

CASE NO. A06-0347

State of Minnesota
In Supreme Court

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

Respondents,

vs.

Robert H. Lehmann,

Appellant,

APPEAL FROM DISTRICT COURT ORDER

BRIEF OF RESPONDENT

Robert J. Bruno
Atty. Reg. No. 12415
ROBERT J. BRUNO, LTD.
1601 East Hwy. 13, Suite 107
Burnsville, MN 55337
952-890-9171

Attorney for Respondent

Associated Bank
2999 West County Road 42
Suite 130
Burnsville, MN 55306
651-306-1831

For Respondent

Carol S. Cooper
Atty Reg. No. 161548
C.S. Cooper Law Firm, Ltd.
26437 Galaxie Avenue
Farmington, MN 55024
651-460-2056

Attorney for Appellant

Eric J. Magnuson
Diane Bratvold
33 South Sixth Street Suite 4900
Minneapolis, MN 55402
612-340-8900

*Attorneys for Amicus Probate and
Trust Section of MSBA*

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	ii
Statement of Legal Issues.....	1
Statement of the Case and Facts.....	1
Argument.....	2
I. STANDARDS OF REVIEW.....	2
II. THE TRIAL COURT PROPERLY DENIED LEHMANN'S MOTION TO QUASH THE GARNISHMENT OF HIS JOINT ACCOUNT.....	3
A. Lehmann Lacks Standing To Object To the Garnishment of His Wife's Funds In a Joint Account.....	3
B. Multi-Party Accounts Act Does Not Abrogate the <i>Park Enterprises</i> Rule	4
C. The doctrine of <i>stare decisis</i> requires affirmance of the Court of Appeals.....	12
Conclusion.....	17
Certificate of Compliance.....	18

TABLE OF AUTHORITIES

<u>Minnesota Cases:</u>	<u>Page</u>
<i>Anderson v. Federated Mut. Ins. Co.</i> , 481 N.W.2d 48, 49 (Minn. 1992).....	3
<i>Bacon v. Towers</i> , 103 Minn. 387, 115 N.W. 205 (1908).....	7
<i>Carlson v. Stafford</i> , 166 Minn. 481, 208 N.W. 413 (1926).....	7
<i>Craig v. Hastings State Bank</i> , 221 Neb. 746, 380 N.W.2d 618 (1986).....	14
<i>Empire Fertilizers Ltd. v. Cioci</i> , (1934) 4 D.L.R. 804.....	14
<i>Fleet Bank Connecticut, N.A. v. Carillo</i> , 240 Conn. 343, 691 A.2d 1068 (1997).....	15
<i>Gilbert v. Pioneer Nat. Bank of Duluth</i> , 206 Minn. 213, 288 N.W. 153 (1939).....	7
<i>Ill. Farmers Ins. Co. v. Glass Serv. Co.</i> , 683 N.W.2d 792, 803 (Minn. 2004).....	2
<i>In re Collier</i> , 726 N.W.2d 799 (2007).....	1, 3, 13
<i>Jadwin v. Minneapolis Star & Tribune Co.</i> , 367 N.W.2d 476, 483 (Minn. 1985).....	2
<i>Knudson v. Anderson</i> , 199 Minn. 479, 272 N.W. 376 (Minn. 1937).....	7
<i>Midland Loan Finance Co. v. Kisor</i> , 206 Minn. 134, 287 N.W. 869 (1939).....	6, 7, 13
<i>Park Enterprises v. Trach</i> , 233 Minn. 467, 47 N.W.2d 194 (1951).....	<i>passim</i>
<i>Polzin v. Merila</i> , 258 Minn. 93, 103 N.W.2d 198 (Minn. 1960).....	7
<i>State by Humphey v. Philip Morris, Inc.</i> , 551 N.W.2d 490, 493 (Minn.1996).....	1, 2, 9

State v. Lee, 706 N.W.2d 491, 494 (Minn. 2005).....13

Minnesota Statutes:

