

No. _____

In The
Supreme Court of the United States

ISAAC D. KOCH,
Petitioner,
v.

STATE OF NEBRASKA,
Respondent.

On Petition for a
Writ of Certiorari to the
Supreme Court of Nebraska

APPENDIX
TO PETITION
FOR WRIT OF CERTIORARI

ISAAC D. KOCH,
Petitioner.
155 Morian Street
Richland, Neb. 68601
(402) 910-1581

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IN THE SUPREME COURT OF THE UNITED
STATES

KOCH v. NEBRASKA

Case no. 22A585

January 3, 2023

Application (22A585) denied by Justice Kavanaugh.

d

IN THE SUPREME COURT OF THE STATE OF
NEBRASKA

No. A-22-84

State v. Isaac D. Koch

Filed: December 12, 2022

ORDER

Appellant's motion to stay mandate overruled. See, Neb. Ct. R. App. P. § 2[-]114(A)(2); State v. Abram, 284 Neb. 55, 815 N.W.2d 897 (2012) (mere filing of petition for certiorari does not automatically stay proceedings in lower court); State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022) (voluntary guilty plea or plea of no contest generally waives all defenses to criminal charge).

IN THE SUPREME COURT OF THE STATE OF
NEBRASKA

No. A-22-84

State v. Isaac D. Koch

Filed: November 15, 2022

Petition of Appellant for further review denied.

f

IN THE COURT OF APPEALS OF THE STATE OF
NEBRASKA

No. A-22-84

State v. Isaac D. Koch

Filed: October 17, 2022

ORDER

Motion of Appellant for rehearing overruled.

IN THE COURT OF APPEALS OF THE STATE OF
NEBRASKA

**MEMORANDUM OPINION AND JUDGMENT
ON APPEAL (Memorandum Web Opinion)**

STATE V. KOCH

NOTICE: THIS OPINION IS NOT DESIGNATED
FOR PERMANENT PUBLICATION AND MAY
NOT BE CITED EXCEPT AS PROVIDED BY NEB.
CT. R. APP. P. § 2-102(E).

STATE OF NEBRASKA, APPELLEE,

V.

ISAAC D. KOCH, APPELLANT.

Filed September 13, 2022. No. A-22-084.

Appeal from the District Court for Platte
County, ROBERT R. STEINKE, Judge, on appeal thereto
from the County Court for Platte County, FRANK J.
SKORUPA, Judge. Judgment of District Court affirmed.

Isaac D. Koch, pro se.

Douglas J. Peterson, Attorney General, and
Matthew Lewis for appellee.

PIRTLE, Chief Judge, and BISHOP and WELCH,
Judges.

WELCH, Judge.

INTRODUCTION

Isaac D. Koch appeals from Platte County District Court's affirmance of his plea-based conviction in the Platte County Court for attempted violation of a domestic abuse protection order, a Class II misdemeanor. He argues that the district court erred in refusing to grant a waiver or extension of time to file a statement of errors and in not finding plain error by the county court relating to his conviction and sentence. For the reasons stated herein, we affirm.

STATEMENT OF FACTS

In April 2021, Koch was charged in the Platte County Court with violation of a domestic abuse protection order, a Class I misdemeanor. See Neb. Rev. Stat. § 42-924(4) (Cum. Supp. 2020). Pursuant to a plea agreement, Koch pled no contest to a reduced charge of attempted violation of a domestic abuse protection order. See Neb. Rev. Stat. § 28-201 (Reissue 2016) (criminal attempt). Additionally, pursuant to the plea agreement, the State dismissed a separate felony charge pending against Koch in the district court and agreed to recommend probation at sentencing. In support of the factual basis to support Koch's plea, the county court took notice of the probable cause affidavit which provided that, on January 12, 2021, officers were dispatched to a specific address located in Platte County in response to a witness report that he "had observed a male . . . in the basement and also secured a shotgun from the residence." Officers contacted the witness who had been invited into the residence by the victim and her two children. The witness stated that, while the victim was giving him a tour of the residence, he received a text from Koch stating that Koch "was being held hostage by [his wife

