

NO. A07-310

State of Minnesota
In Supreme Court

City of West St. Paul,

Appellant,

vs.

Alice Jane Kregel,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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LEGAL ISSUES

I: Where undisputed nuisance activity exists which led to an abatement plan and it is undisputed that the abatement plan was breached, is a prosecutor precluded from seeking injunctive relief to abate the nuisance when the date of the last nuisance activity is more than 12 months before the permanent injunction hearing but within the 12 month period preceding the Notice of Injunctive Action required by *Minn. Stat. § 617.81, subd. 4?*

The Court of Appeals held in the affirmative.

Apposite Authority:

American Tower L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001)

State v. Larivee, 656 N.W.2d, 226 (2003)

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

Minn. Stat. § 617.81

Minn. Stat. § 617.82(a)

Minn. Stat. § 645.16

II: Where undisputed nuisance activity occurs which results in an abatement plan and it is undisputed that the abatement plan was breached, are the nuisance abatement enforcement procedures found in Minn. Stat. § 617.80 through § 617.87 tolled while efforts were made to voluntarily address the nuisance activity during the term of the abatement plan?

The Court of Appeals held in the negative.

Apposite Authority:

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

Hvamstad v. Suhler, 915 F.2d 1218 (8th Cir. 1990)

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Minn. Stat. § 617.82, subd. 4

STATEMENT OF THE CASE

On July 29, 2005 Appellant sent Respondent a Notice of Injunctive Action pursuant to Minn. Stat. § 617.81, subd. 4 (2005). Appellant's Appendix (A 1). Respondent entered into an Abatement Plan on August 22, 2005. (A 4) Respondent violated the provisions of the Abatement Plan and Appellant proceeded to seek an injunction sending Respondent a Notice of Injunctive Action on June 27, 2006. (A 8)

On August 3, 2006, Dakota County District Court issued a Temporary Injunction enjoining Respondent from occupying her property and engaging in nuisance activity on the property. (A 13) Pursuant to that Court Order, Respondent 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 Respondent'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 Respondent from occupying her property for one year. (A 16, 26)

On December 13, 2006, Respondent 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 Respondent's Petition for Writ of Prohibition. (A 30) On February 9, 2007, Respondent served Appellant with a Notice of Appeal of the November 20, 2006 District Court Order. On February 2, 2007, Respondent served and filed a motion in the

District Court requesting an Order staying enforcement of the Permanent Injunction pending Respondent's appeal. A hearing on Respondent's motion was held February 27, 2007. On March 19, 2007, the District Court issued an Order denying Respondent's motion for a stay of enforcement of the injunction pending appeal. (A 32) On May 2, 2007, Respondent filed with the Court of Appeals a Motion to Review and Reverse the District Court's Denial of Respondent's Request for Stay of Enforcement of Injunction. By court Order dated May 22, 2007, the Court of Appeals denied Respondent's Motion for Stay Pending Appeal, finding that both Minn.R.Civ.P. 62.02 and Minn.R.Civ.P. 108.01 are discretionary with the court and that Respondent had not shown a strong likelihood of success on the merits of her appeal. (A 36)

By a 2-1 published decision dated May 6, 2008, the Court of Appeals ruled that the District Court erred in issuing the permanent injunction because the City failed to prove that two or more separate behavioral incidents of statutorily defined nuisance activity occurred within the 12 month period immediately preceding the permanent injunction hearing. (A 38)

The City timely filed a Petition for Supreme Court Review of the May 6, 2008 Court of Appeals' decision. (A 69) By court Order dated July 15, 2008 the Supreme Court granted the Petition and this appeal ensued. (A 76)

STATEMENT OF FACTS

On July 29, 2005, pursuant to Minn. Stat. § 617.81, subd. 4 (2005), Appellant sent Respondent a Notice of Injunctive Action by certified mail detailing thirteen (13) separate incidents that constituted acts of maintaining or permitting a public nuisance

which occurred between September 28, 2004 and July 12, 2005. (A 1) Of those, twelve incidents involved the use of alcohol and the presence of intoxicated guests at Respondent's home. *Id.*

Respondent entered into an Abatement Plan with the City on August 22, 2005 which contained specific terms and conditions to which Respondent agreed in order to avoid the City proceeding to obtain the injunction at that time. (A 4)

