in contempt.[37] Yet even if the party appeals the order, the party cannot revoke the joint return. The party's only avenue for relief from federal tax liability is the tax code's innocent spouse statute. As discussed, that option is a precarious road at best. Thus, the tax code's time limitations also weigh against permitting trial courts to order the parties to file a joint return.

[8] For all of these reasons, we hold that a trial court does not have discretion to compel parties seeking marital dissolution to file a joint income tax return.

CONCLUSION

We conclude that the Court of Appeals erred in holding that a district court has discretion to compel the parties to a marital dissolution proceeding to file a joint income tax return. Because a trial court can equitably adjust its division of the marital estate to account for a spouse's unreasonable refusal to file a joint return, resort to a coercive remedy that carries potential liability is unnecessary. We therefore reverse that portion of the Court of Appeals' decision affirming the district court's order requiring the parties to file a joint tax return. We remand the cause to the Court of Appeals with directions to remand the cause to the district court with directions to vacate that portion of its order that we have reversed.

REVERSED AND REMANDED WITH DIRECTIONS.

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[37] See *Ahmad, supra* note 9.

CARLOS H., APPELLANT, V.
LINDSAY M., APPELLEE.
815 N.W.2d 168

Filed June 15, 2012. No. S-11-548.

1. **Adoption: Appeal and Error.** Appeals in adoption proceedings are reviewed by an appellate court for error appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law,

is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.

3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the 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. **Judgments: Jurisdiction: Appeal and Error.** Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court.
5. **Courts: Parties: Justiciable Issues: Words and Phrases.** The capacity to sue is the right to come into court. A party has capacity when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy.
6. **Minors: Mental Competency: Guardians and Conservators: Guardians Ad Litem.** Minors and incompetents are considered to be under a legal disability and are therefore unable to sue or be sued in their individual capacities; such persons are required to appear in court through a legal guardian, a next friend, or a guardian ad litem.
7. **Rules of the Supreme Court: Jurisdiction: Parties.** Under the Nebraska Court Rules of Pleading in Civil Cases, the capacity of a party to sue or be sued need not be averred except to show the jurisdiction of the court.
8. **Actions: Minors: Guardians and Conservators.** Nebraska law provides that the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted.
9. **Jurisdiction: Appeal and Error.** If the court from which an appeal was taken lacked jurisdiction, then the appellate court acquires no jurisdiction.
10. ____: ____. When an appellate court is without jurisdiction to act, the appeal must be dismissed.

Appeal from the County Court for Sarpy County: ROBERT C. WESTER, Judge. Appeal dismissed.

Hugh I. Abrahamson, of Abrahamson Law Office, for appellant.

Kelly N. Tollefsen, of DeMars, Gordon, Olson, Zalewski, Wynner & Tollefsen, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ., and PIRTLE, Judge.

HEAVICAN, C.J.

NATURE OF CASE

On August 11, 2010, Lindsay M. gave birth to Alexander M., whose biological father is Carlos H. Lindsay and Carlos,

who were both 15 years of age at the time of Alexander's birth, were never married. Lindsay planned to place the child for adoption, but Carlos objected and sought custody. The county court found that Carlos did not timely file his objection to the adoption and that Carlos was not a proper party to bring an action, because he is a minor.

We find that because Carlos is a minor, he lacked capacity to bring this action, and that therefore, the county court lacked jurisdiction. It follows that this court lacks jurisdiction, and the appeal must be dismissed.

FACTS

Notice Prior to Alexander's Birth.

Lindsay alleges that prior to Alexander's birth, she sent Carlos the notice required by Neb. Rev. Stat. § 43-104.08 (Reissue 2008). Section 43-104.08 provides that when a biological mother to a child born out of wedlock contacts an adoption agency to relinquish her rights to a child, the adoption agency shall attempt to establish the identity of the father and attempt to inform the father of his right to execute a relinquishment and consent to adoption or a denial of paternity and waiver of rights. The record reflects that Carlos received the notice on or about June 2, 2010.

