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In re Trust Created by Henry W. Crawford, deceased. Allan A. Armbruster, Jr., Successor Personal Representative of the Estate of Esther Zoe Crawford, deceased, appellant, v. Sam R. Brower, Successor Trustee, et al., appellees.

826 N.W.2d 284

Filed February 5, 2013. No. A-11-823.

1. **Judgments: Final Orders.** Neb. Rev. Stat. § 25-1301 (Reissue 2008) sets forth two ministerial requirements for a final judgment. The first is rendition of the judgment, defined as the act of the court, or a judge thereof, in making and signing a written notation of the relief granted or denied in an action. The second ministerial step for a final judgment is that entry of a final order occurs when the clerk of the court places the file stamp and date upon the judgment.
2. **Final Orders.** Final orders must be signed by the judge as well as file stamped and dated by the clerk.
3. **Judgments: Records: Notice: Fees: Appeal and Error.** A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the judgment is properly rendered shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry.
4. **Judges: Recusal: Judgments.** Recusal or disqualification of a trial judge generally requires that the judge take no further action in the case, and generally any order entered subsequent to recusal is considered void and without effect.
5. ____: ____: ____. Where the trial judge orally announces a ruling, subsequently enters an order of recusal, and thereafter performs the ministerial act of simply entering a written order or judgment reflecting the prior oral ruling, the written order is not void.
6. **Trusts: Equity: Appeal and Error.** Appeals involving the administration of a trust are equity matters and are reviewable in an appellate court de novo on the record.
7. **Decedents' Estates: Appeal and Error.** In the absence of an equity question, an appellate court, reviewing probate matters, examines for error appearing on the record made in the county court.
8. **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.
9. ____: ____. An appellate court, in reviewing a trial court judgment for errors appearing on the record, will not substitute its factual findings for those of the trial court where competent evidence supports those findings.
10. **Judgments: Evidence: Fees: Appeal and Error.** Where it is clear from a de novo review of the record that the court did not receive any evidence, and no witnesses were called or testified concerning the request for payment of fees,

whether they were reasonable or properly payable, or providing any basis for allowing them, the order is not supported by competent evidence.

Appeal from the County Court for Douglas County: EDNA ATKINS and MARCENA M. HENDRIX, Judges. Vacated, and remanded with directions.

Allan A. Armbruster, Jr., of Armbruster Law Office, pro se.

Sam R. Brower, of Andersen, Lauritsen & Brower, pro se.

Joseph E. Jones and Elizabeth A. Culhane, of Fraser Stryker, P.C., L.L.O., for appellee Alta Empkey.

IRWIN, SIEVERS, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Allan A. Armbruster, Jr., successor personal representative of the estate of Esther Zoe Crawford, appeals an order of the county court for Douglas County, Nebraska, which authorized the payment of accounting fees incurred by the trust established by Henry W. Crawford from funds previously ordered to be returned from the trust to Esther's estate. See *In re Estate of Crawford*, No. A-09-733, 2010 WL 3137525 (Aug. 3, 2010) (selected for posting to court Web site). Because the county court's order is not supported by competent evidence, we vacate, and remand to the county court with directions to hold an evidentiary hearing. See *In re Trust of Rosenberg*, 269 Neb. 310, 693 N.W.2d 500 (2005).

II. BACKGROUND

This case is related to *In re Estate of Crawford, supra*. As we recounted in the factual background of that case, Esther executed a series of wills during the course of her life, including wills executed in 1973, 1977, 1982, 1988, 1990, 1992, 1993, 1997, 1999, and 2001. In December 2001, Esther's husband, Henry, established a trust. In the 2001 will, Esther bequeathed all her assets to Henry, if he survived her, or to the trustee of his trust, if Henry predeceased her.

Henry predeceased Esther. Esther died in November 2003. Pursuant to the terms of the 2001 will, the personal

representative of Esther's estate transferred assets of Esther to Henry's trust. In December 2005, however, an objection was filed challenging the validity of the 2001 will. In June 2008, a jury returned a verdict finding that the 2001 will was invalid. In June 2009, the county court entered an order holding that Esther's estate should proceed as an intestate proceeding and directing that any assets previously transferred from Esther's estate to the trust under the invalid 2001 will should be returned as wholly as possible to the estate.