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

Respondent began a pattern of violating the Abatement Plan and Appellant sent Respondent a Notice of Injunctive Action dated June 27, 2006. (A 8) That Notice reiterated the original 13 incidents which were contained in the July 29, 2005 Notice to Respondent and also included an additional four incidents of Respondent's violation of the terms of the Abatement Plan. *Id.* Three of the Respondent's four cited violations of the Abatement Plan involved Respondent's use/suspected use of alcohol. *Id.*

Appellant received a Temporary Injunction from the Dakota County District Court ("District Court") on August 3, 2006, enjoining Respondent from occupying or from entering onto her property without prior approval from the West St. Paul Police Department and enjoined Respondent from engaging in nuisance activity on the property.

Respondent was removed from the property on or about August 7, 2006 for a period of one year.

On October 17, 2006, at the Permanent Injunction hearing, Appellant moved the District Court for an injunction, seeking an order of abatement enjoining Respondent 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 the Court hearing, evidence was introduced which established that:

- Police had responded to Respondent's home approximately 180 times since 1990;
- Respondent twice pled guilty to a public nuisance – once for a November 14, 2004 incident and again for an April 10, 2005 incident;
- Between July 2004 and July 2005 there were 29 police reports regarding Respondent's property;
- Respondent's neighbors testified to nine different instances of nuisance between July 2004 and July 2005.
- Respondent violated the Abatement Plan on September 17, 2005; March 15, 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.
- Respondent's neighbors have been subjected to intoxicated persons at her 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.

- Respondent's neighbor feared for the safety and welfare of her teenage daughter who has received lewd and suggestive comments from men visiting Respondent's residence.
- Respondent's neighbors avoid walking in the area of her property in order to avoid being subjected to the annoying behavior which occurs there.

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 26)

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).

When the words of a statute are not explicit and more than one reasonable interpretation is possible, the statute must be construed. *Abrahamson v. Abrahamson*, 613 N.W.2d 418 (Minn. App. 2000).

Construction of a statute is a legal conclusion and the Supreme Court reviews questions of statutory construction under a *de novo* standard. *State v. Stevenson*, 656 N.W.2d 235 (2003).

When interpreting a statute, the Supreme Court's purpose is to determine the intent of the legislature. *State v. Larivee*, 656 N.W.2d 226 (2003).

ARGUMENT

I. WHEN UNDISPUTED NUISANCE ACTIVITY EXIST WHICH LED TO AN ABATEMENT PLAN AND IT IS UNDISPUTED THAT THE ABATEMENT PLAN WAS BREACHED, IS A PROSECUTOR PRECLUDED FROM SEEKING INJUNCTIVE RELIEF TO ABATE THE NUISANCE WHEN THE DATE OF THE LAST NUISANCE ACTIVITY IS MORE THAN 12 MONTHS BEFORE THE PERMANENT INJUNCTION HEARING BUT WITHIN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE NOTICE OF INJUNCTIVE ACTION REQUIRED BY MINN. STAT. § 617.81, SUBD. 4?

Minn. Stat. § 617.81, subd. 2(a) provides that:

“a public nuisance exists upon proof of two or more separate behavioral incidents of one or more of the following, committed within the previous 12 months within the building: . . . (3) maintaining a public nuisance in violation of Section 609.74 clause (1) or (3); (4) permitting a public nuisance in violation of Section 609.745. . . . (emphasis added)

If a prosecuting attorney has reason to believe that a nuisance is maintained or permitted and intends to seek abatement of the nuisance, the prosecuting attorney shall provide written notice to the owner and all known interested parties. Minn. Stat. § 617.81, subd. 4. The written notice MUST a.) state that a nuisance, as defined in Minn. Stat. § 617.81, subd. 2, is maintained or permitted and must specify the kind(s) of nuisance being maintained or permitted; b.) summarize the evidence that a nuisance is maintained or permitted, including the date(s) on which nuisance-related activity is alleged to have occurred; c.) inform the recipient that failure to abate the conduct constituting the nuisance or otherwise resolve the matter with the prosecutor within 30 days of service of the notice may result in the filing of a complaint in court which would

result in enjoining the use of the building for any purpose for one year. Minn. Stat. § 617.81, subd. 4 (b)(1) through (3).

