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ACTIONS TAKEN

The Minnesota Legislature responded to recent constitutional, ambiguity, and other problems with statutory provisions, which were raised by Minnesota's Court of Appeals or Supreme Court.

In *In re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), the Supreme Court held Minnesota Statutes, section 256B.15, subdivision 2, was preempted by federal law to the extent it authorized recovery from the surviving spouse's estate of assets that the recipient owned as marital property or as jointly-owned property at any time during the marriage. In Laws of Minnesota 2009, chapter 79, article 5, sections 38 to 42, the legislature amended various provisions of the medical assistance estate recovery statute, directly addressing the issue raised by the court.

In *Work Connection, Inc. v. Bui*, 749 N.W.2d 63 (Minn.App. 2008), the Court of Appeals found the words "throughout the labor market area" in Minnesota Statutes, section 268.065, subdivision 15, paragraph (e), to be ambiguous. In Laws of 2009, chapter 78, article 3, section 9, the legislature struck this paragraph and another reference in the statute to use the phrase "in the labor market area."

Minnesota Statutes, Section 16A.152, Subdivision 4

Unallotment Authority

Brayton v. Pawlenty
Minnesota Supreme Court
May 5, 2010

During the course of the 2009 legislative session, the Legislature passed and presented to the Governor appropriations bills for the 2010-2011 biennium. The Legislature also passed and presented two revenue raising bills that met the anticipated budget shortfall for the upcoming biennium. The Governor signed the appropriation bills into law but did not sign the revenue raising bills. This resulted in a projected deficit for the 2010-2011 biennium of $2.7 billion. The Governor did not call a special session to address the budget shortfall. Rather, the Governor approved allotment reductions of approximately $2.5 billion. The allotment reductions were made pursuant to Minnesota Statutes, section 16A.152, subdivision 4, which states:

> (a) If the commissioner determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall, with the approval of the governor, and after consulting the Legislative Advisory Commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.
>
> (b) An additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the commissioner is

> empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.
>
> (c) If the commissioner determines that probable receipts for any other fund, appropriation, or item will be less than anticipated, and that the amount available for the remainder of the term of the appropriation or for any allotment period will be less than needed, the commissioner shall notify the agency concerned and then reduce the amount allotted or to be allotted so as to prevent a deficit.
>
> (d) In reducing allotments, the commissioner may consider other sources of revenue available to recipients of state appropriations and may apply allotment reductions based on all sources of revenue available.
>
> (e) In like manner, the commissioner shall reduce allotments to an agency by the amount of any saving that can be made over previous spending plans through a reduction in prices or other cause.

The unallotments affected the funding of the Minnesota Supplemental Aid-Special Diet (Special Diet) Program. As a result of the unallotments, the Special Diet program was eliminated from November 1, 2009 to June 30, 2011. Respondents, who qualified to receive payments under the Special Diet Program, filed a complaint against the Governor and several commissioners (Appellants) for eliminating the program. The district court issued a temporary restraining order enjoining the appellants from reducing the allotment to the Special Diet Program, stating that "[i]t was the specific manner in which the Governor exercised his unallotment authority that trod upon the constitutional power of the Legislature."

The case was expedited to the Minnesota Supreme Court and the issue before the court was "whether the Legislature intended the unallotment authority conferred on the executive branch in Minn.Stat. § 16A.152, subd. 4, to apply in the circumstances of this case."

Both parties offer competing interpretations of section 16A.152, paragraph (a), which states in relevant part:

> If the commissioner determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall…reduce the amount in the budget reserve account as needed to balance expenditures with revenue.

"Respondents argue that under the plain language of the statute, the conditions required to trigger implementation of unallotment contain temporal limitations that precluded unallotment in the circumstances of this case. Specifically, respondents assert that the unallotment authority is intended to be exercised only in the event of unforeseen fiscal conditions that arise after the beginning of a biennium." Appellants offered an alternative interpretation, arguing "that the remainder can be the entire biennium" and there is "no express language dictating a timing element for the 'less than anticipated' criterion." The court found both interpretations reasonable and therefore found the statute ambiguous.

In order to resolve the ambiguity, the court first analyzed the functions of both the legislative and executive branches in establishing the state budget. The court explained that the legislature is responsible for establishing "the spending priorities for the state through the enactment of appropriation laws." The executive branch has more of "a limited, defined role in the budget process;" to approve or veto bills passed by the legislature or to line item veto specific appropriations without vetoing an entire bill. Further, once a bill becomes a law, the executive branch carries out the law, and for appropriations, the executive branch "approves spending plans and establishes spending allotments for segments of the biennium."

The court explained that the veto and the line-item veto are the specific tools granted to the executive branch by the constitution for achieving a balanced budget. According to the court, appellants' interpretation of section 16A.152 grants the executive branch more authority in establishing the biennial budget than is allowed under the constitution. The court further explained that:

> In the context of this limited constitutional grant of gubernatorial authority with regard to appropriations, we cannot conclude that the Legislature intended to authorize the executive branch to use the unallotment process to balance the budget for an entire biennium when balanced spending and revenue legislation has not been initially agreed upon by the Legislature and the Governor. Instead, we conclude that the Legislature intended the unallotment authority to serve the more narrow purpose of providing a mechanism by which the executive branch could address unanticipated deficits that occur after a balanced budget has previously been enacted.

