

NO. A06-0347

State of Minnesota  
 In Supreme Court

OFFICE OF  
 APPELLATE COURTS

MAR 30 2007

FILED

Ronald Enright, as attorney in fact for S.E. and  
 Marlys Enright, dba Pride-One Co. and  
 Associated Bank,

*Respondents,*

vs.

Robert H. Lehmann,

*Appellant.*

**BRIEF AND APPENDIX OF AMICUS CURIAE**

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## STATEMENT OF INTEREST

The Minnesota State Bar Association (“MSBA”) is a nonprofit Minnesota corporation whose regular members are judges and lawyers in private and government practice admitted to practice before the Minnesota Supreme Court.<sup>1</sup> The MSBA’s goals include aiding the courts in the administration of justice; applying the knowledge and experience of the legal profession to the public good; maintaining high standards of public service; conducting programs of continuing legal education; providing a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; and publishing information related to these goals.

The MSBA’s Probate and Trust Law Section works on behalf of its members and the public to assist with and improve the practice of estate planning, probate, and trust law in Minnesota. It has more than 1,000 members. Section members are frequently consulted to advise clients regarding advantages and disadvantages of different forms of bank account ownership. The Section includes a Legislation Committee that reviews and makes recommendations regarding laws and rules that impact the practice of estate planning, probate and trust law in Minnesota. The Section is active in drafting legislation and lobbying efforts related to new statutes and amendments to existing law.

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<sup>1</sup> The undersigned counsel for Amici authored the brief in whole, and no persons other than Amici made a monetary contribution to the preparation or submission of the brief. This disclosure is made pursuant to Minn. R. Civ. App. P. 129.03.

## INTRODUCTION

For many Minnesotans, maintaining a multiparty account at a financial institution is essential not just for estate planning, but for daily living. When one depositor to such an account becomes liable for debts, it is imperative that Minnesota law provide reliable and sensible means to ascertain what portion of the account, if any, might be subject to debt satisfaction through garnishment or other means. Certainty benefits creditors, debtors, and garnishees—and perhaps most importantly nondebtor depositors who have planned their financial affairs based on the plain assurance in the Multiparty Accounts Act that “[a] joint account belongs, *during the lifetime of all parties*, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.” Minn. Stat. § 524.6-203(a) (emphasis supplied).

After the court of appeals issued its decision in *Enright v. Lehmann*, 724 N.W.2d 546 (Minn. Ct. App. 2006), any sense of certainty evaporated; Minnesota became part of the distinct minority of jurisdictions that have failed to apply the clear language of the multiparty account statute, and instead have employed other tests to address the issue of debt liability. The court of appeals’ decision affects innumerable Minnesotans who, relying on advice of counsel and other estate planning professionals, have contributed to and continue to maintain multiparty accounts based on the plain statutory language that a joint depositor generally will not be liable for a co-depositor’s debts through garnishment or otherwise. The MSBA’s Probate and Trust Law Section, which recommended that the Legislature renumber the former Minn. Stat. § 528.04 (1973) as Minn. Stat. § 524.6-203

and move the Multiparty Accounts Act into the Probate Code, urges this Court to reverse the court of appeals' decision in *Enright* and to return certainty to the law. The Court should hold that Minn. Stat. § 524.6-203(a) means what it says—that it applies during the lifetime of the parties, and not only upon the death of one joint account holder.

## ARGUMENT

The MSBA commends Appellant's thorough and well-reasoned brief to the Court, and joins in Appellant's request that the Court reverse the decision of the court of appeals. Reversal may be based on a plain reading of the Multiparty Accounts Act as a whole, and to the extent that the Court might conclude that Act has not abrogated the decision in *Park Enterprises v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951), that decision should be overruled or limited to its facts.

Should the Court find need to examine the legislative history behind the Multiparty Accounts Act's enactment and renumbering, the materials that the MSBA presents demonstrate that the Legislature never intended to limit the Act's application to matters related to the death of a joint account holder. Any holding to the contrary would risk inviting challenges to other generally applicable parts of the Probate Code—specifically, guardianship and protective proceedings provisions, which were also renumbered and placed in the Probate Code in 2003. It would also be patently absurd to interpret the language that Minn. Stat. § 524.6-203(a) applies “during the lifetime of all parties” in a way that applies only after death; such an application would appear to give that portion of the statute *no* effect. Finally, by reversing the decision of the court of

appeals, this Court will affirm public policies that encourage co-depositors to place money in secure financial institutions.