(the victim)] and was tied [downstairs] in the basement." Upon going to the basement, the witness observed Koch sitting in a chair "tied up [with] duct tape around his mouth." The witness instructed the victim and the children to leave the residence, called 911, and secured a shotgun which he found "placed by the side door near the living room." When officers arrived at the residence and announced themselves, they heard "a muffled voice coming from the basement." Upon entering the basement, officers observed Koch "sitting in a chair facing away from the basement stairs" with "a yellow cord wrapped around his knees and left wrist" and duct tape over his mouth, which officers removed. Officers also observed a cell phone resting in Koch's lap. When asked who had tied him up, Koch admitted that "he had done this to himself because he wanted to show [the victim] . . . how he was feeling about the protection order and not [being] able to [see] his children." Koch also admitted that he had been at the residence "all day" and that the shotgun was for the victim "because she need[ed] something to protect herself and the children." The witness and the victim were initially unaware that Koch was in the basement of the residence and did not see Koch's vehicle parked on the property because Koch had parked the vehicle "behind an old barn away from the house." Koch admitted being aware that he was in violation of the protection order in favor of the victim and two children.

After accepting Koch's plea, the court ordered a presentence investigation report and mental health evaluation. Koch did not complete the mental health evaluation prior to sentencing as ordered. Additionally, prior to sentencing, Koch's counsel filed a motion to withdraw at Koch's request. Thereafter, Koch, appearing pro se, filed a motion to withdraw his plea,

which motion was denied. At the sentencing on September 29, 2021, the county court stated:

Considering the nature of the charges and considering the absurdity of the way that you violated the protection order by tying yourself up in the basement of your wife's home with a gag and telling at least [the witness], according to the police report --

....

. . . [A]ccording to the police report contained in the presentence investigation that you had received -- that [the witness] said that he received . . . a text stating that [Koch] was being held hostage by [the victim] and he was tied . . . downstairs in the basement and to come and get [Koch], and the fact that you yourself as [sic] indicated that it was an attempt to communicate with [the victim] under the strangest way that I have ever heard of in my life, . . . the fact that there was a gun involved and at least you indicate . . . was provided for -- and I admit that you didn't have the gun with you at the time, that it was left in the house somewhere else, based on those circumstances the court finds that you are sentenced to a term of 60 days in the Platte County Jail.

On October 27, 2021, Koch filed a pro se notice of his intent to proceed with an appeal to the Platte County District Court along with a motion to proceed in forma pauperis. In support of his motion, Koch filed a poverty affidavit wherein he asserted his claims on appeal would include

(a) impossibility of attempting to violate a protection order[;] (b) that effectively awarding one year of custody is not issued in compliance with

[Neb. Rev. Stat.] § 42-924[;] (c) an injunction presuming the power, for the state, to proscribe all speech and peaceful assembly, even against just one person, is unconstitutional and therefore, transparently invalid[;] (d) political speech, that being my self-restraint, is protected speech[;] (e) the court erred by selecting a few . . . filings, based on content, as impermissible . . . under a transparently invalid injunction, when imposing the sentence[;] (f) my plea was not knowingly and voluntarily entered[;] and (g) assistance of my counsel was effectively deficient.

Although he included allegations of error in the poverty affidavit, Koch did not file a separate statement of errors in the district court as required by county court and district court rules. See Neb. Ct. R. §§ 6-1452(A)(6) (uniform county court rules) and 6-1518(B) (uniform district court rules). As a result, the district court reviewed Koch's appeal for plain error and, finding none, affirmed Koch's conviction and sentence. Koch then filed a motion to reconsider requesting the court excuse his lack of compliance with court rules as he was not represented by counsel and had substantially complied with the rules and alleged county court errors. The district court overruled his motion to reconsider. Koch has now appealed to this court.

ASSIGNMENTS OF ERROR

On appeal, Koch assigns as error that the district court erred in declining to extend his time to file a statement of errors and in reviewing his appeal for plain error only.