The court stated that in order for the unallotment authority to be triggered under section 16A.152, subdivision 4, there must be a balanced budget first. This requirement "provides a definite and logical reference point for measuring whether current revenues are less than anticipated." In addition, in order for the phrase "probable receipts…[to] be less than anticipated, and…the amount available for the remainder of the biennium [to] be less than needed," the court concludes that "there must have been a point in time when anticipated revenues appeared to be adequate to fund appropriations-i.e., when a balanced budget was enacted." Therefore, the court held that respondents' interpretation of section 16A.152, subdivision 4, allowing the unallotment authority to be "exercised only in the event of unforeseen fiscal conditions that arise after the beginning of a biennium," was more reasonable.

Minnesota Statutes, Section 65B.49, Subdivision 4a

Automobile Insurance; Underinsured Motorist Coverage

Johnson v. Cummiskey
Minnesota Court of Appeals
May 26, 2009

Johnson, an insured motorcyclist, was struck by a car and recovered a portion of his damages from the car's driver and the driver's insurer. Seeking to recover the balance of damages from

his own policy's underinsured motorist (UIM) coverage, Johnson sued his insurer, Illinois Farmers (Farmers) after it applied the limits-less-paid clause of his policy to subtract from his policy's limit the amount he already received. The district court upheld Farmers' application of the clause to his claim and Johnson appealed.

The issue on appeal, as stated by the court, was whether the Minnesota No-Fault insurance Act requires a motorcycle policy to provide full UIM coverage using a damages-less-paid structure, which is statutorily required of policies insuring other types of vehicles. Farmers contended the statutory method, damages-less-paid, does not apply to motorcycle policies. Minnesota Statutes, section 65B.49, subdivision 4a, does not expressly state whether it applies only to those policies that include coverage required by the No-Fault Act – the position argued by Farmers – or whether it applied to all insurance policies issued in Minnesota, as argued by Johnson. "To the extent this omission creates an ambiguity, we must resolve it to determine the coverage that Johnson is entitled to under the Johnson-Illinois Farmers insurance policy."

The court agreed with Farmers' position. Looking at the legislative history of the statute, the court determined there was a "clear and logical legislative relationship between the requirement that some policies include UIM coverage and the requirement that this mandatory coverage be calculated using a specific standard method." Caselaw also supported the notion that "types of coverage not mandated by statute, including optional UIM coverage with a limit-less-paid reducing clause, are a matter of contract between the parties not subject to reformation." In conclusion, the court held "To construe Minnesota Statutes, section 65B.49, subdivision 4a to apply to motorcycle insurance would extend rights created by the No-Fault Act 'beyond those provided by the legislature.'" *Citing Mut. Serv. Case. Ins. Co. v. League of Minn. Cities Ins. Trust*, 659 NW.2d 755, 762 (Minn. 2003)

Minnesota Statutes, Section 65B.49, Subdivision 5a and Minnesota Statutes, Section 169.09, Subdivision 5a

Vicarious Liability; Rental-Vehicle Owners

Meyer v. Nwokedi
Minnesota Supreme Court
January 14, 2010

Appellants brought action against a rental car company to recover damages arising out of a single-vehicle accident. Appellants argued that the rental car company, as owner of the vehicle, was vicariously liable for the driver's negligence, which resulted in the death of two individuals. Appellants' claim was based on (1) Minnesota Statutes, section 65B.49, subdivisions 5a, paragraph (i), clause (2), which caps vicarious liability for rental-vehicle owners, and (2) Minnesota Statutes, section 169.09, subdivision 5a, which imposes vicarious liability on rental-vehicle owners.

The rental car company moved for summary judgment arguing, among other things, that the Graves Amendment, a federal statute that preempts state laws imposing vicarious liability on

rental-vehicle owners, preempts Minnesota Statutes, sections 65B.49, subdivision. 5a, paragraph (i), clause (2), and 169.09, subdivision 5a. The district court agreed with the rental car company and granted summary judgment. An appeal followed.

The Graves Amendment contains a preemption clause and a savings clause. The preemption clause states:

> An owner of a motor vehicle that rents or leases the vehicle to a person ... shall not be liable under the law of any State ... by reason of being the owner of the vehicle ... for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if
>
> (1) the owner ... is engaged in the trade or business of renting or leasing motor vehicles; and
>
> (2) there is no negligence or criminal wrongdoing on the part of the owner....
>
> 49 U.S.C. § 30106(a).

The savings clause provides:

> Nothing in this section supersedes the law of any State ...
>
> (1) imposing financial responsibility or insurance standards on the owner of a vehicle for the privilege of registering and operating a motor vehicle; or
>
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.
>
> 49 U.S.C. § 30106(b).

