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11/25/2026 01:12 AM CST

updated assessments of Daniel and Ethan and devise rehabilitative goals to facilitate a future reunification between them, any such action must bear in mind Ethan's best interests.

CONCLUSION

We conclude that the juvenile court erred in adopting a case plan that provided an alternative permanency objective of reunification with Daniel where DHHS did not provide any rehabilitative goals or tasks for Daniel. Accordingly, we reverse the order and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

ROBERT SCHNEIDER, APPELLEE, V. ALBERT LAMBERT, DOING BUSINESS AS LAMBERT INVESTMENTS, L.L.C., APPELLANT.

809 N.W.2d 515

Filed October 18, 2011. No. A-10-883.

1. **Justiciable Issues.** Justiciability issues that do not involve a factual dispute present a question of law.
2. **Appeal and Error.** An appellate court resolves questions of law independently of the determination reached by the court below.
3. **Justiciable Issues.** A justiciable issue requires a present, substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement.
4. **Moot Question: Words and Phrases.** A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.
5. **Courts: Jurisdiction.** Although not a constitutional prerequisite for jurisdiction, an actual case or controversy is necessary for the exercise of judicial power.
6. **Courts: Judgments.** In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory.
7. **Moot Question.** Mootness refers to events occurring after the filing of a suit which eradicate the requisite personal interest in the resolution of the dispute that existed at the beginning of the litigation.

8. ____. Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.
9. **Collateral Estoppel.** Issues that were actually litigated and decided, but were not necessary to the final outcome of the case, are not subject to collateral estoppel in a future case.
10. **Collateral Estoppel: Res Judicata: Proof.** For application of the doctrines of collateral estoppel or res judicata, the party relying on either of those principles in a present proceeding has the burden to show that a particular issue was involved and necessarily determined in a prior proceeding.

Appeal from the District Court for Lancaster County: ROBERT R. OTTE, Judge. Appeal dismissed.

Brian S. Kruse and Tara L. Tesmer, of Rembolt Ludtke, L.L.P., for appellant.

Bradley A. Sipp for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

After a bench trial, the district court entered judgment determining that a promissory note was Albert Lambert's personal obligation but dismissing the case because the note's holder failed to meet his burden of proof to show that there had not been an effective cure of the original notice of default. The sole issue raised on appeal is whether Lambert signed the promissory note in his personal capacity or merely as the representative of a limited liability company. Because we conclude that the court's determination regarding Lambert's liability was mere surplusage and that the case is moot, we dismiss the appeal.

BACKGROUND

Robert Schneider made a loan evidenced by a promissory note. In the body of the note, the maker was stated as "**Lambert Investments**, Promisor," and at the bottom of the note and below the signature line appeared the typewritten words "Lambert Investments, Albert Lambert, Promisor."

Lambert's signature, without any other notation, appeared above the signature line.

Schneider subsequently filed a complaint against Lambert, doing business as Lambert Investments, L.L.C., alleging that Lambert had failed to make payments on the note despite Schneider's written notice of Lambert's default on the note and Lambert's failure to cure the default. Schneider prayed for judgment against Lambert of $60,000 with interest in accordance with the note. Lambert's amended answer denied the allegations of the complaint regarding the promissory note and specifically alleged that the note was between Schneider and Lambert Investments.

Following a bench trial, the district court entered a written decision making extensive findings and dismissing Schneider's complaint. In this decision, the court found that Schneider had failed to prove the existence of an uncured default on the note. As part of the same decision, the court also determined, based on extensive findings of fact and conclusions of law, that Lambert was personally liable on the note.

Lambert timely appeals.

ASSIGNMENT OF ERROR

On appeal, Lambert assigns only that the district court erred in finding as a matter of law that Lambert was personally liable for the obligation under the note. Lambert makes no assignment of error regarding the court's finding concerning the failure of proof of an uncured default, and Schneider does not cross-appeal this finding.

STANDARD OF REVIEW

[1,2] Justiciability issues that do not involve a factual dispute present a question of law. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010). An appellate court resolves questions of law independently of the determination reached by the court below. *Id.*

ANALYSIS

The district court's ultimate judgment presents a question of justiciability in that the district court's decision turned on whether an uncured default had been proved and not on

Lambert's personal liability on the instrument. The district court first determined that Lambert was personally liable on the promissory note after determining that his signature did not unambiguously show that it was made in a representative capacity. The court then stated, "Despite the findings and conclusions above, the case ultimately turns on one issue the court now addresses—whether the default was cured." Ultimately, the court dismissed the case after finding that Schneider failed to meet his burden of proof to show that there had not been an effective cure of the original notice of default. Neither party takes issue with this aspect of the court's decision.

