

IN THE NEBRASKA COURT OF APPEALS

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

YAH V. LIVNOW HOMES

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M,A, YAH, APPELLANT,

V.

LIVNOW HOMES, LLC, ET AL., APPELLEES.

Filed September 22, 2026. No. A-25-771.

Appeal from the District Court for Douglas County: KIMBERLY MILLER PANKONIN, Judge.
Affirmed.

M,A, Yah, pro se.

Joshua C. Dickinson, of Spencer Fane, L.L.P., for appellees.

RIEDMANN, Chief Judge, and PIRTLE and PICCOLO, Judges.

PICCOLO, Judge.

INTRODUCTION

M,A, Yah, a self-represented litigant, appeals from the order of the district court for Douglas County, which denied his motion to reconsider the court’s dismissal of his complaint and denied his motion to recuse the district court judge. For the reasons set forth herein, we affirm.

STATEMENT OF FACTS

On June 16, 2025, Yah filed a complaint in the district court against LivNow Homes, LLC; Penny Tietjen, individually and as owner of LivNow; Pure Operating, LLC; Richard Miller, individually and as owner of Pure Operating; Tara Holterhaus, individually and as an attorney for Spencer Fane, LLP; and Spencer Fane. In his complaint, Yah alleged that he had previously rented certain real property (the property) in Omaha, Nebraska, managed by Pure Operating. Among other things, Yah alleged that the defendants submitted a false insurance claim to “Tenant Rental

Insurance carrier” in May 2025 for \$10,434.14 for “alleged unpaid rent and late fees” during a period when they were in possession of the property. Yah also alleged that the defendants “falsely claimed” he owed rent for February through May 2025, after receiving possession of the property on February 18 by way of a writ of restitution; that their “fraudulent misrepresentation” to the insurance company was intended “to cause the carrier to pay out funds and then attempt to hold [Yah] financially responsible for reimbursing that sum”; and that after submitting “the false claim,” the defendants sent Yah a written demand “asserting the same fraudulent debt, seeking to extort additional funds.” Yah alleged eight discrete “CAUSES OF ACTION” and sought compensatory and punitive damages. There is nothing in the record to show how, or if, the complaint was served on any of the defendants.

On July 29, 2025, Pure Operating, Miller, Holterhaus, and Spencer Fane (collectively “the Appellees”), through counsel and “for a limited purpose,” filed a motion to dismiss Yah’s complaint pursuant to Neb. Ct. R. Pldg. § 6-1112(b) (rev. 2025). The Appellees alleged that Yah was not the real party in interest and that he lacked standing to pursue any claims related to an underlying lease agreement to which he was not a party. They also alleged that the complaint failed to state a claim upon which relief could be granted; that Yah failed to join necessary parties, or alternatively, had “improperly named” the defendants in his complaint; that the complaint included claims that had already been and/or were currently being adjudicated in another case; and that the complaint had not been properly served and failed for insufficiency of process and/or service of process.

The district court heard the Appellees’ motion to dismiss on August 26, 2025. Holterhaus appeared on behalf of the Appellees, including herself; Yah was self-represented. In addition to hearing argument from the parties, the court took judicial notice of exhibits submitted by the Appellees and by Yah. The judicially noticed exhibits were marked and made part of the bill of exceptions.

The Appellees submitted a copy of a rental agreement (the lease) for the property between “OWNER” LivNow and “RESIDENT” “Ma Yah II” (Yah II). The lease identified Pure Operating as LivNow’s agent. The lease period was from June 6, 2024, through May 31, 2025. The lease included a “Security Deposit Replacement Lease Addendum,” whereby LivNow waived the one-time security deposit of \$1,400 in exchange for payment of a monthly fee of \$38. The Appellees also submitted a copy of Yah II’s driver’s license and credit report. Yah submitted appellate court filings he made in connection with his appeal in a case other than the present case. During the hearing, the parties agreed that Yah II is Yah’s son.

In support of the Appellees’ motion to dismiss, Holterhaus explained that Pure Operating “allows new tenants to, essentially, waive providing a security deposit to live in a unit if they enroll in a program which allows the property management company at the end of the tenancy to submit a claim for security deposit to this insurance company.” She characterized Yah’s complaint as alleging that Pure Operating “made some fraudulent insurance claim under the lease agreement pursuant to the security deposit waiver program.” And, she argued that because Yah was not a party to the lease, he did not have standing to bring a claim under the lease agreement or the waiver program.

Yah countered that he did have standing because the lease had been voided by the trial court’s ruling in another case, because the Appellees knew he had been an occupant of the property

and had communicated with him in other cases involving the property, and because he had been contacted by “the insurance company” and told he owed money.