In his brief, Koch argues the following additional allegations of error: (1) “Is the Charge a Crime, One Specific?,” (2) “Does the Evidence Support a Conviction?” including subparts under which he argues that (a) the factual basis did not support his conviction, (b) he did not take a substantial step in committing the crime, (c) the injunction against him was unenforceable, and (d) the protection order prohibiting all contact and communication was an improper criminalization of his speech; and (3) “Can the Plea be Withdrawn?” under which he argues (a) his appeal was not understandingly or knowingly made, and (b) the court did not have time to examine his complaint regarding his minor child, that the separate felony charged dismissed in exchange for his plea was an “improper escalation of an admittedly incomplete stalking offense into an aggravated stalking offense,” allowing withdrawal of his plea would not create additional expense for the county, and that his no contest plea permitted him to evade certain consequences. Koch failed to assign as error any of the arguments. An appellate court does not consider errors which are argued by [sic] not assigned. *State v. Nielsen*, 301 Neb. 88, 917 N.W.2d 159 (2018). Accordingly, we decline to consider the errors that were argued but not assigned as error. See *State v. Dixon*, 306 Neb. 853, 947 N.W.2d 563 (2020) (to be considered by appellate court, alleged error must be both specifically assigned and specifically argued in brief of party asserting error).

Further, these issues were not reviewed by the district court which dismissed the matter for failure to file a statement of errors following a plan [sic] error review. See *Miller v. Brunswick*, 253 Neb. 141, 571 N.W.2d 245 (1997) (appellate court, in reviewing decisions of district court which affirmed, reversed, or

modified decisions of county court, will consider only those errors specifically assigned in appeal to district court and again assigned as error in appeal to this court). Due to Koch's failure to file a statement of errors, no errors were properly assigned to the district court. Accordingly, this court will not consider these additional errors assigned on appeal. See *id.* We only consider the first two assignments of error set forth above.

STANDARD OF REVIEW

On appeal from the county court, a district court's ruling on a motion to extend the time for filing a statement of errors will be reviewed for an abuse of discretion. *Houser v. American Paving Asphalt*, 299 Neb. 1, 907 N.W.2d 16 (2018). An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Lombardo v. Sedlacek*, 299 Neb. 400, 908 N.W.2d 630 (2018).

In cases where no statement of errors was filed and the district court reviewed for plain error, the higher appellate court likewise reviews for plain error only. *Houser v. American Paving Asphalt*, *supra*.

ANALYSIS

Koch claims that the district court erred in refusing to suspend court rules or grant him an extension to file a statement of errors and in reviewing his appeal on plain error only. Koch asks this court to find that the district court erred in refusing to excuse his failure to file a statement of errors because his arguments were included within his poverty affidavit. Specifically, Koch argues:

n

Under these circumstances, [Koch] is precluded from separately addressing each of the errors, of which the District Court was aware, from his *Poverty Affidavit* (T13-15). “Th[e appellate] court, in reviewing decisions of the district court which affirmed, reversed, or modified decisions of the county court, will consider only those errors specifically assigned in the appeal to the district court and again assigned as error in the appeal to this court.” *Miller v. Brunswick*, 253 Neb. 141 (1997). Therefore, losing the opportunity to argue them affects his substantial right.

Brief for appellant at 20.

Neb. Ct. R. § 6-1518 provides that:
[w]ithin 10 days of filing the bill of exceptions in an appeal to the district court, the appellant shall file with the district court a statement of errors which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be separately numbered and paragraphed. Consideration of the cause will be limited to errors assigned, provided that the district court may, at its option, notice plain error not assigned.

However, “[u]pon the showing of good cause, a rule may be suspended in a particular instance in order to avoid a manifest injustice.” Neb. Ct. R. § 6-1519. In Nebraska, a pro se party is held to the same standards as one who is represented by counsel. *State v. Jaeger*, 311 Neb. 69, 970 N.W.2d 751 (2022).