Appellants agree that their vicarious liability claim falls within the federal preemption clause. However, appellants argue that the vicarious liability claim is excluded from preemption by the savings clause, arguing that Minnesota Statutes, sections 65B.49, subdivision. 5a, paragraph (i), clause (2), and 169.09, subdivision 5a, impose liability on rental-vehicle owners for failure to meet "financial responsibility or liability insurance requirements."

The Minnesota Supreme Court stated that a "failure to meet the financial responsibility or liability insurance requirements under State law" means that in order for the state law to be excluded from preemption it must impose liability on "rental-vehicle owners for failure to meet insurance-like requirements or liability insurance requirements."

The Court concluded that neither of these applied to Minnesota Statutes, section 65B.49, subdivisions 5a, paragraph (i), clause (2), which states:

> Notwithstanding section 169.09, subdivision 5a, an owner of a rented motor vehicle is not vicariously liable for legal damages resulting from the operation of the rented motor vehicle in an amount greater than $100,000 because of bodily injury to one person in any one accident and…$300,000 because of injury to two or more persons in any one accident…if the owner.. has in effect, at the time of the accident, a policy of insurance or self-insurance, as provided in section 65B.48, subdivision 3, covering losses up to at least the amounts set forth in this paragraph. Nothing in this paragraph alters or affects the obligations of an owner of a rented motor vehicle to comply with the requirements of compulsory insurance through a policy of insurance as provided in section 65B.48, subdivision 2, or through self-insurance as provided in section 65B.48, subdivision 3… Nothing in this paragraph alters or affects liability, other than vicarious liability, of an owner of a rented motor vehicle.

Rather, the Court held that this subdivision "provides rental-vehicle owners with the option of capping potential vicarious liability for legal damages resulting from the operation of a rental vehicle if the owner provides insurance coverage in the amounts of $100,000 per person and $300,000 per accident."

Furthermore, the Court concluded that Minnesota Statutes, section 169.09, subdivision 5a also did not impose liability on "rental-vehicle owners for failure to meet insurance-like requirements or liability insurance requirements." Minnesota Statutes, section 169.09, subdivision 5a provides:

> Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.

The Court held that "[t]his statute has consistently been interpreted as creating vicarious liability as to vehicle owners when none existed at common law" and that the statute is not a "financial responsibility law that limits, or conditions liability of the rental-vehicle owner for failure to meet insurance-like requirements or liability insurance requirements."

Therefore, since neither Minnesota Statutes, section 65B.49, subdivisions 5a, paragraph (i), clause (2), nor Minnesota Statutes, section 169.09, subdivision 5a, fall within the savings clause of 49 U.S.C. § 30106(b), both sections are preempted by the Graves Amendment, which preempts state laws that impose vicarious liability on lease- or rental-vehicle owners (49 U.S.C. § 30106(a)).

Minnesota Statutes, Section 169.09, Subdivision 5a

Vicarious Liability; Definition of Motor Vehicle

Vee v. Ibrahim

Minnesota Court of Appeals

July 14, 2009

Appellant was struck by a semi-trailer that swung into his lane while riding his motorcycle. Appellant sued the semitruck's driver, his employers, and amended the complaint to include the company that owns the semitrailer as an additional defendant. Appellant sought to hold the semitrailer company vicariously liable for the semi-truck driver's negligent driving. In addition, the driver of the semi-truck amended his answer to seek indemnification or contribution from the semitruck company under the vicarious liability theory.

The Appellant and the semi-truck driver argued that the semitruck company was vicariously liable for the accident under Minnesota Statutes, section 169.09, subdivision 5a, which states that "[w]henever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner." The issue addressed by the court is whether the definition of motor vehicle includes a connected trailer.

Motor vehicle is defined by law in at least two places. Minnesota Statutes, section 169.011, subdivision 42 defines motor vehicle as "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires." This definition expressly applies to chapter 169. Minn. Stat. section 169.011, subd. 1. Appellant and the semitruck driver argue that an alternative definition of motor vehicle applies to the vicarious liability definition in Minnesota Statutes, section 169.09, subdivision 5a. They state that the definition of motor vehicle found in Minnesota Statutes, section 65B.43, which is part of the Minnesota No-Fault Automobile Insurance Act, applies to the vicarious liability statute. That section defines a motor vehicle as "every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, which (a) is required to be registered pursuant to chapter 168, and (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle."

In 1992, the court of appeals held that the definition of motor vehicle found in section 65B.43 applied to the vicarious liability statute, and the definition in chapter 169 did not apply. *Great Am. Ins. Co. v. Golla,* 493 N.W.2d 602, 605 (Minn. App. 1992). However, in 2005, the legislature instructed the revisor to renumber the vicarious liability statute from section 170.54 to its current location in chapter 169. *See* Laws 2005, chapter 163, section 88. The text of the statute was not changed.

