

NO. A05-2401

State of Minnesota
 In Court of Appeals

Paulette Pahnke, Individually and as a Parent and
 Natural Guardian of Brittany Newman, Alyssa Newman,
 and Michael Newman, Minors,

Appellants,

vs.

Anderson Moving and Storage,
 Home Apartment Development, LLC,
 County of Houston, City of La Crescent,
 John Doe, and Jim Doe,

Respondents.

**BRIEF OF RESPONDENTS
 CITY OF LA CRESCENT AND JIM DOE**

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STATEMENT OF ISSUE

I. WHETHER THE DISTRICT COURT CORRECTLY FOUND OFFICER HARGROVE IS ENTITLED TO OFFICIAL IMMUNITY AND THE CITY OF LA CRESCENT IS ENTITLED TO VICARIOUS OFFICIAL IMMUNITY?

The District Court held in the affirmative.

Apposite Authorities:

Anderson v. Anoka Hennepin Independent School District 11, 678 N.W.2d 651 (Minn. 2004);
Minn. Stat. § 504B.365;
Minn. Stat. § 504B.361;
Berg v. Wiley, 264 N.W.2d 145 (Minn. 1978).

II. WHETHER MS. PAHNKE'S CLAIM REGARDING VIOLATIONS OF MINNESOTA STATUTE SECTION 504B ARE ACTIONABLE?

The District Court did not reach a decision regarding this issue because it decided all claims against the government defendants were dismissed based on official immunity.

Apposite Authorities:

Robinette v. Price, 8 N.W.2d 800 (Minn. 1943);
Minn. Stat. § 466.03;
Brown v. Dayton Hudson Corp, 314 N.W.2d 210 (Minn. 1981);
Buck v. Freeman, 619 N.W.2d 793, 797 (Minn. App. 2000).

STATEMENT OF THE CASE

Appellants (hereinafter “Ms. Pahnke”) commenced a lawsuit against Anderson Moving and Storage, Home Apartment Development, Houston County and the City of La Crescent stemming from her failure to pay rent, subsequent eviction and removal from her apartment. The case was originally venued in state court. The City of La Crescent removed the matter to federal court. All defendants brought summary judgment motions in federal court. On April 21, 2005, United States District Court Judge Paul Magnuson found no constitutional violations, but declined to exercise supplemental jurisdiction over the state law claims and remanded those claims to Houston County District Court.

All parties brought cross motions for summary judgment in state court. On October 7, 2005, Houston County District Court Judge Robert Benson issued a decision granting summary judgment in favor of Houston County and the City of La Crescent. The Court found Houston County Deputy Sass and La Crescent Officer Hargrove entitled to official immunity and Houston County and the City of LaCrescent vicariously immune. The Court determined issues of fact remained regarding Anderson Moving and Storage, Home Apartment Development and the contract claims pertaining to Houston County. Houston County has filed a Notice of Review regarding the breach of contract claim.

STATEMENT OF THE FACTS

A. BACKGROUND.

In November 2002, Paulette Pahnke was living with her three children in an apartment owned by Home Apartment Development, LLC (hereinafter “Home”) in La Crescent, Minnesota. *R.A. 35.*¹ Ms. Pahnke failed to pay rent in October and November 2002 and Home commenced an unlawful detainer action against Ms. Pahnke for past due rent. *R.A. 35, App. 11.*² On November 26, 2002, Ms. Pahnke attended an eviction hearing. *R.A. 35.* The court ruled in favor of Home but delayed the issuance of a writ of recovery for seven days. At this hearing, Ms. Pahnke stated, “So that means I have seven days to move?” The Court answered, “yes, ma’am.” *R.A. 112.* The court issued an order finding in favor of Home for recovery of the premises and “the Writ of Recovery of Premises and Order to Vacate shall be: stayed until December 3, 2002.” *R.A. 77-79.* Ms. Pahnke received a copy of this order. *R.A. 36.*

¹ Citations to R.A. are to Respondents’ Appendix filed by Houston County Respondents.

