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REPORT

OF

REVISOR OF STATUTES

****

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT AND COURT OF APPEALS

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Submitted to the Legislature of the State of Minnesota

NOVEMBER 1994

Pursuant to Minn. Stat. 3C.04; Minn. Stat. 3C.04 Subd. 3; Minn. Stat. 482.09

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December 20, 1994

The Honorable Allen Spear
President of the Senate

and

The Honorable Irv Anderson
Speaker of the House of Representatives

State Capitol
Saint Paul, Minnesota 55155

Minnesota Statutes, section 3C.04, subdivision 3, requires the Revisor of Statutes to biennially report to the Legislature on statutory changes recommended or statutory deficiencies noted in opinions of the Supreme Court of Minnesota.

I am, therefore, pleased to transmit to you our report on opinions issued by the Supreme Court between October 1, 1992, and September 30, 1994.

Respectfully submitted,

Harry M. Walsh
Revisor of Statutes
296-0949

HMW
copies:

Chair and Members,
Senate Judiciary Committee

Chair and Members,
House Judiciary Committee

REPORT OF THE REVISOR OF STATUTES

TO THE

LEGISLATURE OF THE STATE OF MINNESOTA

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

AND COURT OF APPEALS

The Revisor of Statutes respectfully reports to the Legislature of the State of Minnesota, in accordance with Minnesota Statutes, section 3C.04, subdivision 3, which provides that the Revisor of Statutes shall:

> "report 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. The report must be made by November 15 of each even-numbered year. It must treat opinions filed during the two-year period immediately preceding September 30 of the year before the year in which the session is held. It must include any comment necessary to outline clearly the legislative problem reported."

The opinions of the Supreme Court and Court of Appeals of Minnesota concerning statutory changes recommended or discussed, or statutory deficiencies noted during the period beginning October 1, 1992, and ending September 30, 1994, together with a statement of the cases and the comment of the Court, are set forth on the following pages in numerical order, according to statutory section number.

As was the case with our last biennial report, there was a shortage of clear judicial discussion of statutory deficiencies and recommendations for change. Three findings of unconstitutionality appeared during the biennium. The 1994 legislature reacted quickly to remedy one of the defects. In addition, one instance of a declaration of unconstitutionality

reported in our 1992 report was remedied by action of the 1994 session. These cases, and the legislative action they apparently precipitated are mentioned under ACTIONS TAKEN on the next page.

Three cases also appear which appeared to be of interest because of statements made in dissenting opinions in regard to construction of particular statutory provisions.

ACTIONS TAKEN

The Legislature, during the 1993-1994 biennium, has responded to constitutional problems raised by the Supreme Court. Thus the various provisions of Minnesota Statutes, chapter 240, which purported to authorize off-track betting on horses were declared unconstitutional in Rice v. Connelly, 488 N.W.2d 241, (July 31, 1992). This case was reported in our 1992 report, and the unconstitutional portions of chapter 240 were deleted from the law with the passage of Laws 1994, chapter 633, article 1.

Court rulings have seldom had a more direct effect upon the Legislative and Executive branches of government than did the Minnesota Supreme Court's rulings in the closely related cases of Matter of Linehan, 518 N.W.2d 609 (June 30, 1994) and Matter of Rickmyer, 519 N.W.2d 188 (June 30, 1994). Both individuals had been convicted of sex-related offenses and had completed serving their prison sentences. Both were then ordered committed indefinitely to the Minnesota Security Hospital as "psychopathic personalities" under the Minnesota Psychopathic Personality Commitment Act (Minnesota Statutes, sections 526.09 and 526.10).

While the constitutionality of this Act had been previously upheld by both the State and United States Supreme Courts, and indeed was not in question in the Linehan or Rickmyer cases, the Supreme Courts' rulings in both cases that the offenders did not fit the statutory definition of a "psychopathic personality" as supplemented by judicial decisions, and were therefor entitled

to release, caused a great deal of public apprehension.

The public furor presumably led the Governor to call a special session of the Legislature on August 31, 1994, to consider and enact significant revisions to the Psychopathic Personality Commitment Act (Laws 1994, 1st Spec. Sess. c.1), intended to facilitate commitment of such persons. We may well hear more from the Courts on this subject in the future.

Section 65B.44, subdivision 2

GREAT WEST CAS. CO. v. KRONING

Great West Casualty Company v. Kroning, 511 N.W.2d 32 (Minn. App. 1994) (Jan. 18, 1994), was an action seeking recovery from a no-fault insurer of the value of rehabilitative services rendered an accident victim.

Injured truck driver was treated in a hospital for his injuries. A long period of rehabilitative services was then required. The injured driver and his wife decided against a nursing home placement because of their concern over how they would pay the costs. The wife obtained special instructions on the required care and undertook care in their home to the extent of some 400 hours.