The court in this case held that the legislature intended to abrogate the *Golla* case implicitly by relocating the vicarious liability statute to chapter 169. The court stated that if the legislature intended for the chapter 65B motor vehicle definition to apply to the vicarious liability statute, it could have accomplished this in a number of different ways. Instead, the court explains, that by moving "the vicarious liability statute to chapter 169," the legislature "effectively subjected the statute's operative provision to the definition of motor vehicle awaiting it in that chapter. Because a semitrailer does not meet the definition of motor vehicle in section 169.011, the vicarious liability statute does not impose vicarious liability on semitrailer owners for the actions of semitruck drivers."

Minnesota Statutes, Section 169.79, Subdivision 7

Traffic Regulations; Displaying License Plate

State v. White
Minnesota Court of Appeals
January 27, 2009

Appellant was stopped by a police officer when the officer noticed a glare from a vehicle license plate and observed the vehicle had a clear license plate cover. The officer testified that he could not recall if the plate's visibility or reflectivity was affected by the cover.

The district court concluded that Minnesota Statutes, section 169.79, subdivision 7, prohibits the use of any covering over letters, numbers, or state of origin on a license plate, with any material, regardless of whether the material affects the plate's visibility or reflectivity and therefore, the stop was lawful.

The relevant portion of the statute reads: "It is unlawful to cover … a license plate with any material whatever, including any clear or colorless material that affects the plate's visibility or reflectivity. The court concluded, "this language is ambiguous because it is subject to more than one reasonable interpretation. The statute can reasonably be interpreted to mean that covering critical information on a license plate with 'any material' is unlawful, and it can be reasonably interpreted to mean … clear covering is unlawful only if the clear covering is affects 'the plate's visibility or reflectivity.'"

Looking at the legislative history of the statute, the court concluded the legislature attempted to clarify, not change, the meaning of the statute in 1995 when the statue was amended. "[T]he legislature intended to prohibit the covering of critical information on a license plate with 'any material whatever,' including a clear or colorless covering.

Minnesota Statutes, Section 169A.63, Subdivision 2

Driving While Impaired; Vehicle Forfeiture

Mycka v. 2003 GMC Envoy, MN Plate RPG535, VIN 1GKDT13S432414651
Minnesota Court of Appeals
June 15, 2010

The City of Fridley seized a motor vehicle belong to Daniel Mycka following his arrest for driving while impaired. The city seized the vehicle following his release from jail and after he had retrieved the vehicle from a private towing company. Mycka brought an action challenging the seizure on the ground that, without process issued by the court, the city was not authorized to seize the vehicle. The district court rejected his challenge and Mycka appealed.

At issue was Minnesota Statutes, section 169A.63, subdivision 2, which provides property may be seized without process if the seizure is "incident to a lawful arrest." The court observed the legislature did not define the phrase "incident to a lawful arrest" and that the language of the statute, by itself, did not foreclose the conclusion that the city's seizure was "incident to" his arrest. "Thus," concluded the court, "the statute is ambiguous."

In determining the legislature's intention, the court looked at another provision within section 169A.63, which suggested the phrase "incident to a lawful arrest" was narrower than that argued by the city. However, the court went on to state that there were no other "discernable clues in the text or structure of the statute as to the scope of the phrase 'incident to a lawful arrest.' Ultimately this can be resolved on the simple ground that the seizure occurred so late in time … Not until the following day - 36 hours after his arrest and approximately 24 hours after his release from the county jail – did the city's police officers seize Mycka's vehicle from his resident. There was a clear break in time between the arrest and the seizure. These facts compel the conclusion that the city did not seize Mycka's vehicle 'incident to' his arrest … [t]herefore, the district court's order of forfeiture is reversed."

Minnesota Statutes, Section 243.166, Subdivision 1b

Predatory Offender Registration; Entering the State

In the Matter of the Risk Level Determination of G.G.
Minnesota Court of Appeals
August 25, 2009

In 2006, relator was charged in Wabasha County, Minnesota with multiple felony counts. At that time, relator was serving a five year extended-supervision term in Wisconsin for multiple sexual assault convictions. The relator was required to comply with Wisconsin's Sex Offender Registry. In January 2008, the Wisconsin Department of Corrections agreed to have relator transported to the Goodhue County jail in Red Wing, Minnesota to address the felony charges pending in Wabasha County. Relator plead guilty, was sentenced, and returned to Wisconsin to serve both his Minnesota and Wisconsin sentences under a dual commitment. Relator was in Minnesota for just over three weeks while addressing his felony charges.

In April of 2008, the End-of-Confinement Review Committee at the St. Cloud correctional facility assigned relator a predatory-offender risk level of II. Relator appealed the decision to an administrative law judge, arguing that he was not required to register as a predatory offender because the time he spent in jail in Minnesota was a result of state action not as a result of his own volition. The ALJ ruled in favor of the Minnesota Department of Corrections and relator appealed.

The court addressed whether a predatory offender is required to register under Minnesota Statutes, section 243.166, subdivision 1b, paragraph (b), clause (2), if the offender entered and remained in Minnesota as a result of state action rather than his own volition.

