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Foreword

The revisor's Court Opinions Report came into existence in 1957.[1] The first biennial report was issued on January 7, 1959. Prior to that time, and starting in 1945, the revisor's office was tasked with creating and publishing annotations for the entirety of Minnesota Statutes.[2] The revisor's office completed three annotations publications, beginning with annotations for the 1945 Statutes, followed by a 1947 publication for the 1945 Statutes, and a final publication for the 1953 Statutes. These volumes were detailed and expansive. They can be found on the revisor's Minnesota Statutes Archive webpage.

Sixty-five years have passed since the legislature repealed the revisor's office duty to publish statutory annotations and instead directed the revisor's office to complete this report.[3] This 2022 report incorporates changes that we hope will increase its utility, particularly for those who engage with statutes, statutory drafting, or the legislative process. Enhancements include: expanded prefatory material, useful finding aids, explanatory footnotes and expanded footnotes to primary and secondary sources, additional short summaries of other notable cases within the reporting period, and a glossary of principles of legal interpretation. There will also be a cumulative table of all statutes included in any revisor's Court Opinions Report. The cumulative table will be posted on the revisor's website with the current year's report and will be updated with statutes included in future reports.

Please remember that the commentary and content in this report can only be fully understood in the context of the entire legislative enactment, executive implementation, and judicial review process. Rules of statutory interpretation have exceptions and those exceptions shine light on the rules. The body of law in Minnesota is over 160 years old. This report aims to provide a helpful survey of territory for new and experienced practitioners alike.

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[1] *See* Laws 1957, chapter 65, section 1, amending Minnesota Statutes 1953, Section 482.09. The duty to complete the report is now codified as Minnesota Statutes, section 3C.04, subdivision 3.

[2] Minnesota Statutes 1953, section 648.23, provided:

> "Immediately after the end of the biennial session of the Legislature in 1945, the revisor of statutes shall deliver to the commissioner of administration printer's copy for "Annotations to Minnesota Statutes," which shall contain annotations to the Constitution of the State of Minnesota, annotations to the statutes in force at the close of the 1943 session of the Legislature, and the source and legislative history of each section of Minnesota Statutes."

Minnesota Statutes 1953, section 648.23, provided:

> "The revisor of statutes shall prepare accurate and complete annotations of court decisions construing the statutes so as to supplement the annotations contained in "Annotations to Minnesota Statutes" and deliver to the commissioner of administration printer's copy therefor; and the commissioner of administration shall print and deliver biennially, commencing with the year 1946, as soon as possible, an edition of 3,000 copies. Such annotations shall be printed as supplements to "Annotations to Minnesota Statutes," and the commissioner of administration shall fix the price at which copies thereof shall be sold."

[3] *See* Laws 1957, chapter 466, section 1.

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Court Opinions Report Summary

Minnesota Statutes, section 3C.04, subdivision 3, requires the Office of the Revisor of Statutes to report biennially to the legislature "any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the Supreme Court or the Court of Appeals of Minnesota." This report covers opinions from the Minnesota Supreme Court (supreme court) and Minnesota Court of Appeals (court of appeals) filed after September 30, 2020, and before October 1, 2022, that identify ambiguous, vague, preempted, constitutionally suspect, or otherwise deficient statutes.

The 2022 Court Opinions Report includes summaries of 13 cases in which a statutory deficiency was noted: nine from the supreme court and four from the court of appeals.

This report does not include summaries of cases in which the court of appeals found a deficiency but the case is currently under review by the supreme court. There is only one such case:

- *Findling, et al. v. Group Health Plan, Inc., et al.*, 979 N.W.2d 234 (Minn. Ct. App. 2022) (A21-1518, A21-1527, A21-1528, A21-1530)

If the court of appeals found a deficiency but the case was denied review or the time for appeal to the supreme court has expired, the case summary notes the denial or lack of review. If the supreme court reviewed a court of appeals case and found a deficiency, only a summary of the supreme court case is included.

Each case summary includes the text of the deficient statutory provision, a statement of the deficiency, a brief outline of the facts and procedure of the case, and a discussion of the court's analysis of the deficiency and any possible legislative remedy as appropriate. A focused selection of legislative remedies is offered. There is often a wide range of possible policy outcomes or statutory changes that the legislature could make, should it wish to do so. Where possible, the words or phrases identified as deficient have been underlined. Additionally, the statutes discussed and the full text of each court opinion discussing the respective statutory deficiency is linked in the table in this report or can be found on the Office of the Revisor of Statutes website.

The report also includes an Actions Taken section that discusses a subset of appellate court cases that would have merited inclusion in this report because the opinion identified statutory deficiencies. However, in these instances, the legislature subsequently amended the statute at issue to remove, address, or otherwise remedy the deficiency.

There is also a new section that includes shorter summaries devoted to other notable cases. In some of these cases, the court did not formally find a statutory deficiency, but did significantly acknowledge a party's argument regarding a statutory deficiency. In others, the court of appeals found a deficiency, but the supreme court disagreed that a deficiency existed, which is a disagreement worth mentioning. In all these cases, the court reached a resolution through statutory construction using canons of construction or similar analysis, and they are noteworthy for that reason.

This report includes a separate section of summaries of three court of appeals opinions that were designated by the court as "nonprecedential": *Matter of Casterton*, 2022 WL 2912152 (Minn. Ct. App. July 25, 2022) (A21-1393); *Williams v. Sun Country, Inc.*, 2021 WL 855890 (Minn. Ct. App. Mar. 8, 2021) (A20-0936); and *City of Hutchinson v. Shahidullah*, 2021 WL 4428917 (Minn. Ct. App. Sept. 27, 2021) (A20-1519). This designation is noted in the case comments. Before August 1, 2020, Minnesota Statutes, section 480A.08, subdivision 3, provided that unpublished court of appeals opinions did not hold precedential value. The statute provided five instances in which the court of appeals was allowed to publish cases. These aspects of section 480A.08, subdivision 3, were repealed by striking in the 2020 regular session.[4] However, the supreme court amended Minnesota Court Rules, Appellate Procedure, Rule 136.01, subdivision 1, to remove the reference to unpublished opinions and section 480A.08 and to provide a rule that allows the court of appeals to determine whether a written opinion will be precedential, nonprecedential, or an order opinion.[5] The court of appeals opinions

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[4] *See* Minnesota Statutes, section 480A.08, subdivision 3, and Laws 2020, chapter 82, section 3.

[5] See Order Promulgating Amendments to the Rules of Civil Appellate Procedure, 2-3, July 22, 2020 (effective August 1, 2020). Minnesota Court Rules, Appellate Procedure, Rule 136.01, subdivision 1, paragraph (b), now provides: "In determining the written form, the panel may consider all relevant factors, including whether the opinion:

designated as nonprecedential summarized in this report were included because they each address statutory deficiencies.

Finally, this report includes commentary on two supreme court cases in which the court of appeals previously found statutory deficiencies, but the cases were under review by the supreme court at the time of publication of the 2020 Court Opinions Report. Summaries of those court of appeals opinions were not included in the 2020 Court Opinions Report, but are addressed in this report:

- In *Hinrichs-Cady v. Hennepin County*, 961 N.W.2d 777 (Minn. 2021) (A19-1561), the supreme court dealt with a court of appeals opinion which held that the definition of "employee" in Minnesota Statutes, section 181.940, subdivision 2, was ambiguous as applied to the Pregnancy and Parental Leave Act, which requires pregnancy accommodations. The supreme court issued an order opinion, which noted that in 2021 the legislature enacted legislation to provide that the pregnancy-accommodations provisions no longer fall within the range of statutes subject to that statutory definition of "employee," and dismissed the petition for further review as improvidently granted. [6]

- In *In re Krogstad*, 958 N.W.2d 331 (Minn. 2021) (A20-0076), the supreme court dealt with a court of appeals opinion that had held that the term "several defendants" in Minnesota Statutes, section 542.10, requiring a change of venue in certain situations, was ambiguous. The supreme court concluded that "several" unambiguously means "separate," but used multiple canons of construction to reach that conclusion.[7]

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(1) establishes a new principle or rule of law or clarifies existing caselaw;
(2) decides a novel issue involving a constitutional provision, statute, administrative rule, or rule of court;
(3) resolves a significant or recurring legal issue;
(4) applies settled principles or controlling precedent;
(5) involves an atypical factual record or procedural history;
(6) includes an issue pending before the United States Supreme Court or the Minnesota Supreme Court; or
(7) warrants a particular form based on the parties' arguments, including, but not limited to, the parties' statements allowed by Rule 128.02, subdivision l, paragraph (f)."

The order also amended Minnesota Court Rules, Appellate Procedure, Rule 128.02, subdivision 1, to allow a party to "include an optional statement as to whether the court's opinion should be precedential, nonprecedential, or an order opinion and the party's reasons, with reference to Rule 136.01, subdivision 1, paragraph (b)."

[6] For further discussion, see the explanation of this case, and how the legislative amendment resolved the deficiency, in the Actions Taken section of this report on page ....

[7] For further discussion, see the short summary of this case in the Other Notable Cases section of this report on page ....

Court Opinions Report Table

Statute	Issue	Court Opinion
Section 3.732, subdivision 1, clause (2)	Are county officers and employees "persons acting on behalf of the state in an official capacity" for purposes of indemnification under the State Tort Claims Act? (ambiguity)	*Walsh v. State* 975 N.W.2d 118 (Minn. 2022) (A20-1083)
Section 103D.311, subdivision 3	Must a county appoint a metropolitan area watershed district manager from nominees on an aggregate list of nominees submitted by cities, or may the county disregard city-submitted nominees and appoint another fairly representative watershed district manager? (ambiguity)	*City of Circle Pines v. County of Anoka* 977 N.W.2d 816 (Minn. 2022) (A20-1637)
Section 103D.545, subdivision 3	When does a civil action arise from or relate to a violation of a watershed district rule? (ambiguity)	*Roach v. County of Becker* 962 N.W.2d 313 (Minn. 2021) (A19-2083)
Section 176.135, subdivision 1	Does the requirement for an employer to "furnish any medical…treatment" reasonably necessary to treat a work-related injury conflict with federal law that prohibits the possession of cannabis when the employer would be required to pay for the expense of treatment using medical cannabis? (preemption)	*Musta v. Mendota Heights Dental Center* 965 N.W.2d 312 (Minn. 2021) (A20-1551)
Section 177.23, subdivision 10	Under the Minnesota Fair Labor Standards Act, is on-call time for live-in apartment caretakers compensable as work time, or noncompensable as time merely available to work? (ambiguity)	*Hagen v. Steven Scott Management, Inc.* 963 N.W.2d 164 (Minn. 2021) (A19-1224)
Section 245A.03, subdivision 7, paragraph (a)	Must the commissioner of human services consider certain listed factors when mandatorily revoking an adult foster care license? (ambiguity)	*Matter of Casterton* 2022 WL 2912152 (Minn. Ct. App. 2022) (A21-1393)

Section 260B.198, subdivision 1, paragraph (a)	Is a juvenile defendant “found to have committed” a misdemeanor when the defendant pleaded guilty, the case was continued, and then the case was dismissed following successful completion of the terms of a six-month probation? (ambiguity)	*Matter of Welfare of A.J.S.* 975 N.W.2d 134 (Minn. Ct. App. 2022) (A21-1046)
Section 278.05, subdivision 3	Does allowed disclosure of assessor’s records with confidential data include disclosure of nonpublic income-producing property assessment data? (ambiguity)	*G&I IX OIC LLC v. County of Hennepin* 979 N.W.2d 52 (Minn. 2022) (A21-1493)
Section 363A.11	Does the Federal Aviation Act prevent application of the Minnesota Human Rights Act in cases where an airline refuses to serve passengers claiming safety concerns? (preemption)	*Williams v. Sun Country, Inc.* 2021 WL 855890 (Minn. Ct. App.) (A20-0936)
Sections 463.15 through 463.261	Does the 45-day limit to apply for recovery of costs under Minnesota Rules of Civil Procedure apply to recovery of expenses under the Minnesota Hazardous or Substandard Buildings Act? (ambiguity)	*City of Hutchinson v. Shahidullah* 2021 WL 4428917 (Minn. Ct. App. 2021) (A20-1519)
Section 541.051, subdivision 1, paragraph (a)	Does construction of improvement to real property include only specific types of work completed and not the project as a whole, or does it include all persons whose work is necessary to the entire process of a construction project to improve real property? (ambiguity)	*Moore v. Robinson Environmental* 954 N.W.2d 277 (Minn. 2021) (A19-0668)
Section 624.7142, subdivision 1, clause (4)	Does the meaning of “public place” apply to a person’s motor vehicle or the highway upon which it is driven? (ambiguity)	*State v. Serbus* 957 N.W.2d 84 (Minn. 2021) (A19-1921)
Section 629.292, subdivision 1, paragraph (a)	Does a speedy trial request under the Uniform Mandatory Disposition of Detainers Act remain effective when the state dismisses the pending charges before the end of the six-month disposition period? (ambiguity)	*State v. Mikell* 960 N.W.2d 230 (Minn. 2021) (A19-0732)

Case Comments

Minnesota Statutes, section 3.732, subdivision 1, clause (2)

Subject: Indemnification; State Tort Claims Act

Court Opinion: *Walsh v. State,* 975 N.W.2d 118 (2022) (A20-1083)

Applicable text of section 3.732, subdivision 1, clause (2):

"Employee of the state" means …persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation.

Statutory Issue:

Are county officers and employees "persons acting on behalf of the state in an official capacity" for purposes of indemnification under the State Tort Claims Act?

Facts and case procedure:

The Mille Lacs Band of Ojibwe (the Band) sued Mille Lacs County and its elected officials, County Attorney Joseph Walsh and County Sheriff Don Lorge, in federal district court to stop the county and the officials from diminishing the jurisdiction and authority of the Band's peace officers throughout their federally recognized 1855 Treaty Lands[8]. The federal district court partially granted summary judgment for the Band, and Walsh and Lorge sought indemnification from Mille Lacs County and the state to cover their attorney fees and costs.

Walsh and Lorge sought indemnification under the Municipal Tort Claims Act[9] and the county paid a portion of their expenses and attorney fees. Next, Walsh and Lorge went to the Attorney General's Office and sought indemnification under the State Tort Claims Act[10] by claiming to be "employees of the state" as defined in section 3.732, subdivision 1, clause (2). They requested indemnification for costs and fees already incurred and going forward. The Attorney General's Office declined their request, stating that Walsh and Lorge were not "employees of the state" within the meaning of the act. Walsh and Lorge sued the state in district court and sought a declaratory judgment that they are entitled to defense, indemnification, and payment from the state for all expenses relating to the federal lawsuit, under the State Tort Claims Act. The district court dismissed Walsh and Lorge's case for failure to state a claim. The court of appeals affirmed the decision of the district court. Walsh and Lorge appealed the court of appeals decision, and the supreme court granted review.