Minn. Stat. Sec. 48.30 (1951).....5

Minn. Stat. Sec. 524.6-202 (2005).....8, 9, 11

Minn. Stat. Sec. 524.6-203(2005)3, 8, 9

Minn. Stat. Sec. 524.6-205 (2005).....4, 8, 9

Minn. Stat. Sec. 524.6-207(2005).....8

Minn. Stat. Sec. 524.6-208(2005).....*passim*

Minn. Stat. Sec. 524.6-212(2005).....15

Minn. Stat. Sec. 571.73, Subd. 3(1)(2005).....1, 9

Other Authorities

4 *Am. Jur., Attachment and Garnishment*, Sec. 188.....13

5 *Am. Jur., Attachment and Garnishment*, § 821.....7

STATEMENT OF LEGAL ISSUES

1. **Does a Person Who Disclaims Ownership of the Funds In a Joint Bank Account Have Standing To Challenge Its Garnishment?**

Apposite authorities: *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn.1996).

TRIAL COURT: BY RULING ON THE MERITS HELD IN THE AFFIRMATIVE.

2. Is a Joint Account Subject to Garnishment To Satisfy the Debt of One of the Owners?

Apposite authorities: *Park Enterprises v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951); Minn. Stat. Sec. 524.6-208; Minn. Stat. Sec. 571.73, Subd. 3(1).

TRIAL COURT: HELD IN THE AFFIRMATIVE.

3. Does the Doctrine of *Stare Decisis* Allow This Court To Overrule a Long Established Construction of the Garnishment Statute That a Joint Bank Account Is Liable For the Debts of Either Party?

Apposite authorities: *In re Collier*, 726 N.W.2d 799 (2007).

STATEMENT OF THE CASE AND FACTS

In an action to collect rent due on a lease, appellant failed to file an answer or to respond to numerous requests for discovery. The district court entered judgment against appellant as a discovery sanction, struck appellant's answer for procedural violations, and entered default judgment. When respondent garnished two joint bank accounts that appellant held

with his wife, appellant objected on the basis that all the funds were contributed by his wife, and moved the district court to quash. The district court, Judge William Thuet, refused to quash the garnishment.

On appeal from the order, the Court of Appeals affirmed, holding that (1) appellant “as a joint depositor” had standing to object to the garnishment of his wife’s funds in the joint account, and (2) the Multiparty Accounts Act did not abrogate the holding of *Park Enterprises. v. Trach, Inc.*, 233 Minn. 467, 47 N.W.2d 194 (1951), which permitted the garnishment of all funds in a joint account, regardless which party deposited them.

This Court granted review on the garnishment issue on February 20, 2007.

ARGUMENT

I. STANDARDS OF REVIEW.

Standing of a party to raise an issue is jurisdictional. *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn.1996). Review of the trial court’s conclusions of law is *de novo*. *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985). Statutory interpretation is an issue of law that is reviewed *de novo*. *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004).

Generally, common-law remedies are not abrogated unless a statute clearly expresses the intention to abrogate them. *Anderson v. Federated Mut. Ins. Co.*, 481 N.W.2d 48, 49 (Minn. 1992). “We are extremely reluctant to overrule our precedent under principles of *stare decisis* and require a compelling reason to do so.” *In re Collier*, 726 N.W.2d 799 (2007).

II. THE TRIAL COURT PROPERLY DENIED LEHMANN’S MOTION TO QUASH THE GARNISHMENT OF HIS JOINT ACCOUNT.

A. Appellant Lacks Standing To Object To The Garnishment of His Wife’s Funds In The Joint Account.

A genuine conflict in the interests of opposing litigants is not enough to create jurisdiction; a litigant must also have standing. *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn.1996). Standing is acquired in two ways: either the plaintiff has suffered some “injury-in-fact” or the plaintiff is the beneficiary of some legislative enactment granting standing. *Id.*, at p. 492.

Appellant’s assertion that the garnishment should be quashed because the funds in the joint account are not his, but rather the property of his wife, does not present a controversy that Mr. Lehmann has a sufficient stake in to establish his standing. Under Minn. Stat. Sec. 524.6-203, during the lifetime of all parties the net funds on deposit in a multi-

party account are owned by the parties in proportion to their net deposits, in the absence of clear and convincing evidence of a different intent. If all of the funds in the joint account have been deposited by Lehmann's wife, as he contends, then she is the exclusive owner of the funds in the absence of clear and convincing evidence of a contrary intent, which does not appear on this record. He is not a "joint depositor," as the Court of Appeals held. Lehmann may have an interest in the outcome of the litigation about her funds as a matter of curiosity, but he does not have a legally cognizable stake in the funds themselves. Stated another way, Lehmann does not have an injury-in-fact from the garnishment of his wife's funds.