Appellant provided notice to Respondent, pursuant to Minn. Stat. § 617.81, subd. 4, on July 29, 2005. That notice, received by Respondent by certified mail on August 5, 2005, identified thirteen separate nuisance incidents that occurred between September 2004 and July 2005. That is the twelve month period immediately preceding the Notice which constitutes the initiation of the injunctive action.

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, Respondent, within 30 days of receiving the July 29, 2005 Notice from Appellant, chose to and did enter into an agreed upon Abatement Plan on August 17, 2005. The Abatement Plan was an attempt by Appellant to address the heart of Respondent's nuisance activity, which typically involved the abuse of alcohol, and eventually led to the nuisance calls.

Respondent subsequently violated the terms of the Abatement Plan. The violations of the Abatement Plan involved circumstances in which Respondent 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 2005.¹

The City personally served Respondent with a Notice re-initiating the injunction action on June 27, 2006 and, as prescribed by the Public 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.

Ambiguity

The Minnesota Public Nuisance Statutes fail to resolve that, upon failure of an abatement plan, whether the “nuisance” addressed in the stated burden of proof is the nuisance stated in the original July 2005 Notice, as it then existed, or another current nuisance. As correctly pointed out by Judge Crippen, “it may be either without offending the words stated and the scheme of action provided in the statute.” 748 N.W.2d 333, 348 (Minn. App. 2008) The four Judges who have ruled in this case at the District Court and Appellate Court level were divided evenly on the meaning of the language. The language is obviously unclear and open to differing interpretations. If a statute’s meaning is reasonably susceptible of more than one meaning, it is ambiguous. *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309 (Minn. 2001). The Minnesota Public Nuisance Statute fails to define which “nuisance” is at issue, because it fails to define the term “within the previous twelve months.” It is unclear from the language used in Minn. Stat. § 617.83

¹ Had Respondent complied with the Abatement Plan for its 1-year effective period, Minn. Stat. § 617.82 (a) would have precluded Appellant from filing a nuisance action on Respondent’s property regarding the nuisance activity described in the July 2005 Notice.

whether new episodes of nuisance activity must exist or whether failure to comply with an abatement plan perpetuates the former nuisance.

Where words in a statute are not defined, the meaning of the provision will be ascertained by considering legislative intent. Attorney General Opinion. 377-A, June 8, 1950. When words of a law are not explicit, the intention of the legislature may be ascertained by considering among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws on the same or similar subjects; (6) the consequences of particular interpretation; (7) the contemporaneous legislative history; (8) the legislative and administrative interpretations of the statute. Minn. Stat. § 645.16; *State v. Wagner*, 555 N.W.2d 752 (Minn. App. 1996); *Haage v. Steies*, 555 N.W.2d 7 (Minn. App. 1996). Statutes are to be construed so as to suppress the mischief and advance the remedy . . . to promote, rather than to defeat, the purpose of the Legislature. Attorney General Opinion 47-F, September 29, 1952. In ascertaining the Legislative intent, courts may be guided by the presumptions that the Legislature intends the entire statute to be effective and certain and intends to favor the public interest as against any private interest. Minn. Stat. § 645.17(2), (5).

Determining Legislative Intent

A. The “occasion and necessity” for the Minnesota Public Nuisance law is clear. The Legislature, in an exercise of its police power, enacted the public nuisance statutes to protect the public health, safety and welfare of Minnesotans by identifying

certain conduct as constituting a nuisance and by providing a process for elimination of the same.

B. The “mischief to be remedied” is, likewise, clear. The Public Nuisance Statute, Minn. Stat. § 617.81, subd. 2 identifies nine separate “mischievous” behaviors as constituting public nuisance behaviors.

C. The obvious “object to be attained” by this legislation is to define nuisance activity and provide due process to seek the elimination of such activity. That process is required to include advising the offending party of a 30 day opportunity within which the nuisance may either be voluntarily abated or an agreed upon abatement plan could be entered into. By including such a provision, the Legislature has expressed its express intent to afford to property owners some extent of self-help to abate nuisance activity. Both parties acknowledge that one of the Legislature’s purposes in enacting the Minnesota Public Nuisance Statute was to encourage property owners to abate nuisance themselves. See Appellant’s Brief to Court of Appeals, p. 11, n. 2. Both State and Federal courts have determined that the purpose underlying Minnesota’s Public Nuisance Statute is to encourage property owners to take action to eliminate nuisance activity themselves. *City of St. Paul v. Spencer*, 497 N.W.2d 305, 308 (Minn. App. 1993), review denied, (Minn. April 20, 1993); *Hvamstad v. Suhler*, 915 F.2d 1218, 1220 (8th Cir. 1990).