Discussion:

The State Tort Claims Act requires the state to indemnify any employee of the state for damages, expenses, and attorney fees. Section 3.732, subdivision 1, clause (2), extends indemnification coverage to nonstate "persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation." Walsh and Lorge argued that they fit this definition because they officially act on behalf of the state when they are required to enforce and prosecute state law crimes enacted by the legislature. The state pointed to the definition of "state" in section 3.732, subdivision 1, clause (1),[11] and argued that county officials do not work on behalf of the state when they arrest felons and prosecute felonies, and are instead working on behalf of a county, which is specifically excluded under the act. The court concluded that the statute is ambiguous because it is subject to more than one reasonable interpretation and looked at textual clues to determine whether the legislature intended for county officials to be considered "persons acting on behalf of the state in an official capacity."

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[8] Treaty with the Chippewa, art. 2, Feb. 22, 1855, 10 Stat. 1165.
[9] Minnesota Statutes 2020, section 466.07
[10] Minnesota Statutes 2020, section 3.736, subdivision 9
[11] Minnesota Statutes, section 3.732, subdivision 1, clause (1): "State" includes each of the departments, boards, agencies, commissions, courts, and officers in the executive, legislative, and judicial branches of the state of Minnesota … It does not include a city, town, county, school district, or other local governmental body corporate and politic.

The court considered textual clues from the language of related statutes and noted that county sheriffs and county attorneys are generally treated as county officials and employees. The court pointed out how these positions are elected by county residents, have nonstate duties based off municipal ordinances and charter provisions, perform mandatory services for the county, and report to a county board, not a state agency or department. Moreover, the fact that the legislature created separate indemnification acts for state employees and municipal employees provided the court with a textual clue that the legislature did not intend for county officials and employees to be covered under the State Tort Claims Act.

The court next turned to section 645.16, clause (6)[12], and applied the "consequences of a particular interpretation" canon to consider the consequences of interpreting the statute broadly so that county officials are acting on behalf of the state every time they enforce and prosecute criminal laws passed by the legislature. The court was reluctant to agree with this interpretation as it would require the state to defend and indemnify every county, city, school district, and watershed board employee. The court did not believe the legislature would have intended the statute to be applied in such an expansive manner.

The court distinguished this case from a prior case[13] in which the court held that Anoka County was a person acting on behalf of the state. The court recognized that in that case the state delegated a specific state responsibility to the county, therefore making it appropriate to define Anoka County as an employee of the state. In this case, the court determined that the legislature did not intend to indemnify county employees under the State Tort Claims Act for acts that were "part of performing their role as a county official." The court concluded by holding that county sheriffs and county attorneys generally do not act on behalf of the state when they enforce or prosecute state criminal laws, and are therefore not entitled to defense and indemnification under the State Tort Claims Act.

The court did not suggest a statutory amendment, but the legislature may consider adopting the court's reading by amending section 3.732, subdivision 1, clause (2), to specify that an "employee of the state" does not include an employee of a city, town, county, school district, or other local governmental body, corporate and politic, when the employee is performing a duty on behalf of their local unit of government.

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[12] Minnesota Statutes 2020, section 645.16, clause (6): "When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters ... (6) the consequences of a particular interpretation ..."

[13] *See Andrade v. Ellefson*, 391 N.W.2d 836 (Minn. 1986).

Minnesota Statutes, section 103D.311, subdivision 3

Subject: Local government municipalities; watershed districts

Court opinion: *City of Circle Pines v. County of Anoka*, 977 N.W.2d 816 (Minn. 2022) (A20-1637)

Applicable text of section 103D.311, subdivision 3:

(a) … If the district is wholly within the metropolitan area, the county commissioners shall appoint the managers from a list of persons nominated jointly or severally by the towns and municipalities within the district. The list must contain at least three nominees for each manager's position to be filled. The list must be submitted to the county boards affected by the watershed district at least 60 days before the manager's term of office expires. The county commissioners may appoint any managers from towns and municipalities that fail to submit a list of nominees.
…
(c) Managers of a watershed district entirely within the metropolitan area must be appointed to fairly represent the various hydrologic areas within the watershed district by residence of the manager appointed."

Statutory issue:

Must a county appoint a metropolitan area watershed district manager from nominees on an aggregate list of nominees submitted by cities, or may the county disregard city-submitted nominees and appoint another fairly representative watershed district manager?

Facts and case procedure:

The city of Circle Pines (the city) brought an action against Anoka County (the county), challenging the appointment of a representative from another city to the Rice Creek Watershed District board of managers. The city had submitted a list of nominees to the county under section 103D.311, subdivision 3. The list did not include the name of a current board of managers member, Patricia Preiner, whose term was expiring. The city instead submitted three other nominees. Another city in the district, the city of Columbus, submitted a letter of support for only one person: Preiner. The other seven cities in the watershed district did not submit nominees.

After disagreement about the appointment process, the county postponed its vote for the manager appointment. The city sought a temporary injunction and declaratory judgment to prevent the county from reappointing Preiner, asking the court to direct the county to appoint a manager from the list of nominees submitted by the city. The county then voted to reappoint Preiner. The district court granted summary judgment in favor of the county. Upon appeal, the court of appeals affirmed the decision. The court of appeals interpreted the statute to mean that the county had discretion to appoint a manager from any city that failed to submit nominees. The city appealed and the supreme court granted review.

Discussion:

The city and the county offered two different interpretations of section 103D.311, subdivision 3, to determine how a county may appoint watershed district managers in a metropolitan area district. The county reappointed a manager whose term was expiring based on the interpretation that when not all the cities in the watershed district submit a list of at least three nominees, the county may appoint a manager from *any* city in the watershed district to represent the district. The city countered that the statute required the county to appoint managers from a list of city-submitted nominees and only when the city-submitted nominees cannot fairly represent the various hydrologic areas within the watershed district does the county have discretion to appoint another manager. The supreme court found each interpretation reasonable and determined that the language is ambiguous.

To resolve the ambiguity, the court analyzed the scope of a county's duty to appoint a manager from city-submitted nominees and what constitutes a valid list of nominees. The court first looked at the text of the statute

and the ways mandatory ("shall") and permissive ("may") language is used with respect to the appointment of managers. Section 103D.311, subdivision 3, paragraph (a), states that the "county commissioners *shall* appoint the managers from a list of persons nominated," and that "county commissioners *may* appoint any managers from towns and municipalities that fail to submit a list of nominees" (emphasis added). The coexisting mandatory and permissive language within the subdivision are in conflict. In this case, when some, but not all, cities submit nominees, there is potential that both the mandatory and permissive duties of the county are in effect. The court referenced the purpose of the statute in requiring counties to choose from city-submitted nominees, unless those nominees cannot fairly represent the various hydrologic areas. The court also referenced the legislative history of the subdivision and a 1992 amendment[14] that made it clear that the law was intended to involve cities in the nomination process and prioritized their participation in appointing managers, except when a county may appoint nominees outside of the city to ensure fair geographical representation.

The supreme court also found ambiguity in the requirements for a list of nominees to be considered valid. The statute uses the word "list" when referring to both the nominees submitted by cities and the aggregate list of those nominees received from all cities from which the county can appoint a manager. The court again referenced the purpose of the statute to allow cities flexibility in their participation in the process by nominating as many candidates as they choose and applied the three-nominee requirement to the aggregate list of all city nominees.

The court held that section 103D.311, subdivision 3, requires counties to appoint watershed district managers from the aggregate list of nominees submitted by all cities, unless the total number of nominees is less than three or the nominees cannot fairly represent the various hydrologic areas within the watershed district.[15] Specific to this case, the court remanded the case to the district court to determine whether Prenier was validly nominated by the city of Columbus and could be considered part of the aggregate list of nominees.

The court did not recommend legislative action. The legislature could codify the court's interpretation to more clearly provide that a county's discretion does not allow appointing nominees not on the aggregate list, unless there are fewer than three nominees. Alternatively, the legislature could clearly provide counties broad discretion to appoint fairly representative managers.

[14] *See* Laws 1992, chapter 466, sections 1 and 2.

[15] Three justices concurred in part and dissented in part, agreeing with the majority in reversing the court of appeals decision, but offered an analysis that the plain language of the statute obligated the county to appoint a manager from the city-submitted list. *See City of Circle* Pines, 977 N.W.2d at 828.

Minnesota Statutes, section 103D.545, subdivision 3

Subject: Watershed district rule; award of attorney fees

Court Opinion: *Roach v. County of Becker*, 962 N.W.2d 313 (Minn. 2021) (A19-2083)

Applicable text of section 103D.545, subdivision 3:

In any civil action arising from or related to a rule, order, or stipulation agreement made or a permit issued or denied by the managers under this chapter, the court may award the prevailing party reasonable attorney fees and costs.

Statutory Issue:

When does a civil action arise from or relate to a violation of a watershed district rule?

Facts and case procedure:

The Roaches and the Alinders are neighbors with property along the shoreline of Lake Melissa in Becker County. The Roaches sued the Alinders and the construction company building the Alinders' lake home because the Alinders did not get the required building permits for the construction of the home. The Roaches alleged that the construction led to an increase in water runoff to the Roaches' property. The matter went to a jury trial and the jury awarded the Roaches damages. The Roaches moved for attorney fees under section 103D.545, subdivision 3, but the district court denied their motion, holding that the statute was not intended to apply here, as the watershed district was not a party to the claim and "it would be a stretch" to say the dispute was over a watershed district rule.

The Roaches appealed the denial to the court of appeals, and the court of appeals held that section 103D.545, subdivision 3, is broad and unambiguously permits fees in all civil cases related to a watershed district rule. The court of appeals remanded the matter back to the district court for a determination of whether awarding attorney fees is appropriate. The Alinders and the construction company petitioned the supreme court for review, and the court granted the petition.

Discussion:

The supreme court examined the phrase "related to" and determined that the phrase must be read in context of section 103D.545, as a whole and not in isolation. The supreme court began its analysis by stating that it would not find that the legislature meant to permit an award of attorney fees in any case relating to a watershed district rule, unless there is a clear indication that the legislature meant to abrogate common law, which does not generally permit an award of attorney fees in ordinary civil actions.

The court found that it would be reasonable to interpret the phrase "relating to" to mean "attorney fees are authorized in any civil action with any connection, association, or logical relationship to a watershed district rule." The court found it would also be reasonable to interpret the phrase to mean "attorney fees authorized by subdivision 3 apply only to those types of civil enforcement actions outlined in the rest of section 103D.545." Because the phrase "relating to" is subject to more than one reasonable interpretation in the context of section 103D.545, the court held that the statute is ambiguous.

The court applied three canons of statutory interpretation to resolve the ambiguity. First, the court turned to Minnesota Statutes, section 645.16, clause (6)[16], and applied the "consequences of a particular interpretation" canon to consider the consequences of interpreting the language to mean any civil action relating to a watershed district rule. The court held this broad interpretation would allow courts to permit attorney fees for disputes that

[16] Minnesota Statutes 2020, section 645.16, clause (6): "When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters … (6) the consequences of a particular interpretation …"

are only tangentially connected to a watershed-district rule. The court decided this interpretation contradicts the common law approach that parties generally must pay their own attorney fees.

Next, the court turned to section 645.16, clause (7)[17], and applied "the contemporaneous legislative history" canon. The court recognized that when the legislature added the attorney fees provision to section 103D.545, the legislature also amended section 103D.537. The focus of these amendments was to provide a method for private parties to challenge an action of a watershed district. The court took this focus to support the interpretation that the legislature meant to permit awarding attorney fees only in cases where parties are seeking to enforce or challenge an action of a watershed district.

Concluding its analysis, the court used the "whole-text" canon, citing section 645.16, generally, to simply state that "[s]ection 103D.545 has always addressed enforcement through criminal prosecution and civil actions, and the [l]egislature chose to place the attorney fees provision within this section when it enacted subdivision 3 in 1992." Therefore, the court held that it is more reasonable to interpret section 103D.545, subdivision 3 to allow awarding attorney fees only in civil actions seeking to enforce or challenge an action by a watershed district.

The court did not suggest a statutory amendment, but the legislature may consider adopting the court's reading to remedy the ambiguity by amending section 103D.545, subdivision 3, to specify that a court may award attorney fees and costs only in a civil action seeking to enforce or challenge an action by a watershed district under section 103D.545, subdivision 2.

[17] Minnesota Statutes 2020, section 645.16, clause (7): "When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters ... (7) the contemporaneous legislative history ..."

Minnesota Statutes, section 176.135, subdivision 1

Subject: Workers' compensation; reimbursement for medical expenses

Court Opinion: *Musta v. Mendota Heights Dental Center*, 965 N.W.2d 312 (Minn. 2021), *cert. denied*, 142 S.Ct. 2834 (2022) (A20-1551)[18]

Applicable text of section 176.135, subdivision 1:

"The employer shall furnish any medical … treatment … as may reasonably be required … to cure and relieve from the effects of the injury."

Issue:

Does the requirement for an employer to "furnish any medical…treatment" reasonably necessary to treat a work-related injury conflict with federal law that prohibits the possession of cannabis when the employer would be required to pay for the expense of treatment using medical cannabis?

Facts and Procedural History:

Susan Musta was a dental hygienist for Mendota Heights Dental Center (Mendota) and suffered a work-related neck injury in February 2003. After receiving chiropractic treatment, medication management, physical therapy, and injection therapy, she underwent surgeries in November 2003 and August 2006. The surgeries provided only temporary relief, and she was prescribed narcotic medication to manage ongoing pain. She discontinued the narcotics in late 2009 due to their side effects and, by then, was permanently and totally disabled.

In April 2019, Musta was eligible for and began using medical cannabis to treat her injury. She requested reimbursement for the cost of that treatment under section 176.135, subdivision 1. Mendota opposed reimbursement, arguing it was prohibited by the federal Controlled Substances Act (CSA) to pay for someone to possess cannabis.[19]

The compensation judge initially asked the Chief Administrative Law Judge to certify a question of federal preemption to the Minnesota Supreme Court. The supreme court declined to take up the question and remanded to the compensation judge to rule on the reimbursement.

On remand, the compensation judge ordered Mendota to reimburse Musta, finding no risk that Mendota would be criminally prosecuted under the CSA because congressional appropriations riders prohibited such interference with state medical cannabis laws. The Workers' Compensation Court of Appeals (WCCA) struck the compensation judge's findings on federal law because the WCCA believed the compensation court lacked subject matter jurisdiction over the preemption issue but affirmed the reimbursement award, concluding Mendota's reimbursement liability could be resolved based on the remaining findings. The supreme court granted Mendota's petition for review.

