THE OFFICE OF THE

REVISOR OF STATUTES

COURT OPINIONS REPORT

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Court Opinions Report Summary

Minnesota Statutes, section 3C.04, subdivision 3, requires the Office of the Revisor of Statutes to biennially 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." This report highlights the Minnesota Supreme Court (supreme court) and Minnesota Court of Appeals (court of appeals) opinions filed after September 30, 2018, and before October 1, 2020, that identify ambiguous, vague, preempted, constitutionally suspect, or otherwise deficient statutes.

The 2020 Court Opinions Report includes summaries of 15 cases: nine from the supreme court and six from the court of appeals.

This report does not include summaries of court of appeals cases that found deficiencies but are currently under review by the supreme court. There are three such cases:

- *State v. Casillas*, 938 N.W.2d 74 (Minn. Ct. App. 2019) (A19-0576); review granted March 17, 2020. The court of appeals held that section 617.261, criminalizing the nonconsensual dissemination of private sexual images, is facially overbroad in violation of the First Amendment.
- *Hinrichs-Cady v. Hennepin County*, 943 N.W.2d 417 (Minn. Ct. App. 2020) (A19-1561); review granted June 30, 2020. The court of appeals held that the definition of "employee" in section 181.940, subdivision 2, is ambiguous as applied to the Pregnancy and Parental Leave Act, which requires pregnancy accommodations.
- *In re Krogstad*, 941 N.W.2d 750 (Minn. Ct. App. 2020) (A20-0076); review granted June 16, 2020. The court of appeals held that the term "several defendants" in section 542.10, requiring a change of venue in certain situations, is ambiguous.

If a court of appeals case in which a deficiency was found was denied review or the time for appeal has expired, the summary notes the denial or expiration. If the supreme court reviewed a court of appeals case and found a deficiency, only a summary of the supreme court case is included; no summary of either case appears if the supreme court did not find a deficiency.

This report includes summaries of 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 2018 Court Opinions Report. Summaries of those court of appeals opinions were not included in the 2018 Court Opinions Report. Upon review, the supreme court issued opinions that confirmed the statutory deficiencies, and summaries of those opinions are included in this report. The two cases are *Olson v. One 1999 Lexus*, 924 N.W.2d 594 (Minn. 2019) (A17-1083), and *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474).

Also, this report includes summaries of two court of appeals opinions that were designated by the court as unpublished: *State v. Malik*, 2020 WL 1845964 (Minn. Ct. App., 2020) (A18-2003); and *Rabbe v. Farmers State Bank of Trimont*, 2019 WL 2416036 (Minn. Ct. App. 2019) (A18-1845). Before August 1, 2020, 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 may publish cases. These aspects of section 480A.08, subdivision 3, were repealed in the 2020 regular session. See section 480A.08, subdivision 3, and Laws 2020, chapter 82, section 3. The two unpublished court of appeals opinions were included in this report because they each address statutory deficiencies. It is unclear why a statutory deficiency, as in the court's finding of ambiguity in these cases, would or would not meet one of the

previously existing criteria for publication, and the court did not explain the reasoning for the designation as unpublished.

The report provides a case comment related to each deficiency noted by the supreme court or the court of appeals. Each case comment includes the text of the applicable deficient statutory provision, a statement of the deficiency, a brief summary of the facts of the court opinion, and a brief discussion of the court's analysis of the deficiency. Where possible, the words or phrases identified as deficient have been underlined. Additionally, 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 at:

https://www.revisor.mn.gov/static/office/pubs/2020CourtOpinions.pdf#page=1

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Statute Citation	Issue	Court Opinion
60A.41, para. (a)	Meaning of the term "insured" for subrogation actions (*ambiguity*)	*Depositors Insurance Company v. Dollansky*, 919 N.W.2d 684 (Minn. 2018) (A17-0631)
169A.63, subd. 9, para. (d)	Are the statutory DWI vehicle forfeiture procedure requirements unconstitutional under the Due Process Clause? (*constitutionality*)	*Olson v. One 1999 Lexus*, 924 N.W.2d 594 (Minn. 2019) (A17-1083)
256.98, subd. 1	Whether for the crime of wrongfully obtaining public assistance the state must prove the defendant intended to defeat the purpose of every assistance program listed or just the programs in which the defendant participated (*ambiguity*)	*State v. Malik*, 2020 WL 1845964 (Minn. Ct. App. 2020) (A18-2003)
259.10, subd. 1	Meaning of the phrase "both parents" for the notice requirement for name changes of minors (*ambiguity*)	*Matter of J. M. M. o/b/o Minors for a Change of Name*, 937 N.W.2d 743 (Minn. 2020) (A17-1730)
260C.301, subd.1, para. (b), clause (6)	Meaning of the phrase "in the parent's care" in relation to egregious harm and termination of parental rights (*ambiguity*)	*In the Matter of the Welfare of K. L. W.,* 924 N.W.2d 649 (Minn. Ct. App. 2019) (A18-1255)
290.068	Whether the reference to a definition for the corporate R&D credit in the Internal Revenue Code" incorporates more than one paragraph of that statute (*ambiguity*)	*General Mills, Inc. v. Commissioner of Revenue*, 931 N.W.2d 791 (Minn. 2019) (A18-1660)
327A.01, subd. 8	Meaning of the term "warranty date" for statutory warranties for housing (*ambiguity*)	*Village Lofts at St. Anthony Falls Assoc. v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020) (A18-0256)
473.848, subd. 1	Meaning of the phrase "the waste has been certified" in relation to the Metropolitan Landfill Abatement Act (*ambiguity*)	*BFI Waste Systems of North America, LLC v. Bishop*, 927 N.W.2d 314 (Minn. Ct. App. 2019) (A18-0963)

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500.24, subd. 2, para. (g)	Meaning of the phrase "capable of being used for farming" in relation to the right of first refusal for agricultural land (*ambiguity)*	*Rabbe v. Farmers State Bank of Trimont*, 2019 WL 2416036 (Minn. Ct. App. 2019) (A18-1845)
504B.441	Meaning of the phrase "complaint of a violation" for residential tenant eviction (*ambiguity*)	*Central Housing Associates, LP v. Olson*, 929 N.W.2d 398 (Minn. 2019) (A17-1286)
590.11, subd. 1, para. (b), clause (1), item (ii)	Meaning of the term "consistent with innocence" for the Minnesota Imprisonment and Exoneration Remedies Act (*ambiguity*)	*Buhl v. State*, 922 N.W.2d 435 (Minn. Ct. App. 2019) (A18-0245)
609.27, subd. 1, clause (4)	Is the criminal coercion statute facially overbroad in violation of the First Amendment? (*constitutionality*)	*State v. Jorgenson*, 946 N.W.2d 596 (Minn. 2020) (A19-0323)
609.746, subd. 1, para. (a)	Does the intent element of the crime of interference with privacy apply to all elements of the crime? (*ambiguity*)	*State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)
609.749, subd. 2, clause (4)	Is the criminal stalking-by-telephone statute facially overbroad in violation of the First Amendment? (*constitutionality*)	*State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)
609.749, subd. 2, clause (6), and 609.795, subd. 1, clause (3)	Are the stalking-by-mail statute and mail-harassment statute facially overbroad in violation of the First Amendment? (*constitutionality*)	*In the Matter of Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019) (A17-1161)

Minnesota Statutes, section 60A.41, paragraph (a)

Subject: Insurance; subrogation actions

Court Opinion: *Depositors Insurance Company v. Dollansky*, 919 N.W.2d 684 (Minn. 2018) (A17-0631)

Applicable text of section 60A.41, paragraph (a):

(a) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not proceed against its insured in a subrogation action where the loss was caused by the nonintentional acts of the insured.

Statutory Issue:

What is the meaning of the term "insured"?

Facts:

Craig Dollansky rented an RV from Karavan Trailers, Inc. (Karavan). While he was driving the RV in Nebraska, it caught fire, causing $204,895.05 in damage. Pursuant to the terms of the rental agreement, Dollansky had obtained an extension of his personal vehicle insurance for the RV and was responsible for all damages. Karavan submitted a claim for the full amount of damages to Dollansky's insurance company, which paid just $4,500, the amount of Dollansky's deductible less the $500 deposit he paid to Karavan for the RV.

Karavan submitted a claim to its own insurer, Depositors Insurance Company (Depositors). Depositors paid the full amount of damages to Karavan and filed a complaint against Dollansky, claiming the insurer was subrogated to Karavan's rights to the full amount.

The parties filed cross motions for summary judgment. Dollansky argued that section 60A.41, paragraph (a), barred the subrogation action because he was an "insured" under Karavan's policy with Depositors. Depositors argued Dollansky was not considered an insured because he had not purchased a policy from them.

The district court granted summary judgment in favor of Dollansky, finding him to be an insured under the policy, which defined "insured" as including "[a]nyone else while using with your permission a covered 'auto' you own, hire or borrow" because Karavan allowed him to rent the RV. Depositors appealed, and the court of appeals affirmed the district court's decision. Depositors petitioned the supreme court, which granted review.

Discussion:

Because "insured" is not defined in statute, the court looked to dictionary definitions to determine the common and ordinary meaning of the term. Three varied definitions led the court to find two reasonable interpretations of "insured": (1) any party covered by some part of the insurance policy; or (2) any party who is covered by the specific section of the policy that applies to the particular loss at issue. Thus, the court found that the term is ambiguous.

The court did not find any useful legislative history to aid in its interpretation but did find "insured" defined elsewhere in chapter 60A as "any named insured, additional insured, or insured under an insurance policy." Although not directly on point, the court found this definition to be consistent with the first reasonable interpretation.

Additionally, the court looked to public policy considerations to aid in its interpretation of the ambiguous term. Citing the great disparity in bargaining powers between insurance companies and insureds and courts' general tendency to protect insureds' rights, the court concluded that the term "insured" should include any person who has coverage under the insurance policy to protect the rights of insureds against subrogation. Based on this analysis, the court concluded that "insured" encompasses any party covered by some part of the insurance policy at issue.

Applying its definition of "insured" to the facts of the case, the court determined that because Dollansky was an insured covered under at least part of Karavan's RV policy, Depositors was barred from bringing a subrogation suit against him according to section 60A.41, paragraph (a).

The dissent relied on pre-statute case law to defend its conclusion that "insured" means any party covered by a specific section of the policy that applies to the particular loss at issue. The majority opinion rejected these pre-statute cases as inapplicable to the case at hand.

The court did not recommend legislative action to address the ambiguity of the term. The legislature may consider clarifying the meaning of "insured" in section 60A.41, paragraph (a).

Minnesota Statutes, section 169A.63, subdivision 9, paragraph (d)

Subject: Vehicle Forfeiture; procedural due process

Court Opinion: *Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461*, 924 N.W.2d 594 (Minn. 2019) (A17-1083)

Applicable text of section 169A.63,[1] subdivision 9, paragraph (d):

A judicial determination under this subdivision must be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant. If a related criminal proceeding is pending, the hearing shall not be held until the conclusion of the criminal proceedings. The district court administrator shall schedule the hearing as soon as practicable after the conclusion of the criminal prosecution.

Statutory Issue:

Do statutory procedural requirements for judicial hearings related to vehicle forfeiture for a driving-while-impaired (DWI) offense violate the procedural due process rights of a purportedly innocent vehicle owner whose forfeiture hearing was delayed 18 months after her vehicle was seized?

Facts:

Defendant Olson was arrested for a DWI on August 16, 2015. At the time of her arrest, defendant already had three prior DWI convictions within the past ten years. A person who drives while impaired with three DWI convictions in the past ten years generally may be charged with a first-degree DWI offense. A first-degree DWI offense is a "designated offense" under the DWI vehicle forfeiture statute, section 169A.63, subdivision 1, paragraph (e), subjecting the vehicle defendant was driving at the time she was arrested to forfeiture. Accordingly, the police seized the vehicle incident to defendant's arrest.

