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NEBRASKA SUPREME COURT
COURT OF APPEALS

Case No. A-25-559

IN THE NEBRASKA COURT OF APPEALS

MILLARD GUTTER COMPANY,

Plaintiff – Appellant,
vs.
NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY

Defendant – Appellee

APPEAL FROM
THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

The Honorable Duane C. Dougherty, District Court Judge

BRIEF OF APPELLEE NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Authorities

Cases

Statutes

Other

STATEMENT OF THE BASIS OF JURISDICTION OF APPELLATE COURT

This is an appeal from an Order Nunc Pro Tunc on Plaintiff's Motion to Alter or Amend of the District Court of Douglas County, Nebraska dated June 24, 2025. (T91-94). The Order resolved all issues pending in the District Court and constitutes a final appealable order pursuant to Neb. Rev. State. §25-1902.

On April 9, 2018, Appellant Millard Gutter Company ("Millard Gutter") filed a Complaint against Nationwide Insurance a/k/a or d/b/a Nationwide Property and Casualty Insurance Company ("NPCIC"). (T1-T7). On February 28, 2019, Appellant filed an Amended Complaint. (T35-43). Thereafter, NPCIC filed its Answer with Affirmative Defenses on August 1, 2019. (T44-56).

On July 16, 2024, NPCIC filed a Motion for Summary Judgment (T62-64). The Court granted NPCIC's Motion for Summary Judgment by Order dated March 4, 2025. (T75-78). Millard Gutter then filed a Motion to Alter or Amend on April 3, 2025. (T80-83). On June 23, 2025, the Court entered an Order denying the Motion to Alter or Amend. (T87—90). On June 24, 2025, the Court entered an Order Nunc Pro Tunc on Plaintiff's Motion to Alter of Amend. (T91-94). Appellant thereafter filed a Notice of Appeal.

STATEMENT OF THE CASE

A. Nature of the Case

In this case, Millard Gutter filed its lawsuit against Nationwide Property and Casualty Insurance Company (NPCIC), alleging that NPCIC had issued policies of insurance to eleven (11) third-party policy holders listed in Exhibit A of Millard Gutter's Amended Complaint. (T43). Millard Gutter is a roofing contractor based in Omaha, Nebraska, that claimed in its lawsuit that the third-party policy holders had hired Millard Gutter via an assignment to repair property damage to their homes following a storm, and that NPCIC was in breach of its insurance policy contract issued to each third-party policy holder by not paying to Millard Gutter monies it claimed were due and owing for repairs to the third-party policy holders' homes. (T35-43).

In its Answer to the Amended Complaint, NPCIC denied that it issued an insurance policy to any of the eleven (11) third-party policy holders. (T44-56). After discovery was closed, NPCIC moved for summary judgment on July 16, 2024, on the grounds that it had not issued a single policy of insurance to a single person identified in Millard Gutter's lawsuit, and as such, NPCIC could never be found to be in breach of a contract because Millard Gutter could never establish a prima facie case of breach of contract against NPCIC. Stated more directly, because Millard Gutter failed to produce a single policy of insurance, let alone a policy of insurance issued by NPCIC to any person identified in Millard Gutter's Amended Complaint, NPCIC was entitled to summary judgment in its favor. it had not ever produced a copy of a Policy of insurance issued by NPCIC.

Evidence offered and received at the hearing included Plaintiffs' Amended Complaint with Exhibit A, NPCIC's Answer with Affirmative Defenses, and copies of the Authorizations to Proceed (BOE, Exhibits 1 – 13). Plaintiff offered an affidavit of Theodore Boecker (Millard Gutter's Counsel) explaining scheduling of the hearing, but it failed to include any policy of insurance issued by NPCIC insuring any of the eleven (11) properties Millard Gutter purports it has an assignment of benefits for.

The District Court entered an Order granting NPCIC's Motion for Summary Judgment on March 24, 2025, thereby dismissing all claims brought by the Plaintiff. (T75-79).

Then, on April 3, 2025, Millard Gutter filed a motion to alter or amend the District Court's Order granting summary judgment to NPCIC. This motion was denied and has now been appealed.