In *Houser v. American Paving Asphalt*, 299 Neb. 1, 18-19, 907 N.W.2d 16, 28-29 (2018), the Nebraska Supreme Court stated that:

On the whole, our case law teaches that there is flexibility in applying the statement of errors rule. The district court has discretion to extend the time for filing a statement of errors. It has discretion to consider errors brought to its attention in ways other than a timely filed statement of errors. And in light of the purpose of this “procedural tool,” we see no reason to unduly constrict the district court’s discretion. Of course, this discretion is not unlimited. And we provide some guidance for the exercise of this discretion.

The situation here is analogous to one where an appellant’s brief in the Supreme Court or the Court of Appeals does not contain an assignments of error section. One of our court rules requires a section of the appellant’s brief to contain, under an appropriate heading, “[a] separate, concise statement of each error a party contends was made by the trial court. . . .” Like the district court’s statement of errors rule, our rule cautions that “consideration of the case will be limited to errors assigned and discussed,” but that “[t]he court may, at its option, notice a plain error not assigned.” In contrast to the district court’s rule, our rule is grounded in statute, which requires that “[t]he brief of appellant shall set out particularly each error asserted. . . .”

We have never interpreted § 2-109(D)(1)(e) to leave us powerless to consider errors that were not properly presented. But we have repeatedly stated that we may proceed as

though the party failed to file a brief entirely or, alternatively, may examine the proceedings for plain error. We believe that the district court should have the same flexibility.

Thus, we hold that on appeal from the county court, a district court's ruling on a motion to extend the time for filing a statement of errors will be reviewed for an abuse of discretion. Numerous situations are possible. For example, an appellant may recognize the omission before an opponent or the court has responded. An opponent may have responded, but only in a summary fashion. An opponent may have submitted a full brief relying on the omission. Or the omission may not have been noted until after the appeal was submitted to the district court. The specific circumstances should drive the court's exercise of discretion. And it is important whether the circumstances are rooted in the moving party's own neglect.

Here, the only evidence before us in the record pertaining to Koch's failure to file the statement of errors is contained in Koch's motion to reconsider wherein he asked the district court to waive the statement of errors requirements and grant him additional time to provide one. However, the motion to reconsider was filed after the district court had already entered its order finding Koch failed to comply with Neb. Ct. R. § 6-1518. Further, it is apparent from the record that Koch's failure to file a separate statement of errors was the result of his own neglect. Although Koch eventually argued his lack of counsel created extenuating circumstances which should afford him some level of relief associated with his neglect, we note that

his counsel withdrew at Koch's request prior to sentencing in the county court and Koch decided to represent himself thereafter. The Nebraska Supreme Court's pronouncements in *Houser v. American Paving Asphalt*, 299 Neb. 1, 907 N.W.2d 16 (2018), are instructive that the timing of a request to extend the filing of a statement of errors is material to the exercise of the court's discretion in granting such requests. Because Koch did not present his request to extend the statement of errors deadline until after the district court had ruled on the issue, we find that the district court did not abuse its discretion in refusing to grant a waiver or additional time to file a statement of errors or in limiting its review of Koch's appeal to plain error.

Having found no abuse of discretion in the district court's determination that its review was limited to plain error, our review of Koch's conviction and sentence is also limited to plain error. See *id.* (in cases where no statement of error was filed and district court review for plain error, higher appellate court likewise reviews for plain error only). Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Id.*

Having reviewed the record for plain error, and finding none, we affirm the district court order affirming Koch's conviction and sentence.

AFFIRMED.

r

IN THE DISTRICT COURT OF PLATTE COUNTY,
NEBRASKA

No. CR21-145

THE STATE OF NEBRASKA,

Plaintiff/Appellee,

-v-

ISAAC D. KOCH,

Defendant/Appellant.

Filed: February 2, 2022

ORDER

On January 14, 2022, this Court entered a memorandum opinion and order affirming the defendant/appellant's conviction and sentence. On January 24, 2022, the defendant/appellant filed a motion to reconsider.