As a result, this court lacks jurisdiction and the appeal must be dismissed.

B. The Multi-Party Accounts Act Does Not Abrogate the *Park Enterprises* Rule.

Appellant argues that the Multi-Party Accounts Act ("MPAA") prevents the garnishment of Lehmann's wife's funds in the joint account because the MPAA establishes the ownership of account funds in the depositor. However, his arguments fail on a number of fronts, primarily because they confuse garnishment of the bank with garnishment of the other owner.

In *Park Enterprises v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951), the Court held that where the debtor has the absolute right to withdraw any or all of the funds in a joint bank account, the entire account is subject to garnishment of the bank by a creditor of either joint owner. The basis for this decision is that one of the incidents of ownership of a joint account under the account agreement is the absolute right of withdrawal by the debtor joint owner, to which the creditor is subrogated by garnishment of the bank. *Id.*, 233 Minn. at 470, 47 N.W.2d at 196.

At the time of *Park Enterprises*, the law governing multi-party accounts was Minn. Stat. Sec. 48.30 (1951), which provided in relevant part:

When any deposit shall be made by or in the names of two or more persons upon joint and several account, the same, or any part thereof, and the dividends or interest thereon, may be paid to either of these persons or to a survivor of them, or to a personal representative of the survivor.

Minn. Stat. Sec. 48.30 (1951). In order to determine the incidents of ownership of a “joint and several account,” the Court struggled to harmonize the statute’s “joint and several” characterization under common law property ownership principles. It concluded that “joint” ownership was incompatible with “several” ownership under common law principles, and

therefore it looked to the account agreement. 233 Minn. at 470, 47 N.W.2d at 196:

Since the type of ownership which the bank and its depositors have created by their contract defies classification under traditional concepts of property ownership, we are forced to treat this case as presenting a contract question and must decide what the incidents of this type of ownership are primarily by reference to the terms of the contract creating it.

Because one of the incidents of ownership was the account contract provision that allowed the debtor unrestricted access to the entire account, the Court held that subrogation by the garnishing creditor to that right was determinative:

Since in purpose and legal effect a garnishment proceeding is virtually an action brought by defendant in plaintiff's name against the garnishee, resulting in the subrogation of the plaintiff to the right of the defendant against the garnishee, we have concluded that plaintiff here may not only garnishee this joint account, but also that it would be entitled to recover judgment against the garnishee for the entire amount of the account if its judgment against defendant were sufficient to exhaust it. Defendant is entitled to withdraw any part or all of the account, and plaintiff, in effect, is subrogated to that right.

Id., 233 Minn. at 470, 47 N.W.2d at 196 (Citing *Midland Loan Finance Co. v. Kisor*, 206 Minn. 134, 287 N.W. 869).

The Court did not venture into new territory when it applied subrogation theory to garnishment. Subrogation by a garnishing creditor to the rights of the debtor against the garnishee is a long-standing

construction of the garnishment statute. *Polzin v. Merila*, 258 Minn. 93, 103 N.W.2d 198 (Minn. 1960) (“The attaching creditor acquires by the garnishment the same, but no greater, right, than the debtor has against the garnishee”); *Midland Loan Finance Co. v. Kisor*, 206 Minn. 134, 136, 287 N.W. 869, 870 (1939):

In purpose and legal effect a garnishment proceeding is virtually an action brought by defendant in plaintiff's name against the garnishee resulting in subrogating the plaintiff to the right of the defendant against the garnishee. *** As sometimes has been said, the garnishing creditor stands in the shoes of the defendant.

(citing 5 Am. Jur., Attachment and Garnishment, § 821); *Gilbert v. Pioneer Nat. Bank of Duluth*, 206 Minn. 213, 288 N.W. 153 (1939); *Knudson v. Anderson*, 199 Minn. 479, 272 N.W. 376 (Minn. 1937); *Carlson v. Stafford*, 166 Minn. 481, 208 N.W. 413 (1926) (“the garnishment proceeding . . . transfer[s] to the plaintiff whatever claim defendant had against the garnishee”); *Bacon v. Towers*, 103 Minn. 387, 115 N.W. 205 (1908) (“The process of garnishment does not change the rights of the parties, further than to transfer to the creditor the right of the defendant to proceed against the garnishee for the collection of the debt due the principal defendant”).

