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In re Special Knox County Attorney David D. Begley. David D. Begley, Special Knox County Attorney, appellant, v. John Thomas, appellee.

___ N.W.3d ___

Filed November 6, 2026. No. S-25-817.

1. **Judgments: Jurisdiction: Appeal and Error.** A jurisdictional issue that does not involve a factual dispute presents a question of law, which an appellate court independently decides.
2. **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.
3. **Jurisdiction: Judgments: Final Orders: Appeal and Error.** When an appellate court lacks appellate jurisdiction because neither a judgment nor a final order was rendered by the lower court, it may not reach the merits of the appeal.
4. **Jurisdiction: Final Orders: Appeal and Error.** When an appeal presents the two distinct jurisdictional issues of appellate jurisdiction and the trial court's lack of subject matter jurisdiction, the first step is to determine the existence of appellate jurisdiction by determining whether the lower court's order was final and appealable.
5. **Jurisdiction: Statutes: Appeal and Error.** The requirements of a statute underlying a right to appeal are mandatory and must be complied with before the appellate court acquires jurisdiction over the subject matter of the action.
6. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, the party must be appealing from a final order or a judgment.
7. **Judgments: Words and Phrases.** Every direction of a court or judge, made or entered in writing and not included in a judgment, is an order.

8. **Actions: Words and Phrases.** An action is any proceeding in a court by which a party prosecutes another for enforcement, protection, or determination of a right or the redress or prevention of a wrong involving and requiring the pleadings, process, and procedure provided by statute and ending in a judgment. Every other legal proceeding by which a remedy is sought by original application to a court is a special proceeding.
9. ____: ____. Special proceedings and actions are mutually exclusive categories.
10. **Final Orders: Statutes: Words and Phrases.** A special proceeding occurs where the law confers a right and authorizes a special application to a court to enforce it. It includes every special statutory remedy that is not itself an action.
11. **Prosecuting Attorneys: Words and Phrases.** A proceeding under Neb. Rev. Stat. § 23-1205 (Reissue 2016), which governs the appointment of an attorney to act as county attorney in any investigation, appearance, or trial by an order entered upon the minutes of the court, is a special proceeding.
12. **Jurisdiction: Final Orders: Appeal and Error.** A timely appeal from an order issued in a special proceeding must be dismissed for lack of appellate jurisdiction, unless that order was final as defined by Neb. Rev. Stat. § 25-1902(1) (Cum. Supp. 2024).
13. **Final Orders: Words and Phrases.** A substantial right is an essential legal right, not merely a technical right.
14. **Final Orders: Appeal and Error.** A substantial right is affected if an order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to an appellant before the order from which an appeal is taken.
15. **Jurisdiction: Final Orders: Appeal and Error.** A right of substance that exists merely in the abstract will not create appellate jurisdiction.

Appeal from the District Court for Knox County: James G. Kube, Judge. Appeal dismissed.

Eric M. Hagen, of Liberty Law Group, for appellant.

John Thomas, pro se.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, and Vaughn, JJ.

Freudenberg, J.

I. INTRODUCTION

A county board appeals from the district court's order granting a motion by a former deputy county attorney to unseal records. The records were contained in the court's file for a criminal investigation—carried out by a court-appointed special prosecutor from the Nebraska Attorney General's office—into the former deputy county attorney and others that ended with the special prosecutor's deciding not to file any charges. The special prosecutor did not object to unsealing the documents. The county board argued against unsealing the records but did not suggest any specific harm that could result from doing so. We dismiss the appeal for lack of appellate jurisdiction.

II. BACKGROUND

The underlying controversy began after the Knox County Board of Supervisors (Board) had a new "audio and visual system" installed at the Knox County courthouse (Courthouse). The Courthouse contains both the Board's meeting room (Boardroom) and the 911 emergency dispatch center.

There was previously a microphone in the Boardroom that had a visible switch to turn it off, and the installers of the new system did not remove the old microphone or its off switch. The installers placed a second microphone that was connected to a camera in the corner of the room. That microphone did not have an off switch.

One of the purposes of the audio system was for staff at the 911 center at the sheriff's office to listen to the Board's meetings and dispatch deputies if needed. The Board members understood there would be audio capabilities in the Boardroom, but they apparently did not know the location of the new microphone or that it was not connected to an off switch. After some Board members learned that audio feed was available during closed meetings and private employee counseling sessions, some Board members were upset, and the new microphone was discovered and removed.