² Ms. Pahnke rented another apartment in 1999-2000 from Home where she also failed to pay rent. *R.A. 35.* As a result, Ms. Pahnke signed an agreement with Home to pay \$200 a month until the balance of \$1,100 was paid off for past rent. *R.A. 85-86.* On September 24, 2002, Ms. Pahnke was provided notice to vacate her apartment for failure to pay the \$200. *R.A. 87.* On or about October 14, 2002, Ms. Pahnke signed a new agreement to pay off the balance of \$1,100. *R.A. 88.*

B. SERVICE OF WRIT OF RECOVERY AND ORDER TO VACATE.

On December 4, 2002, Houston County Deputy Sass was given a Writ of Recovery to serve on Ms. Pahnke. *R.A. 187*. On his way to La Crescent to serve the Writ of Recovery, he contacted the City of La Crescent Police Department to request backup. *R.A. 188*. Deputy Sass spoke to Officer Bill Hargrove about assisting him, but did not explain he was serving a Writ of Recovery. *R.A. 188*. It was not unusual for an officer from La Crescent to assist a sheriff's deputy on matters within the City of La Crescent for officer safety. *R.A. 203*. Deputy Sass and Officer Hargrove met in the parking lot of Ms. Pahnke's apartment. *R.A. 204*. Deputy Sass informed Officer Hargrove he had a Writ of Recovery to serve, but did not show Officer Hargrove the document. *R.A. 188, R.A. 207-208*. Officer Hargrove was present for backup. *R.A. 210*.

A Manager from Home met the officers in the parking lot. *R.A. 189*. Deputy Sass went to the door to serve Ms. Pahnke with the Writ of Recovery. *R.A. 189*. Deputy Sass informed Ms. Pahnke she needed to vacate the premises immediately. *R.A. 189; R.A. 37*. He provided Ms. Pahnke the Writ and Order to Vacate. *R.A. 37*. The Writ of Recovery, dated December 4, 2002, states, "if necessary, you cause Paulette Pahnke to be immediately removed from the premises." *R.A. 80*. The Writ complies with the standard form codified in Minn.

Stat. §504B.631. Officer Hargrove was approximately four to six feet from Deputy Sass and Ms. Pahnke when the Writ of Recovery was served. *R.A. 191.*

Ms. Pahnke was having a birthday party for her daughter at the time the officers arrived. *App. 12.* Deputy Sass and Ms. Pahnke requested Officer Hargrove give two girls at the birthday party a ride home. *R.A. 204-205.* Officer Hargrove called the girls' mother and explained the situation and then took the children home. *R.A. 204-205.* Ms. Pahnke and her children left the apartment at approximately 6:30 p.m. *R.A. 38.* Officer Hargrove was gone before Ms. Pahnke removed personal property from the apartment and left the apartment. *R.A. 205.*

Ms. Pahnke claims on December 5, 2002, she went to Home to remove her personal property but was unable to get into the apartment. *App. 14.* On December 9, 2002, at the request of Home, Anderson Moving and Storage removed Ms. Pahnke's personal property from her former apartment into storage. *App. 14.*

C. PROCEDURAL HISTORY.

On February 17, 2004, Plaintiffs commenced a lawsuit against Anderson Moving and Storage, Home Apartment Development, Houston County and the City of La Crescent. The case was originally venued in Olmsted County. Houston County made a Demand for Change of Venue to Houston County. The City of La Crescent removed the matter to federal court pursuant to 28 U.S.C. §§1441 and

1446 because Plaintiffs alleged civil rights violations. All Defendants brought summary judgment motions.

On April 21, 2005, United States District Court Judge Paul A. Magnuson issued a Memorandum and Order regarding these motions. *R.A. 122-131*. The Court found: “the fact that the government Defendants executed the Writ contrary to the procedure proscribed in §504B.365 but consistent with Judge Benson’s order under Minn. Stat. §504B.365 does not state a federal due process claim.” *R.A. 128-129*. The Court held Plaintiffs’ claims against the government Defendants in their official and individual capacities failed. Because the federal claims had no merit, the Court declined to exercise supplemental jurisdiction over the state law claims and remanded the matter. Judge Magnuson noted, “[a]lthough the Court declines to expressly address the state law claims, it highly doubts that Plaintiffs’ remaining claims against Defendants will succeed on the merits.” *R.A. 130*.³

All parties brought cross motions for summary judgment in state court. On October 7, 2005, Houston County District Court Judge Robert Benson issued a decision granting summary judgment in favor of Houston County and the City of La Crescent. *App. 44*. The Court found Deputy Sass and Officer Hargrove were

³ The United States District Court issued an Amended Order on May 2, 2005, remanding the remaining state claims to Houston County District Court instead of Olmsted County. *R.A. 132*.

entitled to official immunity and Houston County and the City of La Crescent vicariously immune. *App.* 57-58.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, the appellate court must consider “(1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law.” *In re Daniel*, 656 N.W.2d 543, 545 (Minn. 2003) (citing *State by Cooper v. French*, 460 N.W.2d 4 (Minn. 1990)). Whether the district court correctly applied statutory language to undisputed facts is a conclusion of law subject to de novo review. *Id.* (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY FOUND OFFICER HARGROVE ENTITLED TO OFFICIAL IMMUNITY.

