

TRUSTS & WILLS

KENTOPP v. KENTOPP and *EICH v. LAYTON*: A CLARIFICATION AND EXPANSION OF COUNTY COURT PROBATE JURISDICTION

INTRODUCTION

During the survey period, the Nebraska Supreme Court decided two cases which illustrate the court's position in the area of probate jurisdiction, *Kentopp v. Kentopp*¹ and *Eich v. Layton*.² The issue of appropriate jurisdiction in probate matters requiring equitable relief has had a problematic development in the Nebraska courts. A running conflict exists between the county court's exclusive probate jurisdiction and the district court's equity jurisdiction.³

The issue in *Kentopp* of whether the district court or the county court had jurisdiction to partition and sell a decedent's real estate was one of first impression in Nebraska since the state's adoption of the Probate Code and amended state constitution. *Eich* followed the precedent set by *Kentopp* in its determination of which court had jurisdiction over an oral contract claim filed against a decedent's estate.

Kentopp and *Eich* were the first rulings on the issue of which court has probate jurisdiction following the 1970 amendments to the Nebraska Constitution⁴ and the 1974 adoption of the Nebraska Probate Code.⁵ The 1970 amendments eliminated the provisions which identified county court jurisdiction.⁶ The decisions reveal a shift from earlier trends in which the district court was held to have had jurisdiction over these issues.⁷

This article will discuss the court's apparent expansion of county court jurisdiction in the areas of partition and oral contract claims against a decedent's estate, Nebraska constitutional provisions before⁸ and after 1970,⁹ and the statutory provisions¹⁰ which

1. 206 Neb. 776, 295 N.W.2d 275 (1980).

2. 207 Neb. 646, 300 N.W.2d 802 (1981).

3. Comment, 46 NEB. L. REV. 143, 143 (1967).

4. See notes 12-13 and accompanying text *infra*.

5. NEB. REV. STAT. §§ 30-2201 to -2902 (Reissue 1979).

6. Compare NEB. CONST. art. 5, § 16 (Reissue 1964) with NEB. CONST. art. 5, § 16 (Reissue 1979).

7. See 206 Neb. at 779, 295 N.W.2d at 277; notes 65-83 and accompanying text *infra*.

8. NEB. CONST. art. 5, §§ 9, 16 (Reissue 1964).

9. NEB. CONST. art. 5, § 9 (Reissue 1979).

10. NEB. REV. STAT. §§ 24-517, 30-2211 (Reissue 1979).

identify the development of the sources of probate jurisdiction. Analysis of judicial interpretation of these sources reveals the court's rationale in expanding county court jurisdiction. Additionally, this article will consider: (1) recent 1981 legislation addressing appeals of probate issues from county to district court, and (2) possible implications of these case holdings in jurisdiction over inter vivos trusts (L.B. 42).¹¹

FACTS AND HOLDINGS

In *Kentopp*, separate cases were filed in the district and county courts involving the same parties and the same real estate.¹² The decedent died testate devising realty to three of his children and five children of his deceased son.¹³ The will was admitted to probate. One grandson filed an action for partition or sale of the realty,¹⁴ and the district court ordered the partition and distribution of the proceeds to the heirs.¹⁵

The case raised the issue of whether the district court or the county court had jurisdiction to partition and sell the decedent's real estate.¹⁶ The personal representative of the estate argued that the Nebraska Probate Code, Nebraska Constitution and Nebraska statutes granted the county court jurisdiction over all matters relating to settlement of estates. This jurisdiction included partitioning while the estate proceeding was pending probate.¹⁷

The appellee responded that partition is traditionally an equity matter over which the district court has jurisdiction by virtue of its constitutional grant.¹⁸ Notwithstanding concurrent jurisdiction, the appellee argued that the first court to acquire jurisdiction in partition retains it, and that partition was distinct from matters relating to the probating of the estate.¹⁹

The Nebraska Supreme Court held that upon filing for probate of the estate, the county court acquired jurisdiction over all matters relating to it. This jurisdiction included partition and sale. The district court could not exercise its original jurisdiction over partition, either while the decedent's estate proceeding was pend-

11. L.B. 42, §§ 17, 27, 1981 Neb. Laws 10, 17.

12. 206 Neb. at 777, 295 N.W.2d at 276.