1. Investigations Into Courthouse Security

Following these events, the Board went into a closed session to discuss Courthouse security issues, during which the Board adopted "Resolution#2025 - 09." Pursuant to the resolution, the Board entered into an hourly fee agreement with David D. Begley, to be appointed as Special Knox County Attorney, and with Eric Hagen, to be appointed as Special Deputy Knox County Attorney. The resolution set forth that the Board hired Begley and Hagen to investigate, pursuant to Neb. Rev. Stat § 23-1205 (Reissue 2016), possible breaches of Courthouse security, the "County's Employee Handbook," and any violations of law. Begley and Hagen began their investigation.

(a) Attorney General's Investigation and Sealing of Records

Shortly thereafter, under a "miscellaneous file" numbered "MS-25-02" (MS-25-02) and entitled "THE STATE OF NEBRASKA, Plaintiff, vs. KNOX COUNTY, NEBRASKA, Defendant," the district court for Knox County rejected Begley as the criminal prosecutor who would conduct a criminal investigation due to "an apparent conflict of interest." The court instead appointed the Nebraska Attorney General's office as a special prosecutor to investigate possible violations of Nebraska's Open Meetings Act[1] by Knox County employees and/or elected officials. On its own motion, on March 26, 2025, the court ordered that the affidavit authored by Begley, which was filed in MS-25-02 in support of the investigation, be placed under seal to be opened only through specific order of the court.

Upon the completion of the investigation, the special prosecutor found that no criminal charges should be filed. On June 2, 2025, the district court granted the special prosecutor's request

[1] See Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2024 & Supp. 2025).

to terminate the appointment. Two days later, the former special prosecutor filed a motion requesting that the district court seal the State's memorandum summarizing the investigation and that it remain sealed and only opened through specific order of the court. On June 9, the district court sustained the State's motion to seal its memorandum summarizing the investigation, which could be opened only through specific order of the court. The order stated:

> This Court, having considered the State's motion to seal a memorandum prepared by [the special prosecutor], hereby finds the motion should be granted. The memorandum shall be placed under seal, within the Court file, and remain under seal and only opened through specific order of this Court.

Neither the special prosecutor nor the court's order set forth the rationale for sealing the records in the first instance or whether the records were able to be understood with protected information redacted.

(b) Board's Civil Investigation and Discipline

Begley and Hagen continued their civil investigation, collecting sworn statements and conducting interviews under oath of various county employees. After a closed session held in August 2025, the Board found there was no evidence of dishonesty or wrongdoing. Nevertheless, the Board voted to discharge or discipline several employees, including John Thomas, who had served the previous 42 years as Knox County Attorney.

In explaining these actions, the Board published Begley's investigation report on the county's website. In his unsworn report, Begley recommended that the Board impose discipline on Thomas and other county employees. Begley expressed his belief that Thomas was dishonest during the investigation and had violated the "County's Code of Ethics," and he stated he had forwarded the report to the Counsel for Discipline of the

Nebraska Supreme Court to initiate a disciplinary investigation into Thomas for professional misconduct.

2. Thomas' Motion to Unseal Records in MS-25-02

In October 2025, Thomas filed in MS-25-02 a motion to unseal records. The motion requested that Thomas receive a copy of all the documents previously filed under MS-25-02. In his brief in support of the motion, Thomas argued that whatever was contained in the file was related to the criminal accusations that resulted in Thomas' and other Knox County employees' losing their jobs and in Thomas' being reported to the Counsel for Discipline. As such, the records could contain evidence or lead to evidence admissible in pending lawsuits, be relevant to any action by the Counsel for Discipline, and help "restore [the employees'] good names." Thomas further argued that "[i]t is wrong to claim that any part of the Begley criminal accusations should be kept secret when Begley and the Board have publicized the accusations and the investigation again and again."

Among other things, Thomas asserted that, as documents sealed pursuant to Neb. Ct. R. §§ 2-210 and 6-1524(D) (rev. 2022), the court had discretion to unseal the documents, and Thomas believed the burden of proof remained on the party wanting to keep the documents under seal. Referred to in § 2-210, § 6-1524(D) provides that a court that has ordered a filing be sealed "may later unseal the filing or order the person who made the filing to file a redacted version for the public record."

The court held an evidentiary hearing on the motion to unseal. The Attorney General's office participated in the hearing on the motion to unseal. It did not object to the records being unsealed. Begley, however, represented by Hagen, had filed a brief in opposition to Thomas' motion to unseal, and Hagen argued at the hearing against unsealing the records.

The court pointed out that Begley was not a party to the proceedings under the miscellaneous file, but eventually recognized Hagen's standing to object as the Special Deputy Knox County Attorney representing the Board.