Another “object to be obtained” by the nuisance statute is to provide to municipalities the basic right and power to ensure that the public health, safety and welfare of its citizens is protected and they are free from exposure to the results of the public nuisance activities of others.

The Court of Appeals' decision, by interpreting the Public Nuisance Statute provisions to require proof that 2 episodes of nuisance activity occur within 12 months prior to the permanent injunction hearing, has thwarted the legislature's clear intent to exercise its police power to ensure public health, welfare and safety and to achieve the objectives of the statute.

D. When this Court examines the consequences of the Court of Appeals' particular interpretation of the statute, its discord with legislative intent will be apparent. The Court of Appeals' decision and its interpretation of the term "within the previous 12 months" results in far reaching consequences.

The various Public Nuisance provisions found in Minn. Stat. § 617.80 – 617.87, are inextricably intertwined. As acknowledged by the Court of Appeals' decision, many procedural provisions of the Public Nuisance Statutes refer to § 617.81, subd. 2.²

The Court of Appeals' ruling has the effect of defining the term "within the previous 12 months" in different ways depending upon which part of the statutory procedure is at play. Such an interpretation creates an unworkable statute for prosecuting attorneys seeking to remove public nuisances which plague their jurisdictions.

² § 617.81, subd. 4(b) requires that the notice MUST state and summarize that nuisance, as defined by § 617.81, subd. 2 is maintained or permitted; § 617.81, subd. 2 defines nuisance as 2 or more separate behavioral incidents defined in statute committed within the previous 12 months; § 617.82 provides that when a prosecutor has cause to believe a nuisance described in § 617.81, subd. 2 exists, they may seek an injunction and that upon proof of a nuisance described in § 617.81, subd. 2, the Court shall issue a temporary injunction; and § 617.83 which requires that upon proof of a nuisance described in § 617.81, subd. 2 the court shall issue a permanent injunction

Section 617.81, subd. 2, defines the behavioral incidents that constitute a public nuisance and states a nuisance “exists upon proof of two or more separate behavioral incidents. . . committed within the previous twelve months.” Minn. Stat. § 617.81, subd. 2. The Appellate Court held that a reading of § 617.81, subd. 2, in conjunction with the provision that authorizes a permanent injunction, § 617.83, requires proof of two “behavioral incidents” occurring within the 12 months preceding a request for a permanent injunction because the permanent injunction hearing is when the City is required to offer its “proof” of a nuisance. However, there are required statutory procedural steps prior to a hearing for a permanent injunction that also require proof a public nuisance exists, including requirements for written notice and a temporary injunction. *See* Minn. Stat. § 617.81, subd. 4, Minn. Stat. § 617.82(c).

The written notice provision is the first mandatory procedural step under the Public Nuisance Statute and requires the prosecuting attorney to “summarize the evidence that a nuisance” exists. Minn. Stat. § 617.81, subd. 4(b)(2). Although the word “proof” does not appear in the written notice provision, the use of the word “evidence” is a clear substitute. The term “proof” is synonymous with the term “evidence.” *Statsky*, West’s Legal Thesaurus/Dictionary 611 (Special Deluxe Edition 1986). According to the Appellate Court’s interpretation of the statute, in order for a nuisance to exist at the written notice stage, the “behavioral incidents” must be committed within the previous

twelve months preceding service of the notice.³ So now the statute has two different timeframes at play for application of the “within the previous 12 months” language.

The Statute’s temporary injunction provision also requires “proof of a nuisance described in section 617.81, subdivision 2.” Minn. Stat. § 617.82(c). In order for a nuisance to be found to exist at the temporary injunction stage the same behavioral incidents that triggered the notice provision must fall within a different twelve-month period which, to be consistent with the Court of Appeals’ interpretation, must be measured from the temporary injunction hearing.