The seizure of a vehicle results in administrative forfeiture without a judicial hearing unless an individual with an interest in the vehicle contests the forfeiture by filing a demand for judicial determination of the forfeiture (a civil lawsuit against the vehicle). Once a judicial determination of the forfeiture is filed, the proceedings are governed by section 169A.63, subdivision 9, paragraph (d), which requires that the hearing for the "judicial determination . . . be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant." This deadline, however, is subject to the exception at issue: the hearing "shall not be held until the conclusion of the criminal proceedings" underlying the seizure. "In other words, the DWI forfeiture statute bars any judicial hearing on the seizure or forfeiture of a vehicle until the criminal proceedings against the driver have concluded." Because the seizure of a vehicle deprives the owner of the vehicle of their private property, section 169A.63 contains several provisions intended to alleviate potential hardship. One provision, contained in subdivision 7, paragraph (d), provides the "innocent owner" defense. Under the innocent owner defense, a vehicle can be recovered if a petitioning owner can "demonstrate by clear and convincing evidence that the petitioning owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the petitioning owner took reasonable steps to prevent use of the vehicle by the offender."

[1] Section 169A.63 was amended by adding a subdivision in Laws 2019, First Special Session chapter 5, article 6, section 4, following the decision in *Olson*. *Olson*, 924 N.W.2d 594 (filed on March 13, 2019). That amendment does not resolve the constitutional issue this case summary explores.

On October 7, 2015, pursuant to section 169A.63, subdivision 9, paragraph (d), defendant's mother filed a timely demand for judicial determination of the vehicle's forfeiture. Defendant's mother was the sole registered owner of the vehicle seized pursuant to defendant's arrest. Defendant's mother asserted an innocent-owner defense.

Defendant was adjudicated guilty of first-degree DWI on February 13, 2017. Because section 169A.63, subdivision 9, paragraph (d), required the forfeiture hearing for defendant's mother to wait until defendant's criminal proceedings concluded, defendant's mother did not receive a forfeiture hearing until February 23, 2017 — 18 months after her vehicle had been seized.

Defendant's mother moved for summary judgment at the forfeiture hearing. She argued that the forfeiture statute violated procedural due process by failing to provide prompt review of the vehicle's seizure, depriving her of a property interest without an opportunity to be heard "at a meaningful time and in a meaningful way."

Discussion:

To analyze defendant's mother's procedural due process claim, the court applied the *Mathews*[2] framework. Under *Mathews*, the court balances three factors: (1) private interests; (2) government interests, "including the function involved and the fiscal and administrative burdens that [any] additional . . . or substitute procedural requirements would entail"; and (3) "the risk of an erroneous deprivation of [private interests] through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards."

Regarding the first *Mathews* factor, the court found defendant's mother had a private interest in the seized vehicle due to its economic value. Even though defendant's mother's driver's license was canceled, she could still sell, lease, or use the vehicle as collateral to obtain financial benefits. Further, she could not "recoup the loss of the economic value of her vehicle during the 18 months of seizure even if she was eventually deemed an innocent owner."

The court found the second *Mathews* factor regarding governmental interests inconclusive. The state's interest in keeping drunk drivers off the road applied, even though defendant's mother was not the person driving while impaired, because the legislature has recognized that her possible failure to prevent defendant from driving under the influence was important.[3] Nonetheless, because the vehicle was seized when defendant was driving, not defendant's mother, the state's interest in keeping repeat DWI offenders off the road was diminished. Additionally, the court found the other government interest — its fiscal and administrative interest in avoiding numerous prompt post-seizure hearings — unpersuasive. According to the court, "[b]ecause government seizure of a vehicle owned by one individual and driven by another individual is a subset of all designated DWI seizures, requiring a prompt [and limited] hearing in innocent-owner cases poses less of a burden on courts and prosecutors."

The court found the third *Mathews* factor relating to the risk of erroneous deprivation critical. Whether the state could lawfully take the vehicle from defendant's mother under section 169A.63 requires a substantive inquiry into whether she was an innocent owner. This inquiry received no consideration before the vehicle's seizure. There was no way for defendant's mother to even argue that she was an innocent owner before a district court until the criminal charges

[2] *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

[3] See section 169A.63, subdivision 7, paragraph (d), requiring purportedly innocent owners who are family or household members of the offender to show they either did not know their vehicle would be used unlawfully or that they "took reasonable steps" to prevent the use of the vehicle by the offender.

against defendant were resolved. Consequently, the court found there was a significant risk of erroneous deprivation for a purportedly innocent owner like defendant's mother.

Ultimately, the balance of interests under *Mathews* "demonstrated that defendant's mother right to procedural due process was denied as a result of the 18-month delay between the seizure of her [vehicle] and the hearing on her demand for judicial determination." The court, therefore, held that section 169A.63 was unconstitutional as applied to defendant's mother.

The court did not suggest a remedy for the unconstitutional application of section 169A.63. The court did note, however, that "due process urgently requires a *prompt* hearing on innocent-owner defenses under the DWI forfeiture statute."[4] It seems possible a similar situation to this case could arise if the statute is unamended. Accordingly, the legislature may consider amending section 169A.63 to require a prompt hearing, within a short and definite time period, on innocent-owner defenses, notwithstanding the general requirement under subdivision 9, paragraph (d), that judicial hearings wait until a related criminal proceeding concludes.

[4] *Olson*, 924 N.W.2d at 613 (emphasis added).

Minnesota Statutes, section 256.98, subdivision 1[5]

Subject: Crimes; wrongfully obtaining public assistance

Court Opinion: *State v. Malik*, 2020 WL 1845964 (Minn. Ct. App. 2020), *review denied* June 30, 2020 (A18-2003)

Applicable text of section 256.98, subdivision 1:

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, chapters 256B, 256D, 256J, 256K, or 256L, and child care assistance programs, is guilty of theft and shall be sentenced under section 609.52, subdivision 3, clauses (1) to (5):

(1) obtains or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of any material fact, or by impersonation or other fraudulent device, assistance or the continued receipt of assistance, to include child care assistance or vouchers produced according to sections 145.891 to 145.897 and MinnesotaCare services according to sections 256.9365, 256.94, and 256L.01 to 256L.15, to which the person is not entitled or assistance greater than that to which the person is entitled;

Statutory issue:

In prosecuting the crime of wrongfully obtaining public assistance, must the state prove the defendant intended to defeat the purpose of *every* assistance program listed in statute or *just the programs in which the defendant participated*?

Facts:

Nadeem Malik applied for Supplemental Nutrition Assistance Program (SNAP) and health care assistance benefits through Hennepin County in August 2012 after losing his job at EOS Metals. He reported no income and that he was not self-employed. He was approved to receive the benefits and continued recertifying his eligibility through July 2014. In December 2014, the county terminated Malik's public assistance benefits after learning he had made nearly $950,000 in stock trades while receiving benefits.

A fraud investigation found that Malik was the sole owner of a business that sold scrap metal and between August 2012 and March 2015, a period of time that overlapped with his receipt of benefits, over $1.2 million in deposits were made to various personal and business bank accounts controlled by Malik. The investigation concluded over $190,000 was transferred from the business account into Malik's personal account over that period for an average income of $6,558 per month, far above the eligibility requirements to receive public assistance benefits. The fraud investigation also discovered that stock gains, a vehicle purchase, donations, and a $20,000 trip to Mecca, Saudi Arabia, were all made while Malik was receiving benefits.

On January 31, 2018, Malik was charged with theft by wrongfully obtaining public assistance in violation of section 256.98, subdivision 1, clause (1). Following a jury trial, Malik was convicted, sentenced to ten years of probation, and ordered to pay restitution of $59,242 to the county.

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[5] This case addresses the 2012 version of section 256.98, subdivision 1. This subdivision has been amended twice since 2012 and now includes additional programs from which a defendant could unlawfully obtain assistance, but the amendments did not affect the disputed language in this case. See Laws 2015, chapter 78, article 4, section 51; and Laws 2019, First Special Session chapter 9, article 2, section 108.

Malik appealed his conviction on several grounds, including that the state had failed to prove he acted with intent to defeat the purposes of *every* public assistance program listed in section 256.98, subdivision 1, which he argued was an element of the statute.

Discussion:

Malik argued the conjunction "and" in the introductory paragraph of section 256.98, subdivision 1, requires the state to prove he acted with the intent to defeat the purposes of every public assistance program listed—seven different programs, including some that no longer exist—regardless of the form of public assistance he actually received. The state argued this paragraph was a mere introduction and that clauses (1) to (3) constitute the actual elements of the crime.

Based on these arguments, the court concluded the statute is ambiguous because it can have two reasonable meanings: (1) the subdivision requires a specific intent to defeat the purposes of all programs; or (2) the subdivision, as a whole, requires intent to receive assistance to which the defendant knew they were not entitled.

To solve the ambiguity, the court looked to two canons of construction.

First, the court looed to section 645.17, clause (4), and examined prior judicial construction of the statute. The court noted that past cases did not address the "and" in question here but interpreted the element of intent to defraud more generally as "knowingly obtaining or attempting to obtain assistance to which one is not entitled by means of a willfully false statement or by intentional concealment of the material fact or by other fraudulent device."

Because section 256.98, subdivision 1, was amended several times since those cases in 1984 and 1992, the court next looked to the historical amendments of the statute to understand the legislature's overall intent. The 1992 version did not have the "and" in dispute. In 1997, the legislature added "or" to the list of assistance programs and added the phrase, "or all of these sections." In 1999, the legislature changed the "or" to the now-disputed "and" and deleted "or all of these sections." Additional changes since 1999 have not altered the disputed language.

Despite the language changes, the supreme court's interpretation of the statute has endured, and the interpretation is that the element of intent is satisfied when a defendant intends to obtain public assistance to which they knew they were not entitled. Malik's reading of the statute would lead to the extreme result of requiring the state to prove the purposes of assistance programs that no longer exist but are still listed in the statute, such as the Aid to Families with Dependent Children program, and that the defendant intended to defeat the purposes of those nonexistent programs. If the legislature had intended that result, it had ample opportunity to clarify its intent in light of consistent competing judicial interpretations. That it did not do so led the court to believe the legislature did not intend Malik's interpretation.

The court therefore affirmed Malik's conviction, holding that the evidence was sufficient to support the verdict "[b]ecause the state was not required to prove that Malik intended to defeat the purposes of all listed public programs, but rather only the programs identified in [clause] (1) in which he participated."

The court did not suggest a remedy to the statutory deficiency, but the legislature may consider clarifying whether the intent element of section 256.98, subdivision 1, applies to all listed assistance programs or just those programs in which the defendant participated.

Minnesota Statutes, section 259.10, subdivision 1

Subject: Public welfare; name changes

Court Opinion: *Matter of J. M. M. o/b/o Minors for a Change of Name,* 937 N.W.2d 743 (Minn. 2020) (A17-1730)

Applicable text of section 259.10, subdivision 1:

[…] no minor child's name may be changed without both parents having notice of the pending of the application for change of name, whenever practicable, as determined by the court.

Statutory Issue:

What is the meaning of the phrase "both parents" — does it refer to biological parents or legal parents?

Facts:

J.M.M. is the mother of three children; she was unmarried when her children were conceived and born. No person has ever been adjudicated as the legal father of any of the children. J.M.M. chose the names for the children on their birth certificates. In 2015, J.M.M. applied to change the names of all three of her minor children. J.M.M. wrote on the filing that there was "no other legal parent" and checked the box on the form next to the statement, "The non-applicant parent is not known and his/her/their name(s) is/are not shown on the birth certificate."

Later, on a phone call with the county law clerk, J.M.M. said she knew the identity of the biological father but did not know his current whereabouts. The district court then informed J.M.M. that the petitions would be dismissed if J.M.M. failed to provide proof that the father had been served notice of the hearing. J.M.M.'s attorney responded and asserted that the children did not have another legal parent and that notice was only due "whenever practicable, as determined by the court." The attorney argued that notice was impracticable and submitted an affidavit from J.M.M. detailing threats of violence from the father.

The district court dismissed the petitions, finding that the phrase "both parents" in the statute "plainly and unambiguously refers to the biological father and biological mother of the child." The district court also stated that notice was not impracticable.