A claim for the value of the wife's services was submitted and denied by the insurer. An arbitrator ordered payment and the insurer appealed. The applicable statute read:

> "Every policy of automobile insurance that affords no-fault benefits must include medical expense benefits which shall reimburse all reasonable expenses for necessary medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services * * *." Minn.Stat. § 65B.44, subd. 2 (1992) (emphasis added)

Construing this provision, the Court stated:

> "The statute does not require insurers to pay for the reasonable value of services rendered; it requires reimbursement of expenses for such services. There cannot be reimbursement for value of services; there must be an out-of-pocket expense to qualify for reimbursement."

The court described as the irony of this case that:

> "If (the injured party) had gone to a nursing home and received the same care provided by (the wife), but at greater cost, (insurer) could not argue that the expenses are not compensable under the no-fault act."

and concluded its holding on this point by stating:

> "If the Legislature chooses to amend the statute, in-home nursing care could be made compensable. We, however, must apply the statute as it is written."

Section 169.121, subdivision 1a

STATE v. HULST

State v. Hulst, 510 N.W.2d 262 (Minn. App. 1994) (Jan. 11, 1994) was an appeal from a conviction of a motorist for refusing to submit to a chemical test. At the time of appellants arrest, if the arresting officer had probable cause to believe that a person operated or was in physical control of a vehicle, it was a gross misdemeanor to refuse chemical testing if:

> "the person's driver's license has been suspended, revoked, canceled, or denied once within the past five years or two or more times within the past ten years under any of the following: * * * (here followed a listing of specific sections, subdivisions, and clauses of Minnesota Statutes)." Minn.Stat. § 169.121, subdivision 1a (1990)

Significant in this case was the failure to include any mention of municipal ordinances or laws of other states. Appellant had in fact had his license revoked in Iowa within the stated period and, based on this revocation, the District Court found appellant guilty of a gross misdemeanor for refusing the test.

The Court of Appeals, in reversing the conviction, stated:

> "The statute contains no language suggesting the list of Minnesota statutes is not exclusive. * * * Other statutes in the same chapter illustrate that the legislature recognized a difference between Minnesota statutes and statutes of other states. For example, a prior impaired driving conviction is defined as a prior conviction resulting from violation of one of the listed Minnesota statutes "or an ordinance from this state or a statute or ordinance from another state in conformity with any of them." Minn.Stat. § 169.121, subd. 3(b)(1990). Presumably, if the legislature wanted to include license revocations that resulted from a violation of an out-of-state statute or ordinance in Minn.Stat. § 169.121, subd. 1a (1990), it would have used similar language. Further, the legislature did not choose to use more inclusive language when it amended the statute in 1992. *See* Minn.Stat. § 169.121, subd. 3(a)(2)(1992)."

Section 179.12(9)

MIDWEST MOTOR EXPRESS, INC. v.

INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN

AND HELPERS OF AMERICA, LOCAL 120

In Midwest Motor Express v. IBT Local 120, 512 N.W.2d 881 (March 11, 1994), the employer of striking employees sued the union seeking injunctive relief and declaration that the Minnesota Striker Replacement Law (M.S. sec 179.12(9)) was preempted by federal labor law.

Section 179.12(9) provides that:

> "It is an unfair labor practice for an employer: * * *
>
> (9) To grant or offer to grant the status of permanent replacement employee to a person for performing bargaining unit work for an employer during a lockout of employees in a labor organization or during a strike of employees in a labor organization authorized by a representative of employees; * * *."

The statute had been upheld by the Minnesota District Court and Court of Appeals, though a similar case in United States District Court (reported in the 1992 Revisor's Report) had held the law contrary to federal labor law and preempted as unconstitutional under the Machinists preemption doctrine as stated by the United States Supreme Court in 427 U.S. 147.

Proponents of the law contended that the law was essential in curbing picket line violence, but the Court pointed out that other state laws such as Minn.Stat. § 179.13 are specifically aimed at acts of violence.

The Supreme Court, with two justices dissenting followed the reasoning of the United States District Court and held that:

"For the reasons articulated in the *Machinists* opinion, we hold that Minn.Stat. § 179.12(9), which interferes, as did the Wisconsin statute, with the substantive aspects of the bargaining process by branding as unlawful an economic device Congress intended to be unregulated, is preempted by federal law."

Section 256D.05

MITCHELL v. STEFFEN

Mitchell v. Steffen, 504 N.W.2d 198 (Aug. 6, 1993) was a case brought by welfare recipients who had resided in the state less than six months, challenging the constitutionality of Minnesota Statutes, section 262D.065, which imposed a durational residency requirement on receipt of full benefits.

