

A07-310

State of Minnesota
In Court of Appeals

Alice Jane Krengel,

Appellant,

vs.

City of West St. Paul,

Respondent.

RESPONDENT'S BRIEF

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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).

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LEGAL ISSUES

- I. DID THE DISTRICT COURT PROPERLY ISSUE THE PERMANENT INJUNCTION USING THE TIMEFRAME OF JULY 2004 TO JULY 2005 WHEN A NOTICE OF INJUNCTION WAS SERVED ON APPELLANT ON JULY 29, 2005 OUTLINING 13 SEPARATE NUISANCE INCIDENTS WHICH OCCURRED DURING THAT TIME PERIOD AND WHEN APPELLANT THEREAFTER VIOLATED THE TERMS OF THE ABATEMENT PLAN ENTERED INTO ON AUGUST 17, 2005?**

The District Court held in the affirmative.

Apposite Authority:

Minn. Stat. § 617.81, Subds. 1, 2, 4

Minn. Stat. § 617.82

Minn. Stat. § 617.83

City of St. Paul v. Spencer, 497 N.W.2d 305 (Minn. App. 1993)

- II. DID THE DISTRICT COURT PROPERLY ISSUE THE PERMANENT INJUNCTION AFTER DETERMINING THAT APPELLANT MAINTAINED AND PERMITTED A CONDITION THAT UNREASONABLY ANNOYS, INJURES OR ENDANGERS THE SAFETY, HEALTH, MORALS, COMFORT OR REPOSE OF ANY CONSIDERABLE NUMBER OF MEMBERS OF THE PUBLIC WHEN IT FOUND THAT APPELLANT CREATED A NUISANCE AS DEFINED BY MINN. STAT. § 609.74(1)?**

The District Court held in the affirmative.

Apposite Authority:

Minn. Stat. § 617.81, Subds. 1, 2

Minn. Stat. § 617.82

Minn. Stat. § 617.83

Minn. Stat. § 609.74(1)

III. DID THE DISTRICT COURT ADEQUATELY DESCRIBE THE CONDUCT TO BE ENJOINED WHEN IT FOUND, AMONG OTHER THINGS, THAT (1) THERE WERE 29 POLICE REPORTS REGARDING THE PROPERTY RANGING FROM INTOXICATED MALE GUESTS, TO AN ASSAULT, TO UNRELATED GUESTS; (2) A NEIGHBOR SAW APPELLANT SMASH OUT THE WINDOW OF A PICKUP TRUCK IN HER DRIVEWAY; AND (3) YELLING, ARGUING AND SCREAMING OBSCENITIES ALL HOURS OF THE DAY AND NIGHT HAS OCCURRED?

The District Court held in the affirmative.

Apposite Authority:

Minn. Stat. § 617.81, Subds. 1, 2, 4
Minn. Stat. § 617.82
Minn. Stat. § 617.83

IV. DID THE DISTRICT COURT PROPERLY ENJOIN APPELLANT DUE TO HER NON-COMPLIANCE WITH THE ABATEMENT PLAN?

The District Court held in the affirmative.

Apposite Authority:

Minn. Stat. § 617.81, Subds. 1, 2, 4
Minn. Stat. § 617.82
Minn. Stat. § 617.83

STATEMENT OF THE CASE

On July 29, 2005, Respondent sent Appellant a Notice of Injunctive Action pursuant to Minn. Stat. § 617.81, Subd. 4 (2005). Respondent's Appendix (RA-1). Appellant entered into an Abatement Plan with the City on August 22, 2005. (RA-6) Appellant violated the provisions of the Abatement Plan and Respondent re-initiated the process of seeking an injunction by again sending Appellant a Notice of Injunctive Action on June 27, 2006. (A-9)

On August 3, 2006, Dakota County District Court issued Respondent a Temporary Injunction enjoining Appellant from occupying her property and engaging in nuisance activity on the property. (A-6) Pursuant to that Court Order, Appellant was removed from her property on or about August 7, 2006.