The court of appeals reversed, finding that the phrase "both parents" was ambiguous and "for purposes of the Name-Change Act, notice is required to be given to a biological father only if he has a parent-child relationship under the Minnesota Parentage Act." The case was remanded to determine whether the biological father met this standard.

During evidentiary hearings, J.M.M. testified that all three children shared a biological father, D.G. The district court found that D.G. had a legally recognized parent-child relationship with the two eldest children and was due notice. The district court also found that notice was practicable because J.M.M. knew where D.G. lived and could serve notice.

The court of appeals affirmed on both issues. The supreme court granted review.

Discussion:

The court began by recognizing that the phrase "both parents" is ambiguous and is susceptible to two reasonable dictionary definitions: biological parents or legal parents. The court also examined the context, but the word "both" and the fact that "parents" is plural are not

particularly helpful. Biological parents and legal parents alike can each die, have their parental rights terminated, or give up their children for adoption.

The court employed two canons of construction. First, the court looked to legislative intent. Second, the court applied the canon of *in pari materia*.

Looking to the full text of the 1951 amendment to section 259.10,[6] which, among other changes, added the phrase "both parents" to the statute, the court found that the phrase means legal parents, not biological parents. The amendment did away with the right of a man to change his last name and concurrently change the last names of his wife and children. The amendment continued a man's right to apply to change his name and those of his minor children, but it allowed him to change his wife's name only "if she joins in the application." Additionally, it provided that no minor child's name may be changed without prior notice to both parents. The court asserted that "the evident problem to be remedied in 1951 was the unilateral power of the man (as husband and legal father) to change his wife's name without her consent and their children's names without notice to her. The evident object of the amendment was to recognize the rights of a female spouse: the right to control her own name and to have a say in the names of her children." This reasoning supported the conclusion that the phrase "both parents" means legal parents.

Next, the court used the canon of *in pari materia* to turn to other statutes with common purposes and subject matter, reasoning that the statutes could be construed together to determine the meaning of ambiguous language. First, the court examined section 144.215, the birth registration statute. The statute requires certain information to be provided at a child's birth but allows for an administrative rule to be adopted to govern the names of the parent entered on the birth record. According to Minnesota Rules, part 4601.0600, subpart 5, if there is neither a statutory recognition of parentage, nor a statutory presumption of paternity, then "the father's name must not be entered on the birth record." J.M.M. gave birth to her children as an unmarried mother and there was no recognition of parentage for any child. There was also no presumption of paternity that applied at the time of any of the children's births. J.M.M. had the right at the time of each child's birth, as their biological mother, to decide whether D.G.'s name should appear on each birth record. Two of J.M.M.'s three children were born in Wisconsin, where the birth registration statute is substantially similar. When a mother is "not married at any time from the conception to the birth" of a child, "no name of any alleged father of the [child] may be entered as the father on the birth certificate."[7]

The court found that J.M.M. lawfully chose not to list the biological father at birth. D.G. has not attempted, in either state, to pursue the statutory process to alter initial parentage. J.M.M. was the only person legally entitled to *give* the children their names and therefore logically should be the only person who can *change* their names. The court considered that it would be odd to give a biological father greater right in the name-change process than in the initial naming process. This statutory structure also supported the determination that the phrase "both parents" means legal parents.

The court also looked to the Parentage Act, sections 257.51 through 257.75. The Parentage Act provides that biology is not enough to be a parent, but that a "parent and child relationship" must exist. This relationship is defined as "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." This was the final support the court found for its conclusion that the phrase "both parents" means legal parents.

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[6] See Laws 1951, chapter 535, section 1.

[7] See Wisconsin Statutes, section 69.14.

Finally, the court set aside arguments that the definition of "parent" is best supplied by the Adoption Act in chapter 259 (which, if applicable, would only make D.G. a "putative father" and, even so, D.G. may be "considered to have abandoned the child") and found that section 259.10, as interpreted, does not violate the Due Process Clause.

The dissent argued that a plain-language reading of the phrase "both parents" was sufficient and that the result was an unambiguous statute where, at a minimum, the phrase includes the biological father.

The court did not suggest a legislative remedy, but the legislature may consider amending section 259.10, subdivision 1, to provide that the phrase "both parents" means either legal parents or biological parents.

Minnesota Statutes, section 260C.301, subdivision 1, clause (b), item (6)

Subject: Termination of parental rights; egregious harm statute

Court Opinion: *In the Matter of the Welfare of K. L. W.*, 924 N.W.2d 649 (Minn. Ct. App. 2019), *review denied* March 8, 2019 (A18-1255)

Applicable text of section 260C.301, subdivision 1, clause (b), item (6):

The juvenile court may upon petition, terminate all rights of a parent to a child:
[...]
(b) if it finds that one or more of the following conditions exist:
[...]
(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

Statutory Issue:

What is the meaning of the phrase "in the parent's care?"

Facts:

K.L.W. was criminally charged with sexually abusing his cousin's daughter, M.B. He entered an Alford plea[8] to second-degree criminal sexual conduct for having sexual contact with M.B. while she was under the age of 13. He received a stay of adjudication and 25 years of probation. Since K.L.W. was also a parent, Hennepin County filed a petition to terminate his parental rights. After a trial, the district court found that K.L.W. had inflicted egregious harm on M.B. by sexually abusing her while she was "in the parent's care" and on this basis, the district court terminated K.L.W.'s parental rights. K.L.W. appealed the district court's opinion.

Discussion:

K.L.W. argued that section 260C.31, subdivision 1, clause (b), item (6), does not apply to his conduct with M.B. He asserted that for the district court to terminate his parental rights under the egregious harm statute, "a child [must have] experienced egregious harm in the parent's care." K.L.W. claimed that M.B. was not in his care when he sexually abused her and argued that the district court wrongfully terminated his parental rights.

The court of appeals concluded that the phrase "in the parent's care" in section 260C.301, subdivision 1, clause (b), item (6), was ambiguous. The court turned to *The American Heritage Dictionary of the English Language* to define "care" as "[w]atchful oversight; charge or supervision." The court interpreted "parent" as referring to the subject of the termination proceedings. In the phrase "in the parent's care," a parent must not be the parent of the child who was egregiously harmed. The court cited its opinion in a recent case that the "statute does

[8] An Alford plea is when a defendant tenders a guilty plea while maintaining innocence. In an Alford plea, the defendant must admit that he has reviewed the state's evidence, a reasonable jury could find him guilty, and he wants to take advantage of a plea offer that has been made. The court has discretion as to whether to accept this type of plea. See *North Carolina v. Alford,* 400 U.S. 25 (1970); *State v. Theis*, 742 N.W.2d 643 (Minn. 2007); *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977); and Minnesota Rules of Criminal Procedure, Rule 15 and Appendix G to Rule 15.

not require that the parent has inflicted egregious harm on his own child, but rather, that a child has experienced egregious harm in the parent's care."

The court applied this interpretation of the language to the facts of the case to determine whether M.B. was in K.L.W.'s care when he egregiously harmed her. M.B.'s mother testified that K.L.W. "would come and help with [her children] because [she] was going through a tough time." Similarly, K.L.W. stated in his psychosexual assessment that he helped raise M.B. and her siblings and the children were often in his sole care. The court concluded that there was clear and convincing evidence that M.B. was in K.L.W.'s care when he egregiously harmed her. Therefore, the court held that the district court did not abuse its discretion in terminating K.L.W.'s parental rights based on the egregious harm statute.

The court did not suggest a legislative remedy. The legislature may consider amending section 260C.301, subdivision 1, clause (b), item (6), to eliminate the ambiguity in the phrase "in the parent's care." To adopt the court's interpretation, the legislature could make clear that the statute at issue applies to (1) *any* child who has experienced egregious harm (2) in the care of *any* parent who is the subject of a termination of parental rights petition.

Minnesota Statutes, section 290.068, subdivision 2, paragraph (c)

Subject: Taxation; corporate research and development credit

Court Opinion: *General Mills, Inc. v. Commissioner of Revenue*, 931 N.W.2d 791 (Minn. 2019) (A18-1660)[9]

Applicable text of section 290.068, subdivision 2, paragraph (c):[10]

(c) "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code, except that the average annual gross receipts and aggregate gross receipts must be calculated using Minnesota sales or receipts under section 290.191 and the definitions contained in paragraphs (a) and (b) shall apply.

Statutory Issue:

Does the reference to a definition in "section 41(c) of the Internal Revenue Code" incorporate only the explicit definition in paragraph (1) of that statute, or does it also incorporate other related paragraphs of that statute, specifically paragraph (2)?

Facts:

General Mills is a Delaware corporation with its principal research and development (R&D) facilities located in Minnesota. Minnesota allows an R&D tax credit determined by subtracting a base amount of qualified research expenses (QREs) from the QREs for the taxable year. If a company invests an increased amount in research in a particular tax year, then its QREs for that taxable year will likely be greater than its base amount and the company will be entitled to a tax credit. The credit is calculated as the amount equal to ten percent of the first $2,000,000 of the excess of: QREs for the taxable year, minus the base amount. There is an additional credit equal to four percent of all of such excess expenses over the first $2,000,000 of excess.

The calculation of a taxpayer's base amount is important. Minnesota's R&D tax credit incorporates by reference the definition in section 41(c) of the Internal Revenue Code (IRC). Determining the base amount is a complicated calculation that begins with a taxpayer determining its fixed base percentage. The fixed base percentage equals aggregate QREs for the years 1984 through 1988 divided by the aggregate gross receipts for the same years. The fixed base percentage is capped at 16 percent.

The base amount equals the fixed base percentage multiplied by the average annual gross receipts of the taxpayer for the four taxable years prior to the taxable year in which the credit is claimed. This provides a baseline of QREs to compare against QREs in the applicable taxable year.

Section 41(c) of the IRC includes a definition of "base amount" in paragraph (1) and a minimum base amount limitation that sets a floor for the base amount at 50 percent of the QREs for the

[9] On the same day as the opinion in this case (*General Mills*), the supreme court also decided the case *International Business Machines Corporation v. Commissioner of Revenue* 931 N.W.2d 814 (Minn. 2019) (A18-1740) (*IBM*). The court stated that *IBM* "presents the same two issues raised and decided in *General Mills*" and that the reasoning from *General Mills* governs the decision in *IBM*.

[10] The legislature amended section 290.068, subdivision 2, paragraph (c), in 2017 to require that both the numerator and denominator of the Minnesota fixed base percentage be limited to Minnesota gross receipts. See Laws 2017, First Special Session chapter 1, article 13, section 10. That amendment may have forestalled the taxpayer's claim in this case, but doesn't resolve the statutory ambiguity the court found.

credit year in paragraph (2). This minimum base amount could reduce the credit otherwise allowed.

For its 2011 tax year, General Mills claimed an R&D tax credit in Minnesota of $1,112,772. In 2015, General Mills filed an amended 2011 return. General Mills made two important changes on the amended return: (1) the original return used the federal minimum base amount and the amended return did not; and (2) on its initial return, General Mills used Minnesota aggregate gross receipts in the formula, and on its amended return General Mills used federal aggregate gross receipts.[11] These changes allowed General Mills to request a refund of almost $1,000,000.

The commissioner of revenue denied the refund and the company appealed to the Minnesota Tax Court. The tax court found that the federal minimum base amount is incorporated by reference into the Minnesota R&D tax credit statute. However, the court also found that aggregate gross receipts meant federal, rather than Minnesota, aggregate gross receipts. Under this reading, General Mills was not due an additional refund. General Mills appealed the minimum base question and the commissioner appealed the aggregate gross receipts question.

Discussion:

Regarding the base amount, the question before the court was whether both paragraphs (1) and (2) in the federal statute are included in the reference to section 41(c) of the Internal Revenue Code. Essentially, the question was whether the federal minimum base amount under paragraph (2) was included in the reference, although only paragraph (1) could truly be considered a definition.