B. Issues Tried In the Court Below

The District Court, after receiving evidence at the time of hearing from NPCIC, which included its Answer with Affirmative Defenses and a copy of each of the eleven (11) authorizations to proceed from the eleven (11) third-party policy holders, and after finding that Millard Gutter failed to offer an insurance contract for any of the eleven (11) third-party policy holders, found that summary judgment for NPCIC was appropriate, and granted it summary judgment.

C. How the Issues were Decided

The District Court granted summary judgment to NPCIC, finding that it carried it initial burden by citing to Defendant's Answer (T44-56), in which NPCIC had denied that it had issued a policy of insurance to any of the eleven (11) third-party policy holders that Millard Gutter had alleged were actually insured by NPCIC. Thereafter, the District Court denied Millard Gutter's subsequently filed Motion to Alter or Amend.

D. Scope of Appellate Review

Appellee submits that there are two applicable standards of review that apply to this appeal.

As to the motion for summary judgment:

1. An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence. See, e.g., *Clark v. Scheels All Sports, Inc.*, 314 Neb. 49, 58, 989 N.W.2d 39, 47 (2023).

As to the motion to alter or amend:

2. A motion to alter or amend a judgment is addressed to the discretion of the trial court, whose decision will be upheld in the absence of an abuse of that discretion. *See, e.g., Lombardo v. Sedlacek*, 299 Neb. 400, 411, 908 N.W.2d 630, 640 (2018).

PROPOSITIONS OF LAW

1. **Summary judgment is proper when the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material fact or the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Neb. Rev. Stat. § 25-1332 (Reissue 2008).**

2. **In order for Millard Gutter to prevail on a claim of breach of contract, it must show that the party it has sued is a party to the contract. *Moglia v. McNeil Co., Inc.,* 270 Neb. 241, 251, 700 N.W.2d 608, 618 (2005).**

3. **NPCIC may rely upon its statements in pleadings as judicial admissions to establish no genuine issue of material fact for purposes of summary judgment. *State v. Hernandez,* 309 Neb. 299, 305 (2021).**

STATEMENT OF FACTS

In this case, Millard Gutter sued NPCIC, asserting a claim for breach of contract against it by alleging that NPCIC had issued policies of insurance to all of the persons that Millard Gutter had identified as policy holders in Exhibit A of its Amended Complaint; that NPCIC was in breach of the policies of insurance they had issued to the policy holders because NPCIC failed to pay the full amounts owed to the various homeowners and Millard Gutter for roofing repairs for damage that had occurred due to a storm. (T35-T43). NPCIC denied in its Answer it had issued a policy of insurance to any of the eleven (11) claimed homeowners, and affirmatively alleged it did not issue a policy of insurance to any of the eleven (11) claimed homeowners, as Millard Gutter claimed in its Amended Complaint. (T44-T56).

After the close of discovery, NPCIC filed a Motion for Summary Judgment. At the hearing and in support of its Motion, NPCIC offered into evidence (all of which was received), among other evidence, a copy of Plaintiff's Amended Complaint, a copy of Defendant's Answer with Affirmative Defenses, and a copy of each Authorization to Proceed from each of the eleven (11) purported insured homeowners. Alternatively, Millard Gutter failed to offer any evidence at the hearing of a single contract of insurance for a single one of the eleven (11) persons that Millard Gutter had alleged were insured by NPCIC (or any other insurance company). (Please see BOE).

With regard to the eleven (11) Authorizations to Proceed, found in the Bill of Exceptions as Exhibits 3 – 13, it is noted not a single Authorization identifies "Nationwide Property and Casualty Insurance Company" as the homeowner's insurance company. Some Authorizations are blank where the claimed insured is supposed to identify their homeowner insurer, some name different insurance companies, and some state "Nationwide". Despite naming or not naming any insurance company, there is no factual or evidentiary dispute that Millard Gutter failed to produce as evidence an actual policy of insurance issued by Nationwide Property and Casualty Insurance Company, or any insurance company. (Please see BOE).

The District Court granted NPCIC's Motion for Summary Judgment, finding that "there is not enough evidence for a finder of fact to determine that Nationwide issued [the] insurance policies" and that "there is also not enough evidence to prove the terms of any such policy or whether Nationwide has breached them. Plaintiff has failed to offer the insurance contracts at issue into evidence. Given Nationwide's denial that it issued the policies at issue, there is not enough evidence in the record to create a genuine issue of material fact. Therefore, summary judgment for the Defendant must be entered." (T77).