In August 2010, in *In re Estate of Crawford, supra*, we affirmed the county court's holding that assets previously transferred from Esther's estate to Henry's trust under the invalid 2001 will should be returned as wholly as possible to the estate. No petition for further review was filed.

On October 6, 2010, the trustee of Henry's trust filed an application seeking approval to pay an accounting bill. The application indicated that an accountant had performed "tax services on behalf of the Trust" and had submitted an invoice for $2,800 for his services.

On October 15, 2010, a "Stipulation and Agreement" was filed. The agreement was entered into by interested parties in Esther's estate and Henry's trust. The agreement concerned, among other things, the return of assets previously distributed to the trust from the estate pursuant to Esther's invalid 2001 will and the continued administration of the estate and the trust.

According to the agreement, the trust then held $695,982.68 that had been improperly distributed to the trust from the estate pursuant to Esther's invalid 2001 will. The agreement provided that the trust would immediately return $675,162.99 to the estate, while holding back the remaining $20,819.69. Of the money held back, the parties agreed to authorize the trust to pay attorney fees of $17,719.69 incurred in challenging Esther's 2001 will. The parties agreed that the trust could keep another $300 for potential taxes owed by the trust. The remaining $2,800 held back by the trust is the subject of this appeal.

The agreement includes a provision that the parties labeled "DISPUTE REGARDING ACCOUNTING FEES." In that

provision, the parties specifically acknowledged that "there is a dispute concerning certain charges for tax services . . . in the amount of $2,800.00" and that "[t]he parties disagree[d] regarding whether obligations incurred on behalf of the Trust are payable out of funds that have been ordered returned to Esther's estate and/or whether the amount charged is reasonable for and in consideration of the services performed." In the same provision, the parties then agreed as follows:

> [A]n award of accounting fees by the County Court out of the cash held by the Trustee shall be paid out of the $2,800.00 retained by the Successor Trustee. If the County Court determines that the cash held in the Trust is not available for payment of obligations of the Trust or orders that less than $2,800.00 is reasonable under the circumstances, the amount by which $2,800.00 exceeds the amount determined as payable to [the accountant] by the Successor Trustee shall be paid by the Successor Trustee to [the] Successor Personal Representative.

In the agreement, the parties agreed to release a variety of potential claims, including claims against the prior trustee and personal representative. Pursuant to these releases, the estate agreed as follows:

> [To] fully and completely release and discharge, and . . . to indemnify and hold harmless the Trust, the Successor Trustee and the Trust Beneficiaries from any and all claims, suits and causes of action of any kind whatsoever (with the exception of those claims, if any, which statutes cannot [sic] be waived), whether in law or in equity, whether known or unknown, contingent or non-contingent, that they (or any other person might assert as a legal heir of Esther . . .) might have had, now may have, or may have in the future against such released parties which have accrued as of the date of execution of this Agreement, or hereafter accruing . . . . Notwithstanding, [the] Successor Personal Representative, and [the heirs] reserve the Estate's claim for the return to Esther's estate of $2,800.00 less the amount the county court orders to be paid to [the accountant] out of the cash retained by the Successor Trustee . . . .

On October 15, 2010, the county court entered an order approving the parties' agreement.

On November 17, 2010, the county court held a hearing on the application for payment of accounting fees. During that hearing, the successor personal representative specifically indicated to the court there was a question of whether the outstanding accounting bill could be paid with a portion of the money that had been improperly transferred to the trust pursuant to Esther's invalid 2001 will and that had been previously ordered by the county court and this court returned to the estate. The successor personal representative argued that the bill had been incurred by the trust and that the obligations had nothing to do with the estate.