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[18] Faced with the same issues on similar facts, the court cited its analysis in *Musta* to reach the same result in a companion case, *Bierbach v. Digger's Polaris*, 965 N.W.2d 281 (Minn. 2021), *cert. denied* 142 S. Ct. 2835 (2022) (A20-1525).

[19] Under the CSA, cannabis is a Schedule I controlled substance, meaning it has no currently accepted medical use and cannot be prescribed for treatment. Aiding and abetting cannabis possession is a felony.

Discussion:

As an initial matter, the supreme court affirmed the WCCA's finding that it lacked subject matter jurisdiction to address the preemption issue because the WCCA's jurisdiction is confined to the construction and application of the Workers' Compensation Act under Minnesota Statutes, chapter 176, and it cannot resolve questions of law outside the scope of the act.

Turning then to preemption, the court first noted that preemption is generally disfavored because there is an assumption that state policing powers are not to be superseded by federal law absent clear intent from Congress when Congress enters a field traditionally occupied by the states, such as workers' compensation. Of the various types of preemption, this case presented the issue of conflict preemption: whether it is impossible to comply with both state law and federal law at the same time. Whether an employer can reimburse an employee for medical cannabis without running afoul of the CSA was a question of first impression, so the court looked to other states in similar situations for guidance.

The Maine Supreme Judicial Court[20] held, and Mendota argued, that an employer would be liable for aiding and abetting possession of cannabis because the requirement to reimburse the employee would equate to acting with knowledge that the employer was subsidizing the employee's purchase of cannabis. Refusing to reimburse the employee would put that employer in violation of state law. Thus, compliance with both state and federal law would be impossible and state law would be preempted by the CSA.

On the other hand, the New Hampshire Supreme Court[21] determined that such an employer lacked the requisite intent for aiding and abetting possession of cannabis because the reimbursement is compelled by state law and is not a voluntary participation in the offense. Thus, compliance with both state and federal law was not impossible. Musta took this analysis one step further and argued it was impossible for Mendota to aid and abet her possession of cannabis because the illegal possession had already occurred—she was merely being reimbursed for her purchase—and a completed crime cannot be aided or abetted.

The New Jersey Supreme Court[22] agreed that compliance with both laws is possible but instead highlighted seven consecutive fiscal years of appropriations riders enacted by Congress prohibiting the U.S. Department of Justice from interfering with a state's medical cannabis laws, concluding the riders take precedence over the CSA. Musta agreed with New Jersey's analysis, but Mendota argued that the likelihood of prosecution under the CSA, no matter how small, was irrelevant to the preemption analysis.

The Minnesota Supreme Court ultimately sided with the approach of the Maine jurists and Mendota, concluding the right to secure reimbursement for medical cannabis cannot be "converted into a sword" that requires an employer to pay for those purchases and thus engage in conduct that violates the CSA.

The court rejected all of Musta's arguments in turn: (1) the appropriations riders are "merely temporary measures that can be rescinded at any time"; (2) speculation about future prosecution is irrelevant to the impossibility preemption analysis; (3) compelling a person to act does not necessarily negate intent because necessity is an affirmative defense that goes to motive, not intent; and (4) "aiding and abetting a drug offense may encompass activities … that take place after…the principal no longer possesses the [illegal substance]."[23]

The court concluded that a court order mandating Mendota pay for Musta's medical cannabis makes the company criminally liable for aiding and abetting the illegal possession of cannabis under the CSA. Because it is impossible to comply with both state and federal law for the reimbursement of medical cannabis to treat a work-related injury, the court found that, for that purpose, the Workers' Compensation Act is preempted by the CSA.

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[20] *Bourgoin v. Twin Rivers Paper Co., LLC*, 187 A.3d 10 (Me. 2018)
[21] *Appeal of Panaggio*, 260 A.3d 825 (N.H. 2021)
[22] *Hager v. M&K Construction*, 247 A.3d 864 (N.J. 2021)
[23] Concurring in part regarding WCCA's lack of subject matter jurisdiction, Justice Chutich offers a lengthy dissent arguing the opposite stance for each of these conclusions.

Minnesota Statutes, section 177.23, subdivision 10

Subject: Employment law; Fair Labor Standards Act

Court Opinion: *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164 (Minn. 2021) (A19-1224)

Applicable text of section 177.23, subdivision 10:

With respect to any caretaker, manager, or other on-site employee of a residential building or buildings whose principal place of residence is in the residential building, including a caretaker, manager, or other on-site employee who receives a principal place of residence as full or partial compensation for duties performed for an employer, the term "hours worked" includes time when the caretaker, manager, or other on-site employee is performing any duties of employment, but does not mean time when the caretaker, manager, or other on-site employee is on the premises and available to perform duties of employment and is not performing duties of employment.

Statutory Issue:

Under the Minnesota Fair Labor Standards Act, is on-call time for live-in apartment caretakers compensable as work time, or noncompensable as time merely available to work?

Facts and case procedure:

Jessica Hagen worked as an on-site caretaker for her landlord, Steven Scott Management, from 2015 to 2018. She was compensated in the form of rent credits and, if she worked above a certain number of hours in a month, direct payments. As a condition of her employment, Hagen was required to work at least one on-call shift per week, be on call every fifth weekend, and work on call during two holidays each year. During an on-call shift, Hagen could not be more than 20 minutes from the apartment building, had to quickly respond to calls, and could not drink alcohol. Steven Scott Management compensated Hagen for time she was responding to calls or otherwise actively working during an on-call shift but did not compensate her for any time when she was available for calls.

Hagen sued Steven Scott Management, alleging that (1) the rent credits were not wages under the MFLSA, (2) the rent credits were improper deductions from her pay, and (3) she was not compensated for her time because she received no compensation for time when she was on call but not actively responding to a call. Steven Scott Management moved for summary judgement on all three claims, and the district court granted its motion.

The court of appeals affirmed the district court on each claim, and the supreme court granted review.

Discussion:

The court first addressed the issues of whether the rent credits were wages and whether the credits were improper deductions under the MFLSA. The court found that sections 177.23 and 177.28 unambiguously allow employers to pay on-site employees with rent credits. The court then looked at prior cases to determine that rent credits were wages and not deductions. On both issues, the court affirmed the ruling of the court of appeals regarding the dismissal of Hagen's claims.

On the final issue, whether Steven Scott Management failed to compensate Hagen for her on-call shift time, the court ruled that section 177.23, subdivision 10, is ambiguous and that enough of a factual dispute existed for Hagen's third claim to survive summary judgment. The court ruled that Hagen's on-call time could reasonably be interpreted as either "performing any duties of employment" or "on the premises and available to perform duties of employment" under section 177.23, subdivision 10. The court added that on-site caretakers are nearly always "on the premises and available to perform duties of employment" so when a caretaker is required to be on call, it becomes more unclear whether waiting for a call with restrictions on their activity becomes a "dut[y] of employment."

To resolve this ambiguity and determine the legislature's intent, the court looked beyond section 177.23, subdivision 10, to Minnesota Rules, part 5200.0120, subpart 2, which the Minnesota Department of Labor adopted to provide guidance on calculating compensation for on-call time:

> An employee who is *required to remain on the employer's premises or so close to the premises that the employee cannot use the time effectively for the employee's own purposes is working while on call.*[24]

An employee who is not required to remain on or near the employer's premises, but rather is merely required to leave word at the employee's home or with company officials where the employee may be reached, is not working while on call.

The court held that the determining issue was whether Hagen could use her time effectively for her own purposes under Minnesota Rules, part 5200.0120, which is a factual dispute that could not be dismissed at the summary judgment stage. Due to this genuine issue of material fact, the court reversed the dismissal of Hagen's claim for missing wages for when she was on call.

The court did not suggest how the legislature could fix the ambiguity in section 177.23, subdivision 10. The legislature could amend the statute to provide whether or not noncompensable time "on the premises and available to perform duties of employment" should include specific on-call shifts when the employee is required to be on the premises, available, and with restrictions on their activities or only general time spent in or near their own home while awake and available to take a call.

[24] Minnesota Rules, part 5200.0120, subpart 2 (emphasis added by the court).

<u>Minnesota Statutes, section 260B.007, subdivision 16</u>

Subject: Juvenile delinquency law

Court Opinion: *Matter of Welfare of A.J.S.*, 975 N.W.2d 134 (Minn. Ct. App. 2022) (not appealed)

Applicable text of section 260B.007, subdivision 16:

(c) "Juvenile petty offense" does not include any of the following:
...
(3) a misdemeanor-level offense committed by a child <u>whom the juvenile court previously has found to have committed</u> a misdemeanor, gross misdemeanor, or felony offense; or...

Statutory Issue:

Is a juvenile defendant "found to have committed" a misdemeanor when the defendant pleaded guilty, the case was continued, and then the case was dismissed following successful completion of the terms of a six-month probation?

Facts and case procedure:

A.J.S. pleaded guilty to disorderly conduct stemming from an incident with a fellow student on a school bus. The district court adjudicated her guilty of a misdemeanor and sentenced her to probation and participation in a weekend program at the Anoka County Juvenile Center. A.J.S. argued at sentencing that she should have been adjudicated as guilty of a petty misdemeanor because her only relevant prior juvenile case was dismissed following a guilty plea and successful completion of probation. The district court ruled that the adjudication of a misdemeanor was correct, and A.J.S. appealed.

Discussion:

The issue before the court of appeals was whether A.J.S. was "found to have committed" a misdemeanor in her prior juvenile case. Generally, juvenile misdemeanor offenses are treated as juvenile petty offenses. One exception is when a juvenile court "previously has found" that the juvenile committed a misdemeanor or higher-level offense. A.J.S. argued that "found" means a full adjudication of guilt, and the state contended that it meant that a court factually found that the juvenile had committed an offense, whether adjudicated of guilt or not. The court of appeals looked at other uses of "found" or "find" in chapter 260B, and held that both interpretations were reasonable, making section 260B.007, subdivision 16, paragraph (c), clause (3), ambiguous.

After looking more broadly at similar language in statute, the court of appeals held that an adjudication of guilt is not necessary for a court to "previously [have] found" that a juvenile committed an offense. The court noted that section 260B.007, subdivision 16, does not use the word "adjudicate" while other sections of the chapter do. The court also found instances in other chapters and the Minnesota Rules of Juvenile Delinquency Procedure that require prior adjudications of juvenile delinquency for enhancements or consequences, implying that the legislature could have required an adjudication of delinquency under section 260B.007, subdivision 16, but did not do so. The court rejected A.J.S.'s argument that adjudicating her case as a misdemeanor violated the "fair warning" principle[25] and the rule of lenity,[26] because the defendant hadn't raised the issue in district court, noting that the rule of lenity is only applied as a last resort when no other method could be used to interpret the statute, which was not necessary in this case.

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[25] The fair warning principle requires that all criminal statutes be "in a language that the common world would understand," so that the public are given notice to what is and is not prohibited. *United States v. Lanier*, 520 U.S. 259, 265 (1997).
[26] The rule of lenity requires a court to "construe an ambiguous criminal statute in favor of the defendant." *State v. Thonesavanh*, 904 N.W.2d 432, 440 (Minn. 2017), *rehearing denied* October 12, 2017.

Minnesota Statutes, section 278.05, subdivision 3

Subject: Property taxation; assessor's data

Court Opinion: *G&I IX OIC LLC v. County of Hennepin,* 979 N.W.2d 52 (Minn. 2022) (A21-1493)

Applicable text of section 278.05, subdivision 3:

Assessor's records, including certificates of real estate value, assessor's field cards and property appraisal cards shall be made available to the petitioner for inspection and copying and may be offered at the trial subject to the applicable rules of evidence and rules governing pretrial discovery and shall not be excluded from discovery or admissible evidence on the grounds that the documents and the information recorded thereon are confidential or classified as private data on individuals. Evidence of comparable sales of other property shall, within the discretion of the court, be admitted at the trial.

Statutory Issue:

Does allowed disclosure of assessor's records with confidential data include disclosure of nonpublic income-producing property assessment data?

Facts and case procedure:

Taxpayer G&I IX OIC LLC (G&I) filed a property tax petition with Hennepin County disputing the assessment of a building. The parties disagreed about the county's use at trial of nonpublic income property assessment data in its expert opinion assessing the value of comparable properties owned by third parties and the market value of the building in question. During discovery, G&I did not request the data and the county did not object to disclosure. After the tax court directed the parties to exchange expert reports, G&I filed a pretrial motion objecting to the county's expert report. G&I moved to exclude portions of the report arguing that the data were nonpublic under a provision of the Data Practices Act.[27]

The tax court found that the county's expert assessor's report contained nonpublic data that must be excluded at trial. The court reasoned that the county had not first opposed disclosure, so the court did not have the opportunity to apply the proper balancing test under the Data Practices Act.[28] The tax court further held that neither Minnesota Statutes, section 278.05 nor any provision of the Data Practices Act "authorizes a government entity to provide public access to not public data, at its sole discretion." The tax court was concerned that allowing the data to be admitted fully would be a violation of the Data Practices Act. The county appealed.[29]

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[27] *See* Minnesota Statutes, section 13.51.

[28] *See* Minnesota Statutes, section 13.03, subdivision 6.

[29] Decisions of the tax court are immediately appealable to the supreme court. *See* Minnesota Statutes, section 271.10, and Minnesota Rule of Civil Appellate Procedure 116. Here, notably, the supreme court granted special discretionary review of the tax court's order on this pretrial procedural motion under Minnesota Rule of Civil Appellate Procedure 105.01, which provides "[u]pon the petition of a party, in the interests of justice ... the Supreme Court may allow an appeal from an order of the Tax Court ... not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial."

Discussion:

The supreme court noted that the Data Practices Act explicitly provides that disclosure of assessor's records at trial is governed by section 278.05. The court also observed that the section mandates that “assessor's records” be disclosed to the petitioner and permits those records to be offered at trial.

The parties did not dispute that the assessor's expert report is a type of assessor's record covered by the statute, nor that the report contained nonpublic income property assessment data. However, the parties did offer differing interpretations of the term “confidential” in section 278.05, subdivision 3, and, as a result, differing interpretations on whether the assessor's records could be admitted at trial.

