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In re Estate of Robert Dean Mankhey, deceased. Tracy L. Ahmad, formerly known as Tracy L. Mankhey and now known as Tracy L. Bodlak, appellee, v. Noelia Mankhey, Personal Representative of the Estate of Robert Dean Mankhey, deceased, appellant.

___ N.W.3d ___

Filed October 23, 2026. No. S-25-548.

1. **Jurisdiction: Appeal and Error.** The question of appellate jurisdiction is a question of law.
2. ____: ____. Before reaching the legal issues presented for review, it is the power and duty of an appellate court to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.
3. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final judgment or final order entered by the tribunal from which the appeal is taken.
4. **Final Orders: Words and Phrases.** To be final, an order must dispose of the whole merits of the case. When no further action of the court is required to dispose of a pending cause, the order is final.
5. **Decedents' Estates: Final Orders.** A consideration regarding the finality of orders in probate cases is whether the order ended a discrete—that is, separate and distinct—phase of the proceedings.
6. ____: ____. An order ending a discrete phase of probate proceedings is final, but one that is merely preliminary to such an order is not.
7. **Judgments: Attorney Fees.** A party seeking statutorily authorized attorney fees, for services rendered in a trial court, must make a request for such fees prior to a judgment in the cause.
8. **Attorney Fees: Costs.** Attorney fees, where recoverable, are generally treated as an element of court costs.

9. **Judgments: Final Orders: Attorney Fees: Costs: Appeal and Error.** An award of costs in a judgment is considered a part of the judgment. As such, a judgment does not become final and appealable until the trial court has ruled upon a pending statutory request for attorney fees.
10. **Jurisdiction: Appeal and Error.** When an appellate court is without jurisdiction to act, the appeal must be dismissed.

Appeal from the County Court for Dakota County: EDWARD H. MATNEY, Judge. Appeal dismissed.

George H. Moyer, of Moyer & Moyer, for appellant.

Jeanne Neumann Glasford and McKenna F. Carnell, of Hightower Reff Law, L.L.C., for appellee.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

CASSEL, J.

INTRODUCTION

In this probate case, a personal representative purports to appeal from a county court's order granting a petition and affidavit for allowance of claim but "not addressing attorneys' fees." A supplemental transcript confirms that the court ultimately reserved ruling on attorney fees. Because the order appealed from did not entirely conclude this discrete phase of the case and thus was not a final, appealable order, we dismiss the appeal for lack of jurisdiction.

BACKGROUND

The relevant factual background of this case, for purposes of this appeal and our disposition, is limited to procedural history.

Tracy L. Ahmad, formerly known as Tracy L. Mankhey and now known as Tracy L. Bodlak (claimant), filed a petition and affidavit for allowance of claim that alleged, in part: "[Claimant] asks that the court order the Estate of the Decedent to reimburse her attorneys' fees incurred in purs[u]ing this matter, to be presented via separate motion and affidavit upon

the resolution of the Claims." The requested relief included, among other things, "[Claimant's] attorneys' fees."

On July 7, 2025, the county court entered a written order that granted the petition but stated that the court was "not addressing attorneys' fees at this time." It further stated, "The Petition and Affidavit for Allowance of Claim references a possible motion for attorneys' fees. If Claimant wishes to file such a motion, Claimant shall do so within 14 days of the date of this Order." It was not clear from the original appellate transcript whether the claimant had filed such motion.

On July 18, 2025 (before the 14-day period expired), Noelia Mankhey (personal representative) filed a purported appeal from the court's order. We moved the case to our docket.[1]

We issued an order to show cause directing the parties to file a supplemental transcript showing whether the claimant timely filed such motion for attorney fees and, if so, whether the court disposed of that motion, or otherwise show cause why the appeal should not be dismissed for lack of jurisdiction.

A supplemental transcript has been filed, but neither party otherwise filed a response to the order to show cause. We will discuss the supplemental transcript in more detail later in the opinion. We ordered that the case be submitted without oral argument.[2]

ASSIGNMENTS OF ERROR

The personal representative assigns seven errors, all of which relate to the merits of the county court's granting the petition and affidavit for allowance of claim.

STANDARD OF REVIEW

[1] The question of appellate jurisdiction is a question of law.[3]

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[1] See Neb. Rev. Stat. § 24-1106(3) (Cum. Supp. 2024).

[2] See Neb. Ct. R. App. P. § 2–111(B)(1) (rev. 2022).

[3] *WRK v. Wiegert*, 320 Neb. 822, 30 N.W.3d 832 (2026).

