
STATE OF MINNESOTA
IN COURT OF APPEALS

ALICE JANE KRENGEL
Appellant

vs.

CITY OF WEST ST. PAUL
Respondent

APPELLANT'S BRIEF

SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.
Julia Althoff
Attorney Registration No. 307117
Michael Hagedorn
Attorney Registration No. 39287
166 East 4th Street, Suite 200
Saint Paul, MN 55101
(651) 222-5863

Attorneys for Appellant

JARDINE, LOGAN &
O'BRIEN, P.L.L.P.
Pierre N. Regnier
Suite 100
8519 Eagle Point Boulevard
Lake Elmo, MN 55402
(651) 290-6563

Attorneys for Respondent

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

LEGAL ISSUES 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 4

SUMMARY OF ARGUMENT 7

STANDARD OF REVIEW 9

ARGUMENT 9

 I. The provisions of Minnesota’s nuisance law authorizing injunctive relief in district court are limited to addressing nuisance conditions existing during the 12 months preceding the request for an injunction 9

 II. The district court failed to determine, as a required pre-condition for the issuance of an injunction, that petitioner was responsible for two or more behavioral incidents constituting a nuisance under Minnesota nuisance statutes within the 12 month period preceding the request for an injunction 12

 III. The district court failed to determine, as a required pre-condition for the issuance of an injunction, that petitioner was responsible for conduct which adversely affected “any considerable number of members of the public” within the 12 month period preceding the issuance of its injunction 16

 IV. The district court failed, as a required pre-condition for the issuance of an injunction, to describe the nuisance conduct maintained or permitted by petitioner to be enjoined and prevented by excluding petitioner from occupying her own home for a period of one year 17

 V. The district court exceeded its authority under Minnesota law when it enjoined Ms. Kregel from living in her own home for a year

because she failed to comply with an abatement plan 19

CONCLUSION 21

CERTIFICATION OF BRIEF LENGTH 22

APPENDIX A-1

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>Brookfield Trade Ctr, Inc. v. County of Ramsey</i> , 584 N.W. 2d 390 (Minn. 1998)	9
<i>City of St. Paul v. Spencer</i> , 497 N.W. 2d 305 (Minn. App. 1993)	11
<i>Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n</i> , 358 N.W. 2d 639 (Minn. 1984)	9
<i>Hubred v. Control Data Corp.</i> , 442 N.W. 2d 308 (Minn. 1989)	9
<i>O'Malley v. Ulland Bros</i> , 549 N.W. 2d 889 (Minn. 1996)	9
<u>Minnesota Statutes</u>	
Minn. Stat. §609.74(1)	14,16
Minn. Stat. §609.745	14
Minn. Stat. §617.81, subdivision 1	15
Minn. Stat. §617.81, subdivision 2	8, 10, 15, 16, 20
Minn. Stat. §617.81, subdivision 4	11,18
Minn Stat. §617.81, subdivision 4(a)	10
Minn. Stat. §617.81, subdivision 4(b)(1)	10
Minn. Stat. §617.81, subdivision 4(b)(2)	11
Minn. Stat. §617.81, subdivision 4(b)(3)	11
Minn. Stat. §617.82	18, 20

Minn. Stat. §617.82(b) 19
Minn. Stat. §617.82(c) 11
Minn. Stat. §617.83 8, 11, 12, 15, 18

LEGAL ISSUES

1. Did the district court have authority to enjoin appellant from living in her own home for a year without first finding that appellant was responsible for two or more behavioral incidents constituting a nuisance under Minnesota nuisance law within the 12 month period preceding the request for an injunction?

The district court, by implication, held in the affirmative.

Apposite Authority

Minn. Stat. §617.81, subdivisions 1, 2 and 4.

Minn. Stat. §617.82.

Minn. Stat. §617.83

2. Did the district court have authority to enjoin appellant from living in her own home for a year without first finding that appellant was responsible for conduct which adversely affected any considerable number of members of the public within the 12 months preceding the request for an injunction?

The district court, by implication, held in the affirmative.

Apposite Authority

Minn. Stat. §617.81, subdivisions 1 and 2.