Through Hagen, the Board asserted that the court lacked "subject matter jurisdiction" over Thomas' motion "to unseal records of a closed criminal proceeding beyond the scope of the criminal matter." Relying on *State v. Coble*,[2] the Board suggested Thomas instead needed to file a separate action to unseal a criminal record pursuant to a section of the Security, Privacy, and Dissemination of Criminal History Information Act.[3] Section 29-3528 provides that any person aggrieved by any officer or employee of the State who fails to comply with §§ 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, may bring an action—including but not limited to, an action for mandamus—to compel compliance. The Board did not explain which of these underlying statutes applied to the documents under the miscellaneous file of the special prosecutor's investigation. In the alternative, the Board argued that even if the court had subject matter jurisdiction under § 6-1524(D) to unseal the records, Thomas could not show "good cause" for unsealing them.

When the court questioned why the Board would want to block access to the sealed records, Hagen simply stated that the Board did not believe Thomas had a right to demand the records be unsealed and reiterated his belief that the "right way" for the parties to gain access was through discovery in the separate civil actions. When the court expressed surprise that the Board would not want access to information that could potentially bolster the findings in its civil investigation, Hagen said, "Regardless of, you know, reasons the Board

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[2] *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

[3] See Neb. Rev. Stat. §§ 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 (Reissue 2016 & Cum. Supp. 2024).

may or may not want this, they're opposing it right now." Consistent with the Board's assertion that it knew nothing of and did not take part in the criminal investigation, the Board did not specify possible protected information within the records or how the Board, county officers or employees, or its constituents could be harmed by a decision to unseal the records of the miscellaneous file.

The court sustained Thomas' motion and allowed the records to be unsealed. In its written order, the court explained that it had subject matter jurisdiction because the documents under seal were not criminal records and there was no criminal case under which the motion was filed. The court rejected the notion that Thomas was required to file a new action, rather than a motion, to unseal the records. The court found that there was a sufficient showing of "good cause" to support unsealing the documents. It also set forth that, absent an overriding interest, the First Amendment gives the public access to such documents. The court ordered the clerk of the court to "unseal those documents which were previously ordered sealed and to make those documents, along with the entire miscellaneous file contents, available for review."

III. ASSIGNMENTS OF ERROR

Hagen assigns on appeal that the district court erred by (1) granting the motion to unseal, (2) concluding it had subject matter jurisdiction to consider Thomas' motion filed within the previously concluded miscellaneous file, (3) concluding that the criminal nature of the proceedings was irrelevant "based solely on the clerk's designation of the case as a miscellaneous file," (4) determining that a qualified First Amendment right of public access applied to the sealed affidavit and investigative materials contained in the miscellaneous file, (5) failing to conduct the required constitutional analysis to determine whether a qualified First Amendment right of public access exists, and (6) improperly placing the burden on the party

opposing disclosure of the sealed documents, rather than on the movant seeking to unseal them.

IV. STANDARD OF REVIEW

[1] A jurisdictional issue that does not involve a factual dispute presents a question of law, which an appellate court independently decides.[4]

V. ANALYSIS

[2] 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.[5] We hold that because the order granting the motion to unseal is neither a final order nor a judgment, we lack jurisdiction over the present appeal.

[3,4] When an appellate court lacks appellate jurisdiction because neither a judgment nor a final order was rendered by the lower court, it may not reach the merits of the appeal.[6] When an appeal presents the two distinct jurisdictional issues of appellate jurisdiction and the trial court's lack of subject matter jurisdiction, the first step is to determine the existence of appellate jurisdiction by determining whether the lower court's order was final and appealable.[7]

[5] Article V, § 2 of the Nebraska Constitution expressly provides for "such appellate jurisdiction as may be provided by law." Accordingly, the requirements of a statute underlying a right to appeal are mandatory and must be complied with before the appellate court acquires jurisdiction over the subject matter of the action.[8]

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[4] *Bocanegra v. Gonzalez*, 321 Neb. 738, 37 N.W.3d 186 (2026).

[5] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 922 N.W.2d 226 (2019).

[6] *Saint James Apt. Partners v. Universal Surety Co.*, 316 Neb. 419, 5 N.W.3d 179 (2024).

[7] *Id.*

[8] *Id.*

[6] Pursuant to Neb. Rev. Stat. § 25-1911 (Reissue 2016), "[a] judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record." Thus, for an appellate court to acquire jurisdiction of an appeal, the party must be appealing from a final order or a judgment.[9]

[7] Neb. Rev. Stat. § 25-1301(1) (Cum. Supp. 2024) defines a "judgment" as "the final determination of the rights of the parties in an action." Every direction of a court or judge, made or entered in writing and not included in a judgment, is an order.[10]

[8-10] An action is any proceeding in a court by which a party prosecutes another for enforcement, protection, or determination of a right or the redress or prevention of a wrong involving and requiring the pleadings, process, and procedure provided by statute and ending in a judgment.[11] Every other legal proceeding by which a remedy is sought by original application to a court is a special proceeding.[12] Special proceedings and actions are mutually exclusive categories.[13] A special proceeding occurs where the law confers a right and authorizes a special application to a court to enforce it; it includes every special statutory remedy that is not itself an action.[14]

[11] The underlying proceeding under the miscellaneous file was pursuant to § 23-1205, which governs the appointment of an "attorney to act as county attorney in any investigation, appearance, or trial by an order entered upon the minutes of the court." This was a special proceeding. A special

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[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Tegra Corp. v. Boeshart*, 311 Neb. 783, 976 N.W.2d 165 (2022).