Minnesota Statutes, section 243.166, subdivision 1b, paragraph (b), clause (2) states that a predatory offender must register if the offender "enters this state and remains for 14 days or longer." Relator argues that "enters" implies volition. The state argued that the relator entered the state when the Wisconsin Department of Corrections brought him to Goodhue County for more than 14 days to address the crimes he committed in Minnesota. The court concluded that "enters" is ambiguous.

The court explained that the purpose of the sexual predator registration is to (1) create and offender registry to assist law enforcement investigations; (2) monitor sex offenders released into the community; (3) keep law enforcement informed of a predatory offender's whereabouts; and (4) provide law enforcement officials with the whereabouts of sexual offenders to assist with investigations.

The court concluded:

> To condition the requirement to register on the offender's volitional entry into Minnesota would exclude from the duty to register those offenders who come to Minnesota only to commit crimes while in Minnesota, leave the state, are apprehended, and are brought back into the state and incarcerated here against their will. We conclude that the text does not support relator's definition. Additionally, such a result would be contrary to the purpose of the registration statute. We therefore reject relator's argument that the word "enters" in section 243.166, subdivision 1b(b)(2), implies intent or volition.

Minnesota Statutes, Section 244.052, subdivision 3

Predatory Offender Registration; Risk Level Assessment

In the Matter of the Risk Level Determination of D.W.
Minnesota Court of Appeals
June 9, 2009

In 1992, relator was committed to the Minnesota Department of Human Services as sexual psychopathic personality. He is a participant in the Minnesota Sex Offender Program and in September 2007 was assigned to the supervision integration program (MSI). The MSI program prepares civilly committed individuals for their return to society. This is accomplished by permitting supervised trips outside of the treatment facility.

The Department of Human Services required, as a condition of relator's participation in the MSI program, that the Department of Corrections convene an End-of-Confinement Review Committee (ECRC) to assess relator's risk level. The ECRC assigned relator a risk level of III. The relator appealed, arguing that the ECRC did not have the authority to assign a risk level since he was still confined and was unlikely to be released soon.

This issue, as framed by the court, is whether Minnesota Statutes, section 244.052 permits an ECRC to assess the public risk posed by a civilly committed predatory offender confined in a state treatment facility when the offender begins a stage of treatment that permits community contact outside the facility.

Minnesota Statutes, section 244.052, subdivision 3, paragraph (a), provides in pertinent part:

> The commissioner of corrections shall establish and administer end-of-confinement review committees at each state correctional facility and at each state treatment facility where predatory offenders are confined. The committees shall assess on a case-by-case basis the public risk posed by predatory offenders who are about to be released from confinement.

The parties dispute whether the relator is "about to be released from confinement." The relator argues "that an offender is not 'released from confinement' until the offender is discharged, living in community, and subject to community notification." The Department of Corrections argues that "an offender is released from confinement when the offender is permitted to leave the treatment facility on a pass and have contact with the community." The court concluded that the phrase "release from confinement" is ambiguous since both interpretations were reasonable.

The court held that Department of Correction's interpretation of the phrase is consistent with community protection purpose of section 244.052 since it allows "law enforcement to have information regarding an offender's risk level before the offender is permitted contact with the community through the MSI program."

Therefore, consistent with the purpose of section 244.052, the court concluded that since the relator is expected to be permitted to begin the transition treatment phase soon, which includes community contact, section 244.052 permits assessment of the risk level of a civilly committed offender confined in a state treatment facility.

Minnesota Statutes, Section 260C.007, Subdivision 6

Child Protection; Definition of Child in Need of Protection or Services

Welfare of Child of S.S.W.
Minnesota Court of Appeals
July 7, 2009

After a trial on a petition by the Ramsey County Department of Human Services (department) alleging a child was in need of protection or services, the district court held the department failed to prove the allegations in the petition and dismissed it. The department appealed, arguing the district court based its decision on an erroneous interpretation of the statutory definition of a "child in need of protection or services."

At issue was the proper construction of Minnesota Statutes, section 260C.007, subdivision 6, which defines a "child in need of protection or services." The statute lists 15 grounds that may support a finding that a child is in need of protection or services. The department argued that a petitioner need only establish one of the 15 enumerated grounds to prove that a child is in need of protection or services. S.S.W. countered that proof of the existence of one of the grounds, in and of itself, was insufficient to prove that a child is in need of protection or services. The court then held that both of the statutory interpretations suggested by the parties were reasonable and went on to construe the statute.

The court held that the phrase "is in need of protection or services because the child" was properly construed by the district court as an independent component of the definition. "If we … construe the phrase to require a determination that there is a need for protection or services, *in addition* to a determination that one of the enumerated child-protection grounds exists, we give effect to all of the language within the subdivision. (*emphasis added*)" The court also gave much weight to "the deference that must be afforded to the district court as the finder of fact in a juvenile protection matter." The court concluded that the statute required proof that one of the enumerated child-protection grounds exists *and* that the subject child needs protection or services as a result.