So now the Statute has three different timeframes at play for application of the “within the previous 12 months” language. The “within the previous 12 months” statutory language “floats” as a moving target as the prosecutor embarks upon the procedural steps found in the Minnesota Public Nuisance law and culminates at the permanent injunction hearing. Prosecuting attorneys will need a fortuitous collaboration of multiple variables to capture two statutorily defined nuisances within the 12 month timeframe as interpreted by the Court of Appeals.

As a consequence, prosecutors, who are at the mercy of the court’s schedule, must, somehow, take into account at the earlier time of providing notice, that the “within the previous 12 months” language, to be consistent with the Court of Appeals’ decision, must be measured backwards from some future, uncertain, indeterminate date in order to qualify as timely nuisance activity to support a permanent injunction. No prosecutor in

³ “We do not suggest that the 12-month requirement does not apply to the written notice required by Section 617.81, subdivision 4.” *City of W. St. Paul v Krengel*, 748 N.W.2d 333, 343 (Minn. App. 2008).

the State of Minnesota should be required to place the ongoing public health, safety and welfare of its citizens in jeopardy while hoping that the nuisance activity cited in the notice will not become “stale” by the time the court finally holds a hearing on the permanent injunction.

In addition, to the “floating” nature of the “within the previous 12 months” language, the consequences of the Court of Appeals particular interpretation of this statutory language is detrimental to municipalities statewide and contrary to legislative intent, even under optimal timing circumstances.

As an example, assume that a property owner has engaged in separate behavioral instances of statutorily defined nuisance activity on the following dates:

June 15, 2007
June 18, 2007
June 19, 2007
July 1, 2007
August 1, 2007

Then no additional nuisance activity occurs until May 1, 2008. The prosecutor, on June 1, 2008, sends notice to the property owner, pursuant to Minn. Stat. § 617.81, subd. 4, enumerating the above 6 instances of separate nuisance behavior which occurred within the previous 12 month period from June 1, 2007 through May 31, 2008. Pursuant to Minn. Stat. § 617.82(a) the property owner has 30 days from the service of the Notice to either abate the conduct constituting the nuisance or enter into an abatement plan. The property owner enters into an Abatement Plan, but immediately violates its terms. On July 1, 2008, the prosecutor initiates a complaint for relief in the District Court pursuant to Minn. Stat. § 617.82(b) and (c). However, by July 1, 2008 when the temporary

injunction lawsuit is commenced, the June 15, June 18 and June 19, 2007 separate behavioral incidents of nuisance behavior are no longer “within the 12 previous months” as measured from the initiation of the lawsuit.

It is reasonable to assume that the hearing on the temporary injunction petition may not be heard until a month later on August 1, 2008. However, by that time, the July 1, 2007 instance of nuisance behavior is no longer “within the previous 12 months”, as measured from the date of the temporary injunction hearing.

It is likewise reasonable to assume that the hearing on the permanent injunction may not be heard until another month later on September 1, 2008. However, by that time, the August 1, 2007 instance of nuisance behavior is no longer “within the previous 12 months”, as measured from the date of the permanent injunction hearing pursuant to the Court of Appeals’ interpretation.

The result is that at the September 1, 2008 hearing on the permanent injunction, the prosecutor is able to establish proof of only one behavioral instance of nuisance activity (5/1/08) which occurred within the preceding 12 months and the Court must, therefore, deny the request for a permanent injunction. Through no fault of the prosecutor’s and in spite of the prosecutor’s diligence in pursuing abatement via non-judicial and judicial means, the mere passage of time when the Court of Appeals statutory interpretation is applied, robs the prosecutor of the ability to fulfill the legislature’s intent in ridding the municipality of nuisance activity which has been occurring over a long period of time.

One final consequence of the Court of Appeals particular interpretation of the “within the previous 12 months” language is that it will have the effect of discouraging prosecutors from ever agreeing to an abatement plan since they will have to start proceedings all over again with new evidence of nuisance activity once the violator chooses not to comply with the abatement plan. It is an absurd result to allow a property owner to continue to stay the injunction action by entering into abatement plans that they could perpetually violate without consequence. Prosecuting attorneys will likely no longer enter into abatement plans with violators because they risk losing the earliest instances of nuisance activity to indefinite variables such as scheduling orders and abatement plan violations.