ANALYSIS

[2] The parties' appellate briefs do not address the jurisdictional effect, if any, of the court's "not addressing attorneys' fees" in its order. This court must answer the threshold question. Before reaching the legal issues presented for review, it is the power and duty of an appellate court to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.[4]

[3,4] For an appellate court to acquire jurisdiction of an appeal, there must be a final judgment or final order entered by the tribunal from which the appeal is taken.[5] Generally, to be final, an order must dispose of the whole merits of the case. When no further action of the court is required to dispose of a pending cause, the order is final.[6]

[5,6] In the probate context, there is an additional jurisdictional wrinkle. A consideration regarding the finality of orders in probate cases is whether the order ended a discrete—that is, separate and distinct—phase of the proceedings.[7] An order ending a discrete phase of probate proceedings is final, but one that is merely preliminary to such an order is not.[8]

Applying the discrete phase rubric, we conclude that but for the reserved issue of attorney fees, the order granting the petition and affidavit for allowance of claim would have ended a discrete phase of the proceedings. Because the claimant's request for attorney fees was made in the petition, it fell within that discrete phase.

[7-9] Our jurisprudence on the issue of an unresolved request for attorney fees is familiar. We have said that a party seeking statutorily authorized attorney fees, for services

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[4] *Pinpoint Communications v. Gage County*, 321 Neb. 764, 37 N.W.3d 178 (2026).

[5] *In re Estate of Scaletta*, 312 Neb. 953, 981 N.W.2d 568 (2022).

[6] *Id.*

[7] *In re Hessler Living Trust*, 313 Neb. 607, 985 N.W.2d 589 (2023).

[8] *Id.*

rendered in a trial court, must make a request for such fees prior to a judgment in the cause.[9] Attorney fees, where recoverable, are generally treated as an element of court costs.[10] An award of costs in a judgment is considered a part of the judgment. As such, a judgment does not become final and appealable until the trial court has ruled upon a pending statutory request for attorney fees.[11] We have declined to exercise jurisdiction when an appeal is filed before a scheduled hearing[12] or when the trial court has reserved ruling on attorney fees.[13]

Here, our jurisdiction hinges on two questions: (1) whether the claimant filed a motion for attorney fees within the 14-day period and, if so, (2) whether the court disposed of such motion. The supplemental transcript supplies the answers, albeit indirectly.

Conspicuously absent from the supplemental transcript is a motion for attorney fees filed within the 14-day period. The supplemental transcript includes four filings: an "Attorney Fee Affidavit" filed on July 11, 2025 (1 week before the filing of the notice of appeal and within the 14-day period); an "Objection to Motion for Attorney's Fees" filed on July 21 (3 days after the notice of appeal); an order entered on July 25; and a praecipe for the supplemental transcript.

But one can infer from the supplemental transcript that such motion was timely filed. The objection noted that the claimant simultaneously filed a "motion for attorney's fees and an attorney fee affidavit." The order confirmed that the court "received Claimant's Motion for Attorney Fees as well as

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[9] *Murray v. Stine*, 291 Neb. 125, 864 N.W.2d 386 (2015).

[10] *Sulu v. Magana*, 293 Neb. 148, 879 N.W.2d 674 (2016).

[11] *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

[12] See, e.g., *Billingsley v. BFM Liquor Mgmt.*, 259 Neb. 992, 613 N.W.2d 478 (2000).

[13] See, e.g., *In re Guardianship & Conservatorship of Woltemath*, 268 Neb. 33, 680 N.W.2d 142 (2004).

Personal Representative's Objection to the Motion for Attorney Fees." The praecipe for transcript requested a "Motion for Attorney's Fees filed 07/11/2025"—the same date on which the attorney fees affidavit was filed. The supplemental transcript contains no explanation by the court clerk regarding the absence of this requested filing.

The ultimate question is whether the court disposed of such motion. We learn from the supplemental transcript that it did not.

After observing the court's receipt of such motion, the order noted the instant appeal and stated that the court "defer[red] action on the motion and objection, pending the appeal." By deferring action on such motion, the court reserved ruling on attorney fees.

[10] Under these circumstances, we conclude that the order appealed from did not wholly dispose of this discrete phase of the proceedings and that, consequently, the personal representative did not appeal from a final, appealable order. This court lacks jurisdiction of the appeal. When an appellate court is without jurisdiction to act, the appeal must be dismissed.[14] That applies here.

This situation could have been avoided. If the personal representative had sought and received, before filing the appeal, a ruling on the motion for attorney fees, the appeal could have been perfected to address both rulings. It necessarily follows that the order on allowance of claim remained interlocutory pending disposition on the attorney fees request.

CONCLUSION

Because we lack appellate jurisdiction, we dismiss the purported appeal.

APPEAL DISMISSED.

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[14] *Main St Properties v. City of Bellevue*, 318 Neb. 116, 13 N.W.3d 911 (2024).