In response, Holterhaus argued that the order in the “underlying eviction proceedings” referenced by Yah, terminated the lease agreement and any occupant’s right to reside at the property but that the order in that case “doesn’t void anything.” She reiterated that Yah’s claims in this case relate to the security deposit waiver program of the lease to which Yah was not a party. She also stated:

If there’s some sort of insurance claim or insurance claim open that he is being made a party to, that is something he can file a similar motion to dismiss or amend or whatever defense he wants to provide on some sort of insurance claim, but that’s separate and apart from the complaint that he’s brought on in this case.

After hearing the parties’ arguments, the district court stated from the bench that it was granting the motion to dismiss and finding Yah “lack[ed] standing to pursue any claims related to the underlying lease agreement as he was not a party” and had not shown he was “a real party to the interest.” On September 11, 2025, the court entered a written order memorializing its findings and dismissing Yah’s complaint with prejudice. In the order, the court found that Yah was not a party to the lease agreement referenced in his complaint, that he was not the real party in interest to the lawsuit, and that he lacked standing to commence the action. Because the court found the complaint should be dismissed for lack of standing, it declined to address other arguments made in support of the motion to dismiss.

On September 15, 2025, Yah filed a motion, asking the district court to reconsider its order dismissing his complaint. He also filed a motion to recuse the district court judge. Following a hearing, the court entered an order on October 6, denying both motions.

Yah subsequently perfected his appeal to this court.

ASSIGNMENTS OF ERROR

Yah assigns, consolidated and restated, that the district court erred by (1) dismissing his complaint because of standing and ignoring “the legal effect of the terminated lease,” (2) denying his motion to reconsider, and (3) denying his motion to recuse.

STANDARD OF REVIEW

Whether a party who commences an action has standing and is therefore the real party in interest presents a jurisdictional issue. *Henderson State Co. v. Garrelts*, 319 Neb. 485, 23 N.W.3d 444 (2025). A jurisdictional question that does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court’s decision. *Pinpoint Communications v. Gage County*, 321 Neb. 764, 37 N.W.3d 178 (2026).

Aside from factual findings, which are reviewed for clear error, the granting of a motion to dismiss for lack of subject matter jurisdiction under § 6-1112(b)(1) is subject to de novo review. *Skyline Manor v. Rynard*, 288 Neb. 602, 852 N.W.2d 303 (2014).

An appellate court reviews a trial court’s ruling on a motion for a new trial or reconsideration for an abuse of discretion. *Jaeger v. Jaeger*, 307 Neb. 910, 951 N.W.2d 367

(2020). The denial of a motion to alter or amend the judgment is generally reviewed for an abuse of discretion. *Martens v. BB's Childcare*, 321 Neb. 335, 34 N.W.3d 393 (2026). A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Munsell v. Munsell*, 321 Neb. 363, 34 N.W.3d 413 (2026).

A recusal motion is initially addressed to the discretion of the judge to whom the motion is directed. *Timothy L. Ashford, PC LLO v. Roses*, 313 Neb. 302, 984 N.W.2d 596 (2023).

ANALYSIS

Motion to Dismiss.

Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *Big Iron Auction Co. v. Harder Capital*, 321 Neb. 918, ___ N.W.3d ___ (2026). Where a lower court lacks jurisdiction to adjudicate the merits of a claim, issue, or question, an appellate court also lacks the power to determine the merits of the claim, issue, or question presented to the lower court. *MLB Advanced Media v. Nebraska Dept. of Rev.*, 321 Neb. 515, 36 N.W.3d 165 (2026). The district court granted the Appellees' motion to dismiss, finding that Yah was not the real party in interest to the lawsuit and that he lacked standing to bring the complaint. Because a defect in standing is a defect in subject matter jurisdiction, a challenge to standing is treated as a motion to dismiss for lack of subject matter jurisdiction brought under § 6-1112(b)(1). See *Jacobs Engr. Group v. ConAgra Foods*, 301 Neb. 38, 917 N.W.2d 435 (2018).

A party may challenge the court's subject matter jurisdiction under § 6-1112(b)(1) by presenting either a facial challenge or a factual challenge. *Bleich v. Bleich*, 312 Neb. 962, 981 N.W.2d 801 (2022). In a facial challenge under § 6-1112(b)(1), the party asserts the allegations of the complaint are insufficient to establish the court's jurisdiction over the subject matter of the case. *Bleich v. Bleich, supra*. When a facial challenge is presented, the court will look only to the complaint to determine whether the plaintiff has sufficiently alleged a basis of subject matter jurisdiction. *Id.* In a factual challenge under § 6-1112(b), the party asserts there is no jurisdiction over the subject matter of the case notwithstanding the allegations of the complaint. *Id.* When a factual challenge is presented, the court may consider and weigh evidence outside of the pleadings to answer the jurisdictional question. *Id.*

