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JOHN WOODEN AND CONNIE WOODEN, HUSBAND AND WIFE, APPELLANTS, V. COUNTY OF DOUGLAS, A POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, APPELLEE.

744 N.W.2d 262

Filed January 22, 2008. No. A-06-1163.

1. **Judgments: Jurisdiction: Appeal and Error.** When a jurisdictional question does not involve a factual dispute, determination of the issue is a matter of law, which requires an appellate court to reach a conclusion independent from that of the trial court.
2. **Jurisdiction: Appeal and Error.** When a lower court lacks the authority to exercise its subject matter jurisdiction to adjudicate the merits of a claim, issue, or question, an appellate court also lacks the power to determine the merits of the claim, issue, or question presented to the lower court.
3. **Eminent Domain: Appeal and Error.** The manner of perfecting an appeal to the district court from an award by appraisers in a condemnation proceeding is fixed by Neb. Rev. Stat. § 76-715.01 (Reissue 2003).
4. **Eminent Domain: Notice: Affidavits: Time: Appeal and Error.** According to Neb. Rev. Stat. § 76-715.01 (Reissue 2003), proof of service of the notice of appeal shall be made by an affidavit of the appellant filed with the court within 5 days after the filing of the notice of appeal, stating that such notice of appeal was duly mailed or that after diligent search the addresses of such persons or their attorneys of record are unknown.
5. **Eminent Domain: Notice: Affidavits: Appeal and Error.** Pursuant to Neb. Rev. Stat. § 76-715.01 (Reissue 2003), timely filing of the affidavit of mailing notice is required.
6. **Eminent Domain: Jurisdiction: Appeal and Error.** The right to appeal is statutory, and the requirements of Neb. Rev. Stat. § 76-715.01 (Reissue 2003) are mandatory and must be complied with before the appellate court acquires jurisdiction of the subject matter of the action.
7. **Jurisdiction: Appeal and Error.** It is fundamental that an appellate court cannot pass on the merits of a case falling within its appellate jurisdiction unless its jurisdiction is invoked in the manner prescribed by statute.

Appeal from the District Court for Douglas County: JOHN D. HARTIGAN, JR., Judge. Affirmed.

William E. Pfeiffer, of Raynor, Rensch & Pfeiffer, for appellants.

Donald W. Kleine, Douglas County Attorney, and Bernard J. Monbouquette for appellee.

IRWIN, SIEVERS, and MOORE, Judges.

SIEVERS, Judge.

John Wooden and Connie Wooden appeal from the decision of the district court for Douglas County dismissing their appeal of condemnation proceedings commenced by the County of Douglas (County) for lack of subject matter jurisdiction. We affirm. Pursuant to our authority under Neb. Ct. R. of Prac. 11B(1) (rev. 2006), we have ordered this case submitted for decision without oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

The factual background is unnecessary to the disposition of this case. Therefore, we limit our discussion to the procedural aspects of this case. The report and award of the appraisers was filed with the county court for Douglas County on August 17, 2005. On September 9, the Woodens filed with the county court their notice of intent to appeal the report and award of the appraisers to the district court. The Woodens filed their "Affidavit of Mailing of Notice" with the district court for Douglas County on September 21.

On July 20, 2006, the County filed a motion to dismiss the Woodens' "'pending legal action,'" alleging in part that the district court lacked subject matter jurisdiction. In an order filed September 19, the district court found that it did in fact lack personal and/or subject matter jurisdiction, and granted the County's motion to dismiss. The Woodens now appeal from the district court's order.

ASSIGNMENT OF ERROR

The Woodens allege, restated, that the district court erred in granting the County's motion to dismiss the Woodens' condemnation appeal to the district court.

STANDARD OF REVIEW

[1,2] When a jurisdictional question does not involve a factual dispute, determination of the issue is a matter of law, which requires an appellate court to reach a conclusion independent from that of the trial court. *White v. White*, 271 Neb. 43, 709 N.W.2d 325 (2006). When a lower court lacks the authority to exercise its subject matter jurisdiction to adjudicate the merits of a claim, issue, or question, an appellate court also lacks the

power to determine the merits of the claim, issue, or question presented to the lower court. *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006).

ANALYSIS

[3,4] The manner of perfecting an appeal to the district court from an award by appraisers in a condemnation proceeding is fixed by Neb. Rev. Stat. § 76-715.01 (Reissue 2003). *Radil v. State*, 182 Neb. 291, 154 N.W.2d 466 (1967). Section 76-715.01 provides:

> The party appealing from the award for assessment of damages by the appraisers in any eminent domain action shall, within thirty days of the filing of the award, file a notice of appeal with the court, specifying the parties taking the appeal and the award thereof appealed from, and shall serve a copy of the same upon all parties bound by the award or upon their attorneys of record. Service may be made by mail, and proof of such service shall be made by an affidavit of the appellant filed with the court within five days after the filing of the notice stating that such notice of appeal was duly mailed or that after diligent search the addresses of such persons or their attorneys of record are unknown.

The report and award of the appraisers was filed on August 17, 2005. The Woodens filed their notice of intent to appeal the report and award of the appraisers on September 9. Thus, the Woodens did file their notice of intent to appeal within 30 days of the filing of the award by the appraisers. However, the Woodens did not file their affidavit of mailing notice until September 21—12 days after the filing of the notice of appeal. Thus, the Woodens did not file their affidavit within 5 days after the filing of the notice of appeal as required by § 76-715.01.

[5-7] While compliance with the requirement of timely filing the affidavit of mailing notice pursuant to § 76-715.01 has not been the subject of prior appellate litigation in Nebraska, we find that such timely compliance is required. "The right to appeal is statutory and the requirements of the statute are mandatory and must be complied with before the appellate court acquires jurisdiction of the subject matter of the action." *Radil v. State*,

182 Neb. at 293, 154 N.W.2d at 468. And, "[i]t is fundamental that an appellate court cannot pass on the merits of a case falling within its appellate jurisdiction unless its jurisdiction is invoked in the manner prescribed by statute." *Id*.

CONCLUSION

Because the Woodens failed to comply with the 5-day requirement of § 76-715.01 for timely filing the affidavit of mailing notice, neither the district court nor this court has subject matter jurisdiction over the action. The order of the district court dismissing the Woodens' appeal of the condemnation proceedings commenced by the County is hereby affirmed.

We do not address the Woodens' additional assignments and arguments, because they are not necessary to our analysis. See *Jackson v. Brotherhood's Relief & Comp. Fund*, 273 Neb. 1013, 734 N.W.2d 739 (2007) (appellate court is not obligated to engage in analysis which is not needed to adjudicate case and controversy before it).

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V.
CHRISTOPHER PETERSEN, APPELLANT.
744 N.W.2d 266

Filed January 22, 2008. No. A-07-179.

1. **Convictions: Evidence: Appeal and Error.** Regardless of whether the evidence is direct, circumstantial, or a combination thereof, and regardless of whether the issue is labeled as a failure to direct a verdict, insufficiency of the evidence, or failure to prove a prima facie case, the standard is the same: In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. Such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence, viewed and construed most favorably to the State, is sufficient to support the conviction.
2. ____: ____: ____. When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
3. **Statutes.** The meaning of a statute is a question of law.