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decree, given the lack of a supersedeas bond's being set and posted. Moreover, we note that there was no order entered pursuant to Neb. Rev. Stat. § 42-351(2) (Reissue 2008) in aid of appeal that would prevent execution generally, or the entry of a QDRO in particular, during the appeal. Thus, we conclude that the district court did in fact have jurisdiction to issue the QDRO of November 20, 2009. However, that being said, once our mandate is issued, the district court can do only what we have told it to do in our opinion and mandate. See *Smith-Helstrom v. Yonker*, 253 Neb. 189, 569 N.W.2d 243 (1997) (court to which mandate is directed has no power to do anything but to obey mandate; order of appellate court is conclusive on parties, and no judgment or order different from, or in addition to, that directed by appellate court can be entered by trial court). See, also, *Xerox Corp. v. Karnes*, 221 Neb. 691, 380 N.W.2d 277 (1986).

While the district court did have jurisdiction to issue the QDRO during the pendency of the appeal, the district court must now do what we have directed—divide Susan's 401K account, 67 percent to Susan and 33 percent to Gary—as detailed in our opinion of May 11, 2010. Accordingly, as a necessary adjunct of obeying our mandate, the district court must necessarily vacate its previous QDRO in order to enter a QDRO that complies with our mandate. Therefore, we hereby overrule the motion that this court vacate the QDRO entered by the district court on November 20, 2009, during the pendency of the appeal.

MOTION TO VACATE OVERRULED.

DAVID DOBROVOLNY, APPELLANT, V.
FORD MOTOR COMPANY, APPELLEE.
785 N.W.2d 858

Filed July 13, 2010. No. A-09-1118.

1. **Motions to Dismiss: Pleadings: Appeal and Error.** An appellate court reviews a district court's grant of a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party.

2. **Pleadings: Proof.** Complaints should be liberally construed in the plaintiff's favor and should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle the plaintiff to relief.
3. **Products Liability: Strict Liability: Proof.** In order to recover in strict liability for the cost of repairs to the product, there must be proof that a sudden, violent event occurred which aggravated the inherent defect or caused it to manifest itself.
4. **Strict Liability.** In buyer's action to recover for damage to a vehicle, buyer's allegations that destruction of the vehicle was a sudden, violent event was sufficient to state a claim for strict liability.

Appeal from the District Court for Brown County: MARK D. KOZISEK, Judge. Reversed and remanded for further proceedings.

Thomas J. Walsh, Jr., of Walsh Law, P.C., for appellant.

John A. Svoboda, of Gross & Welch, P.C., L.L.O., for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

CARLSON, Judge.

INTRODUCTION

David Dobrovolny brought an action against Ford Motor Company (Ford) in the trial court after his vehicle caught fire. The district court dismissed Dobrovolny's action. Dobrovolny appeals. For the reasons set forth below, we reverse the trial court's order dismissing Dobrovolny's action and remand the cause for further proceedings.

BACKGROUND

Dobrovolny purchased his vehicle in February 2005. In an amended complaint filed July 21, 2009, Dobrovolny brought claims under breach of warranty, strict liability, and negligence. Dobrovolny alleged that in April 2006, his vehicle, while parked with the engine shut off, caught fire and was destroyed. Destruction of the vehicle was the only damage caused by the fire. Dobrovolny alleged that Ford was negligent in the design of the vehicle by failing to properly insulate the electrical system and other potential ignition sources from the combustible materials in the vehicle's engine.

Ford filed a motion to dismiss stating that Dobrovolny's complaint failed to state a cause of action upon which relief could be granted. A hearing on Ford's motion to dismiss was held on July 14, 2009. In an order filed October 7, the district court dismissed Dobrovolny's complaint, stating that actions for strict liability and negligence cannot be maintained when damages are confined to the defective property. The trial court also found that Dobrovolny's warranty claim was barred by the statute of limitations.

Dobrovolny appeals.

ASSIGNMENT OF ERROR

Dobrovolny's sole assignment of error is that the trial court erred in dismissing his cause of action against Ford under the theory of strict liability.

ANALYSIS

Dobrovolny argues that the trial court erred in dismissing his cause of action against Ford under the theory of strict liability for failure to state a claim upon which relief can be granted.

Pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(6), Ford filed a motion to dismiss Dobrovolny's claims.

[1] An appellate court reviews a district court's grant of a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party. *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

[2] Complaints should be liberally construed in the plaintiff's favor and should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle the plaintiff to relief. *Id.*

A hearing on Ford's motion to dismiss was held on July 14, 2009. In a subsequent order, the district court dismissed Dobrovolny's complaint, reasoning that under *National Crane Corp. v. Ohio Steel Tube Co.*, 213 Neb. 782, 332 N.W.2d 39 (1983), actions for strict liability cannot be maintained when damages are confined to the defective property.

On appeal, Dobrovolny attempts to distinguish his case from *National Crane Corp*. He asserts that the sole cause of the fire which destroyed the vehicle was the result of a "sudden, violent event," brief for appellant at 7, which takes his claim outside the general rule announced in *National Crane Corp., supra.* See *Hilt Truck Line v. Pullman, Inc*., 222 Neb. 65, 382 N.W.2d 310 (1986).

