the person to be protected shall be allowed, disallowed, or adjusted by the court and may be paid from the estate of the protected person if the protected person possesses an estate or, if not, shall be paid by the county in which the proceedings are brought or by the petitioner as costs of the action. An action under sections 30-2601 to 30-2661 may be initiated or defended in forma pauperis in accordance with sections 25-2301 to 25-2310 and sections 3 and 4 of this act. The court may assess attorney's fees and costs against the petitioner upon a showing that the action was frivolous in accordance with sections 25-824 to 25-824.03.

Sec. 16. Original sections 25-2301 to 25-2307, 25-2309, 25-2310, 29-2306, 30-2620.01, and 30-2643, Reissue Revised Statutes of Nebraska, and section 25-1912, Revised Statutes Supplement, 1998, are repealed.

Sec. 17. The following section is outright repealed: Section 25-2308, Reissue Revised Statutes of Nebraska.