The county argued that the statute permits assessor's records to be admitted at trial regardless of what those records contain, including nonpublic data that may be protected under the Data Practices Act. The county contended that only the word “confidential” is used, not the full defined term, “confidential data on individuals,” from the Data Practices Act. The county suggested that “confidential” must be given its ordinary meaning, which would include data on both individuals and business entities. G&I argued that the statute does not address nonpublic assessor's data and therefore the Data Practices Act controls. G&I contended that data classified therein are distinct from admissible “confidential” data under the statute. G&I claimed the term “confidential” is better understood as the term of art “confidential data on individuals” as defined in section 13.02, subdivision 3. This narrower interpretation, according to G&I, showed a specific policy choice by the legislature *not to protect* only *individuals’* confidential and private data.

The court determined that both interpretations were reasonable and therefore the statute was ambiguous. The court found the county’s interpretation more persuasive.

First, the court found it compelling that the Data Practices Act specifically provides that section 278.05 applies to disclosure of assessor’s records. Next, the court determined that G&I’s interpretation would result in the peculiar rule that individuals’ data about income-producing properties could be disclosed during property tax litigation, but that information on the income-producing properties of business entities could not. There was no indication that this was the legislature’s intent. Third, the court pointed to the general statutory framework for assessing the value of real property. All prescribed approaches rely on comparisons to “comparable properties” in market transactions. Not allowing nonpublic income property assessment data from the assessor's records to be used at trial could hinder an assessor’s goal of making fair and uniform assessments. Finally, the court found that fairness dictates that expert reports are admissible, as long as they are disclosed before trial and there is sufficient time for depositions and preparation for cross-examinations.

The court held that the term “confidential” in section 278.05, subdivision 3, has its ordinary meaning and does not mean “confidential data on individuals” under the Data Practices Act. The court confirmed that this ordinary meaning incorporates nonpublic data, including income property assessment data. The court suggested that the tax court may need to take action to ensure that the nonpublic information that is admitted at trial is adequately protected from broad distribution to the public.

The court highlighted the complex and competing interests between owners of income-producing property and government entities that collect data and assess taxes on these properties. These interests include accurate assessment of the value of properties, data privacy of third parties, and due process for each party involved in property tax litigation. The court noted that the legislature could strike a different balance among these interests if it chooses. To codify the court’s interpretation, the legislature could add language to the statute clarifying the broad bounds of the term “confidential.” Alternatively, if the legislature preferred to exclude certain data from the disclosure provision in the statute, it could amend the statute to expressly provide for exclusion of that data.

Minnesota Statutes, section 541.051, subdivision 1, paragraph (a)

Subject: Real property; limitation on actions for damages based on construction of improvements

Court opinion: *Moore v. Robinson Environmental, et al.*, 954 N.W.2d 277 (Minn. 2021) (A19-0668)

Applicable text of Minnesota Statutes, section 541.051, subdivision 1, paragraph (a):

"... no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, or for bodily injury... arising out of the defective and unsafe condition of an improvement to real property, shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property... more than two years after discovery of the injury...."

Statutory issue:

Does construction of improvement to real property include only specific types of work completed and not the project as a whole, or does it include all persons whose work is necessary to the entire process of a construction project to improve real property?

Facts and case procedure:

A homeowner, John Moore, sued contractor Robinson Environmental, Inc. (Robinson), claiming damages from asbestos contamination in his home following the removal of an old asbestos-lined boiler and pipes as part of a replacement project that included installation of a new heating system. The district court dismissed the complaint based on the two-year statute of limitations, finding that the damages arose out of a defective and unsafe condition of the improvement to real property under section 541.051, subdivision 1, paragraph (a). Moore appealed, alleging that the unsafe condition was caused by the negligence of Robinson's workers during the removal process, which caused asbestos to scatter across the basement floor. Moore also claimed that the asbestos was further spread when the installer of the new heating system tracked the asbestos from the basement to the rest of the home. Upon appeal, the court of appeals affirmed the dismissal. Moore appealed and the supreme court granted review

Discussion:

The parties disagreed on the scope of section 541.051, subdivision 1. Moore contended that section 541.051 does not apply because Robinson's abatement and removal work was not an "improvement." He also argued that the term "construction" in the statute did not include the work completed. Section 541.051, subdivision 1, lists specific types of work that could be performed on a construction project, such as "design" work and "planning" work. Moore argued that by listing these specific tasks, the statute covered only individuals performing these tasks. Robinson countered that its work must be evaluated by considering the replacement project as a whole and that the statute more inclusively covers all persons whose work is necessary to the process of "construction of the improvement."

The supreme court concluded that each interpretation was reasonable and therefore the statute was ambiguous. To resolve the ambiguity, the court looked at several relevant dictionary definitions, the legislature's intent of including multiple different work categories in the process of a construction project, the relevant legislative history, and the consequences of the parties' interpretations.

The court first turned to the dictionary to help define the word "construction." The dictionary definitions all included the "process" of building and construction. Since the process is necessary for a construction project to move toward completion, the entire process must be included as part of the construction project, from removal of the old boiler through installation of the new heating system.

Section 541.051, subdivision 1, paragraph (a), specifically identifies six categories of construction work, including "performing or furnishing the [1] design, [2] planning, [3] supervision, [4] materials, or [5] observation of construction or [6] construction of the improvement." Since the statute covers contractors contributing at various points in the construction process, the legislature's decision to include contractors at all stages suggests that the scope of analysis should include the project as a whole, not merely the isolated actions of an individual contractor.

Considering the consequences of different interpretations, the court presumed that the legislature does not intend a result that is absurd or unreasonable. An interpretation that distinguishes between contractors working on the same project based on whether they perform subtractive work (e.g., removing an old boiler) compared to additive work (e.g., installing a new heating system) would be unreasonable. Since most construction projects involve both types of work, this distinction would be arbitrary in applying different statutes of limitations to different contractors and would be inconsistent with the legislative intent of broadening the scope of Minnesota Statutes, section 541.051. By focusing on the construction project as a whole, the statute treats all contractors and work consistently.

The court concluded that the removal was an essential component of the "construction." This conclusion was supported by the language of the statute, dictionary definitions, legislative history, and the consequences of competing interpretations.[30]

In summary, the court determined that Moore's claim was barred by the two-year statute of limitations under section 541.051, subdivision 1, paragraph (a), because damages that resulted from removal of the old boiler and installation of the new heating system were included in the construction project as a whole, which was an improvement to real property. The court did not recommend legislative action to address the ambiguity. However, the legislature could codify the court's opinion by adding clarifying language to provide that all work is covered if it is part of the project as a whole. The legislature could also add exclusive or inclusive lists of work to be covered, or not covered, to clarify the statute.

[30] The court also addressed Moore's claims regarding whether (1) removal of the old boiler by the contractors was considered "construction of the improvement" rather than mere removal or repair, and (2) the damages arose out of a "defective and unsafe condition of an improvement." The court dispensed with Moore's arguments. *See Moore,* 954 N.W.2d at 285.

<u>Minnesota Statutes, section 624.7142, subdivision 1</u>

Subject: Crimes; carrying a firearm under the influence of alcohol

Court Opinion: *State v. Serbus*, 957 N.W.2d 84 (Minn. 2021) (A19-1921)

Applicable text of section 624.7142, subdivision 1:

"A person may not carry a pistol…<u>in a public place</u>…when the person is under the influence of alcohol…"

Issue:

Does the meaning of "public place" apply to a person's motor vehicle or the highway upon which the motor vehicle is driven?

Facts and Procedural History:

Kevin Russell Serbus was arrested on suspicion of driving under the influence of alcohol after a Renville County sheriff's deputy observed Serbus swerve across the centerline, and a preliminary breath test indicated an alcohol concentration of .09 percent. After handcuffing and placing Serbus in the squad car, the deputy offered to retrieve any items out of Serbus' car. Serbus asked for his keys, wallet, and phone, which he indicated were in the center console next to a Ruger .45 caliber pistol.

Serbus was later charged with four crimes, including carrying a pistol in a public place while under the influence of alcohol (Count 4). After a contested omnibus hearing, the district court dismissed Count 4 for lack of probable cause, finding that a "private motor vehicle is not a public place" because it is not "regularly and frequently open to or made available for use by the public."

On appeal, the court of appeals instead found ambiguity in the statute because "public place" could reasonably refer to either the interior of Serbus's vehicle or the highway on which he drove. After applying several canons of construction, the court concluded that the legislature intended the highway to be the restricted public place and reinstated Count 4. The supreme court granted Serbus's petition for review.

Discussion:

To begin its analysis, the supreme court first pointed out that "public place" is not defined in section 624.7142 or in the chapter's definitions section, section 624.712. The court ignored the definition of "public place" relied upon by the district court found in section 624.7181, subdivision 1, paragraph (c), presumably because that section prohibits carrying a rifle or shotgun in a public place, regardless of the influence of alcohol or controlled substances, and would be inapplicable here.

The court next examined dictionary definitions of "public" and "place," concluding that "public place" could reasonably mean a geographical (presence on a highway) or spatial (presence inside a vehicle) location that is "accessible to, supported by, or for the benefit of, or visible to, people as a whole." Faced with two reasonable definitions, the court declared the statute ambiguous and looked to three canons of construction under section 645.16 to resolve the ambiguity: the mischief to be remedied; the object to be attained; and the consequences of a particular interpretation.

The mischief to be remedied here is simple: persons carrying a pistol in a public place while under the influence of alcohol, which endangers others. Because vehicles are inherently mobile and can be driven to or past places often frequented by the public, including parks, sidewalks, and parking lots, the court concluded there is a significant risk to the public if an impaired person discharges a firearm in one of these places—even while inside a vehicle. The court weighed these factors in favor of finding that "public place" applies to the highway.

The object to be attained by the statute is largely the same as the mischief to be remedied: to reduce the risk of injury to people from the discharge of a pistol in places where people frequently gather. The state argued the

object of the statute was to minimize as much as possible the locations where a person may carry a firearm while impaired. The court found that interpretation to be too broad, stating that, if true, the legislature would have included nonpublic places in the statute as well. The court's narrower interpretation nevertheless favored the state's position because the mobility of a vehicle places it near people in public places and excluding an impaired driver from prohibition would expose those people to greater danger.

The court next considered the constitutional, doctrinal, and practical consequences of each reading of the statute.

The court first rejected Serbus's contention that treating a private vehicle as a public place would open the door to unconstitutional warrantless vehicle searches, stating that officers would still need reasonable suspicion that a driver or passenger was carrying a pistol before expanding the scope of an ordinary traffic stop to search for a pistol. Additionally, the court noted its holding narrowly applies only to section 624.7142.

The court also rejected Serbus's doctrinal suggestion that the public does not need protection from the interior of a motor vehicle by illustrating the problematic nature of such a rule if it were applied to open-air vehicles like a motorcycle, tractor, or convertible with the top down.

As a practical matter, the court examined the low burden placed on firearm permit holders if highways were deemed public places: stow the firearm out of arm's reach, such as in the trunk of a car. Citing previous case law, the court highlighted the nexus of control required for liability under section 624.7142. If the driver is unable to reach the firearm, there is no nexus of control.

With the statutory canons of construction weighing heavily against him, Serbus argued that a 2005 court of appeals case[31] that found the inside of a motor vehicle was not a public place for purposes of regulating prostitution should also apply here. The court found that case inapplicable not only because it was superseded by statute, but also because the harm to be remedied in that case was the "publicly visible" nature of prostitution while the risk of harm from a discharged firearm exists here whether or not the firearm is visible to the public outside the vehicle. Finally, Serbus argued that the rule of lenity[32] should apply in his case. The court rejected this argument, explaining the rule of lenity is a canon of last resort and is inapplicable here because other canons of construction resolved the statutory ambiguity.

Concluding its analysis of the relevant canons of construction, the court found that "because a public highway is a geographical location that is accessible to the general community, these statutory canons support a determination that the legislature intended to prohibit the driver of a motor vehicle from carrying a pistol on a public highway while impaired."

The court did not offer a potential remedy for the legislature to cure the ambiguity in statute, but the legislature could clarify the definition of "public place" in section 624.7142, perhaps by providing a nonexclusive list or explicitly defining the term.

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[31] *See State v. White*, 692 N.W.2d 749 (Minn. Ct. App. 2005)

[32] The rule of lenity requires a court to "construe an ambiguous criminal statute in favor of the defendant." *State v. Thonesavanh*, 904 N.W.2d 432, 440 (Minn. 2017), *rehearing denied* October 12, 2017.

Minnesota Statutes, section 629.292, subdivision 1, paragraph (a); and subdivision 3

Subject: Criminal law; Uniform Mandatory Disposition of Detainers Act (UMDDA)

Court Opinion: *State v. Mikell*, 960 N.W.2d 230 (Minn. 2021) (A19-0732)

Applicable text of section 629.292, subdivision 1, paragraph (a):

Any person who is imprisoned in a penal or correctional institution or other facility in the Department of Corrections of this state may request final disposition of any untried indictment or complaint pending against the person in this state. The request shall be in writing addressed to the court in which the indictment or complaint is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

Applicable text of section 629.292, subdivision 3:

Within six months after the receipt of the request and certificate by the court and prosecuting attorney, or within such additional time as the court for good cause shown in open court may grant, the prisoner or counsel being present, the indictment or information shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for the attorney to be heard. If, after such a request, the indictment or information is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment or information be of any further force or effect, and the court shall dismiss it with prejudice.

Statutory Issue:

Does a speedy trial request under the Uniform Mandatory Disposition of Detainers Act remain effective when the state dismisses the pending charges before the end of the six-month disposition period?

Facts and case procedure:

The state charged Mikell first with domestic assault and then with two violations of a subsequent Domestic Abuse No Contact Order (DANCO). When Mikell appeared in advance of his jury trial on the domestic assault charge, he made his first speedy trial demand on the DANCO charges. A jury found Mikell guilty of the domestic assault charge. During sentencing, Mikell again brought up his request for a speedy trial on the DANCO charges. Later, Mikell followed the procedure under Minnesota Statutes, section 629.292, subdivision 2, and requested final disposition of his DANCO charges under the UMDDA. The statute requires cases to be brought to trial within six months after the receipt of the request. The district court and the state received his request, and a trial date was set weeks away. On the day of trial, however, the state dismissed the pending charges "in the interests of justice."

Upon appeal, the court of appeals reversed Mikell's domestic assault conviction due to a district court error and remanded for a new trial. Mikell declined to plead guilty on the assault charge. The state again added two counts of violation of a DANCO, but with a new complaint and new case number. The alleged conduct was the same. More than six months after the request for final disposition of his DANCO charges under the UMDDA, a trial was held. Mikell was found guilty.