Minn. Stat. §617. 82.

Minn. Stat. §617.83.

Minn. Stat. §609.74(1).

3. Did the district court have authority to enjoin appellant from living in her own home for a year without describing the nuisance conduct maintained or permitted by appellant or identifying any existing or ongoing nuisance condition to be enjoined?

The district court, by implication, held in the affirmative.

Minn. Stat. §617.82.

Minn. Stat. §617.83.

4. Did the district court have authority to enjoin appellant from living in her own home for a year for non-compliance with an abatement plan which did not constitute nuisance activity under Minnesota law?

The district court, by implication, held in the affirmative.

Apposite Authority

Minn. Stat. 617.81, subdivisions 1,2 and 4.

Minn. Stat. §617.82.

Minn. Stat. §617.83.

STATEMENT OF THE CASE

By notice dated June 27, 2006 appellant Kregel was notified that she had maintained or permitted a nuisance at her residence and that if she failed to either abate the nuisance or enter into a new abatement plan within 30 days respondent may seek relief in district court that could result in enjoining the use of her residence for one year. Upon respondent's Complaint and motion for a temporary injunction, the Dakota County District Court issued a temporary injunction, dated August 8, 2006, enjoining Ms. Kregel from living in her home at 823 Allen Avenue in Saint Paul, Minnesota. On November 15, 2006, following a hearing on October 17, 2006, the Dakota County District Court issued an order for a permanent injunction, entered November 20, 2006, permanently enjoining Ms. Kregel from occupying her home for a period of one year.

On December 13, 2006, Ms. Kregel filed with this Court a Petition For Writ Of Prohibition requesting a Writ prohibiting the Dakota County District Court from enjoining her from occupying her home, arguing that she was homeless and that an ordinary appeal would not be an adequate remedy at law because an appeal would not be resolved before the August 2007 expiration of the injunction. On January 16, 2007 this Court issued an Order denying Ms. Kregel's petition for prohibition, determining that Ms. Kregel may move the district court to stay enforcement of the injunction pending appeal and, if necessary, may move this Court to review an unfavorable stay decision by the district court.

On January 18, 2007 appellant Kregel served respondent with a notice of filing of the Dakota County District Court's order for a permanent injunction. On February 9, 2007 appellant Kregel filed and served upon respondent a Notice of Appeal of the Dakota County District Court's order for a permanent injunction. On February 2, 2007 Ms. Kregel served and filed a motion in the Dakota County District Court requesting the Dakota County District Court to stay enforcement of its permanent injunction pending appeal. Counsel for the respective parties appeared and presented arguments to the District Court with respect to this motion on February 27, 2007. On March 19, 2007 the district court issued an Order denying Ms. Kregel's motion for a stay of enforcement of its injunction. On May 2, 2007 appellant Kregel filed with this Court a Motion To Review and Reverse District Court Denial of Appleeant's Request for Stay of Enforcement of Injunction. As of this date appellant's motion is pending before this Court.

STATEMENT OF FACTS

Appellant Alice Krengel, is a 55 year old woman. She has owned her home at 823 Allen Avenue, in West St. Paul for approximately 20 years. (A-2) She resided in her home until on or about August 5, 2006. (A-8) At that time the Dakota County District Court issued an Order temporarily enjoining her from residing in her own home. *Id.* Thereafter, on November 15, 2006 the district court permanently enjoined petitioner from occupying her home for a period of one year from the date the original temporary injunction was entered or until further order of the Court. (A-4) Since approximately August 5, 2006, petitioner has not been able to live in her home. *Id.*

Prior to being enjoined from living in her home, Ms. Krengel received a letter notice, dated June 27, 2006, from legal counsel for respondent reciting a number of incidents occurring from September 28, 2004 through July 12, 2005 which were described as a "SUMMARY OF EVIDENCE OF PAST VIOLATIONS PRIOR TO THE ABATEMENT PLAN." (A-9) Two, but only two, of these incidents ultimately resulted in Ms. Krengel pleading guilty to maintaining or permitting a public nuisance, as noted in Finding 2 of the District Court's Findings of Fact, Conclusions of Law and Order for Permanent Injunction, signed November 15, 2006 and entered November 20, 2006. (A-2) Those incidents occurred on November 14, 2004 and April 10, 2005. *Id.* Subsequent to these incidents, no nuisance activity by Ms. Krengel, as defined under Minnesota law, has been proven. (A-2 to A-4)