## I. THE MULTIPARTY ACCOUNTS ACT ABROGATED THE COMMON LAW

Appellant has persuasively explained how Minnesota courts confronting multiparty account ownership issues inconsistently applied common law before the former Minn. Stat. § 528.04 (1973) was enacted. (*See* App. Br. at 9-14.) Among those approaches was that used in *Park Enterprises*, which provided the sole basis for the court of appeals' holding, and where this Court affirmed garnishment of a joint account during the lifetime of a debtor without regard to how much the debtor and nondebtor had actually contributed to the account.

From the MSBA's perspective, it is imperative to stress that in *Park Enterprises* the Court found it "difficult, if not impossible" to classify a multiparty account under then-existing legal principles, and that ultimately the Court premised its holding not just on Canadian law but on the parties' contractual deposit agreement. 233 Minn. at 469, 470-72, 47 N.W.2d at 195-97. But by enacting Minn. Stat. § 528.04 (1973) and explicitly specifying that its provisions apply "during the lifetime of all parties," the Legislature abrogated *Park Enterprises* and any common law based on it. *See, e.g., In re Pakarinen's Estate*, 287 Minn. 330, 334, 338, 178 N.W.2d 714, 716, 718 (1970) (holding that intestate succession statute "mitigate[d] ... common-law rule"); *see also Isles Wellness, Inc. v. Progressive Northern Ins. Co.*, 703 N.W.2d 513, 521 (Minn. 2005)

(stating rule that Legislature abrogates common law “by express wording or necessary implication”) (internal citation omitted).

As Appellant has explained, the court of appeals has issued any number of decisions based on the conclusion that Minn. Stat. § 524.6-203 abrogated the common law. (See App. Br. at 17-18.) So, too, have numerous estate planning lawyers advised clients and devised estate plans based on this abrogation and the plain language of Minn. Stat. § 524.6-203(a). Both these reported decisions and the common perception of estate planning lawyers are simply further evidence that the statute has become the controlling statement of Minnesota law, superseding *Park Enterprises* and other common law principles.

## **II. THE COURT OF APPEALS ERRED BY NOT READING THE MULTIPARTY ACCOUNTS ACT AS A WHOLE**

The MSBA wholly endorses Appellant’s argument that the plain language of the Multiparty Accounts Act compels reversal of the court of appeals’ decision. The court’s error is readily apparent upon examination of the language of Minn. Stat. § 524.6-202, which Appellant persuasively argues provides conclusive guidance that the joint-account ownership provision applies in the creditor-debtor context during the lifetime of the joint account holders. (See App. Br. at 8-9.) In addition, the MSBA suggests that by enacting section 524.6-202, the Legislature unambiguously directed that section 524.6-203(a) not be read in isolation as the court of appeals has done, but is to be read only in conjunction with sections 524.6-204 and 524.6-205:

*The provisions of sections 524.6-203 to 524.6-205 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. ...*

Minn. Stat. § 524.6-202 (emphasis supplied). *See also Carousel Automobiles, Inc. v. Gherity*, 527 N.W.2d 813, 817 (Minn. 1995) (holding that single statutory provision “cannot be read in isolation” when it “interrelate[s] in a larger statutory scheme”). Sections 524.6-204 and 524.6-205 both address joint account ownership “at the death of a party.” Accordingly, when read in context, it is clear that section 524.6-203 sets a general rule for ownership of joint accounts during the lifetime of the parties and sections 524.6-204 and 524.6-205 set ownership rules relevant after death of one joint-account holder.

The Legislature clearly anticipated that joint-account ownership issues would arise before as well as after death. Yet the only statute that the court of appeals examined was Minn. Stat. § 524.6-203(a), and it read that statute as if the other provisions of the Act did not exist. When exercising *de novo* review, the MSBA respectfully urges this Court to read the Multiparty Accounts Act as a whole and to hold that it applies to multiparty account ownership both before and after the death of a joint owner. Because that is so, the entire premise of the court of appeals’ decision fails.