Appellant then filed a Motion to Alter or Amend on April 3, 2025, arguing that the District Court applied the wrong standard for summary judgment, and that Plaintiff had sued two separate insurance companies but the Court had granted summary judgment only to one.

The District Court denied Plaintiff's Motion to Alter or Amend, by final order entered June 24, 2025. (T91-93) The District Court found that NPCIC met its initial burden in filing its Motion for Summary Judgment, holding:

> "The Court finds that the referral to the pleadings as well as the lack of a contract in evidence satisfies defendant's initial burden. Thus, the burden shifted to Plaintiff. Plaintiff failed to produce any evidence that Defendant was a party to an insurance contract or the terms of those contracts."

The District Court also rejected Appellant's claim that Appellant had sued two different Defendants. Appellant appeals.

SUMMARY OF THE ARGUMENT

I. The District Court properly granted summary judgment to NPCIC because Millard Gutter never produced a copy of any insurance contract to which NPCIC and therefore Millard Gutter could never meet establish a prima facie case of breach of contract against NPCIC.

II. Millard Gutter only ever sued one entity, not multiple entities, and thus only the one insurance company sued, that being Nationwide Property and Casualty Insurance Company, needed to move for summary judgment for the case to be dismissed.

III The District Court did not err in denying Millard Gutter's Motion to Alter or Amend, as summary judgment was properly granted to NPCIC.

ARGUMENT

I. THE DISTRICT COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO NATIONWIDE PROPERTY AND CASUALTY COMPANY.

> In its summary judgment order, the District Court correctly found that "Plaintiff has failed to offer the insurance contracts at issue into evidence. Given Nationwide's denial that it issued the policies at issue, there is not enough evidence in the record to create a genuine issue of material fact. Therefore, summary judgment for Defendant must be entered." (T77).

At Paragraph 7 of Defendant's Answer (T44-T56), it affirmatively stated:

> 7. Defendant denies that it was the actual entity that issued each policy of insurance referred to and/or otherwise alleged in Plaintiff's Amended Complaint.

(T50)

At Paragraph 34 of Defendant's Answer, it affirmatively stated:

> 34. Defendant affirmatively alleges that it is not the entity issuing any policy of insurance to any persons identified on Exhibit A of Plaintiff's Amended Complaint.

(T53)

A movant is entitled to summary judgment "if the movant shows that there is no genuine dispute as to material fact and that the movant is entitled to judgment as a matter of law." *Johnson v. Wheeling Mach. Prods.*, 779 F.3d 514, 517 (8th Cir. 2015) (citing *Fed. R. Civ. P. 56(a*). Further, matters contained in pleadings are judicial admissions insofar as the adversary is concerned, *Dorszynski v. Reier*, 6 Neb. App. 877, 884; 578 N.W.2d 457, 462; 1998 Neb. App. LEXIS 67, *14, citing to *Miller v. Radtke,* 230 Neb. 561, 432 N.W.2d 542 (1988), and admissions contained in a defendant's answer waive all controversy concerning the matter, *State ex rel. Douglas v. Morrow,* 216 Neb. 317, 343 N.W.2d 903 (1984), *Armbruster v. Stanton-Pilger Drainage Dist.*, 203 Neb. 772, 280 N.W.2d 72 (1979); *Sleezer v. Lang*, 170 Neb. 239, 102 N.W.2d 435 (1960)

Nebraska courts have held that, "the burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." *St. Jude Med., Inc. v. Lifecare Int'l, Inc.*, 250 F.3d 587, 596 (8th Cir. 2001) (quoting *Celotex*, 477 U.S. at 325).

The District Court properly relied on the affirmations in NPCIC's Answer as judicial admissions that Appellee did not issue a single policy to a single person or entity identified in Plaintiff's Amended Complaint. The District Court correctly found:

> Nebraska Statute on summary judgment states in relevant part "[t]he judgment sought shall be rendered forthwith if the pleadings and the evidence admitted at the hearing show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law." Neb. Rev. Stat. § 25-1332. While it may be preferable practice for Defendant to submit an affidavit to the effect that it did not issue the policies at issue, the statutory language relating to summary judgment expressly allows the Court to consider both "the pleadings and the evidence."