Notice of Objection to Adoption.

Carlos alleges that he filed a "Notice of Objection to Adoption and Intent to Obtain Custody" (Notice), which acknowledged that he is the baby's father. Although Carlos does not contest any facts, we note that the record includes a copy of the Notice indicating that it was signed on August 12, 2010, and witnessed by Christian H. The record before the court does not identify Christian. At oral argument, he was identified as Carlos' brother.

The Notice shows that it was filed and received by the Department of Health and Human Services (DHHS) on August 16, 2010. Christian stated in an affidavit that on August 12, he personally tried to deliver the Notice to the DHHS office in Papillion, Nebraska, in compliance with the instructions on the DHHS Web site. The Web site states that the Notice may

be filed at any DHHS office and that "[t]he date of the filing is the date of actual receipt or the postmark when the notice is mailed." Christian stated that two workers in the office refused to accept the Notice. Christian then sent the form via certified mail to the DHHS office in Lincoln, Nebraska. After several telephone conversations with counsel, Christian returned to the Papillion DHHS office on August 12 and delivered the Notice, which he asserted was accepted on that date.

Petition to Adjudicate.

On September 17, 2010, Carlos filed a petition for adjudication of the Notice. The petition alleged that Alexander was born within 5 days of the filing of the Notice. Carlos asked the court to adjudicate the Notice and determine whether Carlos' consent to the proposed adoption was required.

Lindsay filed an answer and counterclaim, in which she alleged that Carlos had reasonable notice of the pregnancy and that he filed the petition to adjudicate on September 23, 2010, which was more than 30 days after the Notice was filed with DHHS on August 16. She alleged that Alexander was currently residing in "cradle care" with the prospective adoptive family, who had cared for him since he left the hospital on August 13. Lindsay stated that she intended to sign a valid relinquishment and consent within 60 days of her receipt of the Notice, pending the determination of Carlos' rights under Neb. Rev. Stat. § 43-104.05(2) (Reissue 2008). She asked the court to find that Carlos failed to timely file a petition for adjudication of the Notice and to determine whether his consent to the adoption is necessary.

Hearing.

At a hearing on October 12, 2010, Carlos' counsel stated that there was no question that the petition was filed more than 30 days after the filing of the Notice. However, he argued that § 43-104.05 was not applicable, because even though Carlos did not file the Notice within 30 days, Lindsay did not file her consent to adoption within 60 days of the filing of the Notice. We note that the record includes a copy of the consent to relinquishment signed by Lindsay on October 14, which

was within 60 days of the filing of the Notice with DHHS on August 16.

County Court Order.

The county court entered an order on October 21, 2010, finding that the petition for adjudication of the Notice was not filed within 30 days of the filing of the Notice. The court also found that because Carlos was 15 years old, he was not a proper party, because the action must be maintained by a guardian or next friend pursuant to Neb. Rev. Stat. § 25-307 (Reissue 2008). Accordingly, a trial date was not set.

First Appeal.

Carlos appealed, and in case No. A-10-1141, the Nebraska Court of Appeals dismissed the appeal in a decision without opinion on March 29, 2011, finding that the county court's order was not a final order.

Summary Judgment Motion and Order.

In an apparent attempt to obtain a final, appealable order, Carlos filed a motion for summary judgment on March 29, 2011. On June 1, the county court entered an order reiterating its ruling of October 21, 2010, finding that Carlos is a minor and incapable of bringing this action in his own name and that the action was filed more than 30 days after the Notice was filed. The motion for summary judgment was denied, and the action dismissed. Carlos again appeals. We moved the case to our docket on our own motion pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state.[1]

ASSIGNMENTS OF ERROR

Carlos argues, restated and summarized, that the trial court abused its discretion (1) in failing to find that § 43-104.05 is against public policy (and a violation of equal protection) because it treats the mother and father differently in adoption cases, giving the father 30 days to object, while the mother has

[1] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008). See, also, *Riggs v. Nickel*, 281 Neb. 249, 796 N.W.2d 181 (2011).