The Injunction hearing was originally scheduled by the District Court to be heard on September 6, 2006, but at Appellant's request, was continued. After a hearing on October 17, 2006, the District Court issued an Order for a Permanent Injunction, entered November 20, 2006, enjoining Appellant from occupying her property for one year. (App. A-5)

On December 13, 2006, Appellant filed a Petition for Writ of Prohibition at the Court of Appeals requesting a Writ to preclude the District Court from enforcing the November 20, 2006 injunction Order. On January 16, 2007, the Court of Appeals issued an order denying Appellant's petition for a Writ of Prohibition. (A-14) On February 9, 2007, Appellant served Respondent with a Notice of Appeal of the November 20, 2006

District Court Order. (A-1) On February 2, 2007, Appellant served and filed a motion in the District Court requesting an Order staying enforcement of the Permanent Injunction pending Appellant's appeal. A Hearing on Appellant's motion was held February 27, 2007. On March 19, 2007, the District Court issued an Order denying Appellant's motion for a stay of enforcement of the injunction pending this appeal. (RA-10) On May 2, 2007, Appellant filed with this Court a Motion To Review and Reverse The District Court's Denial of Appellant's Request for Stay of Enforcement of Injunction. By Court Order dated May 22, 2007, the Court of Appeals denied Appellant's Motion for Stay Pending Appeal, finding that both Rule 62.02 and 108.01 are discretionary with the Court and that Appellant had not shown a strong likelihood of success on the merits of her appeal. (RA-14)

STATEMENT OF FACTS

On July 29, 2005, pursuant to Minn. Stat. § 617.81, Subd. 4 (2005), Respondent sent Appellant a Notice of Injunctive Action by Certified Mail detailing thirteen separate incidents that constituted acts of maintaining or permitting a public nuisance which occurred between September 28, 2004 and July 12, 2005. (RA-1) Of those, twelve incidents involved the use of alcohol and the presence of intoxicated guests at Appellant's home. Id.

Appellant entered into an Abatement Plan with the City on August 22, 2005, which contained specific terms and conditions to which Appellant agreed in order to avoid the City proceeding to obtain the injunction at that time. (RA-6)

Four of the six terms contained in the Abatement Plan concern restrictions on Appellant's use and possession of alcohol and controlled substances. Id. The Abatement Plan limits the number of unrelated occupants who may reside in Appellant's residence. Id. Importantly, the Abatement Agreement advised Appellant that if she violated any of the terms of the Abatement Plan during the one year time period, Respondent would consider pursuing the Injunction. Id.

Less than one month after entering into the Abatement Plan, Appellant began a pattern of violating the Plan and Respondent re-initiated the process of seeking an injunction by again sending Appellant a Notice of Injunctive Action dated June 27, 2006. (A-9) That Notice reiterated the original 13 incidents which were contained in the July 29, 2005 Notice To Appellant and also included an additional four incidents of Appellant's violation of the terms of the Abatement Plan. Id. Three of the Appellant's four cited violations of the Abatement Plan involved Appellant's use/suspected use of alcohol. Id.

Respondent received a Temporary Injunction from the Dakota County District Court ("District Court") on August 3, 2006, enjoining Appellant from occupying or from entering into her property without prior approval from the West St. Paul Police Department and enjoined Appellant from engaging in nuisance activity on the property. (A-6) Appellant was removed from the property on or about August 7, 2006, and has not been allowed to occupy the property since that date.

On October 17, 2006, at the Permanent Injunction hearing, Respondent moved the District Court for an injunction, seeking an order of abatement enjoining Appellant from

continuing to maintain a public nuisance in violation of Minn. Stat. § 609.74, clause (1) or (3) and permitting a public nuisance in violation of Minn. Stat. § 609.745 (2006) and ordering the closing of the building for one year, pursuant to Minn. Stat. § 617.83 (2006).

At that Court hearing, evidence was introduced which established that

- Police had responded to Appellant's home approximately 180 times since 1990;
- Appellant twice pled guilty to a public nuisance—once for a 11/14/04 incident and again for an April 10, 2005 incident;
- Between July 2004 and July 2005 there were 29 police reports regarding Appellant's property;
- Appellant's neighbors testified to nine different instances of nuisance between July 2004 and July 2005;
- Appellant 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. One of these incidents was a complaint from a neighbor and the remainder resulted when West St. Paul Police were checking for compliance with the Abatement Plan.
- Appellant's neighbors have been subjected to intoxicated persons at Appellant's home, yelling, arguing and screaming obscenities at all hours of the day and night. Her guests have been observed to urinate outdoors on neighboring property.
- Neighbors have had to alter their schedule to monitor the condition of their property. They were not comfortable having their family visit them there.
- Appellant's neighbor fears for the safety and welfare of her teenage daughter who has received lewd and suggestive comments from men visiting Appellant's residence.
- Appellant's neighbors avoid walking in the area of Appellant's property in order to avoid being subjected to the annoying behavior which occurs there.