13. *Id.* at 777-78, 295 N.W.2d at 277.

14. *Id.* at 778, 295 N.W.2d at 277.

15. *Id.* at 777, 295 N.W.2d at 276.

16. *Id.* at 787, 295 N.W.2d at 281.

17. *Id.* at 779, 295 N.W.2d at 277.

18. NEB. CONST. art. 5, § 9 (Reissue 1979).

19. 206 Neb. at 779-80, 295 N.W.2d at 277.

ing in the county court, or until the estate had been awarded to the devisees.²⁰

In *Eich*, Henry Layton died intestate without surviving spouse or issue. The county court appointed two of his cousins as personal representatives.²¹ The estate, estimated at \$621,208.64, included a residence, business property, a hardware store, stocks, bonds, and bank accounts.²²

Eich, the decedent's employee for forty years, filed a claim against the estate based on an oral promise made to him by the decedent in which he agreed to execute a will devising the business inventory, goodwill, equipment, and building, valued at \$54,000, in exchange for Eich's long, faithful service.²³ The county court allowed the claim, concluding that the decedent had made an enforceable unilateral contract to transfer property.²⁴ The personal representative appealed to the district court to disallow the claim, arguing that the county court lacked jurisdiction, and therefore could not grant specific performance. The personal representative alleged that such a remedy could be ordered only by a court with equity jurisdiction—a district court.²⁵

The Nebraska Supreme Court held that county court jurisdiction over matters relating to a decedent's estate included jurisdiction to determine a contract claim against the estate. This jurisdiction was acquired when the intestacy proceeding was filed.²⁶

BACKGROUND

Constitutional Grants of Jurisdiction

The Nebraska Constitution, article V, section nine,²⁷ states that "[t]he district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the legislature may provide. . . ." ²⁸ Prior to its repeal in 1970, the Nebraska Constitution, article V, section sixteen,²⁹ outlined county court jurisdiction.³⁰ The constitutional provision had granted county courts

20. *Id.* at 787, 295 N.W.2d at 281.

21. 207 Neb. at 647, 300 N.W.2d at 803.

22. *Id.* at 647-48, 300 N.W.2d at 803.

23. *Id.* at 648, 300 N.W.2d at 803.

24. *Id.* at 649, 300 N.W.2d at 804.

25. *Id.* at 650, 300 N.W.2d at 804.

26. *Id.* at 654, 300 N.W.2d at 806.

27. NEB. CONST. art. 5, § 9 (Reissue 1979).

28. *Id.*

29. NEB. CONST. art. 5, § 16 (Reissue 1964) (Repealed 1970).

30. Before its repeal, article five, section sixteen provided:
County courts . . . shall have original jurisdiction in all matters of pro-

original probate jurisdiction.³¹ It specifically stated that county courts had no jurisdiction in actions involving title, mortgages, or contracts relating to real estate.³² These provisions clearly limited county court jurisdiction. The district court had general equity jurisdiction.³³ Additionally, the district court could order partition or sale of a decedent's realty while the estate was in the process of administration in county court.³⁴ Thus, notwithstanding the county court's original probate jurisdiction, the district court retained exclusive jurisdiction to try title³⁵ and to hear contract claims because of its general equity jurisdiction.³⁶

In 1970, article V of the Nebraska Constitution was amended;³⁷ section nine remained, but section sixteen was repealed in its entirety,³⁸ leaving no constitutional provision in effect with specific reference to county court jurisdiction.³⁹ Following the 1970 constitutional amendment, the legislature was left to vest the county court with jurisdiction. The legislature was free from prior constitutional limitations with respect to title and contract claims;⁴⁰ however, retention of article V section nine protects the district court jurisdiction.⁴¹ The legislature cannot act to deny the district court's traditional equity power.⁴² The constitutional grant of chancery jurisdiction to the district court remains a limitation on the exercise of any legislative grant to the county court of jurisdiction in actions requiring equitable relief.⁴³ The repeal of article V, section sixteen did not solve the jurisdictional conflict between county court probate and the district court's general equity

bate, settlement of estates of deceased persons . . . and such other jurisdiction as may be given by general law: But they shall not have jurisdiction . . . in civil actions in which title to real estate is sought or drawn in question; nor in actions on mortgages or contracts for the conveyance of real estate

NEB. CONST. art. 5, § 16 (Reissue 1964) (Repealed 1970).