The court found that the "language . . . is ambiguous because both interpretations have a reasonable basis in the statutory text." General Mills' interpretation was reasonable because the phrase "as defined in" could refer narrowly only to paragraph (1), which expressly provides what "base amount" means and is the only paragraph that explicitly defines the term. Alternately, the commissioner's interpretation made sense because the legislature simply said "41(c)" and did not further limit the incorporation by reference. The legislature has demonstrated that it knows how to limit the incorporation of federal statutes elsewhere in the same section—section 290.068, subdivision 4—and did not do so here.

The court turned to legislative history and relevant canons of construction and concluded that the more persuasive interpretation is that the legislature intended to incorporate the minimum base amount provision in paragraph (2).

First, the court found that the incorporation of all paragraphs of IRC section 41(c) are necessary for calculating the base amount under section 290.068. General Mills argued that these provisions are not sufficiently related to the calculation of the base amount and should not be incorporated.

Next, the court examined the legislative history at the time Minnesota first incorporated the federal concept of a base amount into the state tax credit.[12] The concept at the time of incorporation was less complicated than it currently is, but still had a minimum limitation of 50 percent of QREs limitation. According to the court, this clarified that the legislature intended to incorporate the minimum base amount in paragraph (2); therefore, to calculate the Minnesota R&D tax credit, the federal minimum base amount limitation applies.

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[11] See footnote 10 for the amendment to section 290.068, subdivision 2, that disallowed the use of federal gross receipts in the formula.

[12] See Laws 1982, Third Special Session chapter 2, article 3, section 6.

The court also found that the incorporation of the term "aggregate gross receipts" through the term "base amount" referred to federal aggregate gross receipts and not Minnesota gross receipts.[13]

The court did not suggest a remedy, but the legislature may consider being more specific when incorporating law by reference and explicitly state whether it is incorporating, or not incorporating, all parts of a section as referenced.

[13] See footnote 10 for the amendment to section 290.068, subdivision 2, that disallowed the use of federal gross receipts in the formula.

Minnesota Statutes, section 327A.01, subdivision 8

Subject: Real estate; statutory warranties

Court Opinion: *Village Lofts at St. Anthony Falls Association v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020) (A18-0256)

Applicable text of section 327A.01, subdivision 8:

"Warranty date" means the date from and after which the statutory warranties provided in section 327A.02 shall be effective, and is the earliest of:
(a) the date of the initial vendee's first occupancy of the dwelling; or
(b) the date on which the initial vendee takes legal or equitable title in the dwelling.
In the case of a home improvement, the warranty date is the date on which the home improvement work was completed.

Statutory Issue:

What is the meaning of the term "warranty date" for condominiums — does the warranty attach when the building is completed or when each individual unit is sold or occupied?

Facts:

In April 2001, developer Housing Partners hired general contractor Kraus-Anderson to build the first of a two-building condominium complex in Minneapolis. Building A was completed September 2002, and the first unit was sold in October 2002. Building B was completed under a separate contract between Housing Partners and Kraus-Anderson and was ready for occupancy in October 2004.

In January 2014, the Village Lofts at St. Anthony Falls (Village Lofts) condominium association hired an engineering consulting firm to investigate a water leak in a unit in Building A. The source of the leak was determined to be a broken pipe that was part of the building's HVAC system. Similar defects were found throughout Building A. Village Lofts notified Housing Partners and Kraus-Anderson of the defects in May 2015. By the end of June 2015, similar defects were found in Building B's HVAC system as well. Village Lofts paid to repair the defective pipes throughout both buildings.

In August 2015, Village Lofts sued Housing Partners, Kraus-Anderson, and a subcontractor for common-law negligence, breach of implied warranty, and breach of contract. The association also claimed Housing Partners and Kraus-Anderson breached warranties provided in statute. Finally, Village Lofts also asserted common-law negligence claims against three subcontractors on the development project.

The district court granted summary judgment for the defendants on all claims, concluding the claims were barred by the ten-year statute of repose under section 541.051. The district court determined each building was a separate improvement to the real property and the ten-year limitation began to run for each building when the first occupant took possession of a unit, 2002 for Building A and 2004 for Building B. Because notice of the defects was provided in 2015—more than ten years after first occupancy for both buildings—all claims were barred.

The court of appeals affirmed dismissal of the association's common-law claims but reversed the dismissal of the statutory warranty claims, reasoning that each condominium unit is entitled to its own warranty date.

The supreme court granted review to Housing Partners and Kraus-Anderson on the statutory warranty claims and cross-review to Village Lofts on its common-law claims.

Discussion:

The court first addressed whether and how the warranties provided under chapter 327A to purchasers of new homes might apply to condominiums as the chapter lacks any specific provisions related to condominiums buildings or condominium units. Chapter 327A establishes warranties that attach upon the sale of a completed dwelling, which is defined as a "new building, not previously occupied, constructed for the purpose of habitation." Specifically, under section 327A.01, subdivision 8, the "warranty date" attaches when the initial vendee first occupies or takes title to the dwelling.

Housing Partners and Kraus-Anderson argued the definition of "warranty date" contemplates a single date attaching on the first occupancy of the building—not each unit—because a "dwelling" is a "building." Village Lofts argued that because the warranty date depends on when the "initial vendee" first occupies the dwelling, it must mean each unit because "initial vendee" is defined as a "person who first contracts to purchase a dwelling from a vendor for the purpose of habitation," and no single person contracted to purchase all of Building A or B, just individual units within them. Based on these arguments, the court concluded the definition of "warranty date" is ambiguous because it is susceptible to two reasonable interpretations.

The court turned to three canons of construction to determine meaning of the statute and the legislature's intent.

First, the court looked to textual clues within chapter 327A and other relevant statutes to see how they support each interpretation. The court found that although the legislature's use of the word "building" in the definition of "dwelling" did not eliminate the ambiguity, the use supports the interpretation that "dwelling" encompasses an entire building, not individual parts of a building.

Next, the court considered the purpose of chapter 327A, which is to provide consumer protections against major construction defects by establishing warranties that apply to "every sale of a completed dwelling." This focus lends weight to the interpretation that each unit should have its own warranty date, but the court also noted that certain limitations on those consumer protections also exist, including giving the vendor and contractors the right to inspect and repair a defect and the presence of statutes of limitation and repose. Those limitations led the court to avoid finding the legislature intended that each unit should be entitled to its own warranty date.

Finally, the court relied on the canon of construction, found in section 645.26, subdivision 1, that special provisions should control over the general if the two cannot be construed so that effect may be given to both. The court looked to harmonize the warranties guaranteed under chapter 327A and the statute of repose in section 541.051. Originally, section 541.051 did not apply to chapter 327A, but that left builders vulnerable to open-ended post-construction liability such that insurers began denying insurance to residential builders. In 2004, the legislature adopted an amendment specifically tying the statute of repose to the warranties under chapter 327A, limiting that exposure to ten years. The court found that if the warranty date runs with each unit and units went unsold, it would open the builder up to the exact kind of open-ended liability the legislature sought to eliminate in 2004.

Additionally, the court noted that there are unit-specific warranties available under chapter 515B, the Minnesota Common Interest Ownership Act, further indicating the legislature did not intend to create unit-specific warranties under chapter 327A.

Thus, the court held that "the legislature intended that there be a single warranty date for a condominium building rather than different warranty dates for each unit" under chapter 327A. Therefore, the court of appeals' decision that warranty dates should be determined on a unit-by-unit basis was reversed.

The court went on to conclude that each building was a separate improvement to the real property for purposes of the statute of repose, thereby barring Village Lofts' common-law claims because the leaking pipes in each building were discovered more than ten years after their respective completion. The district court and court of appeals decisions on these claims were affirmed.

The court did not suggest how the legislature could remedy to the statutory deficiency, but the legislature may consider clarifying the application of the term "warranty date" to condominium buildings in section 327A.01, subdivision 8.

Minnesota Statutes, section 473.848, subdivisions 1 and 2

Subject: Metropolitan Landfill Abatement Act

Court Opinion: *BFI Waste Systems of North America, LLC, d/b/a Pine Bend Landfill v. Laura Bishop, in her capacity as the Commissioner of the Minnesota Pollution Control Agency*, 927 N.W.2d 314 (Minn. Ct. App. 2019) (Filed April 8, 2019 — time for appeal expired) (A18-0963)

Applicable text of section* 473.848*, subdivision 1:

(a) For the purposes of implementing the waste management policies in section 115A.02 and metropolitan area goals related to landfill abatement established under this chapter, a person may not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at a waste disposal facility unless the waste disposal facility meets the standards in section 473.849 and:
(1) the waste has been certified as unprocessible by a county under subdivision 2; or
(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility;
(ii) no other resource recovery facility serving the metropolitan area is capable of processing the waste; and
(iii) the waste has been certified as unprocessible by the operator of the resource recovery facility under subdivision 3.

Statutory Issue:

What is the meaning of the phrase "the waste has been certified"?

Facts:

The Minnesota Pollution Control Agency (MPCA) has the authority to oversee section 473.848. This section imposes statutory restrictions on a person's disposal of metropolitan area garbage, with the goal of reducing the amount that ends up in landfills and increasing the amount that goes to resource recovery facilities. In addition, this section requires that the waste "has been certified" as unprocessible by a county or resource recovery facility.

MPCA issued a landfill permit to a landfill owner, BFI Waste Systems of North America, LLC (BFI). The permit contained language derived from section 473.848, stating "The permittee shall not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at the facility unless: (1) the waste has been certified as unprocessible by a county under section 473.848, subd. 2; or . . . (iii) the waste has been certified as unprocessible by the operator of the resource recovery facility."

On March 31, 2017, MPCA issued an administrative penalty order (APO) to BFI. In the APO, MPCA alleged that in 2016, BFI disposed of 236,001 tons of unprocessed metropolitan waste at Pine Bend Landfill. The APO alleged that, during this same period, resource recovery facilities serving the metropolitan area processed a combined total of 96,177 fewer tons of waste than their total capacities. The APO stated that the counties certified only 830 tons of waste as unprocessible. From this information, MPCA concluded that BFI violated section 473.848 and its landfill permit by accepting unprocessed, uncertified waste. The APO assessed a $20,000 nonforgivable penalty against BFI, the maximum amount allowed by section 116.072. The APO was not based upon any specific loads or tons of waste in violation of the disposal restriction, but rather the aggregate statistics.

In May 2017, BFI petitioned the district court to review the APO pursuant to section 116.072, subdivision 7. Both BFI and MPCA Commissioner Laura Bishop moved for summary judgment.

In April 2018, the district court granted summary judgment to BFI for two reasons: the court found that MPCA had "exceeded its authority when it issued an APO against [BFI] based on a violation of its [p]ermit and [section] 473.848"; and the court concluded that MPCA "failed to demonstrate that it issued the $20,000 APO based on substantial evidence." MPCA appealed the ruling.

Discussion:

As an initial matter, the court of appeals held that BFI qualified under section 473.848 as "a person who dispose[d] of" uncertified, unprocessed waste. Further, the court held that MPCA was entitled to partial summary judgment on the issue of whether BFI violated section 473.848 and the landfill permit. However, the court reversed and remanded the case for further proceedings in district court because a genuine issue of material fact remained over whether the APO penalty of $20,000 was warranted.

Next, the court held that section 473.848 and the landfill permit are not unconstitutionally vague. The court stated that "[b]oth clearly prohibit disposal of waste unless a county or resource recovery facility certifies the waste as unprocessible" and it found the statute ambiguous with regard to how county certification is obtained. By prohibiting disposal unless the waste "has been certified," the language suggests that waste must be certified prior to disposal. However, section 473.848, subdivision 1, paragraph (a), clause (1), refers to certification under subdivision 2, which discusses annual certification. The court found that the statute was ambiguous. The phrase "has been certified" could mean certified prior to disposal, or retroactively certified on an annual basis. To interpret the statute's ambiguous language, the court deferred to MPCA's reasonable interpretation that retroactive county certification is permitted.

The court also f that section 473.848 and the landfill permit did not violate the dormant Commerce Clause.

The court of appeals did not offer a solution to resolve the ambiguity in section 473.848. However, the legislature may consider changing the verb tense from "has been" to "is" in subdivision 1 to resolve the ambiguity so that it no longer implies that certifying waste prior to disposal is required.