See, A-2, Findings of Fact 1, 2, 3, 6, 7, 8, 9, 10, 12. See also, generally, Transcript of October 17, 2006 District Court hearing.

On November 20, 2006, the District Court filed Findings of Fact, Conclusions of Law and Order for Permanent Injunction granting the City's motion. (A-2)

STANDARD OF REVIEW

The standard of review in nuisance cases, and others involving equitable relief, is whether the trial court has abused its discretion. *City of Cloquet Sand & Gravel, Inc.*, 251 N.W.2d 642 (1977).

ARGUMENT

I. THE DISTRICT COURT PROPERLY ISSUED THE PERMANENT INJUNCTION USING THE PROPER TIMEFRAME.

The apparent crux of Appellant's argument is the erroneous claim that the District Court, in November 2006, could not lawfully issue an injunction based upon public nuisances which were found to exist in November 2004 and April 2005 based upon Appellant's guilty pleas to permitting a public nuisance under Minn. Stat. § 609.74, based upon seven police documented nuisance calls to Appellant's property between July 2004 to July 2005 and based upon nine (9) neighbor documented nuisance incidents at Appellant's property during the same time period because there allegedly were no "ongoing existing nuisance conditions." See, Appellant's Brief, p. 11. A review of both the law and facts, however, identifies Appellant's error.

Minn. Stat. § 617.83 (2006) states:

Upon proof of a nuisance described in § 617.81, Subd. 2, the Court shall issue a permanent injunction and enter an order of abatement, except as otherwise provided by § 617.85. The

permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in § 617.84 or § 617.85, unless sooner released pursuant to § 617.87.... (emphasis added)

Pursuant to the Minnesota Nuisance Statute, the District Court had jurisdiction to hear the Respondent's motion for a Permanent Injunction. The Nuisance Statute expressly grants District Courts the authority to issue Permanent Injunctions upon the determination that "there have been two or more separate behavioral incidents" of public nuisance within a twelve month period. See, Minn. Stat. § 617.81, Subd. 2(a) (2006). The District Court's issuance of an injunction is mandatory rather than discretionary upon the proof of the requisite offenses. See, Minn. Stat. § 617.83 (2006).

Minn. Stat. § 617.81, Subd. 2(a) further identifies the qualifying "behavioral incidents" to include maintaining a public nuisance in violation of § 609.74(1) or (3) and permitting a public nuisance in violation of § 609.745. See, Minn. Stat. § 617.81, Subd. 2(a)(3)(4).

Minn. Stat. § 617.81, Subd. 4 sets out the written notice requirements to be followed if the prosecuting attorney, with reason to believe that a nuisance is maintained or permitted, intends to seek abatement of the nuisance.

Respondent first provided notice to Appellant pursuant to Minn. Stat. § 617.81, Subd. 4 on July 29, 2005. (RA-1) Any reference to the July 29, 2005 Notice from Respondent is conspicuously absent from Appellant's Brief.

Minn. Stat. § 617.82(a) provides that

If a recipient of a notice under § 617.81, Subd. 4 either abates the conduct constituting the nuisance or enters into an agreed abatement plan within 30 days of service of the notice and complies with the agreement within the stipulated time period, the prosecuting attorney may not file a nuisance action on the specified property regarding the nuisance activity described in the notice. (emphasis added)

Pursuant to the statute, Appellant, within 30 days of receiving the July 29, 2005 Notice from Respondent, chose to and did enter into an agreed upon Abatement Plan. (RA-6) If Appellant had complied with the Abatement Plan for its 1-year effective period, Minn. Stat. § 617.82(a) would have precluded Respondent from filing a nuisance action on Appellant's property regarding the nuisance activity described in the notice.

