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fees and costs it paid to adjust the liability coverage priorities between Farmers Mutual and Federated.

CONCLUSION

[3] Accordingly, as the district court found, the declaratory judgment action, *Beckman I*, was an adjustment of liability priorities between two insurers, Farmers Mutual and Federated, the former being found to have primary coverage and the latter only excess coverage. The express holding of *Dairyland Ins. Co. v. Kammerer, supra*, was that the dispute between Dairyland and Auto-Owners was "merely an adjustment of liability priorities and cannot be seen as 'an action upon' the policy issued by Auto-Owners to Popish." *Id.* at 113, 327 N.W.2d at 621. The same is true here as between Farmers Mutual and Federated. For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V. MARK A. HENSHAW, APPELLANT.

812 N.W.2d 913

Filed March 27, 2012. No. A-11-567.

1. **Judgments: Speedy Trial: Appeal and Error.** As a general rule, a trial court's determination as to whether charges should be dismissed on speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous.
2. **Speedy Trial.** To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under Neb. Rev. Stat. § 29-1207(4) (Cum. Supp. 2010) to determine the last day the defendant can be tried.
3. ____. Under Neb. Rev. Stat. § 29-1208 (Cum. Supp. 2010), if a defendant is not brought to trial before the running of the time for trial, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge.
4. **Speedy Trial: Pretrial Procedure.** The plain terms of Neb. Rev. Stat. § 29-1207(4)(a) (Cum. Supp. 2010) exclude all time between the filing of a defendant's pretrial motions and their disposition, regardless of the promptness or reasonableness of the delay. The excludable period commences on the day immediately after the filing of a defendant's pretrial motion. Final disposition under § 29-1207(4)(a) occurs on the date the motion is granted or denied.

5. **Speedy Trial: Plea in Abatement.** It is irrelevant for speedy trial purposes whether a plea in abatement is properly filed or has the necessary requirements; there are no such requirements under Neb. Rev. Stat. § 29-1207(4)(a) (Cum. Supp. 2010) in order for a plea in abatement to toll the speedy trial clock.

Appeal from the District Court for Douglas County: JAMES T. GLEASON, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Leslie E. Cavanaugh for appellant.

Jon Bruning, Attorney General, and Stacy M. Foust for appellee.

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Mark A. Henshaw appeals from an order of the district court for Douglas County which denied his motion for discharge on speedy trial grounds. We conclude that the district court correctly found that the time between the filing of Henshaw's pro se plea in abatement and the district court's ruling thereon was an excludable period of time under the speedy trial statutes. Accordingly, we affirm the district court's decision to deny Henshaw's motion for discharge.

BACKGROUND

On September 3, 2010, the State filed an information charging Henshaw with two counts of burglary. On September 7, he filed a motion for discovery which was granted on October 4. On November 30, Henshaw filed a pro se plea in abatement. On February 23, 2011, the State filed an amended information charging Henshaw with the same two counts of burglary and adding a habitual criminal allegation. Also on February 23, Henshaw, through trial counsel, filed another plea in abatement. Following a hearing on May 18, the district court entered an order on May 19 overruling Henshaw's plea in abatement. A jury trial was set for June 6.

On June 6, 2011, Henshaw filed a motion for discharge alleging that his statutory right to a speedy trial had been violated. At the hearing on the motion to discharge, Henshaw argued that his pro se plea in abatement filed on November 30, 2010, did not toll the speedy trial clock because it was not filed with a hearing date and because he did not file a request for a transcript of the preliminary hearing. He further admitted that an excludable period started when trial counsel filed the plea in abatement on February 23, 2011.

Following the hearing on Henshaw's motion for discharge, the district court overruled the motion, finding that the time period from the filing of Henshaw's pro se plea in abatement on November 30, 2010, until the court's ruling on the plea in abatement on May 18, 2011, which was entered May 19, was an excludable period of time for speedy trial purposes. It found that, without addressing any other excludable time periods, there were at least 170 excludable days and that the State had a minimum of 73 days left to bring Henshaw to trial. This appeal followed.

ASSIGNMENT OF ERROR

Henshaw assigns that the trial court erred in finding that the time period from the filing of his pro se plea in abatement on November 30, 2010, until the court's "hearing and ruling on May 18, 2011," was an excludable period of time under the speedy trial statutes.