31. *Id.*

32. *Id.*

33. NEB. CONST. art. 5, § 9 (Reissue 1979).

34. 206 Neb. at 780-81, 295 N.W.2d at 278.

35. *Id.*

36. *See* 207 Neb. at 651, 300 N.W.2d at 804.

37. 206 Neb. at 781, 295 N.W.2d at 278.

38. *Id.*

39. *Compare* NEB. CONST. art. 5 (Reissue 1964) *with* NEB. CONST. art. 5 (Reissue 1979).

40. *See* NEB. CONST. art. 5, § 16 (Reissue 1964) (Repealed 1970).

41. *See* NEB. CONST. art. 5, § 9 (Reissue 1979).

42. *Sorensen v. Polk*, 121 Neb. 532, 536, 237 N.W. 857, 853 (1931); *Burnham v. Benson*, 121 Neb. 291, 298, 236 N.W. 745, 748 (1931); *Lacey v. Zeigler*, 98 Neb. 380, 390, 152 N.W. 792, 795 (1915); *see* NEBRASKA LEGISLATIVE COUNCIL, REPORT OF THE LEGISLATIVE COUNCIL COMMITTEE ON JUDICIARY 22 (1973).

43. *See* note 41 *supra*.

jurisdiction.⁴⁴

Statutory Definitions of Jurisdiction

Since 1970, state statutes have been the sole source of county court jurisdiction.⁴⁵ The sources of the district court's jurisdiction are statutory⁴⁶ and constitutional.⁴⁷ Nebraska Revised Statutes section 24-302⁴⁸ states that "[d]istrict courts shall have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided."⁴⁹ Section 24-517 of the Nebraska Revised Statutes⁵⁰ grants the county court exclusive original jurisdiction over matters which relate to a decedent's estate.⁵¹

The Nebraska Probate Code, section 30-2211,⁵² includes provisions for county court jurisdiction.⁵³ The code vests the county court with subject matter jurisdiction over matters relating to a decedent's estate to the full extent that is constitutionally permitted.⁵⁴ Substantively, the jurisdiction granted by the code corresponds to that of section 24-517.⁵⁵ Both statutory sections

44. The issue was again before the court in the two recent survey cases of *Eich v. Layton*, 207 Neb. at 651, 300 N.W.2d at 805, and *Kentopp v. Kentopp*, 206 Neb. at 784, 295 N.W.2d at 279.

45. 207 Neb. at 651, 300 N.W.2d at 805.

46. NEB. REV. STAT. § 24-302 (Reissue 1979).

47. NEB. CONST. art. 5, § 9 (Reissue 1979).

48. NEB. REV. STAT. § 24-302 (Reissue 1979).

49. *Id.*

50. NEB. REV. STAT. § 24-517 (Reissue 1979).

51. *Id.* This section provides in part:

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedent's estates, including the probate of wills and the construction thereof, . . .

(9) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Id.

52. NEB. REV. STAT. § 30-2211 (Reissue 1979).

53. *Id.* This section provides:

[County court shall have subject matter jurisdiction]:

(a) To the full extent permitted by the Constitution of Nebraska . . . relating to

(1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons;
(2) protection of minors and incapacitated persons; and
(3) trusts.

(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Id.

54. *Id.* at § 30-2211(a).