However, Appellant did NOT comply with the terms of the Abatement Plan. It stands to reason therefore, and is consistent with the clear and unambiguous language found in Minn. Stat. § 617.82(a), that when Appellant did not comply with the Abatement Plan, the Respondent's prosecuting attorney MAY file a nuisance action on Appellant's property regarding the nuisance activity described in the notice.

That is what Respondent did by again sending Appellant Notice of Injunctive Action dated June 27, 2006 which reiterated the nuisance activity which had also been described in the July 29, 2005 Notice. (See, A-9, RA-1)

Appellant erroneously claims that the District Court erred in using the July 2004 to July 2005 timeframe as the qualifying 12 months to determine if a nuisance condition existed upon which to premise issuance of the Permanent Injunction.

The Notice of Injunctive Action sent by Respondent on July 29, 2005, received by Appellant by Certified Mail on August 5, 2005, identified thirteen separate nuisance incidents that occurred between July 2004 and July 2005. That is the twelve month period preceding the initiation of the injunctive action. (See RA-1) Pursuant to her right, Appellant then entered into a voluntary abatement plan that stayed the injunction proceeding, as long as she abided by the terms and conditions of the abatement plan. *Id.* While the terms of the Abatement Plan may have been unusual in that they required Appellant to abstain from the use or possession of alcohol, required her to attend a certain number of Alcoholics Anonymous meetings and required her to agree to take random preliminary breath tests by police officers of the West St. Paul Police Department, the Abatement Plan was an attempt by Respondent to address the heart of Appellant's nuisance activity, which typically involved the abuse of alcohol, and eventually led to the nuisance calls. Appellant agreed to the terms and conditions of the abatement plan, as evidenced by her signature on the plan dated August 17, 2005. (See RA-6)

Appellant subsequently violated the terms of the Abatement Plan. The violations of the Abatement Plan involved circumstances in which Appellant used or possessed alcohol or refused to cooperate with police officers when they requested a preliminary breath test. The violations occurred over a period of many months beginning in September 2005, only one month after the abatement plan was signed.

The City personally served Appellant with a new notice reinitiating the injunction action on June 27, 2006 and, as prescribed by the Nuisance Statute, the notice reiterated

the nuisance activity contained in the July 29, 2005 notice and clearly identified each of the violations of the Abatement Plan. (See RA-6)

Without legal citation, 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.” (App. Brief, p. 11) No such language requirement exists in the Nuisance Statute. Appellant’s argument urges this Court to read beyond the plain and unambiguous language found in Minn. Stat. § 617.86 to § 617.87. The original injunction action was based on nuisance activity that occurred within a twelve month period immediately preceding the first notice of injunctive action sent on July 29, 2005. Therefore, the appropriate time frame for nuisance activity is from July 2004 to July 2005.

The City’s re-initiation of the injunction action after Abatement Plan failure necessarily relates back to the original twelve months time frame for nuisance activity. The fact that Appellant stayed the injunction action by entering into an Abatement Plan does not erase the qualifying nuisances that occurred between July 2004 and July 2005 upon which the original action was based.

Appellant admits that one 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). (See, App. Brief, p. 11, n. 2) That legislative purpose coincided with the City’s purpose in entering into the Abatement Plan with Appellant...to encourage Appellant to abate the nuisance herself. Abatement means “the act of eliminating.” *Black’s Law Dictionary*, 8th Ed. 2004. The

purpose of the parties entering into the Abatement Plan was to eliminate the Appellant's behavior which constituted the nuisance as outlined in the City's Notice of Injunction Action dated July 29, 2005. The intent of the Abatement Plan was to encourage Appellant to eliminate the behavior listed in the 13 separate instances of nuisance listed in the Notice. When Appellant failed to abide by the terms and conditions of the Abatement Plan she failed to eliminate her behavior which constituted a nuisance. Though there is no legal requirement that the violations of the Abatement Plan that triggered re-initiation of the injunctive action be "nuisances" under the statute, Appellant's violations of the Abatement Plan did, in fact, constitute an ongoing nuisance.

