

NOV 28 2005

FILED

STATE OF MINNESOTA  
IN SUPREME COURT

McNeilus Truck & Manufacturing, Inc.,

Supreme Court Case No.: A05-0121

Relator,

v.

**RESPONDENT'S ANSWER IN  
OPPOSITION TO RELATOR'S  
PETITION FOR REHEARING**

County of Dodge,

Respondent.

TO: The Supreme Court of the State of Minnesota, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155:

Respondent County of Dodge answers in opposition to Relator's petition for rehearing pursuant to the provisions of Minnesota Rules of Appellate Procedure, Rule 140.01. None of the factors properly addressed in such a petition pursuant to the rule are met by Relator. The record of the trial before the Tax Court includes all evidence offered by Relator in those proceedings. The record is complete and unaffected by the remand. Under the Supreme Court's decision of November 10, 2005, the remand is limited to, and ought be limited to, instruction to the Tax Court about the evaluation of the evidence already admitted.

Rule 140.01 states that the petition "...shall set forth with particularity: (a) any controlling statute, decision or principle of law; or (b) any material fact; or (c) any material question in the case which in the opinion of the petition, the Supreme Court has overlooked, failed to consider, misapplied or misconceived."

In its petition, Relator starts its argument with a section entitled “Facts Relevant to the Petition.” Presumably, that section is intended to address section (b) of the rule. The allegedly “relevant” facts cited by Relator relate to (1) the judgment appealed from was entered in Dodge County, and (2) “underpayments” of taxes were subsequently collected by the County. This is not surprising because Relator sought no stay and posted no supersedeas bond. Of course, the judgment remained in effect absent such a stay. If the judgment is eventually modified downward as a result of the completion of this litigation, Respondent will simply have to refund any over-collection, together with accrued interest on the over-payment, as routinely occurs in Tax Court matters.<sup>1</sup> Because the Supreme Court carefully noted that it took “no position as to the eventual outcome of this property valuation dispute,” the fact that the County collected additional monies from the entered judgment is of no material consequence within the meaning of Rule 140.01. If Relator were concerned about a potential temporary overpayment to the County, it should have sought a stay and posted the required bond. It did not do so. How that could be the basis of a request for a new trial is totally unexplained in the petition, and it is simply unimaginable.

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<sup>1</sup> Mr. Hill asserts in his affidavit that Respondent’s counsel stated that the County refuses to make a refund of the additional amounts paid as a result of the Tax Court judgment. This is not true, even if it were relevant. In fact, counsel and Respondent’s Board have not had an opportunity to discuss the request, which came verbally and without specifics. See the accompanying Affidavit of Kenneth R. Moen.

Relator then proceeds with an argument at p. 3 of its petition that starts with a total non-sequitur. It states that it is “apparent” that the existing record is inadequate to enable the Tax Court to do its job following remand. However, no evidence offered by Relator at the Tax Court trial was excluded from the record on grounds that relate to the remand. Whatever is “apparent” to Relator in that regard remains totally unexplained and is certainly counter-intuitive, given the status of the record itself.

The only case law cited by Relator is Minnesota Valley R. Co. v. Doran, 15 Minn. 240, 15 Gil. 186 (1870). That one-page decision is included with Relator’s petition. In relevant part, it simply states that a new trial is granted “for error occurring on the trial in the court below.” The reader of that decision cannot discern what error required retrial; nor has Relator shared anything further from the record in that case that might help. In general, it goes without saying that some error may require retrial; other error may not. Doran certainly does not help us draw that line.

By contrast The Supreme Court, in its November 10, 2005, decision, cites Renneke v. County of Brown, 255 Minn. 244, 248, 97 N.W.2d 377, 380 (1959) for authority that it is proper to “remand to the tax court with instructions to reconsider the evidence and clarify its analysis.” See the decision at pp. 8 and 9. It would be a great waste of judicial resources if a remand for such a purpose required retrial,

where the record already includes all comparable sales evidence sought to be introduced at trial by the party now advocating retrial.

The petition for rehearing should be denied.

Dated: November 23, 2005



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ATTORNEY FOR RESPONDENT

STATE OF MINNESOTA  
IN SUPREME COURT

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McNeilus Truck & Manufacturing,  
Inc.,

Supreme Court Case No.: A05-0121

Relator,

v.

**AFFIDAVIT OF  
KENNETH R. MOEN**

County of Dodge,

Respondent.

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Kenneth R. Moen, being first duly sworn, deposes and states as follows:

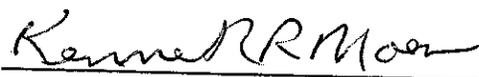
1. I am the attorney of record for Respondent County of Dodge in the above-entitled matter.
2. I have reviewed the Affidavit of Robert A. Hill dated November 18, 2005, and find it inaccurate as it relates to part of our telephone conversation.
3. Mr. Hill wanted to use the remand as the basis to open mediation involving the present case and a case involving completely different property. I told him that I had discussed the remand with the elected County Attorney, and we did not see the remand as the basis for such action.
4. He then referenced the alleged "over-payment" and his client's desire to have the money that was paid to the County as a result of the Tax Court judgment refunded before any results after remand were known.

5. I told him I had not discussed that matter with anyone from the County, but I could review this issue.

6. I have recently reviewed it and report that Relator never sought, and was not granted, any stay to the enforcement of the Tax Court judgment, and it never posted any bond to achieve that effect. I also note that the provisions of Minn. Ch. 278 provide for the refund of any over-payments determined as a result of a tax appeal, together with interest.

FURTHER YOUR AFFIANT SAITH NOT.

Dated: November 23, 2005.

  
Kenneth R. Moen

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of November 2005

  
Notary Public