55. Compare notes 17-18 *supra* with notes 50-53 *supra*.

contain provisions which grant county courts jurisdiction over all matters relating to a decedent's estate. However, the two sections vary in the language by which they confer jurisdiction. Section 30-2211 vests jurisdiction "to the full extent permitted by the Constitution"⁵⁶ whereas section 24-517 grants "exclusive original jurisdiction."⁵⁷

It is essential to reconsider the 1970 constitutional amendment in order to determine the effects of sections 30-2211 and 24-517 on judicial interpretation of jurisdictional questions. The amendment repealed the constitutional provision for county court jurisdiction, but district court jurisdiction was not altered.⁵⁸ This constitutional change gave more weight to both statutes.⁵⁹ Following the change, the legislature could vest exclusive original probate jurisdiction in the county court, including jurisdiction over matters of title and contract claims to a decedent's estate.⁶⁰ It could not, however, limit the constitutional grant of general equity jurisdiction to district courts.⁶¹

Another pertinent statute regarding jurisdiction is Nebraska Revised Statutes, section 30-24,109,⁶² which deals with partition and sale of real estate in a decedent's estate.⁶³ This section provides that the personal representative or heir may petition the court for partition.⁶⁴ The comment to that section states that the court which has jurisdiction to administer the estate also has jurisdiction to partition the property.⁶⁵

Judicial Interpretation

Before 1970, judicial interpretation of jurisdictional statutes was two pronged. First, probate courts had the power to decide equitable matters where such were incidental to its exclusive pro-

56. See note 52 *supra*.

57. See note 51 *supra*.

58. See notes 36-37 and accompanying text *supra*.

59. *Cf.* 207 Neb. at 651, 300 N.W.2d at 805 (the only provisions available are statutes).

60. See note 37 and accompanying text *supra*.

61. See note 41 and accompanying text *supra*.

62. NEB. REV. STAT. § 30-24,109 (Reissue 1979) provides in part: "When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, . . . to make partition." *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at § 30-24,109, comment. The comment to § 30-24,109 provides, in part: "If court determination is necessary, the court with jurisdiction to administer the estate has jurisdiction to partition the property." *Id.*

bate jurisdiction.⁶⁶ Second, when the issue involved was traditionally decided in district court, that court could also decide related probate matters.⁶⁷

The court in *Williams v. Miles*⁶⁸ enunciated the first rule.⁶⁹ The issue presented was whether the county court could hear a petition to set aside a will after the time for appeal on the judgment approving the will had run.⁷⁰ The court held that the county court was free to exercise all the powers of a court of general jurisdiction, either legal or equitable, in situations where it had exclusive jurisdiction.⁷¹ The county court had jurisdiction to provide equitable relief in matters within the scope of its authority from the statutes.⁷²

In *Best v. Gralapp*,⁷³ one child of the decedent brought an action to quiet title against the other children.⁷⁴ Affirming the second rule, the court held that district court had proper jurisdiction because title to realty was involved.⁷⁵ In *In re Estate of Jurgen-smeir*,⁷⁶ decided in 1942, the court held that "county courts are without general equity jurisdiction but, in exercising exclusive original jurisdiction over estates, may apply equitable principles to matters within probate jurisdiction."⁷⁷ This rule was also enunciated more recently by the court in *Dennis v. Omaha National Bank*.⁷⁸ The court held that the district court could decide matters which were otherwise reserved for the county court when an equity issue was material.⁷⁹

66. Comment, 46 NEB. L. REV. 143, 145 (1967).

67. *Id.*

68. 63 Neb. 859, 89 N.W. 451 (1902).

69. *Id.* at 862-63, 89 N.W. at 452-53.

70. *Id.*

71. *Id.*

72. In re Estate of Lee, 137 Neb. 567, 570, 290 N.W. 437, 438 (1940) (The county court was granted jurisdiction over an action to grant specific performance of an agreement between heirs in settlement of a will contest); In re Jensen's Estate, 135 Neb. 602, 605, 283 N.W. 196, 198 (1939) (The county courts have equity jurisdiction incidental to powers properly conferred by statute); In re McLean's Estate, 136 Neb. 353, 355, 285 N.W. 915, 916 (1939) (A county court has full equity power as to all subjects within its exclusive jurisdiction); In re Shierman's Estate, 129 Neb. 230, 235-36, 261 N.W. 155, 157-58 (1935) (The county courts have the power to try and determine matters of an equitable character in connection with such matters and grant equitable relief to the same extent that a district court has in regard to subjects in the exercise of its general equity jurisdiction).