The court of appeals also concluded that the “title of the article and its inclusion as part of the Uniform Probate Code” limit application of Minn. Stat. § 524.6-203(a) to “issues arising after the death of a joint depositor of an applicable bank account.”

*Enright*, 724 N.W.2d at 549. The court provided no authority in support of that statement. *See id.* As Appellant correctly argues, the court of appeals ignored the directive in Minn. Stat. § 645.49, which states that headnotes are “mere catchwords” that are “not part of the statute.” *See also Brown v. Commonwealth of Kentucky*, 40 S.W.3d 873, 880 (Ky. Ct. App. 1999) (“[t]he codification of statutes ... by means of titles and chapter headings does not alter that plain meaning”).

Further, to the degree that this Court sometimes examines statutory captions, they are relevant only where the caption was “present in the bill during the legislative process.” *Minn. Exp., Inc. v. Travelers Ins. Co.*, 333 N.W.2d 871, 873 (Minn. 1983). In this situation, the substantive “legislative process” involving the Multiparty Accounts Act took place in 1973, when the Act was enacted *separate from* the Probate Code. This fact compels the conclusion that the multiparty ownership provision applies outside the context of a party’s death. *Accord Brown*, 40 S.W.3d at 881 (reversing trial court ruling that joint-account provision in chapter titled “Descent and Distribution” applied “only to situations involving a death”).

The court of appeals cited Minn. Stat. § 524.1-102(b) to support its proposition that “[t]he code does not purport to govern relationships or rights of anyone other than decedents, missing or incapacitated persons, or minors.” *Enright*, 724 N.W.2d at 439. But the court completely ignored that the code is to be “liberally construed” in furtherance of promoting underlying purposes and policies, and that a goal is “to make uniform the law among the various jurisdictions.” Minn. Stat. § 524.1-102(a), b(4). The

court of appeals neither liberally construed the Probate Code nor paralleled the law in other jurisdictions. *See* discussion, *infra* at pp. 12-13.

For example, Nebraska has a statute similar to Minn. Stat. § 524.6-203(a) that is titled “ownership during lifetime,” is codified at Neb. Rev. Stat. § 30-2722, and is part of that state’s Probate Code. The Nebraska Supreme Court has nonetheless unambiguously declared that “the Nebraska Probate Code governs nonprobate transfers,” and has observed that the Uniform Probate Code’s Article VI as revised “has three separate parts, each of which is designed to be a free-standing uniform act.” *Newman v. Thomas*, 652 N.W.2d 565, 570, 572 (Neb. 2002). The MSBA respectfully urge the Court to follow the Nebraska Supreme Court’s reasoning and plain language approach, free from hypersensitivity over how and where statutes are compiled.

### **III. THE MULTIPARTY ACCOUNT ACT’S TRANSFER INTO THE PROBATE CODE EVIDENCES NO LEGISLATIVE INTENT TO LIMIT ITS APPLICATION TO THE PROBATE CONTEXT**

The Court’s task is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16. If the plain language of the statute is not conclusive on that issue, then the MSBA—which was the driving force behind the Legislature’s transfer of the Multiparty Accounts Act into the Probate Code—respectfully suggests that the relevant legislative history should nonetheless lead this Court to hold that Minn. Stat. § 524.6-203(a) applies to lifetime acts.

The Minnesota Multiparty Accounts Act was enacted in 1973, as Minn. Stat. §§ 528.01-16. *See* Act of May 23, 1973, ch. 619, §§ 1-16, 1973 Minn. Laws 1472, 1472-80. (Amicus’ App. at 1-9.) At the time, the Minnesota Probate Code was found in

Chapters 525 and 526 of Minnesota Statutes. As discussed below, Minnesota did not adopt Uniform Probate Code provisions *en masse* until 1974.

A year after the Legislature adopted Minn. Stat. § 528.04 (1973) and abrogated any common law to the contrary, Minnesota adopted substantial portions of the Uniform Probate Code. *See In re Bush's Estate*, 311 Minn. 301, 302 n.2, 250 N.W.2d 146, 146 n.2 (1976) (citing Act of Apr. 11, 1974, ch. 442, 1974 Minn. Laws 1022, 1022-78; Act of June 5, 1975, ch. 347, 1975 Minn. Laws 1006, 1006-1104). The Legislature sought to ensure uniformity among jurisdictions, *see* Minn. Stat. § 524.1-102, and expressly stated that the provisions were to be “numbered out of sequence to facilitate the possible inclusion of other articles of the probate code in one chapter.” Minn. Stat. § 524.1-101.