Mikell appealed. The court of appeals determined that the state violated the text of the UMDDA by not bringing Mikell's DANCO charges to trial within six months of his request. But the court concluded that the state did not

violate Mikell's constitutional right to a speedy trial, and Mikell was not entitled to relief.[33] The court of appeals affirmed the conviction. Mikell appealed to the supreme court.

Discussion:

The supreme court found that the UMDDA does not provide for what happens when the state dismisses a pending charge after receipt of a request for a disposition. Mikell argued that a trial must take place within six months of the request, and that dismissing the charges and subsequently recharging and convicting him beyond those six months is not allowed. The state argued that there is a right to disposition only in pending cases. Once a complaint has been dismissed, a right to disposition cannot exist because the complaint is no longer pending. The court deemed the language ambiguous and susceptible to at least two reasonable interpretations.

To resolve the ambiguity, the court examined the purpose and history of the UMDDA. The court noted that one of the UMDDA's purposes was to ensure that charges are deemed valid and tried quickly or deemed suspect and dismissed. Another purpose was to confirm the prompt disposition of untried charges for the benefit of prisoners so they could either secure certain privileges while incarcerated on pending charges or other convictions or participate in rehabilitative programs.

The court found these purposes were not implicated in this case. When the state initially dismissed the DANCO charges, it did not intend to refile them later. Also, Mikell no longer had the DANCO charges pending, so there was nothing inhibiting his access to privileges or rehabilitative or recreational interests while incarcerated on the domestic assault charge.

Finally, the court discussed that the UMDDA's broad goal is to help prisoners by requiring a speedy trial or dismissal of charges. Mikell's interpretation could incentivize the state to take more cases to trial, even if not sufficiently valid, for fear of losing the opportunity to do so in the future. Or it could encourage the state to find reasons to ask the court to keep the charges pending beyond the end of the six-month disposition period. This would frustrate the statute's primary purpose.

The court found the state's interpretation more compelling. The court held that the UMDDA provisions in section 629.292, subdivisions 1, paragraph (a), and 3, provide the right to final disposition of untried charges only when those charges remain pending. Once the state dismisses charges, a prisoner no longer has the right to final disposition of those charges under the statute.

The court also found that the state did not violate Mikell's constitutional right to a speedy trial and affirmed Mikell's conviction.[34]

The legislature could remedy this statutory deficiency by amending section 629.292, to make explicit what happens when the state dismisses a pending complaint after receipt of a request for a speedy trial. To codify the court's decision, the statute could be amended to provide the right to final disposition of untried charges only when those charges remain pending. Alternatively, the statute could be amended to provide a right to final disposition of untried charges within six months of the date of the request, regardless of dismissal, and later refiling based on the same conduct.

[33] The court applied the *Barker* factors. *See Barker v. Wingo*, 407 U.S. 514, 530, for the United States Supreme Court decision regarding factors to consider in resolving a claim of constitutional right to speedy trial: length of delay, reason for delay, assertion of speedy trial right, and prejudice due to the delay.

[34] The supreme court also held, as did the court of appeals, that the district court did not abuse its discretion by denying Mikell's motion to dismiss under Minnesota Rules of Criminal Procedure 30.02.

Nonprecedential Court of Appeals Case Comments

Minnesota Statutes, section 245A.03, subdivision 7, paragraph (a)[35]

Subject: Adult foster care licensing; revocation for primary residence change

Court Opinion: *In the Matter of Casterton*, Not Reported in N.W. Rptr., 2022 WL 2912152, (Minn. Ct. App. July 25, 2022) *nonprecedential*[36] (not appealed)

Applicable text of section 245A.03, subdivision 7, paragraph (a):

If a ... family adult foster care home license is issued during this moratorium, and the license holder changes the license holder's primary residence away from the physical location of the foster care license, the commissioner shall revoke the license according to section 245A.07.

Statutory Issue:

Must the commissioner of human services consider certain listed factors when mandatorily revoking an adult foster care license?

Facts and case procedure:

John Casterton co-owned a business licensed to provide adult foster care services.[37] Casterton and his partner purchased a home in Finlayson (the Finlayson home). As a part of the adult foster care licensing process under chapter 245A, a county employee visited the Finlayson home. At that time, Casterton affirmed that he would be living at the Finlayson home in compliance with section 245A.03, subdivision 7, paragraph (a), with hired staff providing care when Casterton was not present. The county issued Casterton an adult foster care license for the Finlayson home.

In August 2019, a neighbor of the Finlayson home informed the county that they believed Casterton did not reside at the Finlayson home. When law enforcement later visited the Finlayson home in response to a behavioral incident involving one of the residents, they reported only a full-time, live-in staff person residing at the home, not Casterton. In October 2019, a county employee and a department of human services consultant visited the Finlayson home unannounced, at which time Casterton was not at the home and had no identifiable personal items left there.

As a result of this visit and a county recommendation, the commissioner revoked Casterton's adult foster care license. Casterton appealed and the commissioner adopted an administrative law judge recommendation affirming the revocation. Casterton sought judicial review of the revocation.

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[35] This case addresses the 2021 Supplement version of section 245A.03, subdivision 7, paragraph (a). This subdivision was amended twice during the 2022 legislative session. These amendments did not affect the language at issue in this matter. *See* Laws 2022, chapter 98, article 4, section 10; Laws 2022, chapter 98, article 14, section 12.

[36] The Summary in this report on pages 1 and 2 includes a discussion of precedential and nonprecedential opinions from the Minnesota Court of Appeals.

[37] These businesses are licensed under chapter 245D.

Discussion:

Casterton argued that the commissioner revoked his adult foster care license "upon unlawful procedure."[38] Casterton asserted that section 245A.03, subdivision 7, paragraph (a), requires that revocation occur "according to" section 245A.07, and that the commissioner failed to analyze the factors under section 245A.07, subdivision 1, paragraph (a) in the decision to revoke the license.[39]

The court of appeals concluded that section 245A.03, subdivision 7, paragraph (a), is ambiguous because it makes revocation by the commissioner mandatory yet refers to the entirety of section 245A.07, including the permissive language and list of discretionary factors the commissioner must consider in revoking an adult foster care license found in subdivision 1, paragraph (a).

To address the ambiguity, the court of appeals employed the canon of particular provisions controlling over general provisions.[40] The court noted that section 245A.07, subdivision 1, paragraph (a), already existed when the legislature enacted section 245A.03, subdivision 7, paragraph (a), in 2009. The court of appeals interpreted the specific, more recently enacted mandatory revocation under section 245A.03, subdivision 7, paragraph (a), to be an exception to the general requirement of section 245A.07, subdivision 1, paragraph (a).

The commissioner was therefore not required to consider the factors found in section 245A.07, subdivision 1, paragraph (a), prior to revoking a license under section 245A.03.[41] The court of appeals additionally referenced the canon of legislative intent controlling interpretation.[42] The court of appeals noted that considering section 245A.03 as a specific exception to the general discretion of section 245A.07 maintains the effectiveness of all parts of section 245A.03. The cross-reference to 245A.07 still references other procedural steps for license revocation found in section 245A.07, subdivisions 2 to 7, such as the right to a contested case hearing.

The court of appeals did not suggest a way to remedy the ambiguity. The legislature may consider amending section 245A.03, subdivision 7, paragraph (a), to specifically reference the subdivisions of section 245A.07 that outline general procedural steps following a license revocation, to the exclusion of the substantive discretionary factors in section 245A.07, subdivision 1, paragraph (a).

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[38] In an appeal of a contested administrative case, a court may reverse or modify a decision "if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are: … (c) made upon unlawful procedure …" Minnesota Statutes, section 14.69 (2020).

[39] When applying sanctions authorized under section 245A.07, the commissioner must consider the factors of "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program." Minnesota Statutes, section 245A.07, subdivision 1(a).

[40] Where effect cannot be given to both a general and a special provision, "the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail." Minnesota Statutes, section 645.26, subdivision 1 (2020).

[41] The court of appeals noted that requiring the commissioner to consider discretionary factors in the manner suggested by Casterton would either undercut the mandatory nature of revocation under section 245A.03 or make the factors of section 245A.07 redundant by requiring revocation regardless of their weight.

[42] The canon of legislative intent requires that "[e]very law shall be construed, if possible, to give effect to all its provisions." Minnesota Statutes, section 645.16 (2020).

Minnesota Statutes, section 363A.11, subdivision 1

Subject: Civil law; discrimination

Court Opinion: *Williams v. Sun Country, Inc.*, Not Reported in N.W.Rptr., WL 855890 (Minn. Ct. App. Mar. 8, 2021), *review denied* June 15, 2021 (A20-0936) *nonprecedential*[43]

Applicable text of section 363A.11, subdivision 1:

(a) It is an unfair discriminatory practice:
(1) to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin, marital status, sexual orientation, or sex...

Statutory Issue:

Does the Federal Aviation Act[44] prevent application of the Minnesota Human Rights Act, in cases where an airline refuses to serve passengers claiming safety concerns?

Facts and case procedure:

Jalen Williams and Rayvone Eskridge purchased tickets from Sun Country, Inc. (Sun Country) for a flight from Los Angeles to Minneapolis. After Williams and Eskridge boarded the airplane but before takeoff, Sun Country staff told them they had to leave the airplane. When asked why, the staff said, "Sun Country staff did not feel safe with [Williams and Eskridge and another male companion] travelling on the airline." The three men were the only African Americans in first class as well as the only passengers asked to leave. Williams and Eskridge claimed that they did not engage in any "inappropriate, illegal, or disruptive behavior" before they were asked to leave.

Williams and Eskridge brought separate actions against Sun Country in Hennepin County district court. Both brought the same three claims against Sun Country: a claim of discrimination under section 363A.11; a common law negligence claim; and a claim of discrimination under the California Unruh Civil Rights Act. Sun Country moved to dismiss both complaints for failure to state a claim on the grounds that the Federal Aviation Act (FAA) implicitly field preempts state law claims concerning alleged safety issues in airplanes, so no state claim could be brought. The district court granted Sun Country's motions and Williams and Eskridge appealed to the court of appeals.

Discussion:

The court noted that the case concerned whether Congress has legislated about airline safety issues so comprehensively that the U.S. Constitution's Supremacy Clause forbids any state from enforcing its own laws on the subject. The Supremacy Clause holds that the U.S. Constitution and federal law "shall be the supreme Law of the Land." This has resulted in a long line of cases determining whether certain federal laws preempt state laws, making the state laws unenforceable.[45] Here, the specific question the court confronted was whether the FAA implicitly field preempts application of section 363A.11 to Sun Country's removal of Williams and Eskridge's because Sun Country claimed it did so due to safety concerns.

This issue had not yet been addressed in Minnesota courts, so the court looked at various federal cases for guidance. The court looked at cases in the first, second, third, sixth, ninth, and tenth federal circuit courts, all of

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[43] The Summary in this report on pages 1 and 2 includes a discussion of precedential and nonprecedential opinions from the Minnesota Court of Appeals.
[44] United States Code, title 49, section 40101 to 40120.
[45] Implied field preemption occurs when federal law on a subject is so comprehensive that there is effectively no room for the states to legislate without conflicting with the federal laws on the issue. For a more complete discussion of federal preemption, *see* CONGRESSIONAL RESEARCH SERVICE, FEDERAL PREEMPTION: A LEGAL PRIMER (2019).

which found that Congress had legislated on aviation safety so pervasively that states are preempted from making law in the field. The court agreed with those cases and looked at several federal district court cases in determining that the FAA's field preemption covers cases concerning airlines removing passengers for ostensible safety concerns. Based on this, the court determined that because the case concerned Sun Country's decision to remove Williams and Eskridge from a flight while citing safety concerns, the state law claims would violate the Supremacy Clause because of federal implied field preemption of airline safety.

Minnesota Statutes, sections 463.15 to 463.261

***Subject*:** Minnesota Hazardous or Substandard Buildings Act (MHSBA)

Court Opinion: *City of Hutchinson v. Shahidullah*, Not Reported in N.W. Rptr., 2021 WL 4428917 (Minn. Ct. App. Sept. 27, 2021) (A20-1519) *nonprecedential*[46] (not appealed)

Applicable text of section 463.20:

If an answer is filed and served as provided in section 463.18,[47] further proceedings in the action shall be governed by the Rules of Civil Procedure for the District Courts ...

Statutory Issue:

Does the 45-day limit to apply for recovery of costs under the Minnesota Rule of Civil Procedure[48] apply recovery of expenses under the MHSBA?

Facts and case procedure:

In 2011, the city of Hutchinson declared a house and the structures on property belonging to Mohammed Shahidullah, also known as Sam Ulland, as uninhabitable, hazardous, and in violation of the city's building codes. In 2013, the city directed Ulland to remedy the conditions of the property or risk the city condemning and razing it. In 2016, when Ulland failed to remedy the problem, the city council passed a resolution citing the property as hazardous under state law and issued an abatement order requiring Ulland to fix his property within 20 days.

As permitted under section 463.18, Ulland filed an answer contesting the abatement order in district court. The district court sided with the city and ordered Ulland to raze the property within 20 days. The district court order authorized the city to enforce the abatement if Ulland failed to respond and made Ulland responsible for the city's costs if the city had to enforce the abatement, including the city's attorney fees, filing fees, and expenses, as permitted under the MHSBA.

Ulland did not repair his property and the city enforced the abatement order in 2017. In 2020, the city filed an application for an allowance of expenses under MHSBA and sought a judgment of $42,124.98 against Ulland to cover the city's expenses. Ulland argued that the city's application for expenses was barred because the application was filed three years after the district court's abatement order and under Minnesota Rules of Civil Procedure, rule 54.04(b), a party is required to move for expenses within 45 days after a final judgment. The city argued that rule 54.04(b) could not apply because the MHSBA has its own statutory procedure recovering expenses. The district court approved the city's application for an allowance of expenses and certified a judgment against Ulland. Ulland appealed the ruling of the district court and the court of appeals granted review.

[46] The Summary in this report on pages 1 and 2 includes a discussion of precedential and nonprecedential opinions from the Minnesota Court of Appeals.
[47] Minnesota Statutes, section 463.18, states "[w]ithin 20 days from the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying such facts in the order as are in dispute."
[48] Minnesota Rules of Civil Procedure 54.04(b): "A party seeking to recover costs and disbursements must serve and file a detailed application for taxation of costs and disbursements with the court administrator ... and must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements."

Discussion:

Ulland argued that section 463.20, directs parties to comply with the rules of civil procedure in contested cases. The city argued that rule 54.04(b) does not apply because its request for expenses was not made as a motion following a final judgment, but under the procedures in the MHSBA. The MHSBA provides no deadlines for the demolition or repair of a hazardous structure. The city argued that would make no practical sense to apply rule 54.04(b) to expenses under the MHSBA when a municipality cannot apply for expenses before they are incurred. The court acknowledged that each interpretation was reasonable. Thus, the court concluded that the MHSBA is ambiguous regarding the timeline for submitting an application for expenses in a contested case.