Having had an opportunity to review the defendant/appellant's motion to reconsider, the Court finds that the same shall be overruled.

IT IS SO ORDERED.

DATED THIS 2nd DAY OF FEBRUARY, 2022.

BY THE COURT:

/s/ Robert R. Steinke

ROBERT R. STEINKE,
DISTRICT JUDGE

IN THE DISTRICT COURT OF PLATTE COUNTY,
NEBRASKA

No. CR21-145

THE STATE OF NEBRASKA,
Plaintiff/Appellee,

-v-

ISAAC D. KOCH,
Defendant/Appellant.

Filed: January 14, 2022

MEMORANDUM OPINION AND ORDER

On January 10, 2022, this case came on for hearing on the defendant/appellant's appeal. Jose Rodriguez appeared on behalf of the State of Nebraska as Deputy Platte County Attorney. The defendant/appellant, Isaac D. Koch, personally appeared in court and was self-represented. After hearing the arguments of Mr. Koch and the State, the defendant/appellant's appeal was taken under advisement.

The defendant/appellant appeals from his conviction and sentence of 60 days imprisonment for the offense of attempted violation of a domestic abuse protection order, a Class II misdemeanor. Under Nebraska law, a Class II misdemeanor is punishable by a maximum of six months imprisonment, or one thousand dollars fine, or both, with no minimum required penalty. As such, Koch's sentence of 60 days was well

within the statutory limits. There is no dispute that Koch has fully served his 60-day sentence.

In an appeal of a criminal case from the county court, the district court acts as an intermediate court of appeals, and its review is limited to an examination of the record for error or abuse of discretion. *State v. Johnson*, 310 Neb. 527 (2021). See, also, Neb. Rev. Stat. §25-2733(1)(Reissue 2016). Both the district court and a higher appellate court generally review appeals from the county court for error appearing on the record. *State v. Johnson, supra*. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.*

Initially, because the defendant/appellant has served his 60-day sentence, the Court must determine if his appeal has been rendered moot. Generally, an appeal of a criminal conviction is moot when a criminal defendant has completely served his or her sentence. *State v. Patterson*, 237 Neb. 198 (1991). There are, however, two relevant exceptions to this general mootness rule, namely, the Nebraska Supreme Court has held that a prisoner's appeal is not moot if he or she has fully served his or her sentence before his or her appeal reaches the court and there was no way the

prisoner, using all reasonable methods, could have brought his or her case to the court before expiration of his or her sentence, or if the prisoner may suffer future state or federal penalties or disabilities as a result of the judgment. *Id.*

Here, the bill of exceptions was filed just last month, December 14, 2021, long after Koch had completed serving his sentence. As such, and without a bill of exceptions, there was no way Koch, using all reasonable methods, could have brought his case to this court on appeal prior to the expiration of his sentence. Because this exception to the general mootness doctrine applies, Koch's appeal is not moot.

Having determined Koch's appeal has not been rendered moot, the Court would further note that he has not filed a statement of errors as required by Neb. Ct. R. §6-1452(A)(7)(rev. 2001). That rule provides:

Statement of errors. Within 10 days of the filing of the bill of exceptions in the district court, the appellant shall file with the district court a statement of errors, which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be separately numbered and paragraphed. Consideration of the case will be limited to errors assigned and discussed. The district court may, at its option, notice a plain error not assigned. This rule shall not apply to small claims appeal. [sic]

The Nebraska Supreme Court has routinely held that where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. See, e.g., *Federal Mortgage Assn. v. Marcuzzo*, 289 Neb. 301 (2014).

Because Koch has not filed a timely statement of errors, and having carefully reviewed the record for plain error, and finding none, Koch's conviction and sentence is affirmed.

AFFIRMED.

DATED THIS 14th DAY OF JANUARY,
2022.

BY THE COURT:

/s/ Robert R. Steinke

ROBERT R. STEINKE,
DISTRICT JUDGE

W

IN THE COUNTY COURT OF PLATTE COUNTY,
NEBRASKA

State v. Isaac D Koch

Filed: September 29, 2021

JOURNAL ENTRY AND ORDER

....