The Multiparty Accounts Act was exactly such a statute. Minn. Stat. § 528.04 (1973), as originally enacted and subsequently renumbered, was part of the uniform law. *See* Unif. Probate Code § 6-103(a) (pre-1989 version), 8 U.L.A. 464 (West 1998);<sup>2</sup> *see also* J. Rodney Johnson, *Joint, Totten Trust, and P.O.D. Bank Accounts: Virginia Law Compared to the Uniform Probate Code*, 8 U. Rich. L. Rev. 41, 49-50 (1973) (discussing Uniform Probate Code as it existed in 1973).

Subsequently, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) recommended changes to Article II of the Uniform Probate Code, which addresses Intestate Succession and Wills; and also to a part of Article VI, which

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<sup>2</sup> The Uniform Probate Code provision was titled “Ownership During Lifetime,” and read: “A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.”

addresses non-probate transfers, including the provisions that constitute the Multiparty Accounts Act. *See* Memorandum to Uniform Probate Code Study Committee (Amicus' App. at 52-53); Report of the Special Committee on Article II and VI of Uniform Probate Code (Amicus' App. at 54-176); Affidavit of Special Committee member Christopher B. Hunt ["Hunt aff.,"] (Amicus' App. at 177-79; *see also* Amicus' App. at 58-59 (listing roster of Special Study Committee members)).<sup>3</sup> The Article II changes proposed by NCCUSL were engrossed in House File No. 2124 (1992 Leg. Sess.). The Uniform Probate Code as approved and recommended for enactment by NCCUSL in 1974 had included Article VI related to non-probate transfers, including provisions relating to multiparty accounts. These sections were numbered 6-101 to 6-113 and 6-201. Section 6-103 related to ownership of accounts during lifetime. In 1989, NCCUSL approved and recommended for enactment in all states certain substantive changes to Article VI of the Uniform Probate Code. *See* Hunt aff. ¶ 3. (Amicus App. at 177-78.)

In 1992, the MSBA's Probate and Trust Law Section appointed a Special Committee to study the changes to Articles II and VI of the Uniform Probate Code proposed by NCCUSL. (*See* Amicus' App. at 55.) The Special Committee issued many specific recommendations and comments regarding proposed Article II changes (*see* Amicus' App. at 64-166), and further recommended against adopting Part I of Article VI, which addresses nontestamentary transfer documents (*see* Amicus' App. at 166). As for

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<sup>3</sup> The Probate and Trust Law Section hopes the Court finds this report to be helpful, and respectfully suggests that it may be characterized as legislative history. *See Dillard v. Tahash*, 265 Minn. 322, 324 & n.2, 121 N.W.2d 602, 603 & n.2 (1963) (citing report of Minnesota Crime Commission as part of "examination of the legislative history" of act).

the Multiparty Accounts Act, the Special Committee recommended no substantive changes and merely recommended “[r]enumber[ing] Minnesota Statute § 528 as 524.6-201 *et seq.*” in a way that would position the Act within the Probate Code’s intentionally nonsequential numbering scheme (where it is located in the Uniform Probate Code). (*See Amicus’ App.* at 176.) In submitting its report to legislators who authored the MSBA-sponsored changes to the Minnesota Probate Code, the Probate and Trust Law Section’s intention was that the Minnesota Probate Code correspond to the Uniform Probate Code as much as possible. *See Hunt aff.* ¶¶ 5-7. (*Amicus’ App.* at 178-79.) It was not the Section’s intention for substantive changes to be made, or for the Multiparty Accounts Act to be limited in scope or application. *See id.* ¶ 7. (*Amicus’ App.* at 179.)