Many times, as here, the conduct leading to the nuisance activity needs to be addressed in order to truly hope to abate the nuisance activity. Likewise, addressing that underlying conduct may take time. However, with the Court of Appeals interpretation, no prosecutor will be afforded the time necessary to attempt to address the conduct underlying the nuisance behavior. As the dissent points out, a prosecutor, such as in this case, which agrees to an abatement plan. “. . . is penalized for what is evidently a display of sound prosecutorial discretion.” *W. St. Paul v. Krengel*, 748 N.W.2d 333, 349 (Minn. App. 2008).

Penalizing prosecutors, or worse yet – stripping prosecutors of their prosecutorial discretion to enter into abatement plans – clearly runs afoul of the legislative intent to encourage property owners to take action to eliminate nuisance activity themselves. *See City of St. Paul v. Spencer* and *Hvamstad v. Suhler*, *supra*. There would be no incentive

for a prosecutor to support the legislative intent and enter into an abatement plan if it meant that, by the mere passage of time, they could not proceed to seek an injunction based on activities cited in the notice once non-compliance with the abatement plan occurs. In a very practical sense, the demand for proof of current nuisance activity creates barriers on the future formulation of abatement plans, adding to the legislative scheme the urging that abatement plans either should be short in duration or should only call for a cessation of disturbances. As noted by Judge Crippen's dissent, "these are barriers that may be adverse to the interest of both municipal authorities and notice recipients." *W. St. Paul v. Kregel*, 748 N.W.2d 333, 349 (Minn. App. 2008).

Obviously the Legislature intended for the prosecutor and offending party to attempt to reach a resolution of the nuisance issues through means that do not require litigation with all of its expenses and costs both to the parties and to the Court. The ruling of the Court of Appeals' decision greatly reduces, if not eliminates, the possibility that this legislative intent will be achieved.

As can be seen, the consequences of the Court of Appeals particular construction and application of the Public Nuisance Statute is inconsistent with accomplishing the legislature's intent and results in fundamentally altering its usefulness.

E. The intention of the legislature when enacting a statute can be ascertained by considering the contemporaneous legislature history leading up to the introduction of the act, history of the act's passage and any modifications made during the course of the bill's passage. *Haage v. Steies*, 555 N.W.2d 7 (Minn. App. 1996). Tape recordings of committee hearings are part of the legislative history which may be considered in

construing a statute which is ambiguous and subject to multiple interpretations. *Bank of Deerwood v. Gregg*, 556 N.W.2d 214 (1996).

The Minnesota Legislature enacted the Public Nuisance Statute in 1987. The “within the previous 12 months” language was enacted by amendment to the statute in 1995. The House Committee on the Judiciary held hearings on the Public Nuisance Statute amendments, House File 1137, in March 1995, introduced by Representative Jean Wagenius. *Amendments to the Public Nuisance Statute: Hearing on H.F. 1137 Before the H. Comm. on the Judiciary, 1995 Leg., 79th Sess. Tape #2* (Minn. March 29, 1995). The Legislature amended the timeframe from 2 years to “within the previous 12 months.” *Id.*⁴ (A 78)

The Legislative Judiciary Committee hearing placed emphasis on the need for a prosecutor to be able to take action to seek elimination of public nuisance activity which occurred over a 12 month period. *Id.* (Statement of Jean Wagenius, Representative). The Legislative Judiciary Committee had, as its primary goal, the empowerment of neighbors and prosecutors in ridding their communities of unwanted nuisance activities.⁵ There is no discussion contained in the Judiciary Committee hearing tapes which indicates an intent by the Legislature to define the “within the previous 12 months” language as being measured from the date of the permanent injunction hearing. To the

⁴ The Bill’s author described the 1995 public nuisance laws as being “too cumbersome.” *Amendments to the Public Nuisance Statute: Hearing on H.F. 1137 Before the H. Comm. on the Judiciary, 1995 Leg., 78th Sess. Tape #2* (Minn. March 29, 1995) (Statement of Jean Wagenius).

⁵ “This is a bill about helping neighborhoods be strong and stable . . . It’s the neighbors who do most of that work but when they run into problems they can’t handle, then it is up to us (Legislature) to try to find tools that can help . . . House File 1137 is one of those tools.” *Amendments to the Public Nuisance Statute: Hearing on H.F. 1137 Before the H. Comm