Section 262D.065 reads, in pertinent part:

> "* * * otherwise eligible applicants without minor children, who have been residing in the state less than six months, shall be granted general assistance and work readiness payments in an amount that, when added to the nonexempt income actually available to the applicant, shall equal 60 percent of the amount that the applicant would be eligible to receive under section 256D.06, subdivision 1. * * *."

The statute also contained a guarantee of benefits at least equal to those received in recipients last state of residence.

The District Court granted summary judgment in favor of plaintiffs and was affirmed by the Court of Appeals. The Supreme Court also affirmed, stating in its syllabus:

> "Minn.Stat. § 256D.065 (1992), prescribing a durational residency requirement for full general assistance-work readiness benefits, burdens the fundamental right to travel and violates the equal protection clause of the United States Constitution."

A dissent by Justice Tomljanovich concludes with this summary:

> "I turn now to this case. The statute involved is economic legislation, concerning the allocation of the state's financial resources to a social welfare program. No fundamental right is implicated nor is a suspect class or semi-suspect class involved. Consequently, I apply the rational basis test. The legislation will not be set aside if any set of facts may reasonably be conceived to justify the classification. * * * * Here the state has a legitimate purpose in safeguarding its financial integrity: The

classification on the basis of residency with adjusted benefit levels is rationally related to that purpose. I would hold that Minn.Stat. § 256D.065 (1992) does not violate the equal protection guaranty of our state constitution."

Section 325E.37, subdivision 5(c)

NEW CREATIVE ENTERPRISES, INC. v.

DICK HUME & ASSOCIATES

New Creative Enterprises, Inc. v Dick Hume & Associates, 494 N.W.2d 508 (Minn. App. 1993) (Jan. 12, 1993), was an appeal from a District Court order finding the statute (Minn.Stat. sec. 325E.37) governing termination of sales representatives was applicable and constitutional.

The Court of Appeals found that the statute, which provided, among other things, for arbitration of disputes, was applicable to the termination of the sales representative employment agreement in this case, but held unconstitutional as a violation of due process that portion of the statute which read:

> "Subd. 5. [ARBITRATION.] * * *
>
> (c) The decision of any arbitration hearing under this subdivision is final and binding on the sales representative and the manufacturer, wholesaler, assembler, or importer. The district court shall, upon application of a party, issue an order confirming the decision."

The Court thus concluded its opinion by upholding the statute while severing the unconstitutional portion, stating as follows:

> "Due process requires that statutes providing for compulsory binding arbitration of disputes must also provide a minimal level of judicial review of the arbitration process and award. The district court correctly ruled that Minn.Stat. § 325E.37 applies to the sales representative agreement. However, we find the statute's provision precluding judicial review of the arbitration decision unconstitutional. We sever that provision from the statute and remand the case for arbitration on the merits."

Section 325F.665, subdivisions 7 and 10

PFEIFFER v. FORD MOTOR CO.

Pfeiffer v. Ford Motor Co., 517 N.W.2d 76 (Minn. App. 1994) (June 7, 1994) was an appeal from an informal dispute mechanism under the Minnesota Lemon Law (Minn.Stat., sec. 325F.665). It comes to our attention because of the early statement:

> "The problem in this case, as the amicus attorney general points out, is that the Lemon Law was poorly drafted and is susceptable to two meanings."

Thus under subdivision 7:

> "* * * If an application to remove a decision is not filed in the district court within 30 days after the date the decision is received by the parties, then the district court shall, upon application of a party, issue an order confirming the decision. * * *." (emphasis added)

While under subdivision 10:

> "* * * if the consumer applies to an informal dispute settlement mechanism within three years of the date of original delivery of a new motor vehicle to a consumer, then any civil action brought under this section must be commenced within six months after the date of the final decision by the mechanism." (emphasis added)

In this case, the suit was brought within the six-month limitation but not within the 30-day limitation.

Though the consumer lost his case in this instance due to failure to tender the defective car, the court ruled in the consumer's favor on the limitation of actions stating:

> "Where two interpretations of a statute are possible, this court must give the statute a construction consistent with the probable legislative intent. (citation omitted) We accept the attorney general's assertion that the seemingly conflicting provisions can be reconciled by understanding subdivision 7 as applying to consumers who prevail in arbitration. Subdivision 10, on the other hand, provides an appeal mechanism for cases, such as this, where the consumer loses."

Sections 508.64 and 514.08

DAVID THOMAS COMPANIES, INC. v. VOSS

The filing of a mechanics' lien on Torrens property was the subject of the dispute in David Thomas Companies, Inc. v. Voss, 517 N.W.2d 341 (Minn. App. 1994) (June 7, 1994).