In the notice of June 27, 2006 the respondent's legal counsel also set out a

“SUMMARY OF EVIDENCE OF VIOLATIONS OF THE ABATEMENT PLAN.”¹ (A-9 to a-11) The following violations were alleged.

September 17, 2005 - You were seen leaving the 40-Acre Liquor Store with a bag and subsequently you went into your house. Upon speaking to the owner of the liquor store she stated that you purchased a 1-liter bottle of Castillo Silver Puerto Rican Rum. When officers went to your residence to investigate, although the officers could see you through an open window and they identified themselves, you answered them but refused to come to the door and allow them an opportunity to enter.

March 16, 2006 - Police were informed that one of the boarders that resides in your home, Kevin, was seen walking from the 40-Acre Liquor store with a 12-pack of beer and subsequently entered your house. When officers responded to your residence to investigate, you responded to the door and officers detected an odor of alcohol coming from you. No alcohol was seen in the areas you allowed the officers to inspect.

May 6, 2006 - Officer Nagel conducted a random inspection pursuant to the Abatement Plan and knocked at the door. You did not respond. As the officer was leaving, you opened the door to announce that you were fine and then closed the door. When the officer went back to the front door, you did not answer the door or respond to his knock or voice.

May 7, 2006 - Officer Nagel conducted a random inspection pursuant to the Abatement Plan. When you answered the door, the officers detected an odor of alcohol coming from you and noted your slurred speech. When the officers requested a PBT, you slammed the door and locked it.

In its June 27, 2006 notice to Ms. Kregel, respondent’s legal counsel advised petitioner that on June 26, 2006 the City Council authorized pursuing district court action to enjoin Ms. Kregel from using her residence and further advised her as follows.

¹On August 22, 2005, following petitioner’s plea of guilty to maintaining and permitting a public nuisance as a result of two incidents occurring on and before April 10, 2005, an abatement plan was entered with the City. (A-2)

Pursuant to Minnesota Statutes, Section 617.81, if you fail to either abate the nuisance or enter into a new abatement plan *within 30 days of service of this Notice*, the City may file a complaint for relief in district court that could, among other remedies, result in enjoining the use of your residence for any purpose *for one year*.

Id.

Respondent's notice of June 27, 2006 provided Ms. Kregel with no information about what specific nuisance condition needed to be abated; nor did it describe or identify any existing or ongoing nuisance activity for which Ms. Kregel was responsible. (A-9 to A-12) It only listed past alleged violations ending with an incident on July 12, 2005. *Id.* The last incident proven to be, and determined by the court to constitute, a nuisance occurred on April 10, 2005. (A-2)

On October 17, 2006 the district court heard respondent's motion for a permanent injunction to enjoin Ms. Kregel from occupying her home for one year. (A-2) On November 15, 2006 the District Court issued its Findings of Fact, Conclusions of Law, and Order for Permanent Injunction, which was entered November 20, 2006. (A-2 to A-5) The District Court's permanent injunction enjoined petitioner from occupying her home for a period of one year from the date the temporary injunction was entered or until further order of the court. *Id.* The Court's Order did not identify any ongoing conduct or nuisance condition being maintained or permitted by appellant which should have been enjoined; nor did it identify any conduct which had occurred or existed within the previous 12 months which should have been enjoined. *Id.*

The District Court, in Conclusion 4 of its Conclusions of Law, stated generally that petitioner “has intentionally permitted a number of highly intoxicated persons to be on her property on numerous occasions...”*Id.* The Court, however, did not identify any of these incidents as occurring after July 12, 2005. *Id.* Then, in the same Conclusion, the Court stated that “[i]t was not until July 2005 that she sought restraining orders to keep certain of her acquaintances away from her and her property.” *Id.*

The District Court in Finding 6 of its Findings of Fact found that petitioner failed to comply with the abatement plan entered August 22, 2005 and in its finding stated as follows.