Courts determine whether vicarious official immunity protects a governmental entity from liability after it determines if official immunity applies to an individual’s challenged behavior. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). The Minnesota Supreme Court affirmed the importance of applying the doctrine of official immunity to protect public officials from liability for discretionary action taken in the course of their official duties. *Anderson v. Anoka Hennepin Independent School District 11*, 678 N.W.2d 651, 655 (Minn. 2004); *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004).

The Minnesota Court of Appeals has further determined, “[g]enerally, police officers are discretionary officials.” *Dokman v. County of Hennepin*, 637 N.W.2d 286, 296 (Minn. App. 2001) (citing *Johnson v. Morris*, 453 N.W.2d 31, 41-42 (Minn. 1990) (“police officers are classified as discretionary officers entitled to that immunity”)).

The doctrine of official immunity is so broad as to “protect all but the plainly incompetent or those who knowingly violate the law.” *Dokman*, 637 N.W.2d at 292. “Only when officials act outside the scope of their charged authority can they be deemed to have waived this immunity and be held personally liable for their negligence.” *Id.* at 296 (see generally *Janklow v. Minn. Bd. Of Exam’rs*, 552 N.W.2d 711, 715 (Minn. 1996)). “Official immunity is provided because the community cannot expect its police officers to do their duty and then second-guess them when they attempt conscientiously to do it.” *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992). Official immunity is intended “to protect public officials from the fear of personal liability, which might deter independent action and impair effective performance of their duties.” *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988); *Janklow*, 552 N.W.2d at 715.

Determining whether official immunity is available in a given context requires a two-step inquiry: “(1) whether the alleged acts are discretionary or ministerial; and (2) whether the alleged acts, even though of the type covered by

official immunity, were malicious or willful and therefore stripped of the immunity's protection." *Dokman*, 637 N.W.2d at 296 (citing *Davis v. Hennepin County*, 559 N.W.2d 117, 122 (Minn. App. 1997)).

A. OFFICER HARGROVE'S DECISION TO ACCOMPANY DEPUTY SASS WAS DISCRETIONARY.

In determining whether conduct is discretionary for purposes of official immunity, the critical determination is whether the nature of the officers' action was discretionary or ministerial. Whether an act is discretionary is determined by the court as a matter of law. *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 (Minn. 1999). "A ministerial duty [is] one that is 'absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.'" *Anderson v. Anoka Hennepin Independent School District*, 678 N.W.2d 651, 656 (Minn. 2004) (quoting *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998) (citation omitted)). Generally, "police charged with the duty to prevent crime and enforce the laws are not purely 'ministerial officers,' in that many of their duties . . . (involve) the exercise of discretion." *Elwood*, 423 N.W.2d at 678.

There can be no question Officer Hargrove acted with discretion in his decision to accompany Deputy Sass to Plaintiffs' residence. There is no policy or procedure requiring La Crescent officers to accompany deputies within city boundaries. Officer Hargrove used discretion in his decision to accompany Deputy

Sass. *R.A. 211*. He was not presented with “fixed and designated facts” giving rise to “absolute, certain and imperative execution of a specific duty.”

B. THE EXECUTION OF THE WRIT OF RECOVERY WAS REQUIRED BY STATUTE.

Officer Hargrove accompanied Deputy Sass and was approximately four to six feet from Deputy Sass and Ms. Pahnke when the Writ of Recovery was served. *R.A. 191*. The District Court found Officer Hargrove “was in fact removed from the conversation between Sass and the Plaintiff.” *App. 56*. Regardless, even if Officer Hargrove served the Writ of Recovery he is entitled to official immunity for following the Judge’s Order.