[3-6] The circumstances of the court's actual judgment and the issue asserted on appeal require us to consider the legal principles applicable to justiciability. A justiciable issue requires a present, substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement. *Wetovick v. County of Nance, supra*. Both standing and mootness are key functions in determining whether a justiciable controversy exists, or whether a litigant has a sufficient interest in a case to warrant declaratory relief. *Id.* A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009). Although not a constitutional prerequisite for jurisdiction, an actual case or controversy is necessary for the exercise of judicial power. *Id.* In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory. *Id.*

[7,8] Because of these circumstances, we conclude that the instant appeal is moot. Schneider commenced suit on May 19, 2009, because Lambert purportedly had defaulted on the note and failed to cure the default after being sent a 30-day notice of default on April 6. Mootness refers to events occurring after the filing of a suit which eradicate the requisite personal interest in the resolution of the dispute that existed at

the beginning of the litigation. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010). After giving notice of default, Schneider received additional payments through November 2009. Schneider did not send another default letter or a 90-day acceleration notice as provided in the note. Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution. *Id.* In dismissing the case, the district court found that there was no uncured default—a finding that has not been appealed. Thus, we cannot provide the parties meaningful relief, particularly when the circumstance that led to the suit does not appear to exist.

In response to our preargument request for supplemental briefing on the question of mootness, Lambert filed a response arguing that the matter was not moot because of the potential that the district court's finding of Lambert's personal liability on the note would be given issue-preclusive effect in future litigation. Although Schneider did not file a supplemental brief, at oral arguments, counsel for both Schneider and Lambert essentially conceded that the district court's finding on liability was not necessary to the court's ultimate decision.

[9,10] A brief examination of the doctrine of collateral estoppel supports counsels' concessions. "[I]ssues that were actually litigated and decided, but were not necessary to the final outcome of the case, are not subject to collateral estoppel in a future case." 50 C.J.S. *Judgments* § 1079 at 446 (2009). Under the doctrine of collateral estoppel, when an issue of ultimate fact has been determined by a final judgment, that issue cannot again be litigated between the same parties in a future lawsuit. *Zwygart v. State*, 273 Neb. 406, 730 N.W.2d 103 (2007). Four conditions must exist for the doctrine of collateral estoppel to apply: (1) The identical issue was decided in a prior action, (2) there was a judgment on the merits which was final, (3) the party against whom the rule is applied was a party or in privity with a party to the prior action, and (4) there was an opportunity to fully and fairly litigate the issue in the prior action. *Id.* This articulation of the elements of the

doctrine does not address the necessity of the determination of an issue. However, a slightly more recent Nebraska Supreme Court case refines the first condition by adding the concept of necessity. For application of the doctrines of collateral estoppel or res judicata, the party relying on either of those principles in a present proceeding has the burden to show that a particular issue was involved and necessarily determined in a prior proceeding. *Stevenson v. Wright*, 273 Neb. 789, 733 N.W.2d 559 (2007). The U.S. Supreme Court also recently stated that "[i]ssue preclusion bars successive litigation of 'an issue of fact or law' that 'is actually litigated and determined by a valid and final judgment, and . . . is essential to the judgment.'" *Bobby v. Bies*, 556 U.S. 825, 834, 129 S. Ct. 2145, 173 L. Ed. 2d 1173 (2009). "If a judgment does not depend on a given determination, relitigation of that determination is not precluded." *Id.*

We conclude, as counsel effectively conceded during oral arguments, that it was not necessary for the district court to make findings regarding Lambert's personal liability on the note, given its judgment dismissing the case upon the basis that any default was cured. The district court's finding with regard to Lambert's liability was mere surplusage and was not necessary in light of the court's ultimate conclusion that Schneider had not shown that the default had not been effectively cured.

CONCLUSION

Because the district court dismissed the complaint upon the basis that there was no uncured default, its analysis and determination regarding Lambert's personal liability was unnecessary to its judgment and amounted to an advisory opinion. We conclude that the case is moot, and we dismiss the appeal.

APPEAL DISMISSED.