In 1994, the Legislature acted consistent with the Probate and Trust Law Section’s recommendation by directing the Revisor of Statutes to “renumber each section [in section 528] with the corresponding number [in section 524.6-201 *et seq.*]” Act of Apr. 18, 1994, ch. 472, § 63, 1994 Minn. Laws 375, 415. (*Amicus’ App.* at 50.) The Legislature made no substantive changes to the Multiparty Accounts Act. *See id.*

Accordingly, the renumbering and reenactment, as well as the repeal of the former numbering scheme, cannot be seen as at all indicative of a legislative intent to explicitly or impliedly modify the terms or meaning of the statute, or to abruptly and significantly change Minnesota law on multiparty depositor debtor liability by creating a new law that the ownership presumption made applicable “during the lifetime of all parties” applies only after a party’s lifetime. *See Minn. Stat.* § 645.28 (stating general rule that “laws in force at the time of the adoption of any revision or code are not repealed by the revision

or code unless expressly repealed therein”); Minn. Stat. § 645.39 (stating that implied repeals are to be disfavored); *Enger v. Holm*, 213 Minn. 154, 164, 6 N.W.2d 101, 105 (1942) (stating general rule that statute’s reenactment “adopts the prior construction”); compare *Murphy’s Estate v. State Dep’t of Pub. Welfare*, 293 Minn. 298, 306-07, 198 N.W.2d 570, 575 (1972) (holding that repeal of Probate Code provisions and adoption of “more precise statutory scheme” was not “mere reenactment”); *In re Galbraith’s Estate*, 210 Minn. 356, 359, 298 N.W. 253, 255 (1941) (holding that Probate Code amendment evidenced “purpose to change the law”).

As Appellant amply demonstrates, the fact that Minn. Stat. § 524.6-203(a) is now located in the Probate Code is irrelevant for purposes of ascertaining its general applicability. Further, the Court should note that in 2003 the Legislature embraced the Probate and Trust Law Section’s recommendation that guardianship and protective proceedings provisions be moved from chapter 525 to the Uniform Probate Code, Chapter 524. Act of Apr. 10, 2003, ch. 12, 2003 Minn. Laws 116, 116-72. It almost goes without saying that the current Uniform Guardianship and Protective Proceedings Act can and must be applied outside the probate context to protect thousands of Minnesotans unable to look after their own interests during their lifetimes. Should this Court signal otherwise by affirming the court of appeals’ decision, it would create unintended and potentially disastrous inroads for litigants to challenge the power of conservators, guardians, and guardians ad litem who represent and protect living persons, to the detriment of hundreds if not thousands of vulnerable Minnesotans.

#### **IV. THE LEGISLATURE HAS DIRECTED THAT UNIFORM LAWS HAVE UNIFORM CONSTRUCTION, ANOTHER REASON THIS COURT MUST REJECT THE COURT OF APPEALS' DECISION**

The Legislature has charged this Court with the responsibility to ensure that uniform statutes are interpreted consistent with decisions in other jurisdictions, directing that “[l]aws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.” Minn. Stat. § 645.22. As noted above, the Multiparty Account Act was and is part of a uniform law. When enacting the Uniform Probate Code, the Legislature further instructed that the purpose was “to make uniform the law among the various jurisdictions.” Minn. Stat. § 524.1-102. Should the Court affirm the decision of the court of appeals and suggest that *Park Enterprises* remains good law, it would serve neither of these legislative directives.

Courts around the country considering the same statutory language have overwhelmingly rejected the construction reached by the court of appeals. A Kentucky court has soundly and rightly criticized *Park Enterprises* as being a minority view “[in]sensitive ... to the due process concerns involved and to the fact that people use [multiparty] accounts for myriad purposes.” *Brown*, 40 S.W.3d at 880 (Ky. Ct. App. 1999); see also *Giove v. Stanko*, 882 F.2d 1316, 1318-19 (8th Cir. 1989) (applying Nebraska version of Multiparty Accounts Act in garnishment context); accord *Lewis v. House*, 348 S.E.2d 217, 218-19 (Va. 1986) (applying Virginia version in garnishment case); see also App. Br. at 19-23 (citing other foreign authorities).

If anything beyond the plain language of the statute and common sense are needed to conclude that the decision of the court of appeals must be rejected, this Court can and

should pay particular attention to the majority decisions of other courts around the country interpreting this statute.