(T92)

In addition to offering as evidence its pleading, NPCIC also offered as evidence (all receive) each of the eleven (11) Authorizations to Proceed. Once the moving party (NPCIC/Appellee) shows the Court there is an absence of evidence to support the nonmoving party's (Millard Gutter's) case, i.e. there is no contract of insurance from NPCIC to any of the eleven (11) purported NPCIC insureds, the burden then shifts to Millard Gutter to provide evidence as to the terms of the contract.

Here, Millard Gutter failed to produce a single policy of insurance for any person or entity it filed its breach of contract action against. Further, all claims of bad faith asserted by Plaintiff were dismissed by Court Order dated January 23, 2019. Without production of a single policy of insurance, “there is not enough evidence in the record to create a genuine issue of material fact” and therefore, “summary judgment for Defendant must be entered.” (T77).

Ultimately, Appellant never offered into evidence a policy of insurance that it has claimed was issued by NPCIC and to which NPCIC had breached. Without entering into evidence any such policy, Appellant can never prove necessary elements of its claim for breach of contract, which include the terms of the contract. Appellant could have produced one or more copies of any insurance policy it claimed NPCIC had breached, but instead, offered nothing in terms of any actual policy of insurance that would inform the District Court, Millard Gutter and NPCIC of the terms of any purported policy. Simply put, Appellant can never prove NPCIC breached a contract because there is not a single contract issued by any insurance company, let alone NPCIC, and the District Court’s Order(s) should be affirmed.

II. THE DISTRICT COURT CORRECTLY DISMISSED APPELLANT’S ARGUMENTS INVOLVING A PURPORTED AGENCY RELATIONSHIP AND DISMISSING APPELLANT’S ARGUMENT THE DISTRICT COURT APPLIED THE WRONG STANDARD IN GRANTING APPELLEE’S MOTION FOR SUMMARY JUDGMENT

The District Court correctly dismissed one of Appellant’s arguments made on appeal that some agency relationship exists between “Nationwide Insurance” and “Nationwide Property and Casualty Insurance Company”. In support of this argument, Appellant cites this Court to *Dieter v. Hand*, 214 Neb. 257, 333 N.W.2d 772 (1983). In that case, Plaintiff, a commercial truck driver, sued two individual employees of a public power company after he was electrocuted when exiting his vehicle by low hanging power lines that came into contact with his vehicle. *Id.* The power lines in question were administered by the public power company that was the employer of the two individual defendants. *Id.* Plaintiff was barred from initiating a claim against the government under the Political Subdivisions Tort Claims Act as the statute of limitations had expired and thus sued the two individuals. *Id.* The Defendants demurred Plaintiff's positions on the grounds that it failed to state a claim, and the lower Court sustained this demur. *Id.* On appeal, the Court reversed and found that the employees could possibly be held accountable under general negligence theory. *Id.* The Court clarified:

> "Before an employee becomes liable for an act or omission alleged to have constituted negligence, with resultant injury to a third person, it must appear that the employee has agreed to perform such act for his master and has assumed the performance of it"
>
> *Dieter v. Hand*, 214 Neb. 257, 333 N.W.2d 772 (1983)

Appellant's argument recited in part above and included in its brief is misplaced for several reasons. For one, Appellant has produced no evidence showing that any insurance company actually issued a policy of insurance to any alleged homeowner; it has produced no evidence that any of the insurance companies that allegedly issued any such policies to the homeowners were "employees" of Nationwide Property and Casualty Company; and Appellant has not produced any evidence showing that, even if such companies were somehow "employees" of Nationwide Property and Casualty Company, that they A) agreed to the full extent of the repairs in question and B) did so on behalf of Nationwide Property and Casualty Insurance Company. Further, the cited case dealt with potential negligence on behalf of a public power company's employee brought under the Political Subdivisions Tort Claims Act. The case is inapplicable to the matter at hand, because Plaintiff has brought a breach of contract case against NPCIC, and NPCIC is not a Political Subdivision. Thus, Appellant's claims of liability based on agency falls flat.