During the hearing, the court first indicated that "the Court of Appeals' [August 2010] order should be implemented, [and] that the money should be paid back to — whatever is in the trust that belongs to [the estate] should be returned to the estate." The court indicated that it would then need to determine whether the $2,800 bill was "fair" and whether the trust had funds to satisfy the bill without considering money that properly belonged to the estate. The prior trustee and the successor trustee both represented to the court that the trust had no other money to pay the bill. As such, the only money the trust had to satisfy the accounting bill was the $2,800 that had been held back and not yet returned to the estate pending the court's ruling.

The successor personal representative noted that everyone agreed that the $2,800 being held by the trust "is out of the pool of the money that was to be given and returned to the estate." The successor personal representative again argued that the accounting bill incurred by the trust should not be paid with money belonging to the estate. The successor personal representative then indicated that the estate "[was] not going to appeal" the county court's ruling on whether the bill could be paid with money held back and not yet returned to the estate and indicated that "[if] that is the order of the Court, [the estate would] accept that," but again argued that the court should not allow payment of the bill with money belonging to the estate.

The court then orally announced that it was "going to order that [the bill] be paid out of the amount that was held back to pay the fees since that was the agreement of the parties." The successor personal representative again argued that it was "not the agreement of the parties" that the bill be paid with the money held back. At that point, the language quoted above concerning the parties' dispute about the accounting fees and agreement that $2,800 could be held back and not returned to the estate pending the court's ruling was read to the court. The court then held that "the bill was incurred and unless parties have evidence that the $2,800 is not fair and reasonable, then I am ordering that the $2,800 be paid out of the trust money that is presently in [the successor trustee's] possession" and overruled the successor personal representative's objection to using the estate's money to pay the trust's bill.

Although the court on November 17, 2010, orally announced its decision on the application for payment of the accounting fees, the court never entered a signed or file-stamped order on the matter.

On January 7, 2011, the successor personal representative filed a motion for rehearing. On January 12, the county court apparently denied the motion for rehearing, but again failed to enter any signed or file-stamped order to that effect. On March 28, the successor personal representative filed a motion asking the court to enter orders consistent with its oral pronouncements of November 17, 2010, and January 12, 2011, so that the successor personal representative could properly secure an appeal from the court's rulings.

On April 1, 2011, the county court made an unsigned docket entry indicating that it had signed an order for the payment of the accounting fees "which were ordered to be paid" on November 17, 2010. However, the file again contains no signed or file-stamped order to this effect.

On April 1, 2011, the county court judge entered an order recusing herself from the case.

On April 7, 2011, the successor personal representative filed a motion for new trial. On April 25, the successor personal representative filed an amended motion for new trial. On

August 29, the new county court judge presiding over the case entered an order denying the motion for new trial.

On September 20, 2011, the successor personal representative filed a notice of appeal. He indicated his intent to appeal "the final Order entered by the County Court of Douglas County, Nebraska on April 1, 2011, granting the Application for Payment of Accountant's Fees." At that time, however, there was still no signed or file-stamped order actually granting the successor trustee's request to pay the accounting fees with the $2,800 that belonged to the estate and had been held back from the trust's repayment of assets to the estate. Despite the prior county court judge's oral pronouncements on several occasions, she had failed to take the necessary steps to create a final, appealable order.

On October 31, 2011, the prior county court judge filed an affidavit in which she indicated that she was signing and filing an order for payment of the accounting fees, "with the intent and directions that said Order shall take effect and be entered of record as of April 1, 2011 as a correction of the record and for appeal purposes." On October 31, she did sign and file an order granting the application for payment of accounting fees.

III. ASSIGNMENTS OF ERROR

On appeal, the successor personal representative assigns several errors challenging the district court's ruling that an accounting fee incurred by the trust was properly paid with money belonging to the estate.

IV. ANALYSIS

1. Jurisdiction

We first address the jurisdictional complexity that was needlessly created in this case by the initial county court judge's repeated failure to properly render a final order concerning the court's granting of the application for approval to pay the accounting fees from the money held back by the trust. The record presented on appeal indicates that on at least three different occasions, the county court judge announced a decision but failed to render a final order. The

parties subsequently filed motions for rehearing or new trial when there had not yet been any final order rendered, and the parties were forced to expend time and money motioning the court to properly enter orders so that an appeal could be secured. Moreover, the jurisdictional posture of this case was further complicated when the initial county court judge failed to render her final decision until nearly 7 months after recusing herself from the case.