The court turned to the purpose of the MHSBA legislation and relevant canons of construction and concluded that the more reasonable interpretation is that the legislature intended for a municipality to follow the expense procedure of the MHSBA and not the 45-day requirement in rule 54.04(b).

The court used the canon of construction found in section 645.17, clause (2), which states "the legislature intends the entire statute to be effective and certain." The court compared how the MHSBA allows a city to recover various expenses, such as costs for litigation, repairing, demolishing, or selling a building, whereas the costs and disbursements under rule 54.04 were limited. The court found it significant that the MHSBA provides only one procedure for a municipality to recover expenses, regardless of whether the case is uncontested or contested. In order to ensure an effective and certain process in MHSBA cases, the court determined that the MHSBA's procedure for recovering expenses is separate from rule 54.04(b), which would otherwise only apply to contested cases.

The court next turned to the canon of construction in section 645.17, clause (1), which instructs courts to presume that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." The court looked at how the MHSBA requires a district court to thoroughly review a municipality's application for expenses and allows the court to make corrections and certify the expenses. The court noted how the act also requires a property owner to make payment by October 1, otherwise the costs are charged against the property. Rule 54.04(b), however, allows either the court administrator or a district court judge to tax costs and allows a losing party to challenge taxed costs and disbursements. The court determined that these procedures are different and applied the canon of construction found in section 645.26, subdivision 1, that directs "specific statutory provisions [to] control general provisions when the two are in conflict." The court held that the legislature intended for the procedures in the MHSBA to be the only process for recovering expenses in MHSBA matters.

Finally, the court further applied the canon of construction in section 645.17, clause (1), and held that the legislature could not have intended two different timelines to apply in MHSBA matters. The timing requirement of rule 54.04(b) is 45 days, yet the MHSBA timeline is flexible to allow either a property owner or ultimately a city to abate the hazardous conditions of a property. The court emphasized that the "scope of the corrective action required will depend on the nature of the problem, which, in turn, will affect the timing of the corrective action." Because of the inconsistency between the rule and the MHSBA, the court concluded that rule 54.04 could not apply to a municipality's application for an allowance of expenses.

The court did not suggest a statutory amendment, but the legislature could remedy the ambiguity by amending section 463.20, to explicitly provide how, and to what extent, the Rules of Civil Procedure apply to the MHSBA.

Actions Taken

There is one Minnesota appellate court case that would have merited inclusion in the 2022 Court Opinions Report because the opinion identified a statutory deficiency. However, the legislature subsequently amended the statute at issue to remove, address, or otherwise remedy the deficiency. This case is briefly summarized here:

Section: Minnesota Statutes, 501C.1206, paragraph (b)

Subject: Public health care programs and certain trusts

Court Opinion: *Geyen v. Commissioner of Minnesota Department of Human Services,* 964 N.W.2d 639 (Minn. Ct. App. 2021) (A20-1300) (no review)

Issue: In *Geyen*, the court noted that federal law provides that for irrevocable trusts that cannot benefit the individual, states are required to exclude the trust corpus from consideration in determining eligibility for Medicaid. However, section 501C.1206, paragraph (b), mandated that certain irrevocable trusts "become revocable" for the narrow purpose of determining eligibility for Medical Assistance for long-term care purposes. The court of appeals held that section 501C.1206, paragraph (b), was preempted because it conflicted with Congress's intent regarding the treatment of irrevocable trusts under federal law for purposes of determining an individual's eligibility for Medicaid benefits.

Action: The legislature responded in Laws 2022, chapter 98, article 2, section 16, by repealing the entirety of Minnesota Statutes, section 501C.1206.[49]

[49] In Laws 2022, chapter 98, article 2, section 5, coincident to the repeal of Minnesota Statutes, section 501C.1206, the legislature also amended Minnesota Statutes, section 256B.056, subdivision 3b, adding a statement of public policy. That subdivision concerns the treatment of trusts regarding eligibility requirements for Medical Assistance.

Tax Court Cases Not Reviewed by Supreme Court

The Minnesota Tax Court is an independent agency of the executive branch of the state government that, other than appeal allowed to the Minnesota Supreme Court, is the "sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state."[50] Taxpayers may petition the tax court to review and redetermine orders or decisions of the commissioner of revenue. However, the tax court's powers of review are limited.[51] Importantly, though, the tax court's opinions are precedential for the tax court unless overturned by the supreme court.[52] Review by the supreme court is permitted but may be denied, or may not even be sought.[53] In sum, if a tax court opinion finds a statutory deficiency and the supreme court does not grant review, or if review is not sought, the decision is precedent for future tax court cases until overturned by the supreme court.[54]

This report has been expanded to include summaries of certain tax court opinions to offer a more complete reporting of precedential decisions. Excluding summaries of precedential opinions from the tax court would exclude opinions which identify statutory deficiencies in tax statutes from the only entity that decides cases of the tax laws of the state.

There is one additional case that would have merited inclusion in the 2022 Court Opinions Report because the opinion identified a statutory deficiency; however, the opinion was from the tax court. It was not appealed to the supreme court. The case is summarized fully below.

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[50] *See* Minnesota Statutes, section 271.01. The legislature created the current structure of the tax court in 1977. Although prior to that time the state had some form of tax appeal board or court dating back to 1939, when the legislature created a part-time board of tax appeals. *See* Laws 1939 chapter 431, article 6, section 10. The tax court as we know it did not exist in 1957 when the legislature first directed the revisor's office to complete a biennial court opinions report.

[51] E.g., the Minnesota Supreme Court has held that the tax court cannot determine constitutional issues because it does not have the authority. The tax court may only decide constitutional issues if they are raised in the district court before being transferred to the tax court. *See Matter of McCannel*, 301 N.W.2d 910, 919-20 (Minn. 1980).

[52] *See* Minnesota Statutes, section 271.10.

[53] *See* Minnesota Court Rules, Appellate Procedure, Rules 105, 116, and 120.

[54] For a more complete discussion of the tax court's "unique semi-judicial" existence, *see* Nicholas Cunningham, What Can the Erie Shuffle Do for You?: Original and Acquired Equitable Powers of the Minnesota Tax Court, 10 U. St. Thomas L.J. 844 (2013).

Minnesota Statutes, section 290.0922, subdivision 1, paragraph (a)

Subject: *Taxation; corporate franchise minimum fee*

Court Opinion: *Alaska Airlines, Inc. v. Comm'r of Revenue,* Not Reported in N.W. Reporter, 2022 WL 829686 (Minn. Tax Mar. 16, 2022) (No. 9433-R) (not appealed)[55]

Applicable text of section 290.0922, subdivision 1, paragraph (a):

In addition to the tax imposed by this chapter without regard to this section, the franchise tax imposed on a corporation required to file under section 289A.08, subdivision 3, other than a corporation treated as an "S" corporation under section 290.9725 for the taxable year includes a tax equal to the following amounts:

If the sum of the corporation's Minnesota property, payrolls, and sales or receipts is:

	the tax equals:
less than $1,020,000	$0
$1,020,000 to $2,039,999	$210
$2,040,000 to $10,209,999	$610
$10,210,000 to $20,409,999	$2,040
$20,410,000 to $40,819,999	$4,090
$40,820,000 or more	$10,210

Statutory Issue:

Is the inclusion of Minnesota sales or receipts when calculating Minnesota's minimum fee tax for an air carrier preempted by a provision in the federal Anti-Head Tax Act?[56]

Facts and case procedure:

Alaska Airlines (Alaska) is an air carrier and a corporation with its principal place of business in the State of Washington. Alaska had Minnesota corporate franchise tax liability for tax years 2012 through 2016 and timely filed Minnesota tax returns. The commissioner of the Minnesota Department of Revenue (commissioner) issued an order and assessment for those tax years which included unpaid amounts of minimum fee. Minnesota imposes a corporate minimum fee in addition to the corporate franchise tax. The calculation of the fee relies on Minnesota property, payrolls, and sales or receipts, as determined under either general or specific apportionment methods. The components are added together, and the fee is imposed on the total amount. Alaska paid a portion of the assessment, but filed an administrative appeal, which the commissioner denied. Alaska appealed to the tax court.

Discussion:

Alaska argued that the corporate minimum fee under section 290.0922, subdivision 1, paragraph (a), and related Minnesota Rules, were invalid as applied to Alaska based on the express language of a federal statute. Specifically, Alaska contended that inclusion of its gross receipts and nonresident payroll in the minimum fee calculation was preempted by the Anti-Head Tax Act (AHTA). Alaska did not contend that the Minnesota property component portion of the minimum fee provisions was preempted.

Regarding gross receipts, the court noted that the AHTA states, in part: "[a] State ... may not levy or collect a tax, fee, head charge, or other charge on ... the *gross receipts* from that air commerce or transportation" (emphasis

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[55] Decisions of the tax court are immediately appealable to the supreme court. *See* Minnesota Statutes, section 271.10, and Minnesota Rule of Civil Appellate Procedure 116.

[56] United States Code, title 49, section 40116(b)(4).

added). The commissioner argued that the AHTA specifically allows “property taxes, net income taxes, *franchise taxes*, and sales or use taxes on the sale of goods or services” (emphasis added). The court disagreed and said that the full text of the provision cited by the commissioner explicitly disallows taxes on gross receipts by cross reference. The court held that the minimum fee tax on Alaska was based in part on a calculation of Alaska’s “total gross receipts” and therefore conflicted with the plain meaning of the AHTA. The court found that this portion of the minimum fee was preempted.[57]

Regarding payroll, Alaska argued that inclusion of wages of non-resident employees that did not earn more than 50 percent of their pay in Minnesota is preempted by the AHTA. The court turned to the text of the AHTA, which provides:

> The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:
> (A) the State or political subdivision of the State that is the residence of the employee.
> (B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.[58]

The court determined that there was an important distinction between “pay” in the context of individual income taxes and “payroll” as it relates to corporate taxes. The court found that the payroll factor was not preempted by the AHTA.

Finally, Alaska asked the court to invalidate all but the property factor of Minnesota’s minimum fee statutes and rules as they apply to air carriers. The commissioner argued that the provisions were capable of being applied while severing the preempted portion of the statute. The court relied on section 645.20, which supports the commissioner’s argument. The court declined to invalidate the entire statute, finding that there was no provision in section 290.0922 prohibiting severance, and therefore section 645.20 provides that the statute “shall be severable.” Furthermore, the court noted that the legislature did contemplate severability and provided an alternative in section 290.20. That section provides that when apportionment methods “do not fairly reflect all or any part of taxable net income allocable to this state,” a taxpayer may petition the commissioner to calculate net income using a different method, which may include “excluding any one or more of the factors.” Alaska had petitioned for this approach, which the court found to be workable.

[57] In coming to this conclusion, the court relied primarily on the United States Supreme Court's ruling in *Aloha Airlines, Inc. v. Dir. of Tax'n of Hawaii,* 464 U.S. 7, 12 (1983).
[58] United States Code, title 49, section 40116(f)(2).

Other Notable Cases

The revisor's office has historically limited the scope of this report to include summaries of court opinions where the court expressly identifies that a statute is ambiguous, vague, preempted, constitutionally suspect, or otherwise deficient.

As a result, other cases where the court confronts significant questions of statutory interpretation often have not been included in the report. In these cases, the court may engage in significant statutory construction, usually using canons of construction, even if there is no formal finding of a statutory deficiency in the court's opinion. Excluding these cases misses highlighting instances where the courts are doing noteworthy work in interpreting statutes. Including the cases could provide a tool to better understand statutory interpretation and provide legislators valuable information about how courts interpret the legislature's work.[59]

Finally, there are cases where the district court, the court of appeals, and the supreme court come to meaningfully different conclusions about the same statutory language. In those instances, and even if the supreme court did not identify a formal statutory deficiency, differing interpretation of statutory language is informative and instructive.

This year, 15 additional cases from the court of appeals or the supreme court that normally would not have been included in the report merit inclusion. A very brief summary of each court opinion is also included.

MN Constitution, article X, section 5

Sheridan v. Commissioner of Revenue, 963 N.W.2d 712 (Minn. 2021) (A21-0007)

Laws 2021, First Special Session chapter 8, article 5, section 1

Fairmont Housing and Redevelopment Authority v. Winter, 969 N.W.2d 839 (Minn. Ct. App. 2021) (A21-0244) (not appealed)

Minnesota Statutes, section 12.34, subdivision 1, clause (2)

Buzzell v. Walz, 974 N.W.2d 256 2022 (Minn. 2022) (A20-1561)

Minnesota Statutes, section 65B.43, subdivision 12, paragraph (b)

American Family Mutual Insurance Company, S.I. v. Progressive Direct Insurance Company, 970 N.W.2d 707 (Minn. Ct. App. 2022) (A21-0917, A21-0918) (not appealed)

Minnesota Statutes, section 152.137, subdivision 2, paragraph (b)

State v. Friese, 959 N.W.2d 205 (Minn. 2021) (A19-0451)

Minnesota Statutes, section 179A.101, subdivision 1, paragraph (f); and Section 486.01

Minnesota Judicial Branch v. Teamsters Local 320, 971 N.W.2d 82 (Minn. Ct. App. 2022) (A21-0794) (not appealed)

Minnesota Statutes, section 204C.15, subdivision 1

DSCC v. Simon, 950 N.W.2d 280 (Minn. 2020) (A20-1017)

Minnesota Statutes, section 256.0451, subdivision 22, paragraph (a)

Ahmed v. Nicollet County Health and Human Services, Not Reported in N.W. Reporter, 2022 WL 2914028 (Minn. Ct. App. July 25, 2022) (A21-1466)

Minnesota Statutes, section 256.98, subdivision 1, paragraph (a)

State v. Irby, 967 N.W.2d 389 (Minn. 2021) (A20-0375)

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[59] An example of this is the decades-old federal appellate courts project to let Congress know about possible technical flaws in statutes. *See* Robert A. Katzmann & Russell R. Wheeler, A Mechanism for "Statutory Housekeeping": Appellate Courts Working with Congress, 9 J. App. Prac. & Process 131 (2007).