Since Lehmann, as a joint owner, has the absolute right of withdrawal of the funds in the account, subrogation gives Enright the same right to the

funds against the garnishee bank under *Park Enterprises*. Minn. Stat. Sec. 524.6-208. This analysis is not modified by the enactment of the Multiparty Accounts Act in 1973.

Appellant strains to find evidence of legislative intent to support his position. However, if the legislature had intended to abrogate *Park Enterprises* by enactment of the Multi-Party Accounts Act, it was certainly opaque and obscure in its execution. Aside from the statement in Sec. 524.6-202 that Secs. 524.6-203 to 524.6-205 are “relevant to controversies between these persons and their creditors and other successors,” there is no provision in the MPAA concerning the rights of creditors except Minn. Stat. Sec. 524.6-207, which is silent about creditor rights during the lives of the account parties. If the legislature had intended to modify the law of garnishment of joint accounts under *Park Enterprises*, it certainly would have said something about it here.¹ Mere “relevan[ce]” without any statutory provision that establishes or modifies a creditor’s rights is insufficient to accomplish a change in the law. Modification of the law requires the input from the creditor, debtor, and banking communities in

¹ See Report of the Uniform Probate Code Article 2 Study Committee, November 9, 1992, Amicus Appendix, p. 53 (“[T]he rights of creditors are not addressed in the provision.”)

the legislative process and such opaque language as “relevant” is insufficient to put anyone on notice of legislative intent.

There is no provision in the MPAA dealing with garnishment, attachment, levy, or subrogation during the lives of the owners. If anything, the statement that Secs. 524.6-203 to 524.6-205 have “no bearing on the power of withdrawal of these persons as determined by the terms of account contracts” is an affirmation of the basis of the *Park Enterprises* subrogation rule. Minn. Stat. Sec. 524.6-202. Therefore, as a matter of statutory construction, the common law rule of *Park Enterprises* has not been abrogated by the Multiparty Accounts Act.

The broad language of the garnishment statute supports this conclusion. Minn. Stat. Sec. 571.73, Subd. 3 provides that the property attachable by garnishment in addition to earnings is:

“(2) all other nonexempt indebtedness, money, or other property **due** or belonging to the debtor and owing by the garnishee or in the possession or under the control of the garnishee at the time of service of the garnishment summons.”
(Emphasis added.)

Not only property “belonging to the debtor,” but also property “due ... to the debtor” is attachable by garnishment. It would be difficult to conceive broader language concerning the scope of rights and property that can be garnished. Moreover, unless “due ... to the debtor” is mere surplussage,

garnishment reaches more than property “belonging to the debtor,” *i.e.*, beneficially owned by the debtor. The right of withdrawal of the whole under a joint account agreement, now codified in Minn. Stat. Sec. 524.6-208, is such property “due ... to the debtor.”

Appellant’s brief creates a false dichotomy between the so-called “Gift Approach” and the “Contract Approach” in an attempt to draw the *Park Enterprises* rule into the ambit of the MPAA. Appellant’s Brief (“App. Br.”), pp. 10-14. Before the MPAA, it was natural and logical to apply gift analysis to disputes between parties to an account or their executors. In the absence of a statutory directive or contract between the parties, when a party gratuitously deposits money into an account in which another has the total and absolute right of withdrawal, it is only logical for courts to determine the purpose and intent of the depositor as a gift.

In contrast, the relationship between depositors and their banks on joint accounts is seldom in dispute and could hardly be decided on the basis of gift analysis. In the absence of controlling statutes that relationship could only be decided by construing the account agreement. Yet, appellant states that *Park Enterprises* “contains language approving this contract approach,” as if it was somehow out of step or inconsistent with the “Gift Approach” used in disputes between account owners. App. Br., pp. 11, 19.

Appellant next conflates the ambit of the MPAA by stating that it “clarifies the prior confusion between the rights of the financial institution and the rights of any other party.” App. Br., p. 15. However, appellant cites nothing demonstrating confusion in the relationship between the bank and the customer, and he admits that *Park Enterprises* is the only case prior to the MPAA that involves garnishment of joint accounts. *Id.*, p. 11. Moreover, the *Park Enterprises* rule is not in any way confusing. It is straightforward in its application and has been relied upon by the legal community and the financial community for over half a century.