On the other hand, Appellant's choice to enter into an Abatement Plan cannot absolve her from consequences when she failed to abide by its terms. It would be an absurd result to allow Appellant to continue to stay the injunction action by entering into Abatement Plans that she could perpetually violate without consequence.

There would be no incentive for a City to support the legislature's intent and enter into an Abatement Plan if it meant that, by the mere passage of time, it could not proceed to seek an injunction based on the activities cited in the Notice once non-compliance with the Abatement Plan occurred. Therefore, the only practical effect of the legislature's intent is that the 12-month timeframe for determination of "qualifying" nuisances under the statute must be tolled when an Abatement Plan is entered into. In this case, that would mean that the 12-month time frame was tolled from August 17, 2005 (when the Abatement Plan was signed) to June 27, 2005 (when the City served Appellant with the Notice to re-initiate the Injunctive Action).

In any case, the District Court properly issued the permanent injunction based upon findings that Appellant pled guilty to two public nuisances in November 2004 and April 2005.

II. THE DISTRICT COURT PROPERLY ISSUED THE PERMANENT INJUNCTION BECAUSE APPELLANT MAINTAINED AND PERMITTED A CONDITION THAT UNREASONABLY ANNOYS, INJURES, OR ENDANGERS THE SAFETY, HEALTH, MORALS, COMFORT OR REPOSE OF ANY CONSIDERABLE NUMBER OF MEMBERS OF THE PUBLIC.

Appellant argues that the District Court failed to make a finding that the nuisance activity affected a considerable number of members of the public. (See, App. Brief, pp. 16-17). However, the District Court actually found that Appellant's conduct at her property constituted a nuisance as defined by Nuisance Statute. See, A-2; Findings of Fact, paragraph 12; Conclusions of Law, paragraph 5

An element of Minn. Stat. § 609.74(1), the criminal public nuisance law, includes the determination that it affected any considerable number of members of the public. The Court mentions the testimony of the neighbors in six of the twelve Findings of Fact. See, A-2; Findings of Fact, paragraphs 3, 7, 8, 9, 10 and 12. Neighbors were frequently the reporting parties of the incidents. Four neighbors testified to the loud noises, lewd conduct, unruly and drunken behavior, and occasionally suspicious or criminal activity that occurred in or on the Property. Id., Findings of Fact, paragraphs 3, 7, 8, 10, and 12. The neighbors testified as to how their quality of life had been affected by the conduct on Appellant's property. The District Court found the incidents to which the neighbors testified were nuisances. Id., Findings of Fact, paragraphs 3 and 12. The City presented

evidence at the October 17, 2006 Injunction hearing of 18 acts constituting a nuisance which occurred between July 2004 and July 2005. That evidence included evidence of Appellant's two guilty pleas to permitting a public nuisance under Minn. Stat. § 609.74 in both November 2004 and April 2005, evidence of seven police documented nuisance calls to Appellant's property and nine (9) neighbor documented nuisance incidents at Appellant's property. See, Tr. 8-113.

The District Court made a finding that Appellant and her guests "*have created a nuisance in their neighborhood*; has [sic] annoyed them repeatedly by their unruly and drunken behavior; and substantially interfered with the quiet enjoyment of their homes and neighborhood." Id., Findings of Fact, paragraph 12; emphasis added.

By finding that Appellant's conduct was a nuisance, as defined by Minn. Stat. § 609.74(1), the criminal public nuisance law, the District Court necessarily found that all of the elements of Minn. Stat. § 609.74(1) were satisfied, including that it affected any considerable number of members of the public. In addition, Chief Shaver testified that Appellant has been a drain on the City's Police force resources, as Officers must be provided to continuously respond to calls at Appellant's property. Tr., pp. 33-36. The City has exhausted countless resources and public dollars on Appellant that could be utilized for other programs or in support of other law enforcement efforts. Over 19,000 other residents of West St. Paul have a right to effective and equal public safety services. These 19,000 residents also represent a considerable number of members of the public whose safety, health, morals, comfort or repose are unreasonably annoyed, injured or endangered by the conduct on Appellant and others she allows on her property.