In *Anderson v. Anoka Hennepin Independent School Dist. 11*, 678 N.W.2d 651 (Minn. 2004), a high school woodworking teacher was sued for negligence after a portion of a student’s finger was severed while the student used a table saw to make rip cuts of thin strips of wood. *Id.* at 654. The court determined the school district’s unwritten safety protocol regarding the use of a table saw’s blade guard imposed a ministerial duty upon a teacher. *Id.* at 656. The court held official immunity is not forfeited because his or her conduct was ministerial if that ministerial conduct was required by a protocol established through the exercise of discretionary judgment that would itself be protected by official immunity. *Id.* at 660. The ministerial-conduct bar to official immunity arises when the allegation is

that a ministerial duty was either not performed or was performed negligently. *Id.* (citations omitted).

Ministerial duties are often defined by statute, ordinance or department regulation. *Hyatt v. Anoka Police Dept.*, 700 N.W.2d 502, 507 (Minn. App. 2005). See *Anderson*, 678 N.W.2d at 659 (finding a ministerial duty established by unwritten school policy); *Nelson v. Wrecker Servs., Inc.*, 622 N.W.2d 399, 403 (Minn. App. 2001) (finding that statute established ministerial duty for emergency vehicle to activate its lights and siren); *Mumm v. Mornson*, --- N.W.2d ---, 2006 WL 45128 (Minn., Jan. 10, 2006) (finding police policy imposed a ministerial duty).

The statute controlling the execution of a Writ of Recovery and Order to Vacate is Minn. Stat. § 504B.365. The Order may be carried out by “the force of the county and any necessary assistance.” Minn. Stat. § 504B.365, subd. 1(b). “The order may also be executed by a licensed police officer.” Minn. Stat § 504B.365, subd. 1(d). The legislature could have allowed the Writ and Order to be served by any number of people, including the landlord or his/her agents. However, the legislature chose to have an officer serve the Writ and Order.

In *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978), a tenant brought an action to recover against a landlord and others for, among other claims, wrongful eviction. The Minnesota Supreme Court found the landlord must follow the

judicial process. *Id.* at 152. In discussing this case, the court stated, “[i]t has long been the policy of our law to discourage landlords from taking the law into their own hands, and our decisions and statutory law have looked with disfavor upon any use of self-help to dispossess a tenant in circumstances which are likely to result in breaches of the peace.” *Id.* at 149-150.

Clearly the legislature exercised discretion in dictating the Writ and Order is served by an officer rather than a landlord. Here, the officers were executing a District Court Order which provided Ms. Pahnke was to be “immediately removed from the premises.” *App.* 7. They acted under the authority of Minn. Stat. § 504B.365. Accordingly, because the protocol was adopted through the exercise of discretion, they are protected by immunity even if their conduct in serving the Writ and Order was ministerial.

C. OFFICER HARGROVE’S ACTIONS WERE NOT WILLFUL OR MALICIOUS.

In order to avoid the application of official immunity, Ms. Pahnke must demonstrate Officer Hargrove acted willfully and maliciously. In defining the term “malicious,” the Minnesota Supreme Court has stated there must be an element of bad faith involved. *Elwood v. Rice County*, 423 N.W.2d 671, 679 (Minn. 1988). Relying on *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Minnesota Court of Appeals has required plaintiffs to present “specific facts evidencing bad faith” rather than “bare allegations of malice.” *Reuter v. City of*

New Hope, 449 N.W.2d 745, 751 (Minn. App. 1990). The Minnesota Supreme Court has determined in the official immunity context, willful and malicious are synonymous. “Malice means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right.” *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991) (citations omitted). The Minnesota Supreme Court has “established a high standard for a finding of a willful or malicious wrong in the context of common law official immunity, by requiring the defendant to have reason to know that the challenged conduct is prohibited.” *Anderson v. Anoka Hennepin Independent School Dist. 11*, 678 N.W.2d 651, 662 (Minn. 2004).

Officer Hargrove clearly did not act maliciously in accompanying Deputy Sass or in his minimal interactions with Ms. Pahnke. *App.* 56. Ms. Pahnke appears to argue there is a conflict between Minn. Stat. § 504B.365 and Minn. Stat. § 504B.361 and the district court improperly determined the officers properly followed a Court Order. *App. Br.* p. 10.