Appellant further conflates and confuses the application of the MPAA to garnishment subrogation by claiming that “differentiating between the rights of financial institution on the one hand and the rights of account owners and their creditors ... effectively nullifies the contract approach.” *Id.*, pp. 15-16. However, appellant fails to explain how that is the case or, even it were true, how that sheds any light on the issue of garnishment subrogation. To the contrary, the contract approach is affirmed in Sec. 524.6-202’s disclaimer of modification of the contractual right of withdrawal. In addition, the contractual right of withdrawal that formed the basis of *Park Enterprises* is codified in the MPAA, which is hardly nullification. Minn. Stat. Sec. 524.6-208, Subd. 3:

Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account.

Appellant admits that the MPAA “retains the common law gift approach ... where clear and convincing evidence shows that the parties did not intend ownership of the account to be based on the parties’ relative contributions.” App. Br., p. 16. As a result, rather than any sea-change in the analysis of joint accounts, the MPAA brought some measure of stability to the analysis by determining *prima facie* ownership by the parties *inter se*, but no change was made in the right of withdrawal, which is the basis for the *Park Enterprises* rule.

Park Enterprises remains the law of this state unless the legislature has abrogated it by clear and unequivocal language. It is difficult to conceive and appellant does not argue that the MPAA has changed Minnesota’s law of garnishment subrogation. All of the out-of-state court decisions cited by Appellant do not support the abrogation of the settled law, as declared by the highest court of this state. The district court’s refusal to vacate the garnishment was not erroneous. Although the Court of Appeals can be faulted for its reasoning that the MPAA only applies only to estates of decedents, missing persons, protected persons, minors, and

incapacitated persons, its affirmance of the district court was undoubtedly correct.

C. The Doctrine of *Stare Decisis* Requires Affirmance of the Court of Appeals.

Having offered no justification for why the MPAA has altered the *Park Enterprises* rule of garnishment subrogation, appellant is reduced to arguing that *Park Enterprises* was wrongly decided and should be overruled. App. Br., pp. 12-14. This Court is “extremely reluctant to overrule our precedent under principles of *stare decisis*” and it requires a “compelling reason” to do so. *In re Collier*, 726 N.W.2d 799, (2007) (quoting *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005)). The facts in this case offer no compelling reason to overrule *Park Enterprises*.

Appellant argues variously that the Court in *Park Enterprises* should not have relied upon *Midland Loan and Finance, supra*, on the issue of garnishment subrogation, and instead should have relied on 4 *Am. Jur., Attachment and Garnishment*, Sec. 188. *Id.*, p. 13. According to Section 188, the principle on which the decisions denying garnishment of a joint indebtedness rest is that the plaintiff can have no greater right against the garnishee than the debtor would have. But Section 188 is inapplicable to the issue of a multi-party account because it deals with joint indebtedness, but, in contrast, here the indebtedness is not only joint but “several” by

virtue of the debtor's right of withdrawal of the whole account under either the account agreement or the MPAA. Section 188 does not deal with several liability.

Appellant additionally argues that instead of finding persuasive the reasoning of a Canadian court in *Empire Fertilizers Ltd. v. Cioci*, (1934) 4 D.L.R. 804, 805, the Court in *Park Enterprises* should have adopted the reasoning of other unnamed "jurisdictions in this country," who may or may not have had the same or similar garnishment statutes or constructions thereof. App. Br., pp. 13-14. The urged reconsideration of the precedents and reasoning on which *Park Enterprises* relied hardly qualifies as a compelling reason to overrule it under the principle of *stare decisis*.

Appellant also argues that *Park Enterprises* should be overruled because it is in the minority among courts who have decided the issue under the common law before the MPAA. App. Br., p. 20. Why this court should decide garnishment of joint accounts under common law principles after enactment of the MPAA by considering cases decided before it is left unexplained.

In support of the proposition that the MPAA governs garnishment of joint accounts, appellant cites *Craig v. Hastings State Bank*, 221 Neb. 746,

380 N.W.2d 618 (1986) claiming that it holds that under the MPAA the bank has no right of set off against a joint account for the debt of an owner who had not contributed to the account. App. Br., p. 20. However, *Craig* is distinguishable because set off is not the equivalent of garnishment subrogation. A bank's set off rights are determined by Minn. Stat. Sec. 524.6-212, not by subrogation to the debtor's rights, as with garnishment.