**V. AFFIRMING THE COURT OF APPEALS WOULD PRODUCE ABSURD RESULTS, AND WOULD FAIL TO GIVE EFFECT TO THE ENTIRE STATUTE**

The MSBA recognizes that this Court is willing to characterize a particular statutory interpretation as “absurd” only in the “rare case” where plain statutory language “utterly confounds a clear legislative purpose.” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 848 (Minn. 2005) (citing *Mut. Serv. Cas. Ins. Co. v. League of Minn. Cities*, 659 N.W.2d 755, 760 (Minn. 2003); Minn. Stat. § 645.17(1)). This would be one of those “rare cases” if the Court considers the Multiparty Accounts Act’s transfer to the Probate Code to be somehow indicative of legislative intent. In *Wegener v. Commissioner of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993), this Court held it was “utterly absurd” to apply a property tax refund statute such that a county assessor could ignore the value of a \$464,635 structure when assessing value for real estate tax purposes. Similarly, it would be utterly absurd to hold that Minn. Stat. § 524.6-203(a), which by its plain language applies “during the lifetime of all parties,” in fact does not apply during the parties’ lifetimes, merely because the statute was renumbered and moved into the Probate Code.

**VI. PUBLIC POLICY COMPELS THE CONCLUSION THAT JOINT ACCOUNTS BE GARNISHED ONLY IN PROPORTION TO THE DEBTOR DEPOSITOR’S LIABILITY**

Multiparty accounts at financial institutions “have become a popular and an almost universal tool used by the bar in estate planning.” *Browning & Herdrich Oil Co. v. Hall*,

489 N.E.2d 988, 991 (Ind. Ct. App. 1986) (applying Multiparty Accounts law in garnishment context). The public benefits when depositors place funds in financial institutions that are included in the Multiparty Accounts Act's scope.

Should this Court affirm the decision of the court of appeals, it would effectively encourage persons who fear losing money due to a would-be co-depositor's debt to either spend money as they get it, or to commit the funds to less-secure and/or uninsured entities not within the scope of Minn. Stat. § 524.6-203(a). Affirming the decision also would place private interests of creditors over the public interest in encouraging savings, in contravention of the directive that "[t]he legislature intends to favor the public interest as against any private interest." Minn. Stat. § 645.17(5).

In furtherance of public policy, this Court should reverse the decision of the court of appeals and, if necessary, expressly overrule or limit the decision in *Park Enterprises*. See, e.g., *Beaudette v. Frana*, 285 Minn. 366, 368-69, 373 n.10, 173 N.W.2d 416, 417-18, 420 n.10 (1969) (overruling on public policy grounds the absolute defense of interspousal immunity in tort actions).

## CONCLUSION

In interpreting statutes, courts strive to discern and give effect to the Legislature's intent. They are guided first by the plain language of the statute. If that is not enough guidance, they look at the context in which the law was enacted, the Legislature's own description of the law, and the goal sought to be served by the legislation. Finally, courts avoid interpretations of statutes that lead to absurd results, or which make portions of the language of a statute meaningless.

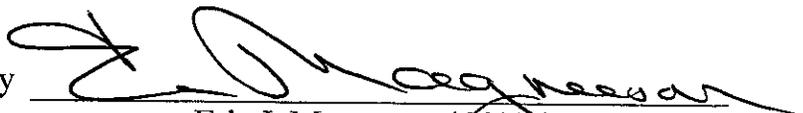
In this case, the court of appeals did none of these things. Instead, perhaps feeling bound by this Court's prior decision in *Park Enterprises*, the court of appeals rendered a decision unsupported by law or logic. If allowed to stand, that decision will confound innumerable carefully constructed estate plans, based on a flawed view of the law, and fail to give effect to the clear intent of the Legislature, as expressed in the plain language of the statute.

Respectfully submitted,

Dated: March 29, 2007

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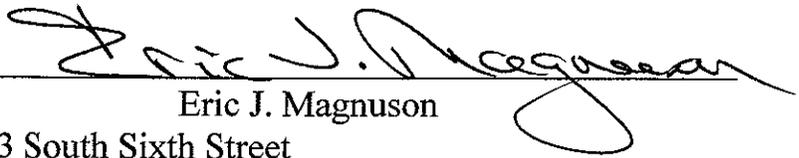
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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced using the following font:

Proportional serif font, 13-point or larger.

The length of this brief is 4,223 words. This brief was prepared using Microsoft Word 2000.

A handwritten signature in black ink, appearing to read "Eric J. Magnuson", is written over a horizontal line. The signature is fluid and cursive.

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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) (with amendments effective July 1, 2007).