Defendant violated the abatement plan on September 17, 2005, March 16, 2006, May 6, 2006, May 7, 2006, June 29, 2006, July 28, 2006, and August 4, 2006. Out of these incidents, only one was a complaint from a neighbor. The other violations resulted from the police going to the property to check compliance with the abatement agreement. The police also went to the Defendant’s property on calls from Defendant attempting to enforce Restraining Orders on November 1, 2005, July 2, 2005, and July 25, 2005.

Id. The court did not determine, however, that these incidents of non-compliance with the abatement plan constituted a nuisance under Minnesota nuisance law or that they had resulted in any ongoing nuisance condition. *Id.* Neither did the Court determine that any of these incidents of non-compliance with the abatement plan affected any “considerable number of members of the public.” *Id.*

SUMMARY OF ARGUMENT

Alice Kregel has been enjoined from living in her home until August 7, 2007. The court, contrary to statute, failed to find that Ms. Kregel had engaged in or allowed any

nuisance activity on her property in the 12 months prior to respondent's request to enjoin her from residing in her home.

Minnesota Statutes §617.83 authorizes the court to issue a permanent injunction and enter an order of abatement when the criteria of Minn. Stat. §617.81, subdivision 2 are met. It further authorizes the closing of the building or a portion of it for one year when these criteria are met. Minnesota Statutes §617.81 subdivision 2 states that there must be proof of two or more separate incidents constituting a nuisance in the previous 12 months in order for an injunction to issue.

In this case the District Court, on November 20, 2006, ordered Ms. Kregel's home closed and permanently enjoined her from living there for one year. But the Court identified no proven nuisance activity at Ms. Kregel's home or property after April 10, 2005. Respondent's Notice of Injunction was dated June 27, 2006. Respondent's Motion for Injunctive Relief was filed August 1, 2006. The District Court issued a temporary injunction on August 5, 2006. A permanent injunction was entered November 20, 2006. The last nuisance activity identified by the District Court did not occur within the 12 months prior to its issuance of an injunction. The court enjoined Ms. Kregel from occupying her home without ordering abatement of a specific nuisance.

An abatement plan had been entered in August 2005. Ms. Kregel failed to comply with some of the provisions in the plan. This non-compliance did not constitute conduct that could be enjoined under the statute. There was no finding of any nuisance activity that

occurred in the time period from April 10, 2005 to the present date, and there is no provision in the statute that permits the court to issue an injunction for non-compliance with an abatement plan that does not constitute nuisance activity. The court exceeded its authority in issuing an injunction under these circumstances.

STANDARD OF REVIEW

A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W. 2d 639, 642 (Minn. 1984). A reviewing court need not defer to the district court's application of the law when the material facts are not in dispute. *Hubred v. Control Data Corp.*, 442 N.W. 2d 308, 310 (Minn. 1989). Statutory construction is a question of law, which the court reviews de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W. 2d 390, 393 (Minn. 1998). Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on the court. *O'Malley v. Ulland Bros.*, 549 N.W. 2d 889, 892 (Minn. 1996).

ARGUMENT

- I. **The provisions of Minnesota's nuisance law authorizing injunctive relief in district court are limited to addressing nuisance conditions existing during the 12 months preceding the request for an injunction.**

The procedures and required prerequisites for obtaining an injunction to abate a public nuisance are set out in Minn. Stat. §§617.80 to 617.87. These procedures and requirements must, in fact, be followed before any injunctive relief may be granted by a court. Minn. Stat.

§617.81, Subd. 1.

One requirement for an injunction to issue is proof that two or more separate behavioral incidents constituting a nuisance have been “committed within the previous 12 months within the building.” Minn. Stat. §617.81, Subd 2. The focus of this language is on ending conduct which is ongoing and is continuing to have a harmful effect on other members of the public. The need to identify and prove that a public nuisance exists at the time injunctive relief is requested is made clear by the language of several other provisions of Minnesota’s nuisance law as well.