Appellants filed a mechanics lien with the county recorder of Hennepin county, relying on the provision of the mechanics lien law which reads:

> "514.08 [STATEMENT; NOTICE; NECESSITY FOR RECORDING; CONTENTS.]
>
> Subdivision 1. [NOTICE REQUIRED.] The lien ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery, unless within this period:
>
> (1) a statement of the claim is filed for record with the county recorder of the county in which the improved premises are situated, or, if the claim is made under section 514.04, with the secretary of state; * * * ." (emphasis added)

The property upon which work was performed was, however, property registered in the Torrens system, under which the pertinent statute reads:

> "508.64 [ATTACHMENTS; LIENS.]
>
> Attachments and liens of every description upon registered land shall be continued, reduced, discharged, and dissolved by any method sufficient therefor in the case of unregistered land. All certificates, writings, or other instruments permitted or required by law to be filed or recorded to give effect to the enforcement, continuance, reduction, discharge, or dissolution of attachments or other liens upon unregistered land or to give notice of the same, shall, in the case of like liens upon registered land, be filed with the registrar." (emphasis added)

The Court stated that in view of section 508.64:

> "Thus, once a mechanics' lien on Torrens property arises, to preserve the lien beyond 120 days, the lien claimant must file the claim with the registrar of titles,

not the county recorder.

This reconciliation of section 508.64 with the general mechanics' lien provision of section 514.08 is supported by other provisions of the Torrens Act.

> Every * * * lien * * * which would affect the title to unregistered land under existing laws, if recorded, or filed with the county recorder, shall, in like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated.

Minn.Stat. § 508.48 (1992). The negative inference of this provision is that a title to registered property is not encumbered unless the lien is filed and registered with the county registrar."

Section 541.023, subdivision 1

WEBER v. EISENTRAGER

In Weber v. Eisentrager, 420 N.W.2d 131 (Minn. App. 1992) (August 25, 1992) was an appeal from a District Court ruling that the Marketable Title Act extinguished appellants' claim to certain property.

In 1933 appellants' father, sole owner of the real estate at issue died intestate. The probate court awarded appellants' mother a life estate in the property and appellants the remainder. Appellants' mother married respondent who lived with her on the property. In 1949 the mother and respondent executed a warranty deed to a strawperson who then quitclaimed back to them as joint tenants. Both deeds were recorded in 1950.

Appellants first learned of their remainder interest in 1980, while placing their mother in a nursing home, but took no action other than a few tentative inquiries of "several attorneys," to record any document regarding to their claim. When appellants' mother died in 1991, appellants, wishing to sell the property brought an action to recover the property from respondent, who continued to reside on the property.

The trial court ruled and the Court of Appeals affirmed the granting of a summary judgment against appellants because they did not file notice of their claim within 40 years of the (1949) straw transaction and that their claim was presumed to have abandoned the property under the Marketable Title Act (Minn.Stat., sec. 541.023, subdivision 1) which imposes the 40-year limitation.

The Court of Appeals stated:

> "The destruction of appellants' remainder interest in family property is unfortunate. Nonetheless, by enactment of the MTA, the legislature has established a hierarchy of policy values, to-wit, the interest in marketability of real estate unfettered by ancient records transcends occasional inequities which result from disqualified individual interests." Minn.Stat. § 541.023, subd. 5.

but concluded their opinion with this decision:

> "A quitclaim deed may serve as a "source of title" under the Marketable Title Act and is not necessarily invalidated because the prior deed was a "stray deed." Therefore, because appellants neither filed notice of their claim to the property nor possessed it, the Marketable Title Act extinguished their interests."

Acting Judge Foley, who concurred specially, was nevertheless troubled by the results in the case, stating:

> "It seems clear to us that it would be unreasonable and inconsistent with the statute's purpose to include within the meaning of the word "title" the term for years and the life estate and thus compel the reversioner or remainderman to file the statutory notice or be barred. It cannot be seriously argued that the holder of the life estate or his tenant would have an estate of inheritance which would permit him to invoke the protection of the act. "Only those who possess a title which complies with the conditions of the statute are qualified to invoke its aid." (citation omitted) "The legislature does not intend a result that is unreasonable; and it does not intend to violate the Minnesota or United States Constitutions." Minn.Stat. § 645.17(1,3).

The concurring Justice was concerned with clarifying the "application and viability of (the Act) today, as it applies or not to life tenants and remaindermen" and the "meaning of source of title" where quit claims are involved.

Not stated in the opinion, but coming to mind readily upon reading the opinion, is the fact that respondent, who in effect invokes the protection of the Marketable Title Act, is the same person who joined in a conveyance when he had absolutely no

interest to convey. In addition, it appears that no rights of any third party, innocent purchaser for value or whatever status have been prejudiced. It is simply a case of defeating a remainder interest in the interest of maintaining marketability of title. Is this good public policy?