73. 69 Neb. 811, 96 N.W. 641 (1903), *aff'd*, — Neb. —, 99 N.W. 837 (1904).

74. *Id.* at 812-13, 96 N.W. at 641-42.

75. *Id.*

76. 142 Neb. 188, 5 N.W.2d 233 (1942).

77. *Id.* at 199, 5 N.W.2d at 239.

78. 153 Neb. 865, 870-71, 46 N.W.2d 606, 610-11 (1951).

79. *Id.* In an action to terminate an express trust and distribute the corpus, the court ordered distribution to the testator's next of kin in equal degree. It affirmed

Examination of judicial interpretation of jurisdiction in matters relating to contract claims against a decedent's estate reveals that the district court alone could grant equitable remedies. The court held in *Sopeich v. Tangeman*⁸⁰ that if the promisor dies before complying with an established contract, then the county court has no jurisdiction.⁸¹ In a 1976 case, *Dunmire v. Cool*,⁸² the rule restricting county court jurisdiction was strengthened.⁸³ The court held that one who claims under oral contract a portion of a decedent's estate for services rendered has no standing to contest in county court.⁸⁴

Thus, judicial interpretation prior to the 1970 constitutional amendment and the 1977 implementation of the Probate Code emphasized the district court's jurisdiction over probate matters requiring partition or specific contract performance, but still allowed the county court to decide equitable matters when such were incidental to its probate jurisdiction.

ANALYSIS

In its comment, the Legislative Judicial Study of the Nebraska Probate Code anticipated the jurisdictional questions⁸⁵ raised in *Kentopp* and *Eich*. In the comment on constitutional and statutory language, the study implies that the grant of jurisdiction to county court would probably mean that if some party raised the issue of county court probate jurisdiction and district court equity jurisdiction in an appropriate district case, it would be held that county court merely has concurrent jurisdiction.⁸⁶ Thus, the inference raised by the comment was that the district court would have jurisdiction over the suit.⁸⁷ The validity of such an inference has been laid to rest by the recent Nebraska Supreme Court holdings in *Kentopp* and *Eich*. These decisions support exclusive, not concurrent, county court jurisdiction.⁸⁸ Thus, the court has reached a different conclusion than that anticipated by the Legislative Judicial Study.

the district court determination, stating that such decree was within that court's original jurisdiction.

80. 153 Neb. 506, 45 N.W.2d 478 (1951).

81. See *id.* at 510-11, 45 N.W.2d at 481.

82. 195 Neb. 247, 237 N.W.2d 636 (1976).

83. See *id.* at 251, 237 N.W.2d at 637.

84. *Id.* at 251, 23 N.W.2d at 637.

85. NEBRASKA LEGISLATIVE COUNCIL, REPORT OF THE LEGISLATIVE COUNCIL COMMITTEE ON JUDICIARY 22 (1973).

86. *Id.*

87. See *id.*

88. See note 34 *supra*.

In *Kentopp*, two conflicting legal approaches are: (1) whether the county court having exclusive original jurisdiction over all matters relating to settlement of estates of deceased persons has jurisdiction to partition or sell real estate while the estate proceedings are pending;⁸⁹ and (2) notwithstanding concurrent jurisdiction, whether the district court has jurisdiction as the first court to receive a petition for partition.⁹⁰ The traditional constitutional grant of equity jurisdiction to the district court strengthens the second approach.⁹¹ Under this second approach, any action to partition a decedent's estate to divide proceeds among heirs or devisees must be treated as a matter in equity, separate and distinct from matters relating to a decedent's estate or its settlement.⁹²

The court in *Kentopp* rejected the assumption that partition and sale of real estate to distribute proceeds to devisees is distinct from matters relating to a decedent's estate.⁹³ Therefore, when the county court acquired jurisdiction over all other matters relating to a decedent's estate, it acquired jurisdiction to partition and sell.⁹⁴

By statutory authority, the county court has jurisdiction to authorize the personal representative to sell the decedent's realty to pay the debts of the estate.⁹⁵ The court's opinion in *Kentopp* extended the jurisdictional authority of the county court over the sale of property for the purpose of distributing proceeds to devisees.⁹⁶ Apparently, the court drew no distinction between the statutory authority permitting a sale to pay debts and a sale to distribute proceeds.