60 days to sign her relinquishment; (2) in refusing to determine that Lindsay filed her relinquishment out of time; (3) by overruling Carlos' motion for summary judgment; (4) in making the minority of the father an issue while not considering the minority of the mother, in violation of equal protection; (5) in failing to find that the statute is tolled until Carlos reaches majority; and (6) in determining that because Carlos is a minor, his parental rights are diminished.

STANDARD OF REVIEW

[1,2] Appeals in adoption proceedings are reviewed by an appellate court for error appearing on the record.[2] When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.[3]

ANALYSIS

[3,4] Before reaching the legal issues presented for review, it is the 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] Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court.[5]

Carlos was 15 years old at the time this action was filed. The county court determined that because Carlos was a minor, he was incapable of bringing the action in his own name. Lindsay was also 15 years old. We must therefore decide whether either party had the capacity to sue or be sued.

A Nebraska statute addresses the incapacity of a minor:

> Except as provided by the Nebraska Probate Code, *the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend.* Such

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[2] *In re Adoption of David C.*, 280 Neb. 719, 790 N.W.2d 205 (2010).

[3] *In re Estate of Craven*, 281 Neb. 122, 794 N.W.2d 406 (2011).

[4] *In re Estate of Potthoff*, 273 Neb. 828, 733 N.W.2d 860 (2007).

[5] See *id.*

> actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.[6]

This court has held:

> In this state an action of an infant must be brought by his guardian or next friend and when such an action is brought by a guardian of the infant, the court has power, for cause, to substitute the next friend in place of the guardian. . . . The district court has authority to and it should appoint a guardian ad litem or permit their next friend to appear for unrepresented, interested infants.[7]

In *Macku v. Drackett Products Co.*,[8] we noted:

> [A]t common law an infant could sue only by a guardian, because an infant was not sui juris—a person with legal capacity to act for oneself. . . . Absent prosecution by a guardian or next friend, an infant's action was subject to a demurrer as a result of the plaintiff's lack of capacity to sue.

We then noted that § 25-307 recognizes the common law regarding an infant's lack of legal capacity to sue.[9]

[5] The capacity to sue is the right to come into court.[10] "'"[A] party has *capacity* when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy."'"[11]

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[6] § 25-307 (emphasis supplied).

[7] *Workman v. Workman*, 167 Neb. 857, 869, 95 N.W.2d 186, 194 (1959).

[8] *Macku v. Drackett Products Co.*, 216 Neb. 176, 180, 343 N.W.2d 58, 61 (1984) (citations omitted).

[9] *Id.*

[10] 67A C.J.S. *Parties* § 11 (2002).

[11] *Intracare Hosp. North v. Campbell*, 222 S.W.3d 790, 795 (Tex. App. 2007).

[6] "[M]inors and incompetents are considered to be under a legal disability and are therefore unable to sue or be sued in their individual capacities; such persons are required to appear in court through a legal guardian, a 'next friend,' or a guardian ad litem."[12]

Although a minor or incompetent may have suffered an injury and thus have a justiciable interest in the controversy, these parties lack the legal authority to sue; the law therefore grants another party the capacity to sue on their behalf.[13]

[7] We must consider how the issue of capacity is raised before a court and whether a party's capacity raises a jurisdictional question. We note again that it is our duty to determine whether this court has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.[14] Under the Nebraska Court Rules of Pleading in Civil Cases, the capacity of a party to sue or be sued need not be averred except to show the jurisdiction of the court. The rule states:

> When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued . . . the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.[15]

The corresponding federal rule provides:

> (a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.
>
> (1) *In General*. Except when required to show that the court has jurisdiction, a pleading need not allege:
>
> (A) a party's capacity to sue or be sued;
>
> (B) a party's authority to sue or be sued in a representative capacity; or
>
> (C) the legal existence of an organized association of persons that is made a party.
>
> (2) *Raising Those Issues*. To raise any of those issues, a party must do so by a specific denial, which must

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[12] *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005).