Minnesota Statutes, Section 327C.02, Subdivision 2

Manufactured Home Park Lot Rentals; Rental Agreements

Skyline Village Park Association v. Skyline Village L.P.
Minnesota Court of Appeals
July 20, 2010

Resident association of manufactured home park brought an action against the owner of the park, claiming in part that a proposed rent increase was unreasonable and unenforceable. The district court concluded that Minnesota Statutes, section 327C.02, subdivision 2, did not impose a reasonableness requirement on manufactured home park lot rent increases.

The relevant portion of section 327C.02, subdivision 2, provides as follows: "A reasonable rent increase made in compliance with section 327C.06 [governing rent increases] is not a substantial modification of the rental agreement and is not considered to be a rule for purposes of section 327C.01 [defining a reasonable rule]." The appellant argued that an unreasonable rent increase was a substantial modification of the rental agreement and is considered to be a rule. The respondents countered that the word "reasonable" meant nothing more than "made in compliance with section 327C.06." The Court held that both interpretations were reasonable and therefore the statute was ambiguous.

In construing the term "reasonable" the court observed that chapter 327C expressly and consistently differentiates "rules" and "rule changes" from "rent" and "rent changes." "The legislature's failure to impose an express "reasonableness" requirement on rent increases in its enumeration of rent increase restrictions in section 327C.06, indicates the legislature did not

intend to impose a reasonableness restriction." Moreover, a review of the legislative history did not support the imposition of a reasonableness requirement.

The court went on to conclude that the term "reasonable" before the phrase "rent increase" in section 327C.02, was superfluous. "We therefore hold that a rent increase is not a rule change for purposes of chapter 327C and affirm the district court's conclusion that any requirement for "reasonableness" set forth in section 327C.02 does not apply to increases in manufactured home park lot rental rates."

Minnesota Statutes, Section 514.011, Subdivision 4c

Mechanic's Lien; Prelien Notices

Wallboard, Inc. v. St. Cloud Mall, LLC
Minnesota Court of Appeals
December 16, 2008

Bath and Body Works, LLC leased approximately 4,375 square feet of floor space at a shopping mall owned by St. Cloud Mall, and then hired a general contractor to build-out its leased space. The general contractor subcontracted with a drywall company to install the drywall. The drywall company purchased the drywall from the appellant. Bath and Body Works LLC paid the general contractor in full and obtained an executed lien waiver of the total build-out contract price. The drywall company was paid in full, executed a full lien waiver, but never paid appellant for the cost of the drywall.

Appellant then served a copy of its mechanic's lien on St. Cloud Mall and subsequently recorded the lien. Later, appellant sued St. Cloud Mall, the drywall company, and Bath and Body Works LLC for enforcement of the mechanics lien. The district court granted summary judgment to the respondents because the prelien notice exception did not apply to the appellant.

At issue in the case is whether the prelien-notice exception set forth in Minnesota Statutes, section 514.011, subdivision 4c, applies to a tenant who improves leased premises of less than 5,000 usable square feet if the landlord's entire property exceeds 5,000 square feet.

Minnesota Statutes, section 514.011, subdivision 4c provides in pertinent part:

> The notice required by this section shall not be required to be given in connection with an improvement to real property which is not in agricultural use and which is wholly or partially nonresidential in use if the work or improvement:
>
> (a) is to provide or add more than 5,000 total usable square feet of floor space; or
>
> (b) is an improvement to real property where the existing property contains more than 5,000 total usable square feet of floor space; or

(c) is an improvement to real property which contains more than 5,000 square feet and does not involve the construction of a new building or an addition to or the improvement of an existing building.

Appellant argues that because the mall exceeds 5,000 usable square feet a prelien notice was not required. Respondents argue that because the space leased by Bath and Body Works LLC was less than 5,000 square feet a prelien notice was required.

The court resolves the ambiguity as to whether the square footage of the landlord's entire property is considered or only the square footage leased by a tenant. The court determines that appellant's position "would have a broad and far-reaching impact not only on all landlords, but also on all business owners, renters, and condominium owners" and would lead to "unjust and likely unforeseen results." For example, the court cites the example of "the tenant of a small office in a high-rise office building who hires a contractor to make improvements to the office space [who] would not be entitled to prelien notice because the building is greater than 5,000 square feet." Thus, the court found the respondents argument more appropriate and concluded that the appellant's mechanic's lien was void and discharged since a prelien notice was not given to Respondents.

Minnesota Statutes, Section 518.58, Subdivision 2

Marriage Dissolution; Division of Non-marital Property

Angell v. Angell
Minnesota Court of Appeals
December 29, 2009

A former wife in a marriage dissolution proceeding challenged the district court's division of death benefits paid to her after her son died during military duty. The son had named only his mother as the beneficiary of his military life insurance policy, which, by federal law, also made her his beneficiary in a federal death-gratuity program. The district court classified these funds as the exclusive non-marital property of the mother, but awarded the father a share under Minnesota Statutes, section 518.58, subdivision 2. On appeal, the mother argued the award violated federal anti-attachment law protecting military death benefits.