Defendant is sentenced to the Platte County Jail, for
terms as show above [that being 60 days], and is to
pay costs of this prosecution.

....

Hon. /s/ Frank J. Skorupa

Frank J Skorupa[, Judge]

...

IN THE COUNTY COURT OF PLATTE COUNTY,
NEBRASKA

State v. Isaac D Koch

Filed: September 23, 2021

JOURNAL ENTRY AND ORDER

....

This matter comes before the court on defendant's Motion to Withdraw plea. . . .

After the entry of a plea of guilty or no contest, but before sentencing, a court, in its discretion, may allow a defendant to withdraw his or her plea for any fair and just reason, provided that the prosecution has not been or would not be substantially prejudiced by its reliance on the plea entered.

In this matter, defendant has not presented a fair and just reason to allow him to withdraw his plea and defendant has failed in his burden to establish by clear and convincing evidence the grounds for withdrawal of a plea.

Therefore, defendant's Motion to Withdraw plea is overruled[.]

Hon. /s/ Frank J. Skorupa
Frank J Skorupa[, Judge]

...

IN THE COUNTY COURT OF PLATTE COUNTY,
NEBRASKA

State v. Isaac D Koch

Filed: July 19, 2021

JOURNAL ENTRY AND ORDER

...

Plea: No Contest Found: Guilty

...

Defendant previously advised of the nature of the
above charges, all possible penalties and rights.

ARRAIGNMENT

Defendant advised of and waived rights.

Defendant waives jury trial.

Defendant enters above pleas.

Pleas entered knowingly, intelligently, voluntarily,
and a factual basis for plea(s) found.

....

Plea agreement: Defendant is to plead to an amended
complaint,

Attempted Violation of a Domestic Abuse Protection
Order.

Felony charge in District Court to be dismissed upon
payment of cost.

Joint recommendation for probation.

....

Hon. /s/ Frank J. Skorupa

Frank J Skorupa[, Judge]

...

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IN THE DISTRICT COURT OF PLATTE COUNTY,
NEBRASKA

Filed: December 21, 2020

No. CI20-504

ANDELA S. KOCH, et. al. v. ISAAC D. KOCH

**ORDER AFFIRMING DOMESTIC ABUSE
PROTECTION ORDER**

The protected party(ies) of this order is/are:

1. Andela S. Koch age: 31
2. Lydia R. Koch age: 2
3. Josiah D. Koch age: 10 months

...

THIS MATTER came before the court, pursuant to Neb. Rev. Stat. §§ 42-924 and 42-925. The petitioner(s) (X was/were)(was/were not) present in court (X with counsel, Wm Neiman). The respondent (X did)(did not) appear (X with counsel, Kory Quant). Evidence was adduced, and the court, being fully advised, finds that this court has jurisdiction of the parties and subject matter of this action, and that petitioner has shown that the respondent:

- attempted to cause, or intentionally, knowingly, or recklessly caused, bodily injury to the petitioner(s);
- by means of a credible threat, placed the petitioner(s) in fear of bodily injury; or
- engaged in sexual contact or sexual penetration without consent as defined [in] Neb. Rev. Stat. § 28-318.

IT IS THEREFORE ORDERED that the ex parte domestic abuse protection order or the ex parte renewal of a domestic abuse protection order issued on December 10, 2020, **copy attached**, is affirmed and is to remain in full force and effect for a period of one year from the date the ex parte order was issued. In the case of a renewal, the ex parte renewal of the domestic abuse protection order is effective for one year to commence on the first calendar day following the expiration of the previous order or on the day the court grants the renewal, whichever is later.

IT IS FURTHER ORDERED that all costs of filing and service in this case are

 taxed to the respondent.

X waived.