Minn. Stat. §617.81, Subd. 4(a) spells out the written notice requirements that must be followed “[i]f the prosecuting attorney has reason to believe that a nuisance is maintained or permitted in the jurisdiction...and intends to seek abatement of the nuisance...” The statute very plainly requires proof of a condition that is “maintained or permitted”, one that is causing ongoing harm and must therefore be abated. The focus is not on a nuisance condition which existed and ended more than a year before the injunctive relief was requested.

Minn. Stat. §617.81, Subd. 4(b)(1) reinforces the principle that the nuisance condition to be enjoined and abated be ongoing. It requires that the written notice “must specify the kind or kinds of nuisance being maintained or permitted.” Once again, the clear focus of the statutory language is on bringing an end to an existing, ongoing condition that is having a harmful effect on other members of the public. The focus is not on preventing a past, abated

nuisance condition. Not only must the written notice specify the nuisance which is being maintained or permitted, but it must also set forth evidence summarizing the nuisance which is maintained or permitted. Minn. Stat. §617.81, Subd. 4(b)(2). This requirement assures that the person responsible for the nuisance knows exactly what condition must be abated in order to avoid being enjoined from using the building where the nuisance condition exists.² *Id*; Minn. Stat. §671.81, Subd 4(b)(3). The prosecuting attorney may not commence an action for injunctive relief in district court until 30 days after service of the notice required under Section 617.81, subdivision 4. Minn. Stat. §617.82(c). This is to give the person maintaining or permitting the nuisance an opportunity to abate the nuisance which is being maintained or permitted.

Finally, any temporary or permanent injunction issued must describe the conduct to be enjoined. *Id*; Minn. Stat. §617.83. It makes no sense to enjoin a nuisance condition which no longer exists and has not existed for over one year. The injunction remedy makes sense only if the injunction is specifically directed at ending a nuisance condition which is maintained and permitted and is causing ongoing harm to other members of the public. Thus, there is a need to describe the conduct to be enjoined.

In short, Minnesota's nuisance statute only authorizes the court to enjoin ongoing existing nuisance conditions.

²One of the legislature's purposes in enacting the public nuisance statute was to encourage property owners to abate the nuisance themselves. *City of St. Paul v. Spencer*, 497 N.W. 2d. 305 (Minn. App. 1993)

II. The district court failed to determine, as a required pre-condition for the issuance of an injunction, that petitioner was responsible for *two or more behavioral incidents* constituting a nuisance under Minnesota nuisance statutes *within the 12 month period preceding the request for an injunction.*

Following a hearing on October 17, 2006 on a motion by the respondent for a permanent injunction to enjoin Ms. Kregel from occupying her home, the district court issued its Findings of Fact, Conclusions of Law, and Order for Permanent Injunction, dated November 15, 2006 and entered November 20, 2006. The district court's Order did not describe the conduct which was to be permanently enjoined as required by Minn. Stat. §617.83 and made no reference to any nuisance condition that Ms. Kregel had maintained or permitted within the 12 month period preceding the City's request for injunctive relief. Ms. Kregel was simply enjoined from occupying her home for a period of one year.

In its Findings of Fact, the district court recited a history of incidents occurring during an extended period, beginning in 1990 and ending in July of 2005. These included incidents on November 14, 2004 and April 10, 2005 which were the basis of Ms. Kregel's pleading guilty to maintaining or permitting a public nuisance. Apart from these two incidents, none of the other incidents recited were determined by the district court or any court of law to constitute a public nuisance under Minnesota's nuisance law.

The district court also recited in its Findings of Fact a number of incidents occurring since August 22, 2005 when petitioner entered into an abatement plan with the City. The court determined that these incidents were violations of the abatement plan. While these incidents amounted to a failure by Ms. Kregel to comply with the abatement plan, the

district court made no finding or conclusion of law that any of these incidents, either individually or collectively, rose to the level of a nuisance condition under Minnesota law. In its Conclusions of Law the district court failed to identify any incidents which it specifically determined to constitute a nuisance occurring within the 12 month period preceding respondent's request for injunctive relief or that were in existence at the time respondent requested injunctive relief.