The court in *Kentopp* expanded county court jurisdiction to order partition and sale. It did so by judicial interpretation of the statutory language "matters relating to decedent's estate."⁹⁷ The court placed a petition to partition and sell a decedent's estate for distribution to devisees within the statutory language vesting county court probate jurisdiction. The county court could then grant equitable relief. Although the county court has no grant of equity jurisdiction, it may apply equitable principles to matters

89. See 206 Neb. at 779-80, 295 N.W.2d at 277.

90. *Id.* Where two courts have concurrent jurisdiction, that which first takes cognizance has the right to retain it to the exclusion of the other. *Terry v. State*, 77 Neb. 612, 617, 110 N.W. 733, 735 (1906).

91. See NEB. CONST. art. 5, § 9 (Reissue 1979).

92. See 206 Neb. at 785, 295 N.W.2d at 280.

93. 206 Neb. at 786, 295 N.W.2d at 280.

94. *Id.* at 787, 295 N.W.2d at 281.

95. NEB. REV. STAT. §§ 30-2476, -24,109 (Reissue 1979) See note 101 and accompanying text *infra*.

96. See 206 Neb. at 786, 295 N.W.2d at 280.

97. NEB. REV. STAT. § 24-517 (Reissue 1979). See note 50 and accompanying text *supra*.

within probate jurisdiction when exercising original jurisdiction over a decedent's estate.⁹⁸

The court's holding in *Kentopp* raises two significant questions. First, if the statutory language—"matters relating to a decedent's estate"—sets the county court jurisdiction, what actions fall within the category? Second, if an action can be placed within that legal pigeonhole, does the county court have jurisdiction to apply equitable principles, precluding the district court?

The court in *Kentopp* did not identify the nature and extent of equitable principles to be used by the county court; nor did it classify "all other matters relating to a decedent's estate." It appears that a case could be argued on the fundamental issue of whether an action is to be treated as "a matter relating to a decedent's estate." If so, statutory provisions would be interpreted to grant jurisdiction to county courts. Otherwise, the action would fall under the district court's general equity jurisdiction.⁹⁹ Once classified as a "matter relating to a decedent's estate," as was the partition action in *Kentopp*, the county court acquires jurisdiction over it.¹⁰⁰ Statutory interpretation then allows the county court to implement equitable principles and avoid conflict with the district court's grant of jurisdiction.

The Nebraska Supreme Court decided *Eich* consistently with the precedent set in *Kentopp*. The court concluded that the county court had jurisdiction over a contract claim against the decedent's estate by virtue of statutory language.¹⁰¹ Classification of the contract claim within the definition of "all matters relating to a decedent's estate" vested jurisdiction with the county court.¹⁰² Therefore, the court could grant specific performance without intruding on the district court's equity jurisdiction.

The Effect of L.B. 42

County court authority was further buttressed during the survey period by recent legislation. L.B. 42¹⁰³ eliminated trial de novo of probate issues on appeal from county to district court.¹⁰⁴ This avoids the delay caused by duplication of trials.¹⁰⁵ Prior to the leg-

98. NEB. REV. STAT. § 30-2211, Comment (Reissue 1979) citing § 24-517. Previous law was the same. See notes 72-73 and accompanying text *supra*.

99. See notes 97-98 and accompanying text *supra*.

100. *Id.*

101. 207 Neb. at 654, 300 N.W.2d at 806.

102. 207 Neb. at 653, 300 N.W.2d at 805-06.