Minnesota Statutes, section 500.24, subdivision 2, paragraph (g)

Subject: Estates in real property; right of first refusal for agricultural land

Court Opinion: *Rabbe v. Farmers State Bank of Trimont,* 2019 WL 2416036 (Minn. Ct. App. 2019), *review denied* August 20, 2019 (A18-1845)

Applicable text of section 500.24, subdivision 2, paragraph (g):

(g) "Agricultural land" means real estate used for farming or capable of being used for farming in this state.

Statutory Issue:

What is the meaning of the phrase "capable of being used for farming"?

Facts:

The owners (Owners) of Rabbe Farms LLP (Rabbe) borrowed over $17,000,000 from Farmers State Bank Trimont (FSB). The loans were secured by mortgages on several parcels of Owners' farmland. Rabbe also granted FSB mortgages on four of Rabbe's commercial grain elevators. In June 2014, Owners defaulted on the loans. In September 2014, Rabbe filed for chapter 11 bankruptcy. FSB foreclosed on the parcels of Owners' farmland. After bankruptcy, FSB acquired and wanted to sell both the farmland and the elevator properties.

FSB sold the elevator properties in July 2017 to a third party. FSB did not provide Owners a notice of the right of first refusal. Based on the use of the property, the improvements on the property, and the property tax classification by the county, FSB did not believe that the properties were "agricultural land" as defined in section 500.24, and therefore were not subject to the right of first refusal.

FSB entered a series of purchase agreements with third parties to sell the farmland formerly owned by Owners. FSB notified Owners of their right of first refusal for each purchase, as required by section 500.245, and complied with other statutory requirements.

Owners did not exercise their rights of first refusal. Owners sued FSB and claimed that FSB violated section 500.245 by failing to provide notice of the right of first refusal for the grain elevator properties. Owners claimed that the elevator properties are agricultural land and that appellants have a right of first refusal. Owners also made numerous other claims. FSB moved for summary judgment.

At a summary judgment hearing, Owners argued that the elevator properties are agricultural land and asked for a continuance and further discovery. The district court declined to entertain the late arguments, granted summary judgment for FSB, and dismissed Owners' complaint. The district court determined that the grain elevator properties are not agricultural land under section 500.245 and entered judgment in favor of FSB on other issues. Owners appealed.

Discussion:

Because the definition of "agricultural land" includes the words "real estate *used for farming or capable of being used for farming*" the court first examined the meaning of the word "farming" and found that it unambiguously relates to production. The grain elevator properties were not used for production, but were used for storage and shipping. Storage and shipping occur after

production is complete. Therefore, property used for storing agricultural products is not considered agricultural land.

However, the court found that the term "capable" in this context was unclear and not further defined. The court used the dictionary to examine the plain-language definition of "capable," which is "[h]aving capacity or ability; efficient and able." The court noted that under this definition, most land could, with enough effort, be "capable of being used for farming." The court stated that the term "capable" was subject to more than one reasonable interpretation, so the statute is ambiguous.

To resolve the ambiguity, the court first relied on section 645.17 and noted that courts are not to construe statutes to reach results that are "absurd, impossible of execution, or unreasonable" because the legislature does not intend such results. The court found it unreasonable that the legislature would intend the definition of agricultural land to include *anything* that might be theoretically possible. This would make all land "capable" of being used for some type of farming.

The court also found that the statutory framework suggests the current use of land is the relevant inquiry. Just because a small portion of the land on which the grain elevators are located could be tilled does not make the property agricultural land. The court found that the grain elevator properties are not currently being used for farming because they are not currently *capable* of being used for farming. The court held that the district court was correct, and the grain elevator properties are not agricultural land under section 500.245.

The court also determined that the district court did not abuse its discretion in denying Owners' continuance motion and in declining to consider Owners' late-filed documents. The court refused Owners' other statutory claims.

The court did not suggest a legislative remedy for the deficiency. The legislature may consider defining the term "capable" as tied to the current use of the land or the improvements on the property, the property tax classification by the county, or other signs that indicate what a parcel of land may be used for.

Minnesota Statutes, section 504B.441

Subject: Landlord/tenant; eviction

Court Opinion: *Central Housing Associates, LP v. Olson*, 929 N.W.2d 398 (Minn. 2019) (A17-1286)

Applicable text of section 504B.441:

A residential tenant may not be evicted . . . if the eviction . . . is intended as a penalty for the residential tenant's . . . complaint of a violation.

Statutory Issue:

What is the meaning of the phrase "complaint of a violation"?

Facts:

Central Housing Associates (CHA) and Aaron Olson entered into a one-year residential lease beginning May 1, 2016. Olson later made several written complaints to CHA regarding maintenance issues and alleged that a CHA staff member harassed and discriminated against his minor daughter.

On January 20, 2017, CHA notified Olson that his lease would be terminated early on February 28, 2017, citing multiple breaches of the lease, including disruptive behavior, multiple late rent payments, an unpaid balance of $275.91, and providing false and incomplete information on his lease application.

After receiving the eviction notice but before February 28, Olson filed a written report with the Minnesota Department of Human Rights alleging CHA was retaliating against him after he complained about the CHA staff member. He also alleged CHA was discriminating against him based on his disability.

Olson did not vacate the property on February 28, and CHA brought an eviction action. Following trial, a jury found Olson had materially breached the terms of the lease, but CHA had retaliated against him as a penalty for his "good faith attempt to secure or enforce rights under the lease."

The district court entered judgment for possession of the rental unit in Olson's favor, apparently based on the existence of a retaliation defense under sections 504B.285 and 504B.441.

CHA appealed, and the court of appeals reversed the decision, finding Olson was not entitled to a retaliation defense under either statute or common law. The court held section 504B.285 inapplicable in eviction actions based on breach of lease and that section 504B.441 only applies if the tenant files a tenant-remedies action in district court.

Olson appealed the section 504B.441 and common law holdings, and the supreme court granted review.

Discussion:

Section 504B.441 provides tenants with a retaliation defense if they are evicted after making a "complaint of a violation." Although "violation" is defined in section 504B.001, "complaint" is not, and the parties asserted widely differing interpretations of the term. Thus, the court

devoted the majority of its opinion to defining "complaint" to determine the meaning of "complaint of a violation."

After consulting dictionaries for the plain and ordinary meaning of the term and examining the context of chapter 504B, the court concluded that section 504B.441 was ambiguous because "complaint" was susceptible to three reasonable interpretations: (1) a formal complaint filed with the court; (2) a complaint of dissatisfaction to a governmental entity or landlord; or (3) a complaint commencing a lawsuit or a complaint to a governmental entity, but *not* a complaint to a landlord—essentially a statement of dissatisfaction with "an official character to it."

The court then turned to three canons of construction to ascertain the legislature's intent.

First, the court considered the consequences of each interpretation as suggested under section 645.16, clause (6). The court determined that if section 504B.441 were interpreted to protect a tenant only after a complaint commencing a lawsuit had been filed, a landlord could retaliate against the tenant for taking the steps required before filing a formal complaint, including requesting an inspection and demanding the landlord correct a violation. The court expressed doubt that the legislature would have intended such a consequence.

The second canon of construction applied by the court in this case was *in pari materia*, which states that, generally, statutes relating to the same subject matter or with a common purpose "should be construed together." The court looked to section 504B.385 (procedures for initiating a rent-escrow action), which references and incorporates section 504B.441, and concluded that when read together, the legislature meant to penalize retaliation for a tenant's mere expression of dissatisfaction, not the filing of a formal complaint.

Finally, the court considered the law that preceded the current version of section 504B.441. Enacted in 1973, the original Tenant Remedies Act referred to a "complaining tenant" airing dissatisfaction, not the commencement of a formal legal action.

Next, the court examined the language in the second sentence of the current version of section 504B.441. The statute puts the burden on the landlord to show that any adverse actions taken against the tenant within 90 days "after filing the complaint" were not retaliatory but were made in good faith. The court used dictionary definitions of "to file" to conclude that filing a complaint could mean that the tenant filed a complaint to initiate a formal lawsuit or filed a complaint with a governmental entity.

Taken together, the court concluded that section 504B.441 "prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding. But it does not provide a defense to retaliation based on an expression of dissatisfaction to the landlord."

The court found that Olson did not have a statutory retaliation defense because, although he filed a complaint with the Department of Human Rights, he did so only after receiving his eviction notice.

However, the court identified a common law defense to evictions in retaliation for tenant complaints about material violations by the landlord The common law defense requires the tenant to assert and prove the defense by a preponderance of the evidence. The court found that Olson asserted a proper common law retaliation defense and proved by a preponderance of the evidence that CHA's eviction action was in retaliation for his good faith attempts to secure his rights under the lease. The court reinstated the district court's order for judgment to give Olson possession of the unit.

The dissent argued that section 504B.441 is not ambiguous because throughout the entirety of chapter 504B, the term "complaint" refers to a formal commencement of a lawsuit. Additionally, the majority's interpretation that "complaint" includes a report to a governmental entity is flawed because elsewhere in chapter 504B, the legislature clearly indicated when such a report to a governmental entity is contemplated. Finally, the dissent chided the majority for ignoring 100 years of precedent and two separate retaliation defenses delineated by the legislature to craft its own common law defense.

The court did not recommend a remedy to the statutory deficiency, but the legislature may consider clarifying the meaning of "complaint."

Minnesota Statutes, section 590.11, subdivision 1, paragraph (b), clause (1), item (ii)[14]

Subject: Postconviction relief; Minnesota Imprisonment and Exoneration Remedies Act

Court Opinion: *Buhl v. State*, 922 N.W.2d 435 (Minn. Ct. App. 2019) (A18-0245) (Filed January 7, 2019 — time for appeal expired)

Applicable text of section 590.11, subdivision 1, paragraph (b), clause (1), item (ii):

(b) "Exonerated" means that:
(1) a court:
[...]
(ii) ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident or the petitioner was found not guilty of all felony charges arising from the same behavioral incident at the new trial;

Statutory Issue:

What is the meaning of the phrase "consistent with innocence"?

Facts:

In 1993, Jonathan Edward Buhl was arrested and charged with four counts of aggravated robbery, four counts of kidnapping, one count of second-degree assault, one count of attempted second-degree criminal sexual conduct, and one count of motor vehicle use without consent. The charges were related to crimes committed during a robbery at a convenience store. During the trial, the state introduced evidence of Buhl's 1990 burglary conviction for the purpose of proving his identity.[15] Buhl was found guilty, but on appeal the conviction was overturned based on inadmissible evidence and a new trial was ordered. Buhl was found not guilty of the same charges at the new trial.

In June 2016, Buhl filed a petition under the Minnesota Imprisonment and Exoneration Remedies Act (MIERA) seeking eligibility for exoneree compensation. After an evidentiary hearing, the district court denied his petition. The district court then denied permission to file a motion for reconsideration. Buhl appealed to the court of appeals.

Discussion:

The court of appeals first considered whether the district court was correct in finding that a reversal and remand for a new trial based on erroneously admitted evidence did not mean that Buhl was exonerated "on grounds consistent with innocence." For a district court to grant an order of eligibility under MIERA, the petitioner must meet certain statutory requirements. The supreme court's decision in *Back v. State*, 902 N.W.2d 23 (Minn. 2017), severed part of MIERA,

[14] The court of appeals incorrectly cited the statute at issue as "Minn. Stat. § 590.11, subd. 1(1)(ii)" which leaves paragraph (b) out of the cite. The correct cite is "Minn. Stat. § 590.11, subd. 1(b)(1)(ii)."
[15] Evidence of other crimes, wrongs, or acts that a defendant may have committed are referred to as "Spreigl evidence" after the case *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). This evidence may be admitted only in certain circumstances. See also Minn. R. Evid. 404(b).

section 590.11, subdivision 1, paragraph (b), clause (1), item (i),[16] as unconstitutional in violation of the Equal Protection Clause.[17] Under what is left of the part of the statute at issue, section 590.11, subdivision 1, paragraph (b), clause (1), item (ii), a petitioner is "exonerated" only if a court "ordered a new trial on grounds consistent with innocence and the prosecutor dismissed [the] charges . . . or the petitioner was found not guilty . . . at the new trial," and that decision becomes final.