Appellant's second argument alleges, broadly speaking, that the Motion for Summary Judgment granted in favor of NPCIC is not supported by evidence, and as a result, the lower Court "applied the wrong standard". (See, generally, Appellants 2nd Argument at Page 15 of Appellant's Brief).

The standards for a grant of Summary Judgment in Nebraska are well established. Summary judgment is proper when the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material fact or the ultimate inferences that can be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Neb. Rev. Stat. §25-1332 (Reissue 2008); see also, *Peterson v. Homesite Indem. Co.,* 287 Neb. 48, 54, 840 N.W.2d 885, 891 (2013). In reviewing a motion for summary judgment, courts view the evidence in the light most favorable to the non-moving party and gives that party the benefit of all reasonable inferences deducible from the evidence. *Hughes v. Sch. Dist. Of Aurora,* 290 Neb. 47, 52, 858 N.W.2d 590, 594 (2015). Where reasonable minds may differ as to whether an inference supporting the ultimate conclusion can be drawn, courts should not grant summary judgment. *McKinney v. Okoye,* 287 Neb. 261, 274, 842 N.W.2d 581, 593 (2014).

Nebraska law is also clear on the burden-shifting mechanics of summary judgment motions. In *Clark v. Scheels All Sports, Inc.*, 314 Neb. 49, 989 N.W.2d 39 (2023), the Supreme Court stated;

> We now hold, consistent with the plain and unambiguous text of *§ 25-1332(2)* and guided by the reasoning of *Celotex,* that if the burden of proof at trial would be on the nonmoving party, then the party moving for summary judgment may satisfy its prima facie burden either by citing to materials in the record that affirmatively negate an essential element of the nonmoving party's claim **or** by citing to materials in the record demonstrating that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.
>
> *Clark v. Scheels All Sports, Inc.*, 314 Neb. 49, 989 N.W.2d 39 (2023).

Appellant is incorrect in stating that the non-moving party has no duty to provide any affirmative evidence at the summary judgment stage. To the contrary, once the party moving for summary judgment has successfully carried its initial burden:

"the burden shifts to the nonmovant to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law"

Id.

The District Court, based on the pleadings and evidence submitted by NPCIC, found that NPCIC carried its initial burden and that there was "sufficient evidence for Defendant to meet its prima facie burden it is entitled to summary judgment on these breach of contract claims because it did not enter into a contract with these insureds." (T77).

When the burden shifted to Appellant, Millard Gutter failed to produce a single contract in support of its breach of contract claims. To the extent Appellant cites to any "evidence", it is that Appellant and the homeowners may have "believed" they were insured by "Nationwide Insurance", and that "Nationwide Insurance" answered the Complaint, and that it is *Appellee* has no evidence. (T80-81). However, as the District Court correctly ruled, none of these allegations were sufficient to prove the terms of any contract purportedly issued by Nationwide Property and Casualty Insurance Company. (T77).

Millard Gutter has the burden of proof at trial, and with no evidence of the terms of each insurance policy purportedly issued to certain homeowners, there was not enough evidence to go forward with the claim or a trial, and the District Court granted summary judgment to NPCIC.

NPCIC met its initial burden, as Nebraska Courts have held that pleadings can be considered evidence when they relate to the subject matter of admission. *Sheets v. Davenport*, 181 Neb. 621, 150 N.W.2d 224 (1967). As a contract between Appellant and Appellee is necessary for Appellant's claim, the evidence contained in NPCIC's Answer and the Authorizations received into evidence, is wholly relevant to the subject matter of admission.