DATED on December 21, 2020

/s/ Frank J Skorupa

JUDGE

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IN THE DISTRICT COURT OF PLATTE COUNTY,
NEBRASKA

No. CI20-504

Andela S. Koch, et. al. v. Isaac D. Koch

Filed: December 10, 2020

EX PARTE DOMESTIC ABUSE PROTECTION
ORDER

The protected party(ies) of this Order is/are:

1. Andela S Koch age: 31
2. Lydia R Koch age: 2
3. Josiah D Koch age: __

...

The Petitioner alleges as follows:

The relationship(s) of the protected party(ies) to the respondent is/are:

☒ Spouse

☐ Former Spouse

☒ Child(ren)

☐ A person he/she is currently living with

☐ A person he/she has lived with in the past

☐ Child in common

☐ Related by blood or marriage

☐ A person he/she is presently dating

☐ A person he/she has dated in the past

RESPONDENT IDENTIFIERS

SEX: M **RACE:** White **AGE:** 35

HT: 6' 3" **WT:** 180 **EYES:** Green

HAIR: Brown

DRIVERS LICENSE #: STATE: NE EXP
DATE:

DISTINGUISHING FEATURES: _____

155 Morian Street

Respondent's Address

Richland NE 68601

Respondent's Telephone Number

CAUTION: (for use by law enforcement)

☐ Weapon Involved ☐ Weapon Present on the
Property

The terms of this order, unless otherwise modified by order of the court shall be effective for one year from 12/10/2020 . In the case of an original order, this date is one year from the date of issuance. In the case of a renewal, this date is one year from either:

- the first calendar day following the expiration of the previous order, or
- the day the court grants the renewal,

whichever is later.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

THE COURT, hereby finds that it has jurisdiction over the parties and subject matter, and the

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Respondent has been or will be provided with reasonable notice and opportunity to be heard.

THE COURT, pursuant to Neb. Rev. Stat. §§ 42-924 and 42-925, upon ex parte consideration of the Petition and Affidavit, finds that the petitioner(s) has/have stated facts showing that the respondent:

- attempted to cause, or intentionally, knowingly, or recklessly caused, bodily injury to the petitioner(s);
- by means of a credible threat, placed the petitioner(s) in fear of bodily injury; or
- engaged in sexual contact or sexual penetration without consent as defined [in] Neb. Rev. Stat. § 28-318.

FURTHER, it reasonably appears from the specific facts included in the affidavit that the petitioner(s) will be in immediate danger of abuse before the matter can be heard on notice.

IT IS THEREFORE ORDERED that, unless otherwise modified by order of the court, a domestic abuse protection order against the respondent is granted for a period of one year from the date of this order. In the case of a domestic abuse protection order renewal, the order is effective for one year to commence on the first day following the expiration of the previous order or on the day the court grants the renewal, whichever is later. The petitioner(s) is/are granted the following relief:

- X 1. Respondent is enjoined and prohibited from imposing any restraint upon the person or liberty of the petitioner(s).

- X 2. Respondent is enjoined and prohibited from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner(s).
- X 3. Respondent is enjoined and prohibited from telephoning, contacting, or otherwise communicating with the petitioner(s), except _____
- X 4. Respondent is removed and excluded from the residence of the petitioner(s), regardless of the ownership of the residence, located at:
3002 8th Street Columbus NE
- X 5. The respondent is ordered to stay away from the following location(s):
B D East, 920 19 St. E; & B D West, 1852 10 Ave., Columbus, NE
- X 6. The petitioner, Andela S Koch is awarded temporary custody of the following minor children: Lydia R. Koch, 2; & Josiah D. Koch, 10 months
Such temporary custody shall remain in effect until: 3/10/2021
- ____ 7. Respondent is enjoined and prohibited from possessing or purchasing a firearm as defined in Neb. Rev. Stat. § 28-1201.
- ____ 8. _____

If the respondent wishes to appear and show cause why this order should not remain in effect or be renewed for a period of one year, he or she shall affix his or her current address, telephone number, and signature on the Request for Hearing form provided and return it to the clerk of the district court within ten (10) business days after service upon him or her. This order shall remain in effect during the

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time prior to the hearing. Costs are waived unless otherwise ordered by the court.