The district court ordered a new trial and Buhl was found not guilty, so the question before the court was whether the new trial was ordered "on grounds consistent with innocence." The court dispensed with Buhl's argument that the decision to grant a new trial was based on anything other than inadmissible evidence. Next, the court noted that the court of appeals opinion in *Back v. State*, 883 N.W.2d 614 (Minn. Ct. App. 2016), reversed by the supreme court, had found that the term "consistent with innocence" was ambiguous, and that it could be fairly construed as meaning (1) "agrees with innocence," or (2) "does not contradict innocence."

However, in *Back*, the court of appeals did not address how the phrase "on grounds consistent with innocence" should be interpreted because the court held that Back's conviction was reversed "on grounds consistent with innocence" under *any* reasonable interpretation of the phrase. Upon review, the supreme court found that the portion of the "exonerated" definition at issue in that case violated the Equal Protection Clause.

The court reasoned that in Buhl's case, the prohibition on introducing certain evidence was a procedural safeguard and was irrelevant to Buhl's actual guilt or innocence. Therefore, a reversal based on a violation of that safeguard "does not contradict innocence," but does not "agree with innocence." The court concluded that the legislature intended for the phrase "consistent with innocence" to mean "agrees with innocence." The court affirmed the district court.

The court used a canon of construction in section 645.16, which requires courts to construe each law "to give effect to all its provisions." To find alternately would render the term ineffectual and superfluous because the statute already contemplates a conviction that has been reversed or remanded. The court also reasoned that to hold differently would create absurd results. The court used an example of the exclusionary rule under the Fourth Amendment where a defendant may argue that illegal drugs they possessed should be suppressed and their conviction reversed because the drugs were discovered as the result of an unconstitutional search. In that case, the reversal would meet the definition of "on grounds consistent with innocence" even though the defendant clearly possessed illegal drugs.

Since Buhl did not meet the statutory definition of "exonerated," the court declined to consider his claim that the district court erred in finding that he failed to establish his innocence. The court also declined to review the district court's denial of the appellant's request for permission to move for reconsideration because the denial of permission to file such a motion is not an appealable order.

The court did not suggest a statutory amendment, but the legislature may consider adopting the court's now dispositive reading to remedy the ambiguity by amending section 590.11, subdivision 1, to replace all three instances of "on grounds consistent with innocence" with "on grounds that agree with innocence."

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[16] In *Back,* the supreme court also incorrectly cited the statute at issue as "Minn. Stat. § 590.11, subd. 1(1)(i)" which leaves paragraph (b) out of the cite. The correct cite is "Minn. Stat. § 590.11, subd. 1(b)(1)(i)."
[17] See the Revisor's 2018 Court Opinions Report for a full summary of *Back v. State* and the Equal Protection Clause issue.

Minnesota Statutes, section 609.27, subdivision 1, clause (4)

Subject: Criminal law; coercion

Court Opinion: *State v. Jorgenson,* 946 N.W.2d 596 (Minn. 2020) (A19-0323)

Applicable text of section 609.27, subdivision 1, clause (4):

Whoever orally or in writing makes any of the following threats and thereby causes another against the other's will to do any act or forbear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:
[…]
(4) a threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule;

Statutory Issue:

Is the criminal coercion statute facially overbroad in violation of the First Amendment?

Facts:

The defendant, Jorgenson, was living with his girlfriend, J.C., in her home. J.C. ended their relationship and sought to evict Jorgenson. Around that time, Jorgenson began making threatening phone calls and leaving voicemails for R.C., the father of J.C. R.C. alleged that Jorgenson called R.C. around 18 times and left 12 voicemails. Among other things, Jorgenson threatened to release a video of J.C. talking about smoking marijuana unless R.C. paid Jorgenson $25,000. Jorgenson threatened to release the video to various entities, including J.C.'s employer and J.C.'s professional licensing board.

After R.C. reported the threats to law enforcement, Jorgenson was charged in Dodge County with attempted coercion. However, Jorgenson filed a successful motion to dismiss for lack of jurisdiction. Subsequently, Jorgenson was charged with one felony count of attempted coercion in Olmsted County. Jorgenson filed a motion to dismiss based on two theories: a lack of probable cause that he violated the criminal coercion statute; and that the statute was overly broad in violation of the First Amendment of the U.S. Constitution and article I, section 3, of the Minnesota Constitution.[18]

The district court denied Jorgenson's motion to dismiss based on probable cause but granted the motion based on violating the First Amendment. The state appealed. The court of appeals affirmed the district court. The supreme court granted the state's petition for review.

Discussion:

Jorgenson argued that section 609.27, subdivision 1, clause (4), is unconstitutionally overbroad because it criminalizes a substantial amount of protected speech. When interpreting the statute, the supreme court found that the word "threat" covers all threats, not just true threats which are unprotected by the First Amendment. The court looked to *Black's Law Dictionary*, where "threat" is defined as a "communicated intent to inflict harm or loss on another or another's property." Precedent from the Supreme Court of the United States provides that "true threat" is "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

[18] The free speech provision in the Minnesota Constitution provides protections co-extensive with those under the First Amendment to the United States Constitution.

According to the court, section 609.27, subdivision 1, clause (4), criminalizes a wide range of communications on a variety of topics. The court found that the statute criminalizes communication touching upon matters of public concern, not just private communication. The broad scope of the statute places it in "the realm of social or political conflict where threats . . . may nevertheless be part of the marketplace of ideas, broadly conceived to embrace the rough competition that is so much a staple of political discourse."

In response to Jorgenson's overbreadth challenge, the state argued that section 609.27, subdivision 1, clause (4), is limited to regulating unprotected speech, specifically "fighting words." The state's argument relied on precedent from the Supreme Court of the United states which established that "fighting words" are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." The court was not persuaded by the state's argument and found that the statute criminalizes substantially more than just fighting words. The court found that the statute prohibits threats that do not contain "personally abusive epithets" or are not "inherently likely to provoke [a] violent reaction." In its analysis, the court concluded that the criminal coercion statute is not limited to regulating unprotected speech.

Furthermore, the court found that the statute limits a substantial amount of protected speech. The court drew upon many hypothetical examples of protected speech that the statute criminalizes to reach its conclusion. Moreover, the court was unable to narrowly construe the statute to remedy its constitutional defects. The court could not find a way to sever part of section 609.27, subdivision 1, clause (4), to save the rest of the language from its constitutional overbreadth. Therefore, the court held that clause (4) is substantially overbroad and invalid, thus violating the First Amendment.

In response to *Jorgenson*, the legislature may consider amending section 609.27, subdivision 1, clause (4), by removing clause (4) in its entirety, thus eliminating the unconstitutional language, and possibly narrowing the prohibited conduct to criminalize only true threats.

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

Subject: Criminal law; interference with privacy

Court Opinion: *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)

Applicable text of section 609.746,[19] subdivision 1, paragraph (a):

(a) A person is guilty of a gross misdemeanor who:
(1) enters upon another's property;
(2) surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another; and
(3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

Statutory Issue:

Does the intent element of the crime of interference with privacy apply to all elements of the crime?

Facts:

Defendant Pakhnyuk visited Minnesota to help his brother with some work. He stayed with his brother and their family during his trip. Pakhnyuk was 38 years old at the time.

Pakhnyuk's niece had several friends over for a sleepover during his trip. At the time of his trip, his niece and her friends were approximately 14 years old. Pakhnyuk provided the girls beer during their sleepover. Pakhnyuk made several crude sexual comments to the girls and convinced them to watch a movie with him. During the movie, Pakhnyuk placed a blanket over his and one of the friend's laps and began to touch her inner thigh. The girls then retreated to the niece's bedroom for the evening.

Five days later, one of the niece's friends was still staying at the house. During the evening, the friend went to the kitchen. As the friend walked back to the niece's bedroom, Pakhnyuk grabbed her buttocks and asked, "Do you miss me?" The friend pushed Pakhnyuk off and ran to the niece's bedroom.

Later that night, the friend and the niece were changing clothes in the niece's bedroom. While undressing, the friend looked outside the bedroom window. She saw Pakhnyuk sitting on the roof, staring at her. The friend screamed. Pakhnyuk then climbed down from the roof.

Pakhnyuk was charged with a variety of counts, including interference with privacy against a minor under section 609.746, subdivision 1, paragraph (e), clause (2). This clause creates a felony when an interference of privacy under subdivision 1, paragraph (a), occurs against a minor. A jury found Pakhnyuk guilty of all charges.

On appeal, Pakhnyuk argued that the evidence to support his finding of guilt was insufficient because "does so" in section 609.746, subdivision 1, paragraph (a), clause (3), requires that an intent to intrude upon privacy is present for both clause (1), the entry into his brother's home, and clause (2), Pakhnyuk's act of peeping on the friend. In response, the state asserted that the

[19] Section 609.746, subdivision 1, was amended by adding a paragraph in Laws 2019, First Special Session chapter 5, article 4, section 11, following the decision in *Pakhnyuk*. That amendment does not resolve the statutory issue explored in this case summary.

intent to intrude on the victim's privacy element in clause (3) only refers to the peeping element in clause (2).

Discussion:

The court first concluded that, because the statute is subject to more than one reasonable interpretation, it is ambiguous. The phrase "does so" in clause (3) could refer to both clauses (1) and (2), or only clause (2).

The court found that the dictionary definition of "does so" is unilluminating. "Does so" simply means "in the manner described," directing a reader to the "conduct described in the words that precede the phrase." This definition does not dictate whether "does so" refers to both clauses (1) and (2), or only clause (2).

The court then found that the parties' grammatical arguments did not resolve the statute's ambiguity. The court determined that the "last-antecedent rule" promoted by the state did not apply. "According to that rule," the court declared, "a concluding modifier in a series applies only to the nearest reasonable element in the series, rather than to every element in the series." Section 609.746, subdivision 1, paragraph (a), however, is divided in structure; it "is interrupted by a colon, three semicolons, three line breaks, and three clause numbers set off in parentheses." The court determined that this division made the last-antecedent rule unhelpful.

On the other hand, Pakhnyuk's grammatical argument mirrored the "series-qualifier canon" of interpretation. He contended, "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all."

The court found this argument unpersuasive because section 609.746, subdivision 1, paragraph (a), due to its division, is dissimilar to the straightforward phrases amendable to parallel construction to which the series-qualifier canon generally applies. Additionally, the court found that the text of clauses (1) and (2) "suggests that they have geographic and temporal meanings that would make application of the series-qualifier canon inappropriate." Understanding "entry" in clause (1) as outlining the *location* of the peeping, and not the *act* of entering, is consistent with section 609.746, subdivision 1, paragraphs (c) and (d).[20] These paragraphs do not require an entry onto property, suggesting that the intent element only applies to the act of peeping. Further, clauses (1) and (2), regarding entry and peeping, respectively, may establish a chronology to the crime. If so, "the intent requirement of clause (3) would reasonably apply only to the act of peeping and not of entering, further undermining application of the series-qualifier canon."

To resolve the ambiguity, the court then turned to the statute's legislative history and purpose. As originally enacted in 1979, the statute read, "[a]ny person who enters upon another's property and surreptitiously gazes, stares, or peeps in the window of a house or place of dwelling of another with intent to intrude upon or interfere with the privacy of a member of the household thereof is guilty of a misdemeanor." The property-entry element of the statute was only added after a defense attorney at a subcommittee hearing raised concerns about the constitutionality of the proposed statute. Its initial exclusion demonstrates the statute's original purpose was "to criminalize the act of peeping with the intent to interfere with another person's privacy, without regard to whether such intent was present at the moment the defendant first

[20] Subdivision 1, paragraph (c), "makes it a crime to peep through a window or aperture of a hotel room, tanning booth, or other similarly private place." Paragraph (d) "makes it a crime to use a 'device for observing, photographing, recording, amplifying, or broadcasting sounds or events' to intrude upon the privacy of those same locations."

entered the property of another." The addition of the property-entry element simply "ensured that no passerby legitimately on a public sidewalk or street could be charged merely for looking into another person's house."