With respect to petitioner's failure to comply with the abatement plan of August 22, 2005, the district court in Finding 6 of its Findings of Fact stated as follows.

Defendant violated the abatement plan on September 17, 2005, March 16, 2006, May 6, 2006, May 7, 2006, June 29, 2006, July 28, 2006, and August 4, 2006. *Out of these incidents, only one was a complaint from a neighbor.* The other violations resulted from the police going to the property to check compliance with the abatement agreement. The police also went to the Defendant's property on calls from Defendant attempting to enforce Restraining Orders on November 1, 2005, July 2, 2005, and July 25, 2005. (Emphasis added.)

The City in its "SUMMARY OF EVIDENCE OF VIOLATIONS OF THE ABATEMENT PLAN" in its notice of June 27, 2006 stated as follows.

September 17, 2005 - You were seen leaving the 40-Acre Liquor Store with a bag and subsequently you went into your house. Upon speaking to the owner of the liquor store, she stated that you purchased a 1-liter bottle of Castillo Silver Puerto Rican Rum. When officers went to your residence to investigate, although the officers could see you through an open window and they identified themselves, you answered them but refused to come to the door and allow them an opportunity to enter.

March 16, 2006 - Police were informed that one of the boarders that resides in your home, Kevin, was seen walking from the 40-Acre Liquor store with a 12-pack of beer and subsequently entered your house. When officers responded

to your residence to investigate, you responded to the door and officers detected an odor of alcohol coming from you. No alcohol was seen in the areas you allowed the officers to inspect.

May 6, 2006 - Officer Nagel conducted a random inspection pursuant to the Abatement Plan and knocked at the door. You did not respond. As the officer was leaving, you opened the door to announce that you were fine and then closed the door. When the officer went back to the front door, you did not answer the door or respond to his knock or voice.

May 7, 2006 - Officer Nagel conducted a random inspection pursuant to the Abatement Plan. When you answered the door, the officers detected an odor of alcohol coming from you and noted your slurred speech. When the officers requested a PBT, you slammed the door and locked it.

The acts of purchasing an alcoholic beverage, consuming alcohol in one's own home, allowing a boarder to possess an alcoholic beverage, and declining to allow a police officer to enter one's home, while constituting non-compliance with the particular abatement plan in effect, do not amount to a nuisance under the provisions of Minnesota law upon which the district court relied in issuing its permanent injunction.

The district court relied on Minn. Stat. §§ 609.74(1) and 609.745 as its basis for issuing its injunction. Minn. Stat. §609.74(1) provides that whoever "[m]aintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public" is guilty of maintaining a public nuisance. And Minn. Stat. §609.745 provides that "[w]hoever having control of real property, permits it to be used to maintain a public nuisance or lets the same knowing it will be so used is guilty of a misdemeanor." These provisions plainly require that a nuisance exists only if a condition is being maintained or permitted. Ms. Kregel's failure

to comply with the abatement plan in the respects recited in the City's Notice, fall well short of *maintaining* or *permitting* a nuisance, as these nuisance laws require.³ And the district court did not conclude that these particular abatement plan compliance failures constituted a public nuisance within the meaning of the statutory provisions upon which it was relying. Nor did the district court identify any other incidents or conduct occurring within the past 12 months which embodied the elements of statutory nuisance upon which it relied.

While respondent appears to take the position that the requirement that the nuisance activity occur within "the previous 12 month" means the 12 months preceding the commencement of the abatement plan, nothing in the language of the nuisance statute supports such a position. Before an injunction may be obtained, there must be "proof of two or more separate behavioral incidents...committed within the previous 12 months within the building..." Minn. Stat. §617.81, subdivisions 1 and 2. Subdivisions 1 and 2, read together, make clear that there must be proof of nuisance activity within the 12 months preceding the request for an injunction, not the commencement of an abatement plan. This mandate is reaffirmed in Minn. Stat. §617.83. A pre-condition of the request for a permanent injunction is "proof of a nuisance described in section 617.81, subdivision 2." *Id.* Among other things, subdivision 2 requires that the nuisance activity must occur "within the previous 12 months."

Neither the history of the incidents recited by the district court in its Findings of Fact

³In fact, while petitioner may have failed to comply with provisions of the abatement plan which imposed higher standards on her than on other members of the public, she succeeded under the abatement plan in abating the nuisance conditions which she had on two occasions caused to exist prior to the implementation of the plan.

nor Ms. Krengel's failure to comply with the abatement plan, as detailed by the respondent and referenced in the district court's findings, demonstrate the existence of two or more behavioral incidents attributable to petitioner which constituted a public nuisance within the 12 months preceding respondent's request for injunctive relief. This is an essential requirement of Minn. Stat. §617.81, Subd 2 which has not been met. Because this requirement was not met, the district court exceeded its authority in enjoining Ms. Krengel from occupying her own home.

III. The district court failed to determine, as a required pre-condition for the issuance of an injunction, that petitioner was responsible for conduct which adversely affected "any considerable number of members of the public" within the 12 month period preceding the issuance of its injunction.

The district court cites Minn. Stat. §609.74(1) as a provision of the nuisance law which Ms. Krengel violated. That provision states that "[w]hoever maintains or permits a condition which unreasonably annoys, injures or endangers, the safety, health, morals, comfort, or repose of any considerable number of members of the public..." is guilty of maintaining a public nuisance. Before a district court may issue injunctive relief, as noted above, two or more separate behavioral incidents constituting a nuisance must be committed within the previous 12 months. Minn. Stat. §617.81, Subd 2.

The district court acknowledged in its own findings that only one of the incidents it found to be a violation of the abatement plan was a complaint from a neighbor. *See* Finding 6. The Court did not specifically identify or describe the incident associated with this complaint. Nor did the Court determine that this incident affected any "considerable number

of members of the public” or that it rose to the level of a nuisance condition under Minnesota nuisance law. Whatever the nature of this incident, it appears to have been observed by only one neighbor, not a “considerable number of members of the public.”

The district court noted in the same Finding 6 that the other failures by Ms. Kregel to comply with the abatement plan were simply incidents in which the police came to her home 1) to check whether she was complying with the abatement plan and 2) in response to calls from Ms. Kregel attempting to enforce restraining orders to prevent other persons from creating a nuisance. The district court’s findings make reference to no determinations by the police officers visiting Ms. Kregel’s home that Ms. Kregel was observed engaging in behavior or conduct affecting a “considerable number of members of the public” or constituting a nuisance under Minnesota law. Apart from a single isolated complaint from one neighbor, the district court’s findings make reference to no other incidents affecting other members of the public, much less a “considerable number of members of the public” within the previous 12 months.

The district court exceeded its authority when it issued an injunction without finding that a considerable number of members of the public were affected by Ms. Kregel’s conduct within the previous 12 months.

IV. The district court, as a required pre-condition for the issuance of an injunction, failed to describe the nuisance conduct maintained or permitted by petitioner to be enjoined and prevented by excluding petitioner from occupying her own home for a period of one year.

Under Minnesota’s nuisance law, any injunction, temporary or permanent, “must

describe” the conduct enjoined. Minn. Stat. §§617.82 and 617. 83. Such a description is conspicuously absent from the district court’s injunction order. Only nuisance conduct which had occurred more than a year before the issuance of the injunction was identified in the District Court’s Findings of Fact and Conclusions of Law. No reference whatsoever was made to the conduct, behavior or nuisance condition to be enjoined for the protection of the public. Ms. Kregel was simply enjoined from occupying her home. Ms. Kregel’s occupation of her home, however, was not found or determined by the district court to constitute a nuisance condition that had adversely affected a considerable number of members of the public within the previous 12 month period; nor could it have been.

The failure of the district court to describe the conduct enjoined appears to flow from the failure of the respondent to comply with the requirements of Minn. Stat. §617.81, Subd 4. Under this provision respondent was required to serve Ms. Kregel with a written notice specifying the kind or kinds of nuisance being maintained or permitted and summarizing the evidence of the nuisance being maintained or permitted in her home. If this requirement had been met, assuming there was any nuisance conduct or condition which could be identified, the petitioner would have been made aware of the nature of the conduct or condition to be abated and would have had an opportunity to abate it. The respondent in its notice to Ms. Kregel, instead, only included a “SUMMARY OF EVIDENCE OF PAST VIOLATIONS PRIOR TO THE ABATEMENT PLAN” (none of which occurred after July 12, 2005) and a “SUMMARY OF EVIDENCE OF VIOLATIONS OF THE ABATEMENT PLAN” (none

of which constituted a nuisance). The respondent, in effect, failed to identify any existing nuisance condition which was being *maintained* or *permitted* by Ms. Kregel or which had been *maintained* or *permitted* by her within the previous 12 months. Ms. Kregel could not have known what conduct needed to be abated. If there had been a specific condition which Ms. Kregel might have taken action to abate, she was afforded no opportunity to do so. Since the respondent failed to provide either Ms. Kregel or the district court with any evidence of a nuisance condition then being maintained or permitted by Ms. Kregel, the district court was unable to satisfy the essential requirement under Minnesota's nuisance law of describing the nuisance conduct to be enjoined.

The district court exceeded its authority when it issued an injunction that did not describe or identify any nuisance conduct that needed to be abated or enjoined but simply enjoined petitioner from occupying her home.

V. The district court exceeded its authority under Minnesota law when it enjoined Ms. Kregel from living in her own home for a year because she failed to comply with an abatement plan.

Nowhere does Minnesota's nuisance law authorize the issuance of an injunction for violation of an abatement plan alone. Minn. Stat. § 617.82 (b) states that if a person who has entered into an abatement plan fails to comply with the agreed plan, "the prosecuting attorney may initiate a complaint for relief in the district court consistent with paragraph (c)." But paragraph (c), among other things, very clearly requires "proof of a nuisance described in section 617.81, subdivision 2." While the respondent was permitted to initiate a complaint

for relief in district court if Ms. Kregel failed to comply with the abatement plan, nothing in the nuisance statute excused respondent from proving that nuisance activity occurred within the previous 12 months.

As has been demonstrated above, the district court's findings and conclusions of law fail to show that a nuisance as described in Minn. Stat. §617.81 Subd. 2 was proven. If the district court had determined that Ms. Kregel's failure to comply with the abatement plan had actually resulted in the reoccurrence of a nuisance as defined under Minnesota law, the prerequisite requirements for its injunction would have been met. But the district court made no such determination. The district court, therefore, was not authorized to issue either a temporary injunction under Minn. Stat. §671.82 or a permanent injunction under Minn. Stat. §671.83 and exceeded its authority in doing so.

CONCLUSION

For the reasons set forth above, Ms. Kregel requests this Court to determine that the district court lacked authority under Minnesota law to enjoin her from living in her own home and to vacate the district court's order of injunction preventing her from living in her home.

Dated: 5-22-07

Respectfully Submitted

SOUTHERN MINNESOTA REGIONAL
LEGAL SERVICES, INC.



Julia Althoff #307117
166 East 4th Street, Suite 200
St. Paul, MN 55101
(651) 222-5863



Michael Hagedorn #39287
166 East 4th Street, Suite 200
St. Paul, MN 55101
(651) 228-9823

Attorneys for Appellant

STATE OF MINNESOTA
IN COURT OF APPEALS

Alice Jane Kregel,

Petitioner,

v.

City of West St. Paul,

Respondent.

**CERTIFICATION OF
BRIEF LENGTH**

Appellate Case No. A05-2301

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5600 words. This brief was prepared using WordPerfect 9.0.

Dated: 5-22-07

**SOUTHERN MINNESOTA REGIONAL
LEGAL SERVICES, INC.**



Julia Althoff

Attorney License No. 307117

Michael Hagedorn

Attorney License No. 39287

166 East 4th Street, Suite 200

St. Paul, MN 55101-1437

(651) 228-9823