A motion to dismiss becomes a factual challenge to the court's subject matter jurisdiction when the moving party supports its motion by presenting affidavits or other evidence properly brought before the court. *Washington v. Conley*, 273 Neb. 908, 734 N.W.2d 306 (2007). The party opposing the motion must then offer affidavits or other relevant evidence to support its burden of establishing subject matter jurisdiction. *Id.*

In this case, the Appellees filed their motion to dismiss at the pleadings stage, but at the hearing on the motion to dismiss, the parties asked the district court to take judicial notice of certain documents. The court did so, and those judicially noticed documents were marked as exhibits and included in the bill of exceptions. See *Trausch v. Hagemeyer*, 313 Neb. 538, 985 N.W.2d 402 (2023) (papers requested to be judicially noticed must be marked, identified, and made part of bill of exceptions). The court considered those exhibits in determining that Yah was not a party to the lease and that he was not the real party in interest and did not have standing to bring the complaint.

Thus, it treated the Appellees' motion to dismiss as a factual challenge under § 6-1112(b)(1). Where the trial court's decision on a motion to dismiss for lack of subject matter jurisdiction is based on a factual challenge, the court's factual findings are reviewed under the clearly erroneous standard. *Jacobs Engr. Group v. ConAgra Foods, supra*.

The focus of the real party in interest inquiry is whether the party has standing to sue due to some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of controversy. *Millard Gutter Co. v. Shelter Mut. Ins. Co.*, 312 Neb. 606, 980 N.W.2d 420 (2022). Standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court. *Kellogg v. Mathiesen*, 320 Neb. 223, 26 N.W.3d 651 (2025). Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf. *Id.* To have standing, the plaintiff must have some legal or equitable right, title, or interest in the subject matter of the controversy. *Id.*

As a general rule, one who is neither a party to a contract nor an agent of a party to a contract has no rights under the contract, and cannot bring an action for breach thereof. *Applied Underwriters v. S.E.B. Servs. of New York*, 297 Neb. 246, 898 N.W.2d 366 (2017). A plaintiff does not generally have standing to bring a case on behalf of a third party. *Equestrian Ridge v. Equestrian Ridge Estates II*, 308 Neb. 128, 953 N.W.2d 16 (2021). Third-party-beneficiary theory is a common-law doctrine that allows a nonparty to a contract to enforce an interest owed by a promisor under the contract. *Id.* The fact that a third party would be better off if a contract were enforced does not give him or her standing to enforce the contract. *Id.* To enforce a contract, a third party bears the burden of proving that he or she was an intended, not incidental, beneficiary of rights under the contract. *Id.*

Yah acknowledges that he was not a party to the lease, but he argues that in dismissing Yah's complaint for lack of standing, the district court ignored the fact that Yah was "directly affected by [the] lease termination and insurance claims." Brief for appellant at 7. Yah points to statements he made to the court at the hearing on the motion to dismiss indicating that he lived at the property and paid rent for the property, that he handled communications with the various defendants, and that the lease was terminated during other legal proceedings. Yah was not sworn in as a witness, and his informal discussion with the court was not evidence. See *In re Estate of Radford*, 297 Neb. 748, 901 N.W.2d 261 (2017) (at hearing, testimony must be under oath and documents must be admitted into evidence before being considered by trial court; Neb. Rev. Stat. § 27-603 (Reissue 2016)). See, also, *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010) (informal discussion at show cause hearing did not produce any evidence sufficient to support issuance of protection order). We also note that the only information in the record about how the security deposit waiver program worked and the fact that the property management company could submit claims to an insurance company at the end of a tenancy as part of that program came from statements made by the Appellees' attorney at the dismissal hearing. The attorney's statements at the hearing are not evidence. See *In re Interest of Lawrence H.*, 16 Neb. App. 246, 743 N.W.2d 91 (2007) (attorney's assertions at trial are not to be treated as evidence).

Yah did not present evidence to show the circumstances of the alleged lease termination and how he was affected by it. The district court's determination that Yah was not the real party

in interest and therefore lacked standing is not clearly erroneous. The court did not err in granting the Appellees' motion to dismiss for lack of subject matter jurisdiction under § 6-1112(b)(1).

Motion to Reconsider.

Yah assigns that the district court erred by denying his motion to reconsider. In his motion, he invoked "Neb. Ct. R. App. P. § 5.1 and Rule 11(b)." The Nebraska Supreme Court rules of appellate procedure do not include a § 5.1. As for "Rule 11(b)," Yah appears to be referring to Fed. R. Civ. P. 11(b), which governs the signing of pleadings, motions, and other papers; representations to the court; and sanctions. Neither it nor the corresponding Nebraska procedural rule, Neb. Ct. R. § 6-1111 (rev. 2025), govern motions for rehearing before a trial court. In his brief on appeal, Yah also references Neb. Ct. R. App. P. § 2-111 (rev. 2022), which governs methods by which cases are submitted on the merits to Nebraska appellate courts, including whether cases are decided with or without oral argument. None of the rules referenced by Yah are applicable to a trial court's consideration of a motion to reconsider.