Section 609.746, subdivision 1, paragraph (a), remained virtually unchanged until 1994. In 1994, the legislature did not make any changes to the intent element in clause (3), but it did give "the statute its current structure of three numbered clauses separated by semicolons and line breaks." The court determined the legislature did not intend to change the substance of the law with this rearrangement. Thus, the legislative history demonstrated that, "from the statute's inception to its current language today, the legislature intended for the intent element to apply only to the act of peeping."

In addition, the court found that "the clear purpose for enacting the statute, the protection of personal privacy," also favored the State's interpretation." Requiring an intent to interfere with a victim's privacy when initially entering another's property would limit the statute's ability to protect personal privacy. Consequently, the court found that the intent element in section 609.746, subdivision 1, paragraph (a), clause (3), "applies only to the peeping conduct described in clause (2), and not to the property-entry conduct in clause (1)."

The court did not suggest a way to remedy the ambiguity. If the legislature meant for the intent element of clause (3) to apply to only clause (2), it may consider combining clauses (2) and (3) or specifying in clause (3) that it is referring to clause (2). If the legislature meant for the intent element of clause (3) to apply to both clauses (1) and (2), it may consider moving the intent element to the introductory paragraph or specifying in clause (3) that it is referring to both clauses (1) and (2). In doing that, the legislature may want to examine the remainder of the statute for similar issues.

Minnesota Statutes, section 609.749, subdivision 2, clause (4)

Subject: Criminal law; stalking-by-mail

Court Opinion: *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019), *review denied* Feb. 26, 2020 (A18-2105)

> ***Note*** The legislature amended the statute at issue in response to this case and *In the Matter of the Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019), also summarized in this report. The amending act adopted the standards for a mental state and causation of conduct that are in current federal law. See Laws 2020, chapter 96.

Applicable text of section 609.749, subdivision 2 (2018):

A person who stalks[21] another by committing any of the following acts is guilty of a gross misdemeanor:
[…]
(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

Applicable text of section 609.749, subdivision 2, as amended by Laws 2020, chapter 96, section 2 (amendment shown by striking and underscoring):

(b) A person who ~~harasses another by committing~~ commits any of the ~~following~~ acts listed in paragraph (c) is guilty of a gross misdemeanor if the person, with the intent to kill, injure, harass, or intimidate another person:
(1) places the other person in reasonable fear of substantial bodily harm;
(2) places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or
(3) causes or would reasonably be expected to cause substantial emotional distress to the other person.
(c) A person commits harassment under this section if the person:
[…]
(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

Statutory Issue:

Is the criminal stalking-by-telephone statute unconstitutional under the First Amendment because it is facially overbroad?

Facts:

In 2016 and 2017, Jason Peterson repeatedly called and left voicemails for several Rice County employees regarding his 2002 family-law case. Specifically, on August 29, 2016, Peterson connected with the Rice County Sheriff by phone. On the call, Peterson began "swearing and yelling" and threatened to "arrest" the sheriff. Two days later, during another telephone call between the sheriff and Peterson, Peterson became "hostile" and "again said that he would 'arrest' the sheriff." On September 6, 2016, Peterson then called an employee of the Minnesota Bureau of Criminal Apprehension "with questions about 'arrest[ing]' the sheriff and, again, swore during the call."

[21] The legislature changed "stalks" to "harasses" in Laws 2019, First Special Session chapter 5, article 2, section 18. This change was supplanted by the changes made in Laws 2020, chapter 96, section 2.

On September 23, 2016, a Rice County Sheriff's Deputy went to Peterson's home regarding an unrelated matter. During the ensuing conversation, "Peterson became 'very vocal' and stated that 'me and [the sheriff] are gonna be butting heads pretty godd—mn hard if he doesn't get ahold of me' and that '[the sheriff] can run but he cannot f—king hide.'" Peterson's statements made the sheriff fear for his and his family's safety.

In January 2017, Peterson left six voicemails for a child-protection social worker. "In the voicemails, Peterson stated, 'I'm coming for your a—es,' and said he would 'call the lawyer' and 'have [her] a— arrested' if he did not receive a return phone call. Peterson's voicemails had over 20 expletives." Peterson also telephoned three other Rice County employees that month, who said that Peterson was "angry and threatening"; swore repeatedly; and stated that he would "come into [their] office and raise hell," that "he would kick the sheriff's a— and [another employee's] as well," and that the employee "won't know what day or time or when [Peterson] may come." Several employees feared for their safety.

The state subsequently charged Peterson with violating section 609.749, subdivision 2, clause (4), the stalking-by-telephone statute. A jury found Peterson guilty. Peterson appealed, arguing that his conviction must be reversed because the stalking-by-telephone statute is facially overbroad and therefore unconstitutional under the First Amendment.

Discussion:

The court noted that the criminalization of stalking by telephone regulates speech and therefore must not be overly broad. The court restated the rule that a statute is overly broad if "it prohibits constitutionally protected activity, in addition to activity that may be prohibited without offending constitutional rights."

To determine whether the stalking-by-telephone statute is overbroad, the court utilized a four-step analysis: (1) interpret the statute to ascertain the legislature's intent; (2) determine whether the statute's "reach is limited to unprotected categories of speech or expressive conduct"; (3) if the statute is not limited under step (2), ask "whether a 'substantial amount' of protected speech is criminalized"; and (4) "evaluate whether the court is able to narrow the statute's construction or sever specific language to cure constitutional defects."

First, to ascertain the legislature's intent, the court turned to the plain meaning of the text. Based in part on the definition of "stalking" provided in section 609.749, subdivision 1, including the requirement that the actor "knows or has reason to know" that his or her action would cause the victim to experience a certain reaction, the court concluded that a conviction under the stalking-by-telephone statute requires the state to prove: "(1) a defendant knew or had reason to know that his conduct would cause the victim to feel fear, loss of power, worry, or ill-treated; and (2) the defendant's conduct caused this reaction in the victim." Due to the "knows or has reason to know" language of subdivision 1, the statute required an intent standard of negligence, which the court determined was broad. The court referred to a recent supreme court case, *In the Matter of the Welfare of A. J. B.,*[22] where section 609.749, subdivision 2, clause (6), the stalking-by-mail statute, was found to be facially overbroad. As in *A. J. B.*, the court found that the potential reactions a victim may experience under the stalking-by-telephone statute are "broad and unqualified."

Second, the court determined the stalking-by-telephone statute is not limited to unprotected categories of speech or expressive conduct for three reasons: (1) the language "does not criminalize only speech linked to criminal conduct because it criminalizes repeated telephone

[22] *In the Matter of the Welfare of A. J. B.* is also summarized in this report.

calls and text messages regardless [its] content . . . And telephone calls are a common way of expressing political and other protected communications"; (2) like *A. J. B.*, the negligence intent standard is problematic because a person may be convicted "even though the person does not intend or even know that his communication would frighten, threaten, oppress, persecute, or intimidate the victim"; and (3) requiring the state to prove the victim's possible reactions—"to feel frightened, threatened, oppressed, persecuted, or intimidated"—is so broad and subjective that it does not "place any meaningful limitation on the statute's scope."

Third, the court found that a "substantial amount of constitutionally protected speech" was criminalized under the stalking-by-telephone statute. The court provided several examples of situations in which protected speech may be criminalized, including a scenario parallel to one discussed in *A. J. B.*

Finally, the court determined it was unable "to narrow the statute's construction or sever specific language to cure constitutional defects." Remedying the statute would require amending its negligence intent standard. Similar to *A. J. B.*, the court was unable to alter the negligence intent standard in this case because it would change the required intent for the remaining types of stalking prohibited by section 609.749, subdivision 2. Therefore, the court held that the stalking-by-telephone statute was unconstitutionally overbroad and must be invalidated.

The legislature amended section 609.749 in Laws 2020, chapter 96, but the language in subdivision 2, clause (4), at issue in this case, was not directly amended.[23]

[23] The legislature repealed section 609.749, subdivision 1, the "stalking" definition, thereby removing the negligence intent standard required by the "knows or has reason to know" language, and subdivision 1a, which stated that the prosecution had no obligation to prove a specific intent by the actor to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated or to cause any other result. The legislature also made conforming changes in section 609.749, subdivision 3.

Minnesota Statutes, sections 609.749, subdivision 2, and 609.795, subdivision 1

Subjects: Criminal law; stalking-by-mail and mail-harassment

Court Opinion: *In the Matter of the Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019) (A17-1161)

> ***Note*** The legislature amended the statutes at issue in response to this case and *State v. Peterson,* 936 N.W.2d 912 (Minn. Ct. App. 2019), *review denied* Feb. 26, 2020, also summarized in this report. The amending act adopted the standards for a mental state and causation of conduct that are in current federal law. See Laws 2020, chapter 96.

Applicable text of section 609.749, subdivision 2 (2018):

A person who stalks[24] another by committing any of the following acts is guilty of a gross misdemeanor:
[...]
(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

Applicable text of section 609.749, subdivision 2, as amended[25] by Laws 2020, chapter 96, section 2 (amendment shown by striking and underscoring):

(b) A person who ~~harasses another by committing~~ commits any of the ~~following~~ acts listed in paragraph (c) is guilty of a gross misdemeanor if the person, with the intent to kill, injure, harass, or intimidate another person:
(1) places the other person in reasonable fear of substantial bodily harm;
(2) places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or
(3) causes or would reasonably be expected to cause substantial emotional distress to the other person.
(c) A person commits harassment under this section if the person:
[...]
(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

Applicable text of section 609.795, subdivision 1:

Whoever does any of the following is guilty of a misdemeanor:
[...]
(3) with the intent to abuse, disturb, or cause distress, repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, or packages.

[24] The legislature changed "stalks" to "harasses" in Laws 2019, First Special Session chapter 5, article 2, section 18. This change was supplanted by the changes made in Laws 2020, chapter 96, section 2.
[25] The language in clause (6), at issue in this case, was not directly amended.

Applicable text of section 609.795, subdivision 1, as amended[26] by Laws 2020, chapter 96, section 5 (amendment shown by striking and underscoring):

Whoever does any of the following is guilty of a misdemeanor:
[...]
(3) with the intent to ~~abuse, disturb, or cause distress~~ harass or intimidate another person, repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, or packages and thereby places the other person in reasonable fear of substantial bodily harm; places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or causes or would reasonably be expected to cause substantial emotional distress as defined in section 609.749, subdivision 2, paragraph (a), clause (4), to the other person.

Statutory Issue:

Are the stalking-by-mail statute and mail-harassment statute unconstitutional under the First Amendment because they are facially overbroad?

Facts:

In March 2016, high school student A.J.B. created an anonymous Twitter account. Within a few hours, A.J.B. had posted approximately 40 cruel, insulting tweets about another high school student, M.B., who is diagnosed with autism and attention deficit hyperactivity disorder. Nearly all of the tweets mentioned M.B. by including his Twitter username. When M.B. viewed the tweets, he became extremely upset. M.B. later testified that the tweets made him want to commit suicide and that he held a knife near his chest. M.B. also testified that he was afraid to return to school for fear of being attacked. He sought the assistance of a psychiatrist and a social worker. After an internal school investigation, A.J.B. admitted to the dean that he had created the anonymous Twitter account and had sent the tweets that mentioned M.B.

A.J.B. was charged with one count of gross misdemeanor stalking by use of the mail in violation of section 609.749, subdivision 2, clause (6), and one count of misdemeanor harassment by use of the mail in violation of section 609.795, subdivision 1, clause (3). A.J.B. filed a pretrial motion to dismiss the charges, arguing that the statutes were facially overbroad and unconstitutional in violation of the First Amendment as applied to him. The juvenile court denied his motion. Prior to the trial, the state filed an amended juvenile petition, charging A.J.B. with an additional count of felony stalking in violation of section 609.749, subdivision 3, paragraph (a), clause (1), which requires the same proof as the gross misdemeanor stalking charge but with an added element of demonstrating that the stalking occurred because of the offender's bias against the victim's disabilities.