Ford argues that the only sudden, violent event alleged by Dobrovolny in his petition was the defect in the vehicle which caused the destruction of it by fire. Ford contends that since Dobrovolny alleged only that the defect caused the fire and made no allegation of any "event which aggravated the alleged defect or any outside event which caused the alleged defect to manifest itself," brief for appellee at 4, Dobrovolny has not shown a sudden, violent event, and that *National Crane Corp.* and *Hilt Truck Line* bar Dobrovolny's recovery under strict liability.

The Eighth Circuit Court of Appeals addressed a very similar argument in *Arabian Agri. Servs. Co. v. Chief Indus., Inc.*, 309 F.3d 479 (8th Cir. 2002). In that case, Arabian Agriculture Services Co. (AASC) brought a strict liability action against Chief Industries, Inc. (Chief), after some grain silos purchased by AASC from Chief collapsed. AASC alleged that the collapse was caused by inadequate and defective design. AASC's case against Chief was heard by a jury, and AASC was awarded damages.

On appeal, Chief argued that the trial court erred in denying its motion for judgment as a matter of law on the issue of strict liability. Noting that it reviewed Chief's claims de novo, the Eighth Circuit addressed Chief's argument that AASC failed to show that a sudden, violent event caused the silos to fall, citing *Hilt Truck Line, supra*.

In *Hilt Truck Line*, the plaintiffs brought an action against Pullman, Inc., alleging that the trailers they bought from Pullman had an inherent defective design. The plaintiffs sought to recover their repair costs under claims of strict liability and negligence. At trial, the plaintiffs produced evidence showing that their trailers were damaged by the corrosion of materials used in the trailers' construction. The

district court directed a verdict in Pullman's favor, and the plaintiffs appealed.

[3] The Nebraska Supreme Court affirmed the trial court's ruling, stating that the plaintiffs' strict liability claims failed as a matter of law. The Supreme Court further stated, "In Nebraska, in order to recover in strict liability for the cost of repairs to the product, there must be proof that a sudden, violent event occurred which aggravated the inherent defect or caused it to manifest itself." *Hilt Truck Line*, 222 Neb. at 67, 382 N.W.2d at 312.

In *Arabian Agri. Servs. Co., supra*, Chief contended that under Nebraska law, a sudden, violent event must cause the failure; the failure cannot itself be the sudden, violent event. The Eighth Circuit stated:

> We are not persuaded by Chief's interpretation. According to the Nebraska Supreme Court, it has, in essence, followed the "majority of courts that have considered the applicability of strict liability to recover damages to the defective product itself [and] have permitted use of the doctrine, at least where the damage occurred as a result of a sudden, violent event and not as a result of an inherent defect that reduced the property's value without inflicting physical harm to the product." [*National Crane Corp.*] *v. Ohio Steel Tube Co.*, 213 Neb. 782, [789,] 332 N.W.2d 39, 43 (1983) (citations omitted). Here, [AASC's] damages were not the result of a defect that merely reduced the value of the silos. Instead, the collapse of the silos could certainly be characterized as a "sudden, violent event" that inflicted "physical harm to the product." . . . We therefore conclude that because [AASC] presented sufficient evidence demonstrating that its damages occurred as the result of a sudden, violent event, the district court did not err in submitting the strict liability claim to the jury.

Arabian Agri. Servs. Co., 309 F.3d at 484 (citations omitted).

[4] Similarly, in the instant case, Dobrovolny does not allege that the fire merely reduced the value of his vehicle. Rather, he alleges that the fire that destroyed his vehicle was a sudden, violent event that inflicted physical harm to the

vehicle. We must liberally construe Dobrovolny's complaint in his favor and construe Dobrovolny's factual allegations in the light most favorable to him. After reviewing the record de novo, we conclude that Dobrovolny has stated a claim for strict liability against Ford and that the trial court erred in dismissing Dobrovolny's complaint. Therefore, we reverse the trial court's order dismissing Dobrovolny's complaint and remand Dobrovolny's action for further proceedings.

CONCLUSION

For the reasons set forth above, we conclude that the trial court erred in dismissing Dobrovolny's complaint, and therefore, we reverse, and remand for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

DOUGLAS K. GENGENBACH, APPELLANT, V. HAWKINS MFG., INC., AND TIMOTHY HOCK, APPELLEES.

785 N.W.2d 853

Filed July 13, 2010. No. A-09-1226.

1. **Injunction: Equity: Appeal and Error.** An action for injunction sounds in equity. In an appeal of an equity action, an appellate court tries the factual questions de novo on the record and reaches a conclusion independent of the findings of the trial court.
2. **Records: Appeal and Error.** It is incumbent upon the appellant to present a record supporting the errors assigned; absent such a record, an appellate court will affirm the lower court's decision regarding those errors.
3. **Summary Judgment: Records: Appeal and Error.** The only issue which will be considered on appeal of a summary judgment, absent the bill of exceptions, is the sufficiency of the pleadings to support the judgment.
4. **Deceptive Trade Practices: Injunction.** Under Nebraska's Uniform Deceptive Trade Practices Act, injunctive relief granted for the copying of an article is limited to the prevention of confusion or misunderstanding as to source.
5. **Appeal and Error.** To be considered by an appellate court, an error must be both specifically assigned and specifically argued in the brief of the party asserting the error.

Appeal from the District Court for Phelps County: TERRI S. HARDER, Judge. Affirmed.