Although Yah labeled his motion as a motion to reconsider, it was filed within 10 days of the district court's order of dismissal, and we have treated it as a motion to alter or amend. See *Kinsey v. Colfer, Lyons*, 258 Neb. 832, 606 N.W.2d 78 (2000) (typically, motion for reconsideration is considered nothing more than invitation to court to consider exercising its inherent power to vacate or modify its own judgment). See, also, *Arnold v. Walz*, 306 Neb. 179, 944 N.W.2d 747 (2020) (motion to reconsider may be treated as motion to alter or amend if it was filed no later than 10 days after entry of judgment and seeks substantive alteration of judgment). On appeal, Yah argues that the district court ignored his motion and denied it "without addressing the arguments, constituting procedural error." Brief for appellant at 8.

The record does not reflect that the district court ignored Yah's motion. The court heard arguments from the parties at the October 2025 hearing and then entered an order on October 6, denying Yah's motion. Yah did not ask the court to make detailed findings of fact. See Neb. Rev. Stat. § 25-1127 (Reissue 2016) (in absence of request by party for specific findings, trial court is not required to make detailed findings of fact and need only make its findings generally for prevailing party). See, also, *Cullinane v. Beverly Enters.-Neb.*, 300 Neb. 210, 912 N.W.2d 774 (2018) (in case tried to court without jury, motion for specific findings of fact pursuant to § 25-1127 must be made before final submission of case to court). In his motion, Yah asked the court to reconsider its ruling on the motion to dismiss; find that "the lease underlying this action was terminated on September 17, 2024, rendering it void and unenforceable"; recognize his "standing as a resident and party in this matter consistent with all related cases"; and allow his claims to proceed. Given our resolution of Yah's first assignment of error, we need not address his second assignment of error further. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it. *Schmuecker v. Lancaster County*, 321 Neb. 623, 36 N.W.3d 185 (2026).

Motion to Recuse.

Yah assigns that the district court erred by denying his motion to recuse.

Yah argues that he "clearly demonstrated [the] appearance of partiality under Neb. Rev. Stat. § 24-739 [(Reissue 2016)]." Brief for appellant at 8. The statutory grounds for the

disqualification of a judge are set out in § 24-739. Beyond the conclusory assertion that he demonstrated the district court judge's partiality, Yah does not contend that the judge was disqualified under any of the terms of that statute. Conclusory assertions unsupported by coherent analytical argument fail to satisfy the requirement that an error be specifically argued. *White v. White*, 320 Neb. 256, 26 N.W.3d 924 (2025).

Yah also argues that the district court's denial of his motion to recuse "deprived [him] of impartial adjudication, violating due process protections." Brief for appellant at 8. The right to an impartial judge is guaranteed under the Due Process Clauses of the U.S. and Nebraska Constitutions, the parameters of which are coextensive. See *Quiles v. Collazo*, 33 Neb. App. 180, 12 N.W.3d 518 (2024). To demonstrate that a trial judge should have recused himself or herself, the moving party must show that a reasonable person who knew the circumstances of the case would question the judge's impartiality under an objective standard of reasonableness, even though no actual bias or prejudice was shown. *Timothy L. Ashford, PC LLO v. Roses*, 313 Neb. 302, 984 N.W.2d 596 (2023). One seeking to disqualify a judge on the basis of bias or prejudice bears the heavy burden of overcoming the presumption of judicial impartiality. *Id.*

The gist of Yah's argument appears to be that the district court judge is biased because she ruled against him. However, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion directed to a trial judge. *City of Omaha v. Professional Firefighters Assn.*, 309 Neb. 918, 963 N.W.2d 1 (2021). Yah has not demonstrated that a reasonable person who knew of the circumstances would question the judge's impartiality. See *Timothy L. Ashford, PC LLO v. Roses, supra*. We conclude that the district court did not abuse its discretion when it denied the motion to recuse.

CONCLUSION

The district court's determination that Yah was not the real party in interest and therefore lacked standing is not clearly erroneous, and the court did not err in granting the Appellees' motion to dismiss for lack of subject matter jurisdiction under § 6-1112(b)(1). Likewise, the court did not abuse its discretion in denying Yah's motion to reconsider its dismissal of Yah's complaint or in denying Yah's motion to recuse the trial judge.

AFFIRMED.