Minn. Stat. § 504B.365, subd. 1(a) provides, “the officer who holds the order to vacate shall execute it by demanding the defendant . . . relinquish possession and leave, taking family and all personal property from the premises within 24 hours.” Here, the District Court Judge followed the form supplied in

Minn. Stat. § 504B.361, subd. 1(c) indicating Ms. Pahnke was to be “immediately removed from the premises.” *App. 7.*

There is no indication the officers had reason to believe what they were doing was prohibited. They were following a Judge’s Order by requesting Ms. Pahnke immediately leave the premises. Ms. Pahnke claims “no reasonable officer would force a young mother and three minor children into the street on a winter’s night with a moment’s notice after having been shown the law.” *App. Br. p. 11.* This argument is without merit. First, Ms. Pahnke did not have a moment’s notice. On November 26, 2002, Ms. Pahnke attended an eviction hearing. *R.A. 35.* The court ruled in favor of Home and delayed the issuance of a writ of recovery for seven days. *R.A. 112.* At this hearing, Ms. Pahnke stated, “So that means I have seven days to move?” The Court answered, “yes, ma’am.” *R.A. 112.* The court issued an Order for recovery of the premises and “the Writ of Recovery of Premises and Order to Vacate shall be: stayed until December 3, 2002.” *R.A. 77-79.* Ms. Pahnke received a copy of this order. *R.A. 36.* Ms. Pahnke knew she was ordered to be out of the apartment by December 3, 2002. The Writ of Recovery and Order was served on December 4, 2002. Accordingly, Ms. Pahnke did not have a moment’s notice to vacate the apartment. She had seven days to move.

Second, Ms. Pahnke suggests the officers should have questioned the Judge’s Order and asked a supervisor, or the county or city attorney for advice.

App. Br. p. 11-12. This suggestion is ridiculous. It is the officers' job to carry out a Judge's Order. It would be absurd to require officers to question judicial orders. Officers are immune from liability in carrying out judicial orders. In *Robinette v. Price*, 8 N.W.2d 800 (Minn. 1943) the court found:

Unquestioning obedience, without power or right to review or to revise, being the duty of the officer, he is afforded upon grounds of public policy a commensurate protection against personal liability for acts done in the performance of such duty. A sheriff is protected and justified for acts done in executing the process and orders of a court having jurisdiction of the subject matter when the process is regular on its face.

Id. at 804. Accordingly, the District Court correctly found Officer Hargrove did not act willfully or maliciously in following the Judge's Order and is entitled to official immunity.

D. THE DISTRICT COURT CORRECTLY DETERMINED THE CITY OF LA CRESCENT IS ENTITLED TO VICARIOUS OFFICIAL IMMUNITY.

Because Officer Hargrove is immune from liability, the City of La Crescent is entitled to vicarious official immunity. Vicarious official immunity protects a governmental entity from a suit based on the acts of an employee who is entitled to official immunity. *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998). The Minnesota Supreme Court concluded, "it would be anomalous" to impose liability on the government employer for the very same acts for which the employee receives immunity. *Id.* "Generally, if a public official is found to be

immune from suit on a particular issue, his or her government employer will be vicariously immune from suit arising from the employee's conduct and claims against the employer are dismissed without explanation." *Anderson v. Anoka Hennepin Independent School District 11*, 678 N.W.2d 651, 663-64 (Minn. 2004).

Courts apply vicarious official immunity when failure to grant it would focus "stifling attention" on an official's performance "to the serious detriment of that performance." *Anderson*, 678 N.W.2d 664. "This standard grants vicarious official immunity in situations where officials' performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their actions." *Id.* (citations omitted).

Here, it would hinder an officer's performance to second guess a judicial order in anticipation the City would sustain liability as a result of their actions. Accordingly, the District Court properly determined the City of La Crescent is immune from liability.

II. MS. PAHNKE'S CLAIM REGARDING VIOLATIONS OF MINNESOTA STATUTE SECTION 504B IS NOT ACTIONABLE.

The District Court properly granted the City of La Crescent's Motion for Summary Judgment based upon official immunity. However, there are other reasons this court could have dismissed Ms. Pahnke's claims.

Ms. Pahnke claims the officers violated certain provisions of Minn. Stat. §504B.365 and §504B.231. *App. 18*. Officer Hargrove did not serve Ms. Pahnke with the Writ of Recovery. He simply accompanied Deputy Sass to serve the document. Officer Hargrove never looked at nor read the Writ of Recovery and had no conversation with Ms. Pahnke pertaining to the Writ of Recovery. Regardless, Officer Hargrove and the City of La Crescent are protected from liability for executing orders of the Court. *See* Minn. Stat. § 466.03, subd. 5 and *Robinette v. Price*, 8 N.W.2d 800 (Minn. 1943). The City of La Crescent joins in Houston County’s argument the officers are protected from liability as a matter of law for serving the Writ of Recovery. Additionally, statutory immunity and quasi-judicial immunity bar Ms. Pahnke’s claims regarding Minnesota Statute Section 504B. Finally, Minnesota Statute Section 504B does not create a private cause of action.