A.J.B.'s case went to trial. The district court found him guilty beyond a reasonable doubt on all three charges and adjudicated him delinquent of gross misdemeanor stalking and harassment by use of the mail. A.J.B. appealed the district court's decision. The court of appeals rejected A.J.B.'s constitutional challenges and affirmed his adjudications for stalking by mail and mail harassment. The supreme court granted A.J.B.'s petition for review.

[26] The legislature removed the exact language in clause (3) found to be unconstitutional in this case, "abuse, disturb, or cause distress," and replaced it with "harass or intimidate another person." See Laws 2020, chapter 96, section 5.

Discussion:

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech." First Amendment protections are not limitless; there is a point where First Amendment protections end and government regulation of speech or expressive conduct becomes permissible. Exceptions to First Amendment protections generally fall into several delineated categories that include speech or expressive conduct designed to "incite imminent lawless action," "obscenity," "defamation," "speech integral to criminal conduct," "so-called fighting words," "child pornography," "fraud," "true threats," and "speech presenting some grave and imminent threat the government has the power to prevent." First Amendment principles apply with equal force to speech or expressive conduct on the Internet.

A statute is considered facially overbroad in violation of the First Amendment when it prohibits a substantial amount of constitutionally protected activity judged in relation to the statute's plainly legitimate sweep. The supreme court held that section 609.749, subdivision 2, clause (6), the stalking-by-mail statute, is facially overbroad and violates the First Amendment because it prohibits a substantial amount of constitutionally protected speech.

The stalking-by-mail statute requires the state to prove that the defendant mailed, delivered, or caused the delivery of a communication. While the stalking-by-mail provision generally prohibits a person from "engag[ing] in conduct," the court found that the specific conduct at issue in the statute was tethered closely to speech or expressive activities. Four of the six items identified in the statute—letters, telegrams, messages, any communications—are purely expressive and the other two items—packages and other objects—may be expressive. The court determined that the statute applies broadly to "any communication made through any available technologies." The plain language of this phrase covers every type of communication without limitation.

Additionally, the court found that the stalking-by-mail statute requires the state to prove that the defendant made the delivery "repeatedly." The word "repeatedly" limited the reach of the statute because it did not apply to instances when a person delivered a communication that frightened, threatened, oppressed, persecuted, or intimidated the recipient on a single occasion.

Furthermore, the court found that the *mens rea* requirement in the statute was broad. Section 609.749, subdivision 1, provides that the defendant must "know or ha[ve] reason to know" that the communication would cause the victim "under the circumstances" to feel "frightened, threatened, oppressed, persecuted, or intimidated." The "knows or has reason to know" standard, a negligence *mens rea*, means that a person may have been convicted under subdivision 2, clause (6), even though the person did not intend or know that the person's communication would frighten, threaten, oppress, persecute, or intimidate the victim. The breadth of the negligence standard was further expanded by the phrase "under the circumstances."

The court ultimately found that section 609.749, subdivision 2, clause (6), has a substantial sweep and is tied to speech or expressive conduct. It criminalizes the mailing or delivery of any form of communication that an actor directs more than once at a specific person who the actor "knows or has reason to know" would cause the targeted person to feel "frightened, threatened, oppressed, persecuted, or intimidated." Therefore, the stalking-by-mail statute prohibits a substantial amount of constitutionally protected speech judged in relation to the conduct legitimately prohibited by the statute. Due to the substantial ways that the statute could prohibit and chill protected expression, the court held that it facially violated the First Amendment overbreadth doctrine. The court could not narrowly construe nor sever the unconstitutional language from the statute, so the court found that it was void.

Next, the court analyzed the mail-harassment statute, section 609.795, subdivision 1, clause (3), and found that it too was facially overbroad in violation of the First Amendment because it prohibits a substantial amount of constitutionally protected speech. The statute deems conduct that is closely connected to expressive activity illegal, as it focuses on the delivery of letters and telegrams as well as packages. The statute also allows the state to prosecute a person who intends to "abuse, disturb, *or* cause distress," but does not require that the victim actually suffer harm or experience abuse, distress, or disturbance.

In this case, however, the court was able to successfully sever the unconstitutional language from the mail-harassment statute by eliminating the words "disturb" and "cause distress." The remaining statute proscribed repeatedly mailing, delivering, or causing the delivery "by any means, including electronically, of letters, telegrams, or packages," with "the intent to abuse," that is, the intent of maltreating the recipient including through the use of insulting or hurtful words with the primary aim of causing mental, physical, or emotional injury or harm. Because the judicially amended statute was not substantially overbroad, the court concluded that the state may still constitutionally prosecute a person for mailing or delivering a letter, telegram, or package with the intent to abuse the recipient under section 609.795, subdivision 1, clause (3).

In Laws 2020, chapter 96, the legislature struck and replaced the unconstitutional language in section 609.795, subdivision 1, clause (3), and also amended section 609.749.[27] However, the language in section 609.749, subdivision 2, clause (6), at issue in this case, was not directly amended.

[27] The legislature repealed section 609.749, subdivision 1, the "stalking" definition, thereby removing the negligence intent standard required by the "knows or has reason to know" language, and subdivision 1a, which stated that the prosecution had no obligation to prove a specific intent by the actor to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated or to cause any other result. The legislature also made conforming changes in section 609.749, subdivision 3.

Actions Taken

There is one[28] Minnesota appellate court case that would have merited inclusion in the 2020 Court Opinions Report because the opinion identified statutory deficiencies. However, the legislature subsequently amended the statute at issue to remove, address, or otherwise remedy the deficiency. This case is summarized briefly here:

> *State v. Gosewisch,* 921 N.W.2d 796 (Minn. Ct. App. 2018), *review denied* (Mar. 19, 2019) (A18-1142, A18-1143)
>
> **Issue:** In *Gosewisch*, the court of appeals held that section 609.349, which provided a defense to several criminal sexual conduct crimes when the actor and alleged victim were in a voluntary relationship, was ambiguous as to whether a defense to criminal sexual conduct between an actor and a vulnerable adult exists if the actor and vulnerable adult marry after the sexual conduct and before the actor's trial. The court held that the legislature's intent was to excuse from criminality sexual conduct with a vulnerable adult only if the vulnerable adult and actor are married at the time of the sexual conduct.
>
> **Action:** The legislature responded in Laws 2019, chapter 16, section 1, by repealing section 609.349, eliminating the voluntary relationship defense to criminal sexual conduct crimes.

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[28] There are two other instances where the legislature amended a statute at issue in an appellate case in which a statutory deficiency was found. Summaries explaining the cases that identified those statutory deficiencies are included in this report. The cases are *In the Matter of the Welfare of A. J. B.*, 929 N.W.2d 840 (Minn. 2019) (A17-1161) and *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105). The statutes at issue in the cases were:

1) section 609.795, subdivision 1, clause (3), the mail-harassment statute (*A. J. B.*); and
2) section 609.749, subdivision 2, clause (4) (*Peterson*) and clause (6) (*A. J. B.*), the stalking-by-mail statute.

In both cases, the supreme court found the language to be unconstitutional under the First Amendment because it is facially overbroad.

In 2020, the legislature struck and replaced the unconstitutional language in section 609.795, subdivision 1, clause (3). The legislature also amended section 609.749 in the same act. However, the language in section 609.749, subdivision 2, clauses (4) and (6), at issue in these cases, was not directly amended. The amending act adopted the standards for a mental state and causation of conduct that are in current federal law. The court in these cases had expressed concerns with the broad mental state in the statute, and the statute lacking proof of specific intent which has the potential to criminalize negligent conduct. For a deeper explanation, see Laws 2020, chapter 96, and the summaries in this report.

Glossary

PRINCIPLES OF LEGAL INTERPRETATION

The following is a glossary of principles of legal interpretation that were explicitly or implicitly applied by the court of appeals or the supreme court in opinions summarized in this report. This 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 a statutory deficiency. These interpretive tools and canons are susceptible to dueling use, which may be evident by reading dissenting opinions in the cases. Additional considerations for the interpretation of statutes can be found in Minnesota Statutes, chapter 645. Sections of chapter 645, which include relevant principles of legal interpretation used in opinions summarized in this report, are referenced in this glossary along with the principles of legal interpretation. Additionally, 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 rather to interpret the law. In other words, the task is to determine the intent of the legislature.

Section 645.16, cited in many of the opinions summarized in this report, 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."

Some of the following terms overlap or intersect with what is provided in section 645.16.

GLOSSARY OF USEFUL TERMS

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:

- *Rabbe v. Farmers State Bank of Trimont*, 2019 WL 2416036 (Minn. Ct. App. 2019) (A18-1845)

- *Buhl v. State*, 922 N.W.2d 435 (Minn. Ct. App. 2019) (A18-0245)

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:

- *BFI Waste Systems of North America, LLC v. Bishop*, 927 N.W.2d 314 (Minn. Ct. App. 2019) (A18-0963)

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;"

Cases:

- *Olson v. One 1999 Lexus*, 924 N.W.2d 594 (Minn. 2019) (A17-1083)

- *In the Matter of Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019) (A17-1161)

Context; Textual Clues

The context of a division of a statute includes those parts of the text that 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 J. M. M. o/b/o Minors for a Change of Name*, 937 N.W.2d 743 (Minn. 2020) (A17-1730)

- *General Mills, Inc. v. Commissioner of Revenue*, 931 N.W.2d 791 (Minn. 2019) (A18-1660)

- *Rabbe v. Farmers State Bank of Trimont*, 2019 WL 2416036 (Minn. Ct. App. 2019) (A18-1845)

- *Village Lofts at St. Anthony Falls Assoc. v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020) (A18-0256)

- *State v. Jorgenson*, 946 N.W.2d 596 (Minn. 2020) (A19-0323)

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."

Case:

- *Village Lofts at St. Anthony Falls Assoc. v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020) (A18-0256)

In pari materia; Related-Statutes Canon
Statutes *in pari materia* (upon the same subject matter) are to be construed together.
Cases:
- *Matter of J. M. M. o/b/o Minors for a Change of Name*, 937 N.W.2d 743 (Minn. 2020) (A17-1730)
- *Central Housing Associates, LP v. Olson*, 929 N.W.2d 398 (Minn. 2019) (A17-1286)

Interpretive-Direction Canon
Definition sections and interpretation clauses in statutory language are to be carefully followed.
Case:
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)

Last-Antecedent Canon
A relative or qualifying word or phrase generally modifies only the word or phrase that 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.
Case:
- *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)

Ordinary-Meaning Canon
Words and phrases in statutes are to be understood in their ordinary, everyday meanings, 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:
- *Rabbe v. Farmers State Bank of Trimont,* 2019 WL 2416036 (Minn. Ct. App. 2019) (A18-1845)
- *In the Matter of the Welfare of K. L. W.*, 924 N.W.2d 649 (Minn. Ct. App. 2019) (A18-1255)
- *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)
- *In the Matter of Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019) (A17-1161)

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."

Cases:

- *State v. Malik*, 2020 WL 1845964 (Minn. Ct. App. 2020) (A18-2003)
- *Village Lofts at St. Anthony Falls Assoc. v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020) (A18-0256)

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.

Cases:

- *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)

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.

Cases:

- *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)

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."

Cases:

- *State v. Jorgenson*, 946 N.W.2d 596 (Minn. 2020) (A19-0323)
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)
- *In the Matter of Welfare of A. J. B.,* 929 N.W.2d 840 (Minn. 2019) (A17-1161)

Surplusage Canon
No provision of a law should be rendered superfluous.
Case:

- *State v. Jorgenson*, 946 N.W.2d 596 (Minn. 2020) (A19-0323)

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:

- *General Mills, Inc. v. Commissioner of Revenue*, 931 N.W.2d 791 (Minn. 2019) (A18-1660)
- *Buhl v. State*, 922 N.W.2d 435 (Minn. Ct. App. 2019) (A18-0245)
- *State v. Pakhnyuk*, 926 N.W.2d 914 (Minn. 2019) (A17-0474)
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019) (A18-2105)