STANDARD OF REVIEW

[1] As a general rule, a trial court's determination as to whether charges should be dismissed on speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

ANALYSIS

Henshaw assigns that the trial court erred in finding that the period of time from "November 30, 2010[, to] May 18, 2011," attributable to his plea in abatement, was an excludable period of time under the speedy trial statutes.

[2,3] Neb. Rev. Stat. § 29-1207(1) (Cum. Supp. 2010) provides that "[e]very person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section." To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under § 29-1207(4) to determine the last day the defendant can be tried. *State v. Williams, supra*. Under Neb. Rev. Stat. § 29-1208 (Cum. Supp. 2010), if a defendant is not brought to trial before the running of the time for trial, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. *State v. Williams, supra*.

[4] The rules concerning the effect of a defendant's motions are well settled. The plain terms of § 29-1207(4)(a) exclude all time between the filing of a defendant's pretrial motions and their disposition, regardless of the promptness or reasonableness of the delay. *State v. Williams, supra.* Section 29-1207(4)(a) specifically includes pleas in abatement as pretrial motions by a defendant. The excludable period commences on the day immediately after the filing of a defendant's pretrial motion. *State v. Williams, supra.* Final disposition under § 29-1207(4)(a) occurs on the date the motion is granted or denied. *State v. Williams, supra*.

Henshaw argues on appeal that neither his pro se plea in abatement nor the plea in abatement filed by counsel tolled the speedy trial clock because neither conformed to the statutory requirements of Neb. Rev. Stat. § 29-1818 (Reissue 2008). Section 29-1818 provides that "[n]o plea in bar or abatement shall be received by the court unless it be in writing, signed by the accused, and sworn to before some competent officer." Henshaw did not make an argument based on § 29-1818 at the hearing on the motion for discharge. Rather, he argued that the pro se plea in abatement did not toll the speedy trial clock because it was not filed with a hearing date and because he did not file a request for a transcript of the preliminary hearing. However, regardless of which argument is made, the outcome is the same—the filing of the pro se plea in abatement tolled the speedy trial clock.

[5] It is irrelevant for speedy trial purposes whether the plea in abatement was properly filed or had the necessary requirements. There are no such requirements under § 29-1207(4)(a) in order for a plea in abatement to toll the speedy trial clock. Based on the plain language of § 29-1207(4)(a), Henshaw's pro se plea in abatement was a pretrial motion filed by the defendant. Once Henshaw's pro se plea in abatement was filed by the clerk of the district court for Douglas County on November 30, 2010, the speedy trial clock stopped until the trial court disposed of the pretrial motion. Had the trial court found that the pro se filing did not comply with § 29-1818 or was defective in some other way, as Henshaw contends, the speedy trial clock would still have stopped from the period when the pro se plea in abatement was filed until the court made such ruling disposing of the pretrial motion.

We conclude that the filing of Henshaw's pro se plea in abatement on November 30, 2010, tolled the speedy trial clock and the excludable period continued until the court ruled on the plea in abatement on May 19, 2011. Therefore, when counsel filed the plea in abatement on February 23, the clock was already stopped and such filing had no effect on the speedy trial calculation. Accordingly, the trial court did not err in excluding the time between Henshaw's pro se plea in abatement filing and the court's ruling thereon from the speedy trial calculation.

We further determine that the speedy trial clock had not expired at the time Henshaw filed his motion for discharge. The information was filed on September 3, 2010, which would have made the last day to bring Henshaw to trial, absent any excludable periods, March 3, 2011. Henshaw filed his pro se plea in abatement on November 30, 2010, and it was overruled in an order filed May 19, 2011, resulting in 170 excludable days. Henshaw admits that there are 27 excludable days attributable to his motion for discovery filed on September 7, 2010, and granted on October 4. Adding the 197 days of excludable time, the last date on which the State could bring Henshaw to trial was extended to September 16, 2011. At the time Henshaw filed his motion for discharge on June 6, 2011, the speedy trial clock had not expired, as there were 102 days

still remaining to bring Henshaw to trial. The trial court did not err in overruling Henshaw's motion to discharge based on speedy trial grounds.

CONCLUSION

We conclude that the district court did not err in finding that the time period from the filing of Henshaw's pro se plea in abatement on November 30, 2010, until the court's ruling on the plea in abatement filed on May 19, 2011, was an excludable period of time under the speedy trial statutes. Accordingly, the district court did not err in denying Henshaw's motion for discharge and its judgment is affirmed.

AFFIRMED.