Further, it is well established in this State that admissions contained in pleadings, answers and replies are judicial in nature and waive all controversy concerning the matter admitted *Anderson v. Cumpston*, 258 Neb. 891, 606 N.W.2d 817 (2000), *Madson v. TBT Ltd. Liab. Co.,* 12 Neb. App. 773, 686 N.W.2d 85 (2004). Here, Appellee's Answer affirmatively stated that it did not issue any of the policies claimed to have been issued by Millard Gutter is directly and wholly related to the relevant matter as such evidence makes it impossible for Appellant to make his case. When the burden shifted to Appellant after this introduction of evidence, Appellant failed to create an issue of material fact. Thus, in the light most favorable to Appellant, in consideration of Appellee's Answer as well as all evidence submitted by Appellee, Appellant could never establish a breach of contract claim against NPCIC because there simply was no contract in existence. In order for Millard Gutter to prevail on a claim of breach of contract, it must show that the party it has sued is a party to the contract. *Moglia v. McNeil Co., Inc.,* 270 Neb. 241, 251, 700 N.W.2d 608, 618 (2005)**.**

III. THE DISTRICT COURT PROPERLY FOUND THAT APPELLANT ONLY INITIATED A LAWSUIT AGAINST ONE INSURANCE COMPANY

Appellant has argued that there is no evidence that indicates that "Nationwide" or "Nationwide Insurance" did not insure any of the properties identified in the lawsuit because there is no affidavit from "Nationwide" or "Nationwide Insurance". However, a review of the record in front of the District Court shows that there is no competent evidence that "Nationwide" or "Nationwide Insurance" ever issued a policy of insurance to any of the property owners, because Appellant never offered a copy of any policy of insurance issued by "Nationwide" or "Nationwide Insurance" (or any other insurer (State Farm, Allied, Allstate, etc…) into evidence.

The District Court's Order denying Appellants Motion to Alter or Amend addressed this very issue:

> "Nationwide asserts that "Nationwide Insurance" is a trade name and that it has responded to this suit in the

> name of the legal entity named in the Complaint, "Nationwide Property and Casualty Insurance Company." The caption of this matter names a singular "Defendant" who is, according to the caption, known by two names. The Court does not read the Plaintiff to have sued two distinct defendants such that the summary judgment motion was only brought on behalf of one."

(T92-93)

A reading of Appellants complaint shows that they did not sue two separate entities:

> "Upon information and belief, Nationwide operates under various names and/or does business through names or affiliates including Nationwide Property and Casualty Insurance Company, but generally markets itself to insured homeowners as Nationwide" (T35)

Further, Appellants prayer for relief reads;

"Plaintiff prays that this Court enter a judgment against **Defendant…** (emphasis added)" (T41)

Appellants sued a single entity which issues policies of insurance, Nationwide Property and Casualty Insurance Company. Appellant did not serve two parties with the Complaint (T9, 10) but rather served one party with two names: "Nationwide Insurance a/k/a Nationwide Property and Casualty Insurance Company". Further, when Appellant amended its Complaint, it served only one entity via Electronic Service to its Counsel (T35), not multiple entities represented by the same or separate lawyers. In fact, even the certificate of service on Appellants opening brief indicates it was only served upon one entity, not two.

Ultimately, despite its attempt to argue in the contrary, Appellant never sued two entities, it sued one, and that one entity, Nationwide Property and Casualty Insurance Company, was granted summary judgment by the District Court, because Appellants never offered a copy of a contract issued by NPCIC that Appellant claims it breached.

CONCLUSION

For the reasons contained herein, Appellee requests that the District Court's Order granting it summary judgment and the Order denying Millard Gutter's Motion to Alter or Amend be upheld and affirmed, and for such other and further relief as this Court determines to be just and appropriate.

RESPECTFULLY SUBMITTED this 13th day of February, 2026.

NATIONWIDE PROPERTY &
CASUALTY INSURANCE
COMPANY, Appellee

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CERTIFICATE OF COMPLIANCE

This Brief was prepared using Microsoft Word 360 and complies with the typeface requirements of Neb. Ct. R. App. P. 2-103(A)(4) because it uses Century Schoolbook font, size 12-point. This Brief complies with the type-volume limit of Neb. Ct. R. App. P. § 2-103(C)(3) because this document contains 5,060 words, within the 15,000-word limit, including this Certificate of Compliance.

/s/Matthew D. Hammes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of February, 2026, the above and foregoing was served electronically upon the following:

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Certificate of Service

I hereby certify that on Friday, February 13, 2026 I provided a true and correct copy of this *Brief of Appellee* to the following:

Millard Gutter Company represented by Theodore R Boecker Jr (20346) service method: Electronic Service to **boeckerlaw@msn.com**

Signature: /s/ Hammes,Matthew,D (21484)