A. STATUTORY IMMUNITY BARS PLAINTIFFS’ CLAIMS.

Minn. Stat. § 466.03, subd. 5 exempts a municipality from liability for claims arising from “an act or omission of an officer ... in the execution of a valid or invalid statute,” Here any claims the City of La Crescent violated Minn. Stat. §504B are simply not actionable. The officers served the Writ of Recovery which required Ms. Pahnke to immediately leave the premises under Minn. Stat. § 504B.361. Ms. Pahnke claims the officers violated Minn. Stat. § 504B.365 by not

allowing her twenty-four hours to vacate the apartment. According to Minn. Stat. § 466.03, subd. 5, the City is statutorily immune for executing a Writ of Recovery pursuant to Minn. Stat. § 504B.361.

B. PLAINTIFFS' CLAIMS ARE BARRED BY QUASI-JUDICIAL IMMUNITY.

Quasi-judicial immunity is not a new concept in Minnesota law. *Brown v. Dayton Hudson Corp.*, 314 N.W.2d 210, 214 (Minn. 1981). Quasi-judicial immunity protects officers of the court, those appointed to carry out the court's orders. *Dinsmore v. Noor*, No. CV-01-641, 2002 WL 15688, *2 (Minn. App. 2002). Quasi-judicial officials enjoy complete immunity from civil liability for their judicial acts. *Linder v. Foster*, 296 N.W. 299, 300-301 (1940). The goal of quasi-judicial immunity is to protect the judicial process. *Sloper v. Dodge*, 426 N.W.2d 478, 479 (Minn. App. 1988).

The officers were acting pursuant to a District Court Order executing the Writ of Recovery. Therefore, the government appellants enjoy quasi-judicial immunity.

C. MINNESOTA STATUTE SECTION 504B DOES NOT GIVE RISE TO A CIVIL CAUSE OF ACTION.

"Statutes do not give rise to a civil cause of action unless the liability is explicit or clearly implicated." *Buck v. Freeman*, 619 N.W.2d 793, 797 (Minn. App. 2000). The Minnesota Supreme Court has stated: "Principles of judicial

restraint preclude us from creating a new statutory cause of action that does not exist in common law where the legislature has not either by the statute's express terms or by implication provided for tort liability." *Bruegger v. Faribault County Sheriff's Department*, 497 N.W.2d 260, 262 (Minn. 1993). In determining whether a private cause of action is implied, the courts consider three factors:

1. Whether appellant belongs to the class for whose benefit the statute was enacted;
2. Whether the legislature enacted an intent to create or deny a remedy; and
3. Whether implying a remedy would be consistent with the underlying purpose of the statute.

Buck, 619 N.W.2d at 797.

In this case, Minn. Stat. §§ 504B.365 and 504B.231 do not create a private cause of action. Minnesota Statute Chapter 504B refers to Plaintiff as the individual or entity bringing the Eviction Action and Defendant as the resident/tenant. The Writ of Recovery and Order to Vacate are executed by officers. *See Minn. Stat. §504B.365, subd. 1(a) and (d)*. Minn. Stat. §504B.365, subd. 5 provides "a plaintiff, an agent, or other person acting under the plaintiff's direction or control who enters the premises and removes the defendant's personal property in violation of this section is guilty of an unlawful ouster under section 504B.231 and is subject to penalty under section 504B.225." Minn. Stat. §504B.231 (a) provides for treble damages if a landlord forcibly keeps out a tenant from residential premises. Clearly this statute distinguishes between a landlord,

tenant and the officer executing the court documents. The statute only provides for a remedy by the tenant against the landlord.

Therefore, Minn. Stat. § 504B.365 and its penalty provisions only apply to landlords (or persons acting under the direction or control of a landlord) and does not create a private remedy against officers for executing a Writ of Recovery. A private cause of action under this statute against the officers would conflict with the remedy and purpose of the statute. Accordingly, because the statute does not provide a private cause of action, Ms. Pahnke's claims should be dismissed in their entirety.

CONCLUSION

The District Court properly granted the City of La Crescent's Motion for Summary Judgment. Respondents respectfully request this Court affirm the District Court's decision and dismiss Ms. Pahnke's Complaint in its entirety.

Respectfully submitted,

IVERSON REUVERS

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