103. L.B. 42, §§ 17, 27, 1981 Neb. Laws 10, 17.

104. *Id.*

105. Comment, 46 NEB. L. REV. 143, 145 (1967).

isolation, when an appeal was made in district court, the county court lost all jurisdiction over the appeal.¹⁰⁶ Thus, the district court tried the case on all issues of fact and law as if it had been originally filed in that court.¹⁰⁷ Appeals were generally made de novo on the record, but the Nebraska Revised Statutes section 24-541¹⁰⁸ provided an exception. Those matters referred to in Nebraska Revised Statutes section 30-1606,¹⁰⁹ relating to probate, had to be appealed de novo.¹¹⁰

Cases on point illustrate that the court strictly interpreted the de novo appeal procedure.¹¹¹ In *In re Conservatorship of Hatcher*,¹¹² the court held that trial of probate matters was heard in the district court as if no action whatsoever had been instituted in the county court.¹¹³ County court rulings on probate matters ceased to exist with the filing of an appeal.¹¹⁴ In affirming the district court's decision to uphold the county court's termination of the conservatorship, the supreme court reiterated the significance of de novo appeal.¹¹⁵ The court stated that "whatever the county court did was not before the District Court for review and is not before us for review. The only matters to be reviewed . . . on appeal are the actions of the District Court in hearing the case as if it had been originally filed in the District Court."¹¹⁶

106. NEB. REV. STAT. § 30-1606 (Reissue 1979) (Repealed 1981) provided in part: In all cases not otherwise specifically provided for, either party may appeal from the final judgment of the county or municipal court to the district court of the county where the judgment was rendered. All such appeals shall be de novo on the record except those matters referred to in section 30-1606 relating to the probate . . . which matters shall be appealed de novo.

Id.

107. *Id.*

108. NEB. REV. STAT. § 24-541 (Reissue 1979).

109. NEB. REV. STAT. § 30-1606 (Reissue 1979) (Repealed 1981).

110. NEB. REV. STAT. § 24-541 (Reissue 1979) provides in part:

In all cases not otherwise specifically provided for, either party may appeal from the final judgment of county court to district court. All such appeals shall be de novo on the record except those matters referred to in section 1606 relating to probate . . . which matters shall be appealed de novo.

Id.

111. *State v. Worrell*, 198 Neb. 507, 511-12, 253 N.W.2d 843, 846 (1977) (On appeal from the county to the district court, it is the obligation of the district court to reach an independent conclusion without reference to decisions of the county court); *Landmesser's Estate*, 198 Neb. 148, 149, 251 N.W.2d 885, 887 (1977) (By interpretation of section 24-541, appeals from the county to the district court in probate matters are tried in the district court de novo and not on the record).

112. 205 Neb. 449, 288 N.W.2d 276 (1980).

113. *Id.* at 455-56, 288 N.W.2d at 280.

114. *Id.*

115. *Id.*

116. *Id.*

The 1981 legislative session repealed the statutes which had provided for appeals of probate matters *de novo*.¹¹⁷ The provisions for appeal of probate matters from county to district court were revised and are no longer *de novo*.¹¹⁸

Implications for Inter Vivos Trusts

Decisions in *Kentopp* and *Eich* may have implications in cases involving jurisdiction over trusts. Equity jurisdiction over trusts was confined to the district courts until 1931, when the Legislature granted probate courts jurisdiction over testamentary trusts.¹¹⁹ Judicial interpretations consistently held that the county court had concurrent jurisdiction with district court in the supervision of the administration of testamentary trusts.¹²⁰ The act of giving the county court jurisdiction of testamentary trusts did not deprive the district court of its constitutional grant of original equity powers.¹²¹

The 1970 amended Nebraska Constitution and the 1974 adoption of the Probate Code affected county court jurisdiction over trusts.¹²² Under the present constitution, a trust matter could be brought into the district court under its general law and equity jurisdiction.¹²³ Following adoption and implementation of the Probate Code, county courts were granted jurisdiction over all trusts.¹²⁴ Section 30-2806¹²⁵ vests subject matter jurisdiction over trusts in the county court.¹²⁶ Jurisdiction extends to both testamentary and inter vivos trusts.¹²⁷ Additionally, it specifies the types of proceedings which can be initiated in county courts.¹²⁸