IT IS FURTHER ORDERED that a copy of this order and a copy of the petition be served on the respondent and a copy of this order be mailed to the petitioner(s).

DATED on December 10, 2020

/s/ Frank J Skorupa

JUDGE – Frank J Skorupa

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U.S. Constitution, Article III, Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

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28 U.S.C. § 2101

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

IN THE COUNTY COURT OF PLATTE COUNTY,
NEBRASKA

State of Nebraska v. Isaac D. Koch

Filed: July 13, 2021

AMENDED STATE COMPLAINT

The complaint and information of Carl K. Hart, Jr., County Attorney of Platte County, Nebraska, made before me the undersigned, in and for the County of Platte, State of Nebraska, this July 13, 2021 being duly sworn on oath says that ISAAC D. KOCH, in the County of Platte and the State of Nebraska:

COUNT I

Defendant, being a person, did then and there intentionally engage in conduct which would constitute the crime if the attendant circumstances were as he believed them to be; or did then and there intentionally engage in conduct which, under the circumstances as he believed them to be, constituted a substantial step in a course of conduct intended to culminate in his commission of the crime of Violation of a Domestic Abuse Protection Order, contra Neb.Rev.Stat. 42-924(4), a Class I Misdemeanor, specifically: On or about January 12, 2021, Defendant attempted to violate an order issued pursuant to subsection (1) of Neb. Rev. Stat. section 42-924 after service in Platte County District Court Case CI20-502, enjoining defendant, as respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner; or from threatening, assaulting, molesting, attacking, or otherwise disturbing the

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peace of the petitioner; or from telephoning, contacting, or otherwise communicating with the petitioner;

all contrary to the Statutes of the State of Nebraska and against the peace and dignity of the State of Nebraska.

STATE OF NEBRASKA, Plaintiff,
Carl K. Hart, Jr., Platte County Attorney
/s/ Breanna Anderson-Flaherty
Breanna Anderson-Flaherty, #24914
For: Carl K. Hart, Jr., #18982
Platte County Attorney
2610 14th Street
Columbus NE 68601
Phone: 402/563-4903

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Neb. Rev. Stat. § 25-1064.01 (Reissue 2016)

Every order granting an injunction and every restraining order shall: (1) Set forth the reasons for its issuance; (2) be specific in terms; (3) describe in reasonable detail, and not by reference to the pleading or other document, the act or acts sought to be restrained; and (4) be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Neb. Rev. Stat. § 28-311.04 (Cum. Supp. 2020)

- (1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.
- (2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:
 - (a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;
 - (b) The victim is under sixteen years of age;
 - (c) The person possessed a deadly weapon at any time during the violation;
 - (d) The person was also in violation of section 28-311.09, 28-311.11, 42-924, or 42-925, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 at any time during the violation; or
 - (e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

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The following table shows the nature of restrictions on speech, specific to domestic violence orders. Blanks were not found in statute.

State, current through	Max restriction re: speech, after hearing	Code section
ALABAMA, 2021	contact, without limitation including indirect communication	30-5-7(b)(2)(b) via 30-5-7(c)(1)
ALASKA, 2020	indirect communication	18.66.100(c)(2)
ARIZONA, 2022	contact	13-3602(G)(3)
ARKANSAS, 2020	indirect contact with case-specific exceptions	9-15-205(a)(6)
CALIFORNIA, 2019	indirect contact	Fam.Code § 6320(a)
COLORADO, 2019	"contacting any other party or the minor child of either of the parties"	13-14-105(1)(b)
CONNECTICUT, 2020	on form, not found in statute	

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DELAWARE, 2022 ACT 284	contacting or attempting to contact	10 Del 1045(a)(2)
FLORIDA, 2021	not author- ized, yet pe- nalized	741.31(4)(a)(5)
GEORGIA, 2020	on form, not found in statute	
HAWAII, 2021	contacting	586-4(1) via 586-5.5