Minnesota Statutes, section 518.58, subdivision 2, permits the apportionment of up to one half of a spouse's non-marital property to the other spouse to prevent unfair hardship. The issue, as framed by the court, was whether the federal anti-attachment statutes protecting military death benefits preempt section 518.58, subdivision 2, to the extent it authorizes a district court to award the beneficiary's spouse a portion of those benefits as divisible non-marital property.[1]

1 Syllabus by the Court, 777 N.W.2d 32, 33

The court determined the district court properly classified the military death benefits as non-marital property belonging to the mother. However, the court observed that both the life insurance policy and the death-gratuity benefits have anti-attachment provisions imposed by federal law. 38 U.S.C. section 1970(g) and 38 U.S.C. section 5301(a)(1). The court went on to hold that "[A] state divorce decree, like other law governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments." *Citing Ridgeway v. Ridgeway*, 454 U.S. 46, 55, 102 S.Ct. 49, 55 (1981).

"Although the district court correctly held that the award meets the objectives of Minnesota law … the district court's awarding of a portion of her non-marital property to Gordon Angell under state law conflicts with the authoritatively superior federal anti-attachment provisions."

Minnesota Statutes, Section 580.23, Subdivision 2

Mortgages; Redemption Period

Riverview Muir Doran, LLC v. Jadt Development Group, LLC
Minnesota Court of Appeals
December 8, 2009

Mortgagee brought an action against a developer and its owners to foreclose on the mortgage. The district court determined the bank was entitled to foreclose its mortgage and that the developer was limited to a six-month redemption period. The developer and its owners appealed.

Under Minnesota Statutes, section 580.23, a mortgager normally has a six-month redemption period after the foreclosure sale, but is entitled to a 12-month redemption period under subdivision 2, when "the amount claimed to be due and owing is less than 66-2/3 percent of the original principal amount secured by the mortgage." The loan agreement established the terms of loan including a provision for multiple advances up to $19,125,000. The appellants argued the district court erred by concluding the original principal amount secured by the mortgage was $4,530,307.02; the outstanding principal balance of the loan. They argued the original principal amount secured was $19,125,000.

The court held that the phrase "original principal amount secured by the mortgage" was not defined by the statute or case law and was therefore ambiguous. Reviewing legislative history, the court concluded the intent of subdivision 2 "was to grant an extended redemption period to certain mortgagors, including those who, by virtue of having paid down their loans, could have a relatively large equity in their property and are more likely to redeem." The court then held that "in the context of a multiple-advance construction loan, the 'original principal amount secured by the mortgage' for the purposes of determining a mortgagor's redemption period under Minnesota Statutes, section 580.23, is the greatest principal balance due at any time during the term of the loan, but not more than the maximum amount set forth in the mortgage."

Minnesota Statutes, Section 609.341, Subdivision 15

Criminal Sexual Conduct; Definition of Brother

State v. Williams
Minnesota Court of Appeals
March 17, 2009

Respondent was charged with first degree criminal sexual conduct for sexually penetrating his fifteen years old half sister under Minnesota Statutes, section 609.342, subdivision 1, paragraph (g), which states in relevant part:

> A person who engages in sexual penetration with another person…is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:
>
> …
>
> (g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration.

Minnesota Statutes, section 609.341, subdivision 15, defines significant relationship as follows:

> "Significant relationship" means a situation in which the actor is:
>
> (1) the complainant's parent, stepparent, or guardian;
>
> (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or
>
> (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

The district court dismissed the complaint because half-sibling is not included in the definition of significant relationship. The state appealed. The court of appeals determined that the statutory reach of the term “brother” is “arguably ambiguous” for purposes of the criminal statute.

In order to resolve the ambiguity, the court first reviewed the dictionary definitions of both brother and sister, all of which include half-siblings. Likewise, the court referenced a Minnesota federal district court opinion and various Minnesota Statutes that all include half-siblings within the definition of brother or sister. In addition to these various definitions of brother and sister the court states:

> If this court were to interpret the law to exclude half-brothers, the law would then include step-brothers (with no blood relation) and cousins (genetically more distant than half-brothers) but exclude a brother related by half blood. This result would both be illogical and contrary to the overall statutory purpose of prohibiting intra-family sexual contacts.

Therefore, the court concluded that half-brother is by definition included in the term "brother" for the purpose of a first degree criminal sexual conduct charge under Minnesota Statutes, section 609.342, subdivision 1, paragraph (g).

Minnesota Statutes, Section 624.7142, Subdivision 1

Carrying While Under Influence; Definition of Public Place

State v. Gradishar
Minnesota Court of Appeals
June 2, 2009

Respondent, a bar owner and manager, was arrested in his bar for carrying a pistol while under the influence of alcohol. Respondent was charged in violation of Minnesota Statutes, Section 624.7142, which states in pertinent part:

> A person may not carry a pistol on or about the person's clothes or person in a public place…when the person is under the influence of alcohol.