[13] *Id*.

[14] *In re Estate of Potthoff, supra* note 4.

[15] Neb. Ct. R. Pldg. § 6-1109(a) (rev. 2008).

> state any supporting facts that are peculiarly within the party's knowledge.[16]

[8] Thus, under the pleading rules, a party wishing to raise the issue of whether another party has the necessary capacity must specifically deny that the opposing party has capacity. However, in this case, Lindsay was also 15 years old at the time the action was brought. Nebraska law also provides that "the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted."[17] Therefore, as the named defendant, Lindsay also should have been represented by a guardian, because she was a minor.[18] But because she lacked capacity to defend herself under § 25-309, she cannot be found to have waived any claim that Carlos lacked capacity by failing to raise it in her answer.

We note that several states have specific statutes governing whether the consent requirements for adoption are different if the relinquishing parent is a minor. In Colorado, South Carolina, and Wyoming, statutes provide that the validity of a relinquishment for adoption is not affected by the minority of the relinquishing parent or parents.[19] And Oklahoma state law provides specific requirements for consent to adoption if the relinquishing parent is under 16 years of age.[20]

Nebraska's adoption statutes do not address the age of the parties except to provide that if the mother is under the age of 19, the affidavit of identification, which is required to be attached as an exhibit to any petition to finalize the adoption, "may be executed by the agency or attorney representing the biological mother."[21] The statutes also provide that a guardian ad litem "may" be appointed to represent the interests of

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[16] Fed. R. Civ. P. 9(a).

[17] Neb. Rev. Stat. § 25-309 (Reissue 2008).

[18] See *Peterson v. Skiles*, 173 Neb. 470, 113 N.W.2d 628 (1962).

[19] Colo. Rev. Stat. Ann. § 19-5-104(9) (West Cum. Supp. 2011); S.C. Code Ann. § 63-9-310(E) (2010); Wyo. Stat. Ann. § 1-22-109(d) (2011).

[20] Okla. Stat. Ann. tit. 10, § 7503-2.1B(2) (West 2007).

[21] Neb. Rev. Stat. § 43-104.09 (Reissue 2008).

the biological father if the adoption petition does not establish compliance with notice requirements.[22] The statutory scheme for adoptions does not require that any of the minor parties be represented by guardians, but § 25-307 imposes the requirement that minors must be represented by guardians or next friends.

To the extent that *In re Adoption of Baby Girl H.*[23] implicitly holds that an unemancipated minor may file a petition such as the one in this case, it is disapproved. In that case, we determined that the putative father was not deprived of any benefit intended by the notice requirements of the adoption statutes and that the statutes did not require that notice be served on the parents of a minor. We did not address whether the father had the capacity to file the action, since he was a minor.

[9,10] Under § 25-307, Carlos lacked the capacity to bring this action, because he was a minor. Likewise, under § 25-309, Lindsay lacked the capacity to defend herself. Both parties lacked capacity to act in their own names without a guardian or next friend. The county court determined that Carlos was not a proper party, but it exercised its jurisdiction and also determined that the petition was not timely filed. We find that the court had no jurisdiction to determine the merits of Carlos' claim. We have often held that if the court from which an appeal was taken lacked jurisdiction, then the appellate court acquires no jurisdiction.[24] And when an appellate court is without jurisdiction to act, the appeal must be dismissed.[25]

CONCLUSION

The county court lacked jurisdiction over the action which was brought solely in the name of a minor. Therefore, this court also lacks jurisdiction. The appeal is dismissed.

APPEAL DISMISSED.

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[22] Neb. Rev. Stat. § 43-104.18 (Reissue 2008).

[23] *In re Adoption of Baby Girl H.*, 262 Neb. 775, 635 N.W.2d 256 (2001).

[24] *Big John's Billiards v. State, ante* p. 496, 811 N.W.2d 205 (2012).

[25] *Wright v. Omaha Pub. Sch. Dist.*, 280 Neb. 941, 791 N.W.2d 760 (2010).