117. See note 118 *infra*. See notes 105-106 and accompanying text *supra*.

118. L.B. 42, § 17, 1981 Neb. Laws 10 provides: "[T]hat section 30-1601 reissue Revised Statute of Nebraska, 1943, be amended to read as follows: 'In all matters arising under the Nebraska Probate Code, appeals shall be allowed as provided in sections 1-10 of this act and section 24-551.'" *Id.*

119. R. VOLKMER, NEBRASKA ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF TRUSTS § 6, at 7-8 (1971).

120. See *Johnson v. Hays*, 193 Neb. 54, 55, 225 N.W.2d 397, 398 (1975); *Love v. Fauquet*, 184 Neb. 250, 252, 166 N.W.2d 742, 744 (1969).

121. See note 118 *supra*.

122. Gradwohl, *Trust Administration-Jurisdiction and Venue*, 9 CREIGHTON L. REV. 551, 552 (1976) [hereinafter cited as Gradwohl].

123. NEB. CONST. art. 5, § 9 (Reissue 1979).

124. NEB. REV. STAT. § 30-2806 (Reissue 1979). "Section 30-2806 is a tremendously important section on the jurisdiction of county courts of trust proceedings—not just testamentary trusts, but inter vivos as well." Gradwohl, *supra* note 122, at 552.

125. NEB. REV. STAT. § 30-2806 (Reissue 1979).

126. *Id.* This section vests "subject matter jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts" to county courts. *Id.*

127. Gradwohl, *supra* note 122 at 553.

128. NEB. REV. STAT. § 30-2806 (Reissue 1979).

The grant of jurisdiction is broad.¹²⁹ For example, the county court is vested with jurisdiction over the determination of other matters involving trustees and beneficiaries of trusts and any questions arising in the administration and distribution of any trust.¹³⁰ The above statute coupled with section 30-2203¹³¹ broaden the equitable powers of the county court to effectuate its jurisdiction over trusts.¹³² By virtue of section 30-2211, the county courts have jurisdiction over all trusts, but that jurisdiction is not exclusive.¹³³ The statutory language implies that county courts continue to have concurrent jurisdiction with district courts over inter vivos trusts.¹³⁴

The court's holdings in *Kentopp* and *Eich*, granting the county court jurisdiction over testamentary property, may be employed to expand county court jurisdiction over inter vivos trusts. The interpretation of the Nebraska Probate Code and case law, which permit the county court incidental equity jurisdiction to apply equitable principles within its probate jurisdiction, may expand the county court's jurisdiction over inter vivos trusts to the preclusion of the district court.

CONCLUSION

A conflict exists between the district court's constitutional grant of equity jurisdiction and the county court's statutory grant of probate jurisdiction. During the survey period, the Nebraska Supreme Court clarified the dispute.

In *Kentopp* and *Eich*, the court held that the county court had jurisdiction over the partition and sale of a decedent's estate and the oral contract claims against the estate.

The court upheld the county court's jurisdiction in both areas which had been previously limited to the district court. By a broadened interpretation of statutory language, the county court acquired jurisdiction over partition and over contract claims against a decedent's estate.

In February, 1981, the Unicameral repealed sections 30-1601 to -1610, making probate appeals no longer de novo. Thus, by judicial

129. See Gradwohl, *supra* note 122, at 522.

130. NEB. REV. STAT. § 30-2806 (Reissue 1979).

131. NEB. REV. STAT. § 30-2203 (Reissue 1979) reads, in part: "Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions." *Id.*

132. See Gradwohl, *supra* note 122, at 523.

133. NEB. REV. STAT. § 30-2211 (Reissue 1979); see notes 51-52 and accompanying text *supra*.

134. See notes 118-132 and accompanying text *supra*.

decision and reform legislation, county court probate jurisdiction and authority was clarified and expanded.

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