Minnesota Statutes, section 260C.425, subdivision 1
State v. Boss, 959 N.W.2d 198 (Minn. 2021) (A19-1671)

Minnesota Statutes, section 394.27, subdivision 9
Hecker v. Crow Wing County Board, 959 N.W.2d 215 (Minn. Ct. App. 2021) (A20-0932) (not appealed)

Minnesota Statutes, section 515B.3-118
Harkins v. Grant Park Association, 972 N.W.2d 381 (Minn. 2022) (A20-0937)

Minnesota Statutes, section 542.10
In re Krogstad, 958 N.W.2d 331 (Minn. 2021) (A20-0076)

Minnesota Statutes, section 595.02, subdivision 1, paragraph (k)
In re Hope Coalition, 977 N.W.2d 651 (Minn. 2022) (A21-0880)

Minnesota Statutes, section 609.746, subdivision 1, paragraph (b)
State v. McReynolds, 973 N.W.2d 314 (Minn. 2022) (A20-1435)

Minnesota Constitution, article X, section 5

Subject: Property taxation; Aircraft Amendment to constitution

Court Opinion: *Sheridan v. Commissioner of Revenue*, 963 N.W.2d 712 (Minn. 2021) (A21-0007)

Statutory Issue:
The court concluded that Minnesota Constitution, article X, section 5, was ambiguous. The constitutional provision at issue allows the legislature to tax aircraft "on a more onerous basis than other personal property," but that tax must "be in lieu of all other taxes." A taxpayer argued that the in-lieu clause means "instead of" and restricts the legislature's taxing authority to just one tax on aircraft: the personal property tax. The commissioner contended that the in-lieu clause prohibits only the application of duplicative *personal property* taxes on aircraft, not the application of multiple types of taxes to aircraft. The court applied the canon of construction in Minnesota Statutes, section 645.16, to examine the circumstances under which the constitutional language was enacted, the legislative history, and the occasion, necessity, and object to be attained by its passage. The court found that the legislative process and public discourse leading up to the 1944 referendum on the constitutional amendment indicated that the in-lieu clause in the Aircraft Amendment[60] was meant to remove aircraft from the general property tax system. The court determined that the in-lieu clause referred only to the personal property taxes existing at that time. Therefore, the provision prohibits only the imposition of duplicative personal property taxes on aircraft.

[60] The 1944 ballot language read:
"Shall the Constitution be amended by adding thereto a new article, to be known as Article 19, permitting the state to construct, improve, maintain, and operate, and assist in constructing, improving, maintaining, and operating airports and other air navigation facilities; to expend monies, including monies appropriated by the legislature, and to incur debts and issue bonds, for such purposes; authorizing the levy of an excise tax on fluids and other means or instrumentalities used for aircraft and airport power purposes, or the business of selling or dealing therein, and taxes on aircraft in lieu of personal property taxes." Laws 1943, chapter 666.
Minnesota Constitution, Article X, section 5, currently reads:
"The legislature may tax aircraft using the air space overlying the state on a more onerous basis than other personal property. Any such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax on aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings on which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state temporarily using the air space overlying the state."

Laws 2021, First Special Session chapter 8, article 5, section 1

Subject: Housing; legislative repeal of executive order eviction moratorium

Court Opinion: *Fairmont Housing and Redevelopment Authority v. Winter, 969 N.W.2d 839 (Minn. Ct. App. 2021) (A21-0244)* *not appealed*

Statutory Issue:
The court determined that the phrase "null and void" in the legislative repeal of an executive order eviction moratorium was ambiguous. Executive Orders 20-14, 20-73, and 20-79 suspended most lease terminations and eviction actions to prevent homelessness during the COVID-19 pandemic. Winter was a renter and during his appeal of an eviction action, the legislature passed a session law replacing and phasing out the eviction moratorium. Renters argued that "null and void" meant that the eviction moratorium executive orders were only voided as of the effective date, allowing current appeal of a past eviction. The landlord argued that "null and void" meant that the eviction-related executive orders were an absolute nullity. The court first looked to the overall context of the moratorium phaseout which provided continuing protection for tenants. The court also determined that the savings clause in Minnesota Statutes, section 645.35, would protect the pending proceeding in this case. That section provides, in part, that "[t]he repeal of any law shall not affect any right accrued." Finally, the court said that the legislative history showed that the phaseout was meant to extend protections, not make them a nullity, and that due process considerations also supported the renters' interpretation.

Minnesota Statutes, section 12.34, subdivision 1, clause (2)

Subject: Emergency management; governor's emergency powers

Court Opinion: *Buzzell v. Walz*, 974 N.W.2d 256 (Minn. 2022) (A20-156)[61]

Statutory Issue:
As a matter of first impression, the court examined the meaning of "commandeer" in section 12.34. A business owner argued that his hospitality businesses were commandeered when, in response to the COVID-19 pandemic, the governor issued emergency executive orders imposing capacity limits for dining. The statute requires just compensation for the government's use of commandeered property. The district court dismissed for failure to state a claim, concluding the dictionary definition of "commandeer" was "to seize for military or police use; confiscate"; "to take arbitrarily or by force"; or "to force into military service." The court said those definitions did not apply to the circumstances of the case. Upon appeal, the court of appeals affirmed, but found that for property to be commandeered under the statute, it "unambiguously requires direct, active use of private property by the government." Upon final appeal, the supreme court relied on a dictionary to describe a different definition of "commandeer" that neither the court of appeals nor the district court applied. The court determined that for purposes of section 12.34, "the government commandeers private property when it exercises exclusive control over or obtains exclusive possession of the types of property listed in [the section] such that the government could physically use it for an emergency management purpose."

Minnesota Statutes, section 65B.43, subdivision 12, paragraph (b)

Subject: Auto insurance; commercial vehicles

Court Opinion: *American Family Mutual Insurance Company, S.I. v. Progressive Direct Insurance Company*, 970 N.W.2d 707 (Minn. Ct. App. 2022) (A21-0917, A21-0918)

Statutory Issue:
Seeking indemnity from claims American Family paid resulting from two collisions caused by pickup trucks insured by Progressive, American Family argued the pickup trucks were "commercial vehicles" for purposes of Minnesota's No-Fault Automobile Insurance Act. "Commercial vehicle" is defined in section 65B.43, subdivision 12, paragraph (b), as any motor vehicle that weighs more than 5,500 pounds and does not qualify as a passenger automobile under section 168.002, subdivision 24. American Family argued the use of the phrase "any motor vehicle" in the cross-referenced section was ambiguous because it was overbroad. The court of appeals disagreed because although "any" is an all-encompassing adjective, it is sufficiently limited by the surrounding language. For instance, paragraph (a) limits the definition to vehicles designed to carry fewer than 15 passengers. Paragraph (b) excludes motorcycles, motor scooters, buses, school buses, and commuter vans from the definition, and in its analysis, the court employed a canon of construction that holds where a list includes some items, it is implied that all unlisted items must be excluded from the list. Finally, the court noted paragraph (c) unambiguously *includes* pickup trucks in the definition of "passenger automobile." As such, the pickup trucks in question are clearly "passenger automobiles" and cannot be considered "commercial vehicles" under the no-fault act.

[61] *See also Doran 610 Apartments, LLC v. State by and through Walz*, No. A21-0869, 2022 WL 764229, (Minn. Ct. App. Mar. 14, 2022), *rev'd in part consistent with Buzzell v. Walz,* 974 N.W.2d 256 (Minn. 2022).

Minnesota Statutes, section 152.137, subdivision 2, paragraph (b)

Subject: Controlled substances; exposure to methamphetamine

Court Opinion: *State v. Friese,* 959 N.W.2d 205 (Minn. 2021) (A19-0451)

Statutory Issue:
The court discussed the meaning of the phrase "exposed to … methamphetamine." The issue was whether, in order for the state to convict a defendant of violating the statute, the state must show that a defendant knowingly allowed a child to come into physical contact with methamphetamine or must only show that the defendant knowingly subjected a child to a *risk of harm* from methamphetamine, such as by storing methamphetamine in such a way that a child *could* have accessed it. The court found that interpreting "exposure" to mean only physically subjecting a child to methamphetamine violated the canon against surplusage. Because section 152.137, subdivision 2, paragraph (b), also uses the words "inhale, … have contact with, or ingest," exposure has multiple meanings. The court instead adopted a broader definition of "expose," which is "to subject to risk from a harmful action or condition." The court also applied the whole-statute canon to construe section 152.137, subdivision 2, paragraph (a). That paragraph prohibits storage of methamphetamine-related paraphernalia near children. The language suggests that exposure means more than just physical contact. Finally, the court found that defining "exposed" as "subjected to risk from a harmful action or condition" is consistent with the word-association canon, because other words in the statute detail the ways a child can be harmed by methamphetamine.

Minnesota Statutes, section 179A.101, subdivision 1, paragraph (f); and section 486.01

Subject: Public employment labor relations; court reporters

Court Opinion: *Minnesota Judicial Branch v. Teamsters Local 320,* 971 N.W.2d 82 (Minn. Ct. App. 2022) (A21-0794) *not appealed*

Statutory Issue:
The court discussed the meaning of the following phrases: (1) "judges may appoint and remove court reporters at their pleasure" under the Minnesota Public Employment Labor Relations Act (PELRA)[62]; and (2) "judges … may appoint a competent stenographer as reporter of the court, to hold office during the judge's pleasure" in the court reporter statute[63]. The employee union argued that PELRA established collective bargaining rules and rights for Minnesota public employees, and therefore court reporters have a right to arbitrate their terminations as provided under applicable collective bargaining agreements. The court used the canon of construction in section 645.08, clause (1), which provides that "technical words and phrases and such others as have acquired a special meaning … according to such special meaning or their definition." The court determined that if a statute provides that a public officer or employee may be removed at pleasure of the appointing authority, the public officer is removable at will, with or without cause.

[62] Minnesota Statutes, section 179A.101, subdivision 1, paragraph (f).
[63] Minnesota Stautes, section 486.01.

Minnesota Statutes, section 204C.15, subdivision 1

Subject: Elections; voter-assistance limitations

Court Opinion: *DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020) (A20-1017)[64]

Statutory Issue:

The court considered whether the limit on the number of voters one person may assist in marking a ballot is preempted[65] by section 208 of the Voting Rights Act (VRA).[66] Section 204C.15, subdivision 1 provides that a person cannot "mark the ballots of more than three voters at one election." The court analyzed the language of the state and federal statutes to determine if compliance with both was impossible, or if the state laws created an obstacle to the accomplishment of Congress's purpose and objective in federal law. The court noted that both section 208 of the VRA and section 204C.15, subdivision 1, permissively describe the person who can provide assistance to a voter, using "may" language and broadly describing an eligible assistant. The court found that the plain-language comparison between the state and federal law leads to the conclusion that Minnesota's three-voter limit on marking assistance can be read to stand as an obstacle to the objectives and purpose of section 208 because it could disqualify a person from voting if the assistant of choice is, by reason of other completed assistance, no longer eligible to serve as the voter's "choice."[67]

Minnesota Statutes, section 256.0451, subdivision 22, paragraph (a)

Subject: Human services benefits; appeals

Court Opinion: *Ahmed v. Nicollet County Health and Human Services*, Not Reported in N.W. Rptr., 2022 WL 2914028 (Minn. Ct. App. 2022) (A21-1466)

Statutory Issue:

The court examined whether the 90-day deadline under section 256.0451, subdivision 22, paragraph (a), for a human services judge to issue a written decision on an appeal is mandatory or directory. On November 25, 2019, Asha Ahmed appealed the decision of the commissioner of human services denying her application for benefits. After time had passed due to the court changing the type of hearing that was set, a continuance, and a refusal to proceed with a prior recommendation, on October 16, 2020, Ahmed received a final decision on her appeal. The court of appeals discussed how the supreme court has recognized that some statutory deadlines with the words "shall" or "must" are "directory" rather than "mandatory" when the statute does not provide a consequence if a district court fails to meet the statutory deadline. The court determined that in this instance the statute fails to provide a consequence and, furthermore, permits another 30-day extension if the commissioner refuses to accept a recommended decision. The court held that the statute's lack of a consequence, as well as its allowance for more days, underscores the point that a court's authority is not limited by the 90-day deadline in this statute.

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[64] The supreme court issued an order opinion on September 4, 2020, and later issued a full opinion on October 28, 2020. The September 4 order was issued a day after oral arguments were heard in the matter due to the immediacy of the election. This summary addresses the analysis from the October 28 opinion.

[65] The district court had found the provision to be preempted and granted a temporary injunction against the Minnesota Secretary of State. Upon expedited review, the supreme court considered whether the district court had abused its discretion in granting the injunction based on finding a likelihood of success on the merits for the claim that the voter-assistance limit was preempted.

[66] *See* section 208 of the Voting Rights Act (VRA), United State Code, title 52, section 10508.

[67] The supreme court held that the district court had not abused its discretion in finding that a likelihood of success on the merits was shown on the claim that the voter-assistance limit was preempted.

Minnesota Statutes, section 256.98, subdivision 1, paragraph (a)

Subject: Criminal law; public benefits

Court Opinion: *State v. Irby, 967 N.W.2d 389 (Minn. 2021) (A20-0375)*

Statutory Issue:
The court found that, despite the use of "and" in the list of benefits in the wrongfully obtaining assistance statute, the state does not need to prove that a defendant wrongfully obtained assistance from *each* of the listed benefits programs. Section 256.98, subdivision 1, paragraph (a), states "[a] person who commits any of the following acts or omissions with intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program formerly codified in sections 256.72 to 256.871, chapter 256B, 256D, 256J, 256K, or 256L, *and* child care assistance programs, is guilty of theft..." (emphasis added). The court ruled that usually the use of "and" in a sentence like this implies that a person must intend to defeat the purposes of five different benefits programs, but in this case such a reading would not make sense and would contradict other statutes. Looking at the broader context of the Minnesota Statutes, the court ruled that the state need only prove that a defendant intended to defeat one of the listed programs.

Minnesota Statutes, section 260C.425, subdivision 1

Subject: Crimes; contributing to a juvenile's need for protection or services

Court Opinion: *State v. Boss*, 959 N.W.2d 198 (Minn. 2021) (A19-1671)

Statutory Issue:
The supreme court analyzed whether the state must prove that a child is actually in need of protection or services for a defendant to be found guilty of encouraging need for protective services. The statute provides that "[a]ny person who by act, word, or omission encourages, causes, or contributes to the need for protection or services is guilty of a gross misdemeanor." The court concluded that requiring the state to prove that a child is actually in need of services because of a defendant's encouragement would convert the word "encourages" into the equivalent of "causes," which is already listed separately in the statute. The court noted the surplusage canon to "preserve all words and phrases and avoid rendering any language superfluous." The court also noted that the express language of section 260C.425, subdivision 2, states that a separate petition alleging such need is not a prerequisite for charges or a conviction under the section. Finally, the conclusion that encouragement must result in actual services would effectively require the courts to improperly insert the word "actual" into the statute where the legislature had not included it.