At issue in this case is whether the definition of "public place" excludes an individual's place of business. The phrase "public place" is not defined in section 624.7142. The district court relied on the definition of public place found in Minnesota Statutes, section 624.7181 and dismissed the charges because that definition of "public place" excludes a person's place of business. Minnesota Statutes, section 624.7181 states:

> "Public place" means property owned, leased, or controlled by a governmental unit and private property that is regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use but does not include: a person's dwelling house or premises, the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activity involving firearms.

The state appealed the dismissal and argues that the dictionary definition of public place should guide the court in the matter. The definition provided by the state is as follows:

> A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (*e.g.* a park or public beach). Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together to pass to and fro.

The court found both definitions to be reasonable and therefore also found the phrase "public place" to be ambiguous. In order to resolve the ambiguity, the court first looked to the statutory context of section 624.7142, which is a part of the Minnesota Citizens Personal Protection Act of 2003 (sections 624.031 to 624.74). The court noted that within these sections there is a definition section and the legislature chose not to define public place for purposes of section 624.7142. The court infers that if the legislature wanted a specific definition to apply to section 624.7142, it would have provided one.

Second, the court determined that the definition of public place used by the district court applies only to one section of law. Section 624.7181 "specifically provides that the definitions contained therein apply only to that section," and therefore not to section 624.7142.

Third, in order to ascertain legislative intent, the court considered the "mischief to be remedied" (*See* Minnesota Statutes, section 645.16) by section 624.7142, which is to prevent intoxicated persons from possessing firearms. In contrast, section 624.7181 penalizes an individual for possessing or controlling a firearm in a public place without a permit. The court reasons that "[b]ecause section 624.7142 seeks to remedy a separate and distinct mischief, the term "public place" should be defined in a manner that best remedies that particular mischief." The court then determines that the definition of public place as found in section 624.7142, which excludes a person's home and business, "makes sense when considering the reasons for allowing an individual to carry a pistol without a permit-to protect one's home and business." In contrast, section 624.7142 seeks to protect the public, not a person's home or business.

Fourth, the court considers "the object to be obtained" (*See* Minnesota Statutes, section 645.16) by section 624.7142, which is to protect individuals in public places from intoxicated persons with firearms. Since public safety is the paramount goal of section 624.7142, the court concludes that a narrow definition of public place would be inconsistent with that goal. Therefore, the court determines that a broader definition of public place would be more appropriate for purposes of section 624.7142 because it would "minimize the locations where a permit holder may carry a firearm while intoxicated."

Finally, the court analyzes the consequences of the respondents interpretation and then gives a "reasonable and sensible construction" to section 624.7142 (*See* Minnesota Statutes, section 645.16). The court shows that the respondents interpretation would allow permit holders who carry while under the influence of alcohol to carry at:

> the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activity involving firearms. Minnesota Statutes, section 624.7181, subdivision 1, paragraph (c).

The court states, "[t]he result of this interpretation compromises public safety and is, therefore, not a reasonable and sensible construction."

Therefore, for the reasons stated, the court found that the district court erred in adopting the section 624.7181 definition of public place for purposes of section 624.7142 and concluded that the state's argument for a broader definition of public place was more persuasive. For purposes of section 624.7142, the court concluded that "public place" should be defined as: "generally an indoor or outdoor area, whether privately or publicly owned, to which the public have access by right or by invitation, expressed or implied, whether by payment of money or not."

Minnesota Statutes, Section 634.20

Domestic Abuse; Evidence of Prior Conduct

State v. McCurry
Minnesota Court of Appeals
August 18, 2009

Appellant was convicted of burglarizing his former wife's home. At trial, the district court allowed the victim to testify about three incidents involving the appellant that included abusive actions made by the appellant to the victim. These incidents occurred weeks prior to the burglary. The court allowed the evidence under Minnesota Statutes, section 634.20, which states:

> Evidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Similar conduct" includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

The court of appeals concludes that section 634.20 is ambiguous because "it is not clear on its face whether it applies to non-domestic-abuse charges." The court states that an analysis of the text "favors the domestic-abuse-only interpretation." Since the text refers to the victim, the accused, and domestic abuse, the court indicates that it's reasonable that the section is intended to encompass "acts related to domestic violence."

The court explains that the phrase "similar conduct" is meaningless unless the conduct to be proven is similar to the currently charged conduct. In addition, the reference to "the victim of domestic abuse" is understood to be a reference to the victim of the current charge. Further, the court explains that the phrase "*the* victim of domestic abuse" indicates that "the domestic abuse referred to must be a *specific* instance, namely, the current charge." This is in contrast to the phrase "*a* victim of domestic abuse" which was not used by the legislature and would have indicated that the legislature intended the statute to apply to any past occurrence rather than the current charge.

Therefore, the court held that this statute may only be used when the charges against a defendant include a domestic abuse charge.