[14] See *id*.

prosecutor's investigatory proceedings may determine whether to file a separate criminal action, but they do not, in themselves, end in a judgment.

[12] A timely appeal from an order issued in a special proceeding must be dismissed for lack of appellate jurisdiction, unless that order was final as defined by Neb. Rev. Stat. § 25-1902(1) (Cum. Supp. 2024).[15] Section 25-1902(1)(b) states that "[a]n order affecting a substantial right made during a special proceeding" is a final order which may be vacated, modified, or reversed. The question thus presented is whether the order unsealing the filings in the special prosecutor's investigation affected a substantial right.

[13] A substantial right is an essential legal right, not merely a technical right.[16] It is a right of substance.[17] Further, it is not enough that the right itself be substantial; the effect of the order on that right must also be substantial.[18]

[14] A substantial right is "affected"[19] if an order affects the subject matter of the litigation, such as diminishing a claim or defense that was available "to an appellant" before the order from which an appeal is taken.[20] We have said in other contexts that the term "affect" means "'to act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously,'" and, as applied to such parties as a reversal of a judgment would affect, means "'adversely affect.'"[21]

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[15] See *Brozovsky v. Norquest*, 231 Neb. 731, 437 N.W.2d 798 (1989).

[16] *Pearce v. Mutual of Omaha Ins. Co.*, 293 Neb. 277, 876 N.W.2d 899 (2016).

[17] *Id.*

[18] *In re Hessler Living Trust*, 313 Neb. 607, 985 N.W.2d 589 (2023).

[19] *Big John's Billiards v. State*, 283 Neb. 496, 501, 811 N.W.2d 205, 211 (2012). See, also, e.g., *In re Hessler Living Trust, supra* note 18.

[20] *Big John's Billiards, supra* note 19, 283 Neb. at 502, 811 N.W.2d at 211. See, also, e.g., *In re Hessler Living Trust, supra* note 18.

[21] *In re Application of Neb. Power Co.*, 147 Neb. 324, 328, 23 N.W.2d 312, 315 (1946).

[15] We agree with the Board that, in the abstract, an order to unseal records entails an essential legal right, not merely a technical right, and can, depending on the facts of the case, have a substantial effect on the appealing party as relevant to a final order analysis. "Secrecy is a one-way street," and "[o]nce information is published, it cannot be made secret again."[22] But the fact that unsealing records cannot be undone does not create harm to an appellant where none existed in the first place. A right of substance that exists merely in the abstract will not create appellate jurisdiction.[23]

The case of *In re Grand Jury of Douglas Cty.*[24] is instructive. In an appeal from the special prosecutor of the court's decision to make grand jury proceedings available for public review, we held there was no final order, because no substantial right of the special prosecutor was affected by the order's being appealed. The transcript of the grand jury proceedings contained the testimony of numerous witnesses and approximately 850 exhibits, which led to the grand jury's returning "true bill" that there was probable cause to believe two police officers had committed crimes.[25] We explained that the special prosecutor's generalized arguments—that the release of the transcript could potentially undermine pending criminal prosecutions, make witnesses unwilling to testify in the future, or complicate seating an impartial jury because of pretrial publicity—lacked concrete facts and were insufficient to establish that any substantial right of the special prosecutor was affected by the order.

In this case, the Board has consistently failed to even suggest how the order to unseal the filings under the special prosecutor's investigation affected any substantial right of the Board. Without any showing of how the Board was aggrieved

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[22] *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008).

[23] See *In re Grand Jury of Douglas Cty., supra* note 5.

[24] *Id.*

[25] *Id.* at 137, 922 N.W.2d at 234.

or injured by the order, we cannot conclude a substantial right of the Board was substantially affected. Because the order the Board seeks review of did not affect the Board's substantial rights, we lack appellate jurisdiction over the Board's appeal.

VI. CONCLUSION

Because the order the Board appeals from is not a final order, we lack jurisdiction, and the Board's appeal is dismissed.

Appeal dismissed.

Bergevin, J., not participating.