Minnesota Statutes, section 394.27, subdivision 9

Subject: Local government, zoning

Court Opinion: *Hecker v. Crow Wing County Board,* 959 N.W.2d 215 (Minn. Ct. App. 2021) (A20-0932)

Statutory Issue:
The court analyzed section 394.27, subdivision 9, which governs appeals of local planning and zoning decisions to district court. Subdivision 9 states that planning and zoning board decisions are final, "except that any aggrieved person or persons ... shall have the right to appeal within 30 days, after receipt of notice of the decision." In this case, the plaintiff's attorney received an unsigned draft opinion of a county board's decision on zoning matters more than 30 days before the plaintiff filed his appeal. The official decision was published six days later, less than 30 days before the plaintiff's appeal. The court ruled that "notice of the decision" requires receipt of a formal written order, not just informal or oral conveyance of the content of the order. The court noted that informal notice would give rise to confusion and uncertainty of when true notice was received, and that requiring a formal written notice was a small burden to ensure the due process rights of parties.

Minnesota Statutes, section 515B.3-118

Subject: Common Interest Ownership Act; disclosure

Court Opinion: *Harkins v. Grant Park Association,* 972 N.W.2d 381 (Minn. 2022) (A20-0937)

Statutory Issue:
The court examined the meaning of "all records" under the Minnesota Common Interest Ownership Act, which reads: "All records, except records relating to information that was the basis for closing a board meeting under section 515B.3-103, paragraph (g), shall be made reasonably available for examination by any unit owner or the unit owner's authorized agent, subject to the applicable statutes." Grant Park Association argued that the phrase "all records" refers to all "adequate records of its membership" and all "sufficiently detailed financial records" required to be kept under the act. The association argued that its record of member email addresses did not fit the description and therefore argued that the association was not required to disclose it. The court reasoned that "when interpreting statutes ... we do not examine provisions in isolation, but rather read phrases in light of their context." Applying the whole-text canon, the court determined that the only reasonable interpretation is that "all records" means all association documents within the following categories enumerated within the statute: membership, unit owners meetings, board of directors meetings, committee meetings, contracts, leases and other agreements to which the association is a party, material correspondence and memoranda relating to its operations, and financial records.

Minnesota Statutes, section 542.10

Subject: Medical malpractice; change of venue

Court Opinion: *In re Krogstad*, 958 N.W.2d 331 (Minn. 2021) (A20-0076)
Statutory Issue:
The court discussed the meaning of the word "several" and found that it means "separate" as used in the context of venue motions. Accordingly, two defendants may unite in a request under section 542.10 to change venue when a civil action is brought in a county where one defendant resides but where the cause of action did not arise. Section 542.10 allows "several defendants residing in different counties" to compel the transfer of venue when the majority of the defendants unite in demand. If the county designated in the complaint is not the county in which the cause of action arose and if there are "several" defendants residing in different counties, then the trial shall be had in the county in which the majority of the defendants unite in demanding or, if the numbers are equal, in that county whose county seat is nearest. The court relied on the canon in section 645.16, which states that "[e]very law shall be construed, if possible, to give effect to all its provisions." The court also examined the use of "several" in statute and, through its 257 uses, concluded that it is often used to indicate separate subjects.

Minnesota Statutes, section 595.02, subdivision 1, paragraph (k)

Subject: Evidence; sexual assault counselor records

Court Opinion: *In re Hope Coalition*, 977 N.W.2d 651 (Minn. 2022) (A21-0880)

Statutory Issue:
The court discussed the meaning of the phrase "may not be allowed to disclose" section 595.02, subdivision 1, paragraph (k), in the context of whether a sexual assault counselor can be compelled to disclose information about a sexual assault victim without the victim's consent in a criminal matter. The defendant, facing charges of criminal sexual conduct, argued "may" is considered permissive and "may not" indicates the legislature intended disclosure in some situations. The court conceded that "may" is permissive but used the canon of construction under section 645.08, clause (1), construing words and phrases according to their common and approved usage, and the dictionary definition of "not" to conclude such permission is revoked or negated. The court also pointed out that paragraph (k) includes a specific carve-out for disclosure in cases of neglect or termination of parental rights, and had the legislature intended more exceptions to apply, it would have included them. The court held the plain language of section 595.02, subdivision 1, paragraph (k), prohibits sexual abuse counselors from disclosing privileged records without the victim's consent.

Minnesota Statutes, section 609.746, subdivision 1, paragraph (b)

Subject: Crimes; surreptitious intrusions and observation devices

Court Opinion: *State v. McReynolds*, 973 N.W.2d 314 (Minn. 2022) (A20-1435)

Statutory Issue:
The supreme court discussed the meaning of the phrase: "installs or uses any device for . . . recording . . . through the window or any other aperture of a house or place of dwelling of another." The court of appeals determined that defendant McReynolds used the "aperture" of a "cellphone's camera to take photos of [a woman] while she was in bed in her apartment, a 'place of dwelling' within the meaning of the statute." The court of appeals concluded that narrowing the definition of "aperture" to include only openings connected to a house or dwelling would lead to an absurd result, "essentially allow[ing] guests in a home to record residents at will so long as the recording was not done through 'a window or some other aperture.'"

The supreme court reversed the ruling, holding that the definition restricting the definition of "aperture" to openings connected to a house or dwelling was, in fact, the plain meaning of the statute. The supreme court noted that "whether technological advancements should prompt amendments to this statute is a question for the legislature, not this court."

Glossary

OVERVIEW OF PRINCIPLES OF LEGAL INTERPRETATION

The following is a glossary of principles of legal interpretation that were applied by the court of appeals or the supreme court in the opinions summarized in this report. The glossary is not exhaustive; rather, it highlights various principles used by the courts over the last two years when engaging in statutory interpretation and resolving statutory deficiencies. These interpretive tools and canons, regardless of whether they are textualist, purposivist, pragmatist, or something else, are susceptible to dueling use, which may be evident in the dissenting opinions in these cases.[68] Additional considerations for the interpretation of statutes can be found in Minnesota Statutes, chapter 645. The relevant sections of chapter 645 that are discussed in the opinions summarized in this report are referenced in the glossary along with the corresponding principle of legal interpretation. Also, Chapter 7 of the Revisor's Manual contains a brief discussion of statutory construction.

As a general matter, courts will often explain that in determining the meaning of statutory language the prevailing view is that a judge's task is not to make the law, but to interpret the law; in other words, the task is to determine the intent of the legislature.

Minnesota Statutes, section 645.16, is cited in *many* of the opinions summarized in this report. That section provides:

> The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.
>
> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.
>
> When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:
> (1) the occasion and necessity for the law;
> (2) the circumstances under which it was enacted;
> (3) the mischief to be remedied;
> (4) the object to be attained;
> (5) the former law, if any, including other laws upon the same or similar subjects;
> (6) the consequences of a particular interpretation;
> (7) the contemporaneous legislative history; and
> (8) legislative and administrative interpretations of the statute.

In addition to section 645.16, the court sometimes uses the following principles of statutory interpretation, which were cited in the court opinions fully summarized in this report or in a previous court opinions report.[69] Some of the principles overlap or intersect with what is provided in section 645.16. Reference to a principle is not indicative of how the court resolved the issue. If there is summary of an opinion in this report in which the principle was used, the case is cited. Sometimes there is a corollary interpretive provision in chapter 645, and if so, it is cited as well.

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[68] For one (perhaps somewhat archaic, but informative) discussion and list of competing canons of statutory interpretation, *see* Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed, 3 Vanderbilt Law Review 395 (1950).

[69] The 2014 Court Opinions Report was the first report to include an appendix with a glossary of principles of legal interpretation. The next report to include a similar glossary was the 2020 Court Opinions Report. The glossary in this report is meant to be a cumulative listing of principles of legal interpretation cited in opinions summarized in *all* reports that included these glossaries. Therefore, if continued, it will likely be expanded in future reports.

GLOSSARY OF PRINCIPLES OF LEGAL INTERPRETATION

Absurdity Doctrine

Judges will disregard interpretations of language that provide a result no reasonable person could approve.

- Section 645.17, clause (1): "In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; ..."

- Cases:
  - *City of Hutchinson v. Shahidullah*, Not Reported in N.W. Rptr., 2021 WL 4428917 (Minn. Ct. App. 2021) (A20-1519)
  - *Moore v. Robinson Environmental*, 954 N.W.2d 277 (Minn. 2021) (A19-0668)

Administrative Deference

If words and phrases in a statute have been interpreted authoritatively by a responsible administrative agency, the words and phrases are to be understood according to that construction.

- Case:
  - *Hagen v. Steven Scott Management, Inc.*, 963 N.W.2d 164 (Minn. 2021) (A19-1224)

Constitutional-Doubt Canon

Statutes should be interpreted in a way that avoids placing their constitutionality in doubt.

- Section 645.17, clause (3): "In ascertaining the intention of the legislature the courts may be guided by the following presumptions: ... (3) the legislature does not intend to violate the Constitution of the United States or of this state; ..."

Context; Textual Clues

The context of a division of statute are those parts of the text which immediately precede and follow it. Courts scrutinize context to aid in statutory interpretation, particularly examining textual clues supporting each reasonable interpretation of an ambiguous statute to decide which is the better interpretation.

- Cases:
  - *Matter of Welfare of A.J.S.*, 975 N.W.2d 134 (Minn. Ct. App. 2022) (A21-1046)
  - *G&I IX OIC LLC v. County of Hennepin*, 979 N.W.2d 52 (Minn. 2022) (A21-1493)

Expressio unius est exclusio alterius

When one or more things of a class are expressly mentioned others of the same class are excluded.

Section 645.19: "Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others."

- Case:
  - *Walsh v. State*, 975 N.W.2d 118 (2022) (A20-1083)

Harmony

One goal of statutory interpretation is to harmonize statutes, if possible.

- Section 645.26, subdivision 1:
  "When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both."

- Cases:

- *Matter of Casterton*, Not Reported in N.W. Rptr., 2022 WL 2912152 (Minn. Ct. App. 2022) (A21-1393)
- *City of Hutchinson v. Shahidullah*, Not Reported in N.W. Rptr., 2021 WL 4428917 (Minn. Ct. App. 2021) (A20-1519)

In pari materia; Related-Statutes Canon
Statutes *in pari materia* (upon the same subject matter) are to be construed together.

Interpretive-Direction Canon
Definition sections and interpretation clauses in statutory language are to be carefully followed.

Last-Antecedent Canon
A relative or qualifying word or phrase generally modifies only the word or phrase which it immediately follows (i.e. the nearest reasonable antecedent). This presumption can be overcome if the intent and meaning of the context, or an examination of the entire act, clearly requires extending the qualifying word or phrase to additional antecedents.

Mandatory/Permissive Canon
Mandatory words, such as "shall' or "must," typically indicate "that the act to be performed is mandatory." Permissive words, such as "may," allow for discretion.

Ordinary-Meaning Canon/Ejusdem Generis (Latin for "of the same kind of class")
Words and phrases in statutes are to be understood in their ordinary, everyday meaning, unless the context indicates that they bear a technical sense. Courts often turn to the dictionary definition to determine the ordinary meaning of a disputed word or phrase.

- Section 645.08, clause (1): "In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute: (1) words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition; ..."

- Cases:
  - *Hagen v. Steven Scott Management, Inc.*, 963 N.W.2d 164 (Minn. 2021) (A19-1224)
  - *Matter of Casterton*, Not Reported in N.W. Rptr., 2022 WL 2912152 (Minn. Ct. App. 2022) (A21-1393)

Presumption Against Preemption Canon
In all preemption cases, the court begins with the assumption that the historic police powers of the states were not superseded by the federal act unless that was the clear and manifest purpose of Congress.[70]

- Cases:
    - *Musta v. Mendota Heights Dental Center*, 965 N.W.2d 312 (Minn. 2021) (A20-1551)
    - *DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020) (A20-1017)
    - *Williams v. Sun Country, Inc.*, Not Reported in N.W. Rptr., 2021 WL 855890 (Minn. Ct. App.), *review denied* June 15, 2021 (A20-0936)

Prior-Construction Canon
If the court has interpreted the meaning of statutory language, even if the legislature later amends the statute (but leaves the interpreted language unchanged), the court's prior interpretation is determinative.

- Section 645.17, clause (4): "When a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language."

Reenactment Canon
If the legislature amends or reenacts a provision, other than as a technical consolidation or recodification, a significant change in language is presumed to entail a change in meaning.

Rule of Lenity
When a criminal law is unclear or ambiguous, the court should apply it in the way that is most favorable to the defendant, or construe the statute against the state.

- Case:
    - *Matter of Welfare of A.J.S.*, 975 N.W.2d 134 (Minn. Ct. App. 2022) (A21-1046)
    - *State v. Serbus*, 957 N.W.2d 84 (Minn. 2021) (A19-1921)

Series-Qualifier Canon
When there is a straightforward, parallel construction that involves all nouns or verbs in a series, the court assumes that a prepositive or postpositive modifier applies to the entire series. This canon supports the argument that phrases can constitute one integrated list of closely related, parallel, and overlapping terms.

Severability Canon
If any provision of a statute is found to be unconstitutional, the rest of the statute survives if the court can effectively sever the unconstitutional provision.

- Section 645.20: "Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

- Case:
    - *Alaska Airlines, Inc. v. Comm'r of Revenue*, Not Reported in N.W. Rptr., 2022 WL 829686 (Minn. Tax Mar. 16, 2022) (No. 9433-R)

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[70] *See Gretsch v. Vantium Cap., Inc.*, 846 N.W.2d 424, 433 (Minn. 2014), rehearing denied May 30, 2014, citing *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). *See also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

Surplusage Canon
No provision of a law should be rendered superfluous. If possible, every word and every provision is to be given effect. No interpretation should result in a provision having duplicate meaning with another provision or having no consequence.

- Case:
  - *Hagen v. Steven Scott Management, Inc.*, 963 N.W.2d 164 (Minn. 2021) (A19-1224)

Whole-Text Canon
Courts do not interpret statutory phrases in isolation; rather, they read statutes as a whole.

- Section 645.17, clause (2): "In ascertaining the intention of the legislature the courts may be guided by the following presumptions: … (2) the legislature intends the entire statute to be effective and certain; …"

- Cases:
  - *Roach v. County of Becker*, 962 N.W.2d 313 (Minn. 2021) (A19-2083)
  - *Hagen v. Steven Scott Management, Inc.*, 963 N.W.2d 164 (Minn. 2021) (A19-1224)
  - *Matter of Welfare of A.J.S.*, 975 N.W.2d 134 (Minn. Ct. App. 2022) (A21-1046)