To the extent that the Minnesota rule is in the minority of jurisdictions on the subject of garnishment,² it is because of the broad construction of the garnishment statute that the MPAA does not purport to affect. Minnesota's minority status among the states on this single issue was known at the time the legislature enacted the MPAA. The fact that the legislature did not undertake to modify the garnishment statute and did not clearly enunciate the rights of creditors in the MPAA is evidence that it did not intend to abrogate the rule. Minnesota's minority status on this issue is not "a compelling reason" to overrule firmly established precedent.

Appellant has not cited a single financial institution that has not been following the *Park Enterprises* rule since it was enunciated, or a single court that has been confused by the rule, the MPAA notwithstanding.

²Connecticut also allows the garnishment of a joint account for the debt of any of the joint owners. Fleet Bank Connecticut, N.A. v. Carillo, 240 Conn. 343, 691 A.2d 1068 (1997).

Rather than confusion, the rule has provided certainty to creditors, account owners, and financial institutions, well as economy to an already burdened judiciary. As the Court stated in *Park Enterprises*:

The peculiar features of a joint bank account, such as this case presents, make it difficult, if not impossible, in most cases, to determine what portion of the account belongs to each depositor. A long series of deposits which cannot be traced to their source, and a similar series of withdrawals which cannot be traced to their destination, are normally involved. This defect is inherent in the severalty feature of such bank accounts wherein each depositor is allowed to treat joint property as if it were entirely his own. Like any loose system of dealing with money, joint bank accounts sacrifice precision to convenience and becloud the respective rights of the depositors. The courts should not encourage parties to do their bookkeeping in court when, by their private contract, they have virtually declared that they do not wish to be inconvenienced by any strict accountability as between themselves. A joint bank account of this kind is a creature of contract between parties avowedly indifferent to the exact percentage of ownership between themselves. The law should take them at their word and give effect to their contract without making detailed and belated evidentiary inquiries to establish factual ownership. Any presumption, whether conclusive or rebuttable, that part or all of these joint accounts are immune from garnishment has the effect of either creating or tending to create a nonstatutory exemption for the parties using them, and any attempt to base the extent of garnishment upon the respective amounts of the account owned by each depositor will compel courts and juries to grope with problems which the depositors themselves have declared to be of no consequence. Let them abide the results which flow from their own declared purposes.

Id., 222 Minn. at 471-72, 47 N.W.2d at 197. If the appellant prevails, the bookkeeping of ownership in multi-party accounts in the courts will

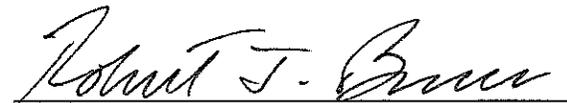
become commonplace and the courts will be burdened, not because of any dispute between the owners, but in order to create a “nonstatutory exemption” to save the owners from the consequences inherent in their loose system of dealing. Not only is there no compelling reason to overrule *Park Enterprises*, but there are compelling reasons to preserve it.

Regardless how the Court of Appeals reached its decision, it’s affirmance of the district court’s refusal to quash the garnishment was the correct decision.

CONCLUSION

Respondent respectfully requests that this Court affirm the Court of Appeals’ decision affirming the order of the district court.

Respectfully submitted,



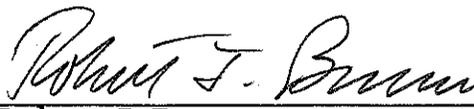
Robert J. Bruno (#12415)
ROBERT J. BRUNO, LTD.
Attorney for Appellant
1601 E. Highway 13, Suite 107
Burnsville, MN 55337
952/890-9171

Dated: April 13, 2007.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01, Subd. 3 of the Minnesota Rules of Civil Appellate Procedure, I, as counsel of record herein for Respondent, hereby certify that the Brief For Respondent is proportionately spaced, has a typeface of 14 points and contains 3,818 words as measured by Microsoft WORD 2007 word count.

Dated: April 13, 2007.



Robert J. Bruno
Attorney for Respondent