III. THE DISTRICT COURT ADEQUATELY DESCRIBED THE CONDUCT TO BE ENJOINED.

Appellant argues that the District Court Order did not articulate the conduct to be enjoined. (See, App. Brief, pp. 17-19) The nuisance conduct is adequately described in great detail in the Findings of Fact, Conclusions of Law and Order for Permanent Injunction, including the following:

- a. Findings of Fact Paragraph 2: “There were 29 police reports regarding the property, ranging from intoxicated males, to an assault, to unwanted guests;”
- b. Findings of Fact Paragraph 3: “Neighbors witnessed people at 823 Allen filling a pipe and passing it between themselves to smoke, rolling a cigarette and passing it back and forth to smoke; ...yelling and swearing...and one neighbor saw [Appellant] smash out the window of a pick up truck in her driveway;”
- c. Findings of Fact Paragraph 7: “Yelling, arguing with one another, and screaming obscenities, at all hours of the days and nights;” and
- d. Findings of Fact Paragraph 12: “[Petitioner] and her guests...has (sic) annoyed [the neighbors] repeatedly by their unruly and drunken behavior.”

(A-2) The District Court made the above-mentioned findings, all of which describe the nuisance conduct. The District Court concluded that “Defendant *and her conduct* at 823 Allen Avenue, West St. Paul, MN, constitutes a nuisance as defined in Minn. Stat.

§ 617.80 and this conduct is a violation of Minn. Stat. §§ 617.80 to 617.87.” A-2, Conclusions of Law Paragraph 5, emphasis added. By making the appropriate findings of nuisance conduct, concluding as a matter of law that the conduct is a nuisance, it follows that, the conduct to be enjoined is the conduct described in the Order.

In addition, Minn. Stat. § 617.83 requires that the order for Permanent Injunction “describe the conduct permanently enjoined. When read in conjunction with Minn. Stat. § 617.83 and § 617.81, Subd. 4(3), the Court Order for Permanent Injunction DOES describe the conduct permanently enjoined in that the Order enjoins the “use of the building for any purpose for one year.” The actual occupancy of Appellant’s home is the behavior being enjoined by the Permanent Injunction.

IV. THE TERMS OF THE ABATEMENT PLAN, AS AGREED TO BY APPELLANT, ALLOWED THE CITY TO PROCEED TO SEEK AN INJUNCTION WHEN APPELLANT FAILED TO ABIDE BY ITS TERMS.

Appellant argues that there is no authority for the City to seek an injunction based upon violation of the Abatement Plan. (See, App. Brief, pp. 19-20) However, Appellant herself agreed that should she violate any term of the Abatement Plan, the City could decide to pursue the injunction remedy.

The clear language contained in the Abatement Plan, to which Appellant agreed, provides that “should the Owner violate any of the terms of the Abatement Plan during the one-year time period, the City will consider pursuing the injunction, which could result in preventing the Owner from using the residence for any purpose for a period of one (1) year.” (RA-6)

Accordingly, Appellant expressly agreed that upon her noncompliance with the terms of the Abatement Plan, Appellant could re-commence the injunction process.

In addition, Appellant is in error when she maintains that “no where does Minnesota’s nuisance law authorize the issuance of an injunction for violation of an abatement plan alone.” See, App. Brief, p. 19. As argued previously, it is consistent with Minn. Stat. § 617.82(a) for Respondent to file a nuisance action regarding the nuisance activity described in the 2005 Notice when Appellant failed to comply with the Abatement Plan.

CONCLUSION

Respondent and the District Court followed the requirements contained in the Minnesota Nuisance Statute. The District Court, using the proper timeframe, did not exceed its authority but, in fact, made adequate and appropriate findings and ordered the remedy mandated by the nuisance statute. Respondent, City of West St. Paul, respectfully requests that this Court affirm the District Court order which enjoined Appellant from the use of the building on her property for any purpose for one year, from August 7, 2006 to August 7, 2007.

Dated: June 20, 2007.

Respectfully Submitted,

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CERTIFICATE OF BRIEF LENGTH

I hereby certify that **Respondent's Brief** conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3. The brief contains 4,237 words, including footnotes, excluding the Table of Contents, Table of Authorities, and the Certification of Compliance. This brief was prepared using Microsoft Word 97.



Susan Steffen Tice (A.R. #131131)

Subscribed and sworn to before me
this June 20, 2007.



Notary Public

