

CASE NO. A07-0301³¹⁰

STATE OF MINNESOTA
IN COURT OF APPEALS

ALICE JANE KRENGEL
Appellant

vs.

CITY OF WEST ST. PAUL
Respondent

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. THE DISTRICT COURT LACKED THE REQUISITE BASIS FOR ISSUING AN INJUNCTION BECAUSE THE CITY'S NOTICE OF JUNE 27, 2006 TO APPELLANT DID NOT IDENTIFY A NUISANCE THAT "IS MAINTAINED OR PERMITTED" AND CAPABLE OF BEING ABATED BY APPELLANT.

Respondent asserts on page 11 of its brief that appellant misstates the applicable Nuisance Statute by stating that issuance of an injunction after a failed abatement plan requires a finding that the nuisance condition be ongoing. The plain language of the statute, however, authorizes the City to provide a written notice to appellant seeking abatement only if it "has reason to believe that a nuisance *is maintained or permitted...*" Minn. Stat §617.81 Subd. 4(a). Emphasis added. And "...[t]he written notice must...state that a nuisance as defined in subdivision 2 *is maintained or permitted* in the building and *must specify the kind or kinds of nuisance being maintained or permitted...*" Minn. Stat. §617.81 Subd. 4(b). Emphasis added. The deliberate and repeated use of the phrase "maintained or permitted" makes clear that the conduct to be abated must be existing, ongoing conduct.¹

Respondent's notice of June 27, 2006 to appellant identified only instances of non-compliance with an agreed upon abatement plan. It did not identify any actual, existing or ongoing nuisances which were "being maintained or permitted" by appellant. This notice gave appellant 30 days to abate an undisclosed nuisance or face an action in District Court enjoining her from using her home for one year. The notice failed to identify or describe the nuisance "being maintained or permitted," even though disclosure of such nuisance activity was necessary for appellant to have a

¹The words "maintain" and "permit" are critical elements as well of the public nuisance violations described in Minn. Stat. §§609.74 and 609.745; these are the provisions relied upon by defendant and the District Court as the basis for issuance of an injunction.

fair opportunity to abate it and avoid losing the use of her home.

When the City did file its complaint seeking an injunction at the expiration of the 30 day period, it identified no nuisance conduct during this 30 day period that appellant had “maintained or permitted” and had failed to abate. Neither did the District Court identify any nuisance conduct during this 30 day period which appellant had “maintained or permitted” and had failed to abate.

In effect, appellant was deprived of her statutory right to an opportunity to abate a nuisance before action was taken to remove her from her home.

II. THE CITY WAS AUTHORIZED ONLY TO “INITIATE A COMPLAINT FOR RELIEF IN DISTRICT COURT...” IF APPELLANT FAILED TO COMPLY WITH THE AGREED UPON ABATEMENT PLAN; AND THE DISTRICT COURT WAS AUTHORIZED TO ISSUE AN INJUNCTION ONLY IF NUISANCE CONDUCT WITHIN THE PREVIOUS 12 MONTHS WAS IDENTIFIED AND PROVEN.

Respondent suggests on pages 16-17 of its brief that appellant agreed to an injunction preventing her from using her home if she failed to comply with the provisions of the abatement plan, even though her failure to comply with any one of these provisions, of itself, would not constitute a nuisance. Appellant agreed to no more than Minnesota’s nuisance statute permits. She agreed that “the City will consider pursuing the injunction” if she failed to comply with the plan. She did not agree that she could be enjoined from using her home if the City failed to show, and the District Court failed to determine, that she had engaged in nuisance activity within the previous 12 months and continued to maintain or permit such a nuisance. This is consistent with the statutory provision that if a person fails to comply with the agreed abatement plan the City “*may initiate a complaint for relief in the district court consistent with paragraph (c).*” Minn. Stat. §617.82(b). Emphasis added.

Paragraph (c) then provides that a temporary injunction shall be issued only upon “proof of

a nuisance described in section 617.81, subdivision 2," which requires that two separate behavioral incidents (of those enumerated) be committed within the previous 12 months. Minn. Stat. §617.82(c). Likewise, a permanent injunction shall be issued only "[u]pon proof of a nuisance described in section 617.81, subdivision 2." Minn Stat. §617.83.

The Respondent is therefore not excused from proving that a nuisance had been committed within the previous 12 months, even though appellant has not fully complied with the abatement plan. Had the appellant's non-compliance with the abatement plan been shown to constitute a nuisance under §617.81, subdivision 2, such a showing would have been sufficient to warrant the issuance of an injunction. But no such showing was made by Respondent. And the District Court made no such determination. While appellant did not comply with the abatement plan in all respects, her conduct and behavior changed enough during the time the abatement plan was in effect to enable her to avoid engaging in nuisance activity as defined under Minnesota nuisance law. There was, in fact, no proof of a nuisance being maintained or permitted by appellant which required abatement.

III. THE DISTRICT COURT ORDER DID NOT ADEQUATELY DESCRIBE THE NUISANCE CONDUCT TO BE ENJOINED.

Although respondent refers on pages 15-16 of its brief to findings of fact by the District Court which it claims adequately describe nuisance conduct, none of the incidents referenced were identified as conduct which occurred within the previous 12 months. Nor were the incidents of non-compliance with the agreed upon abatement plan, which were described, determined to be nuisance conduct under Minnesota nuisance law.

Respondent also appears to misunderstand the fundamental purpose of the requirement in Minn. Stat. §617.83 that the permanent injunction "must describe the conduct permanently

enjoined.” The fundamental purpose is to provide a mechanism for the effective abatement of nuisances. While one form of remedy for abating a nuisance may include enjoining the use of a building for a year, the primary conduct that will need to be permanently enjoined is the nuisance conduct that is “being maintained or permitted.” A “permanent” injunction is directed at conduct which must be permanently abated. This is not accomplished by simply enjoining the use of a building for one year. The District Court in its Order failed to describe what nuisance conduct needed to be permanently enjoined because it could identify no nuisance conduct “being maintained or permitted.” It thus failed to comply with the mandate of Minn. Stat. §617.83.

CONCLUSION

For the reasons set forth above and in Appellant’s Brief, 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 injunction preventing her from living in her home.

Dated: 6/29/07

Respectfully Submitted

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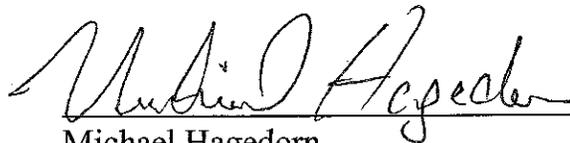
**CERTIFICATION OF
BRIEF LENGTH**

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 1,145 words. This brief was prepared using WordPerfect 9.0.

Dated: 6/29/07

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