[1,2] In *State v. Brown*, 12 Neb. App. 940, 687 N.W.2d 203 (2004), we issued a published opinion concerning the importance of properly rendering final orders to provide guidance for the bench and bar, eliminate unnecessary procedural delays for litigants, and make the work of the appellate courts somewhat simpler. As we noted in that case, Neb. Rev. Stat. § 25-1301 (Reissue 2008) sets forth two ministerial requirements for a final judgment. The first is rendition of the judgment, defined as "the act of the court, or a judge thereof, in making and signing a written notation of the relief granted or denied in an action." § 25-1301(2). The second ministerial step for a final judgment is that entry of a final order occurs when the clerk of the court places the file stamp and date upon the judgment. § 25-1301(3). In short, final orders must be signed by the judge as well as file stamped and dated by the clerk. *State v. Brown, supra*.

[3] As we noted and discussed in some depth in *State v. Brown, supra*, it has long been the law in Nebraska that a notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the judgment is properly rendered shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry. See Neb. Rev. Stat. § 25-1912(2) (Reissue 2008). Announcement of a decision can come, among other ways, orally from the bench, from trial docket notes, from file-stamped but unsigned journal entries, or from signed journal entries which are not file stamped. *State v. Brown, supra*. Section 25-1912(2) creates what we have called "potential jurisdiction" or "springing jurisdiction," wherein an announced decision creates a situation where the appellate court potentially has jurisdiction that will spring into existence when

the announced decision is properly rendered. See *State v. Brown, supra*.

In the present case, the initial county court judge announced a ruling on the application for approval of the accounting fees during the hearing on November 17, 2010. This announcement created potential jurisdiction, but there was no final, appealable order until the court rendered a final decision that was signed, dated, and file stamped. In January 2011, the judge apparently overruled a motion for rehearing, but again failed to enter a written, signed, and file-stamped order. Then, on April 1, the judge again announced a decision on the application, evidenced by an unsigned docket entry. There was still no final, appealable order, however, because the judge again did not sign, date, and enter a written order.

On April 1, 2011, the initial county court judge recused herself from presiding over this case. At the time of her recusal, she had still not rendered a final order consistent with her announced ruling of November 2010. On October 31, 2011, nearly a year after announcing her decision on the application for approval to pay accounting fees, the recused county court judge signed and entered a written order granting the application.

At the same time, she executed an affidavit indicating her intent to have the written order be effective as of April 1, 2011. The county court judge's intent notwithstanding, the order was not effective until the date it was signed, entered, and file stamped—October 31, 2011. On that date, more than a month after the successor personal representative filed his notice of appeal upon the subsequent county court judge's denial of a motion for new trial and nearly a year after the decision was announced, our potential jurisdiction "sprung" to fruition.

[4,5] In addition to the complications and delays occasioned by the initial county court judge's failures to render a final decision on her ruling, an additional jurisdictional wrinkle was interjected into this case by the judge's finally rendering her final decision only after having already recused herself from the case. Recusal or disqualification of a trial judge generally requires that the judge take no further action in the case, and

generally any order entered subsequent to recusal is considered void and without effect. See, *Plaza v. Plaza*, 21 So. 3d 181 (Fla. App. 2009); *Goolsby v. State*, 914 So. 2d 494 (Fla. App. 2005); *Davis v. State*, 849 So. 2d 1137 (Fla. App. 2003). However, there is an exception to this rule where the trial judge orally announces a ruling, subsequently enters an order of recusal, and thereafter performs the ministerial act of simply entering a written order or judgment reflecting the prior oral ruling. *Plaza v. Plaza, supra*.

We conclude that we have jurisdiction to address the merits of the successor personal representative's appeal.

2. Merits

The successor personal representative asserts that the county court's order directing payment of accounting fees incurred by the trust with money belonging to the estate was not supported by competent evidence. Inasmuch as there was no testimony or evidence adduced to support the payment of the fees, we agree.

[6-9] Appeals involving the administration of a trust are equity matters and are reviewable in an appellate court de novo on the record. *In re Trust of Rosenberg*, 273 Neb. 59, 727 N.W.2d 430 (2007). In the absence of an equity question, an appellate court, reviewing probate matters, examines for error appearing on the record made in the county court. *Id*. 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. *Id*. An appellate court, in reviewing a trial court judgment for errors appearing on the record, will not substitute its factual findings for those of the trial court where competent evidence supports those findings. *Id*.

In *In re Trust of Rosenberg*, 269 Neb. 310, 693 N.W.2d 500 (2005), the Nebraska Supreme Court addressed a situation wherein the trial court removed a trustee, replaced her with a successor trustee, and eventually entered orders concerning assets and the payment of attorney and trustee fees and costs. On appeal, the former trustee challenged her removal and replacement, as well as the trial court's orders concerning

assets, fees, and costs. Although the Supreme Court found that the former trustee had not timely appealed her removal, the court addressed the trial court's orders concerning assets and the payment of fees and costs for which the successor trustee had sought approval.

The Supreme Court noted that when the parties appeared in court concerning the successor trustee's requests for directions concerning assets, fees, and costs, "[n]o witnesses testified, and only one exhibit was offered and received into evidence." *Id.* at 316, 693 N.W.2d at 505. The Supreme Court noted that instead of witnesses and evidence, "the parties' attorneys presented brief arguments, and the court announced its findings after having 'reviewed all the filings.'" *Id.* at 316-17, 693 N.W.2d at 505.

In reviewing the procedure used by the trial court, the Supreme Court noted that "[t]he court's failure to hold a formal evidentiary hearing" was "of great concern." *Id.* at 317, 693 N.W.2d at 505. The Supreme Court emphasized that the appellate court's standard of review is, in the absence of an equity question, to review for error appearing on the record, and that the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Because there had been no witness testimony and essentially no evidence adduced to support the trustee's request for fees and costs, the Supreme Court held that "[t]he district court's . . . orders [were] not supported by competent evidence," and the Supreme Court vacated, and remanded with directions to hold an evidentiary hearing. *Id.*

Similarly, in the present case, the trustee requested the court's approval to pay accounting fees incurred on behalf of the trust. The trustee was seeking the court's approval to pay the accounting fees with money that the county court and this court had both previously specifically ordered did not belong to the trust and should be returned to the estate. At the hearing, no witnesses testified and no evidence was received to support the payment of the fees, let alone use of the estate's money to pay the fees. Despite having specifically ruled that the money at issue should be returned to the estate and was

not available to the trust, the county court in the present case approved payment of the accounting fees with the estate's money. The court provided no explanation or rationale for its ruling.

[10] Our review of the record indicates that at the hearing, the trustee, during his argument to the court, indicated that he was "offer[ing] the invoice from [the accountant]." However, there was no exhibit marked, the court never made any ruling indicating that the invoice was being received as evidence, and the bill of exceptions presented to us includes no exhibits. It is clear from a de novo review of the record that the court did not receive any evidence. In addition, no witnesses were called or testified concerning the fees, whether they were reasonable or properly payable, or providing any basis for using the estate's money to pay them.

As the Supreme Court found in *In re Trust of Rosenberg*, 269 Neb. 310, 693 N.W.2d 500 (2005), we find that the county court's order that the accounting fees were payable with the estate's money is not supported by competent evidence. We vacate, and remand to the county court with directions to hold an evidentiary hearing. See *id.*

V. CONCLUSION

We conclude that we have jurisdiction to address the merits of this appeal. We find that there was no evidence adduced to support the county court's decision. We vacate, and remand with directions to hold an evidentiary hearing.

VACATED, AND REMANDED WITH DIRECTIONS.

WILLIE J. HARRIS, APPELLEE, V. IOWA TANKLINES, INC., AND COMMERCE & INDUSTRY, APPELLANTS.

825 N.W.2d 457

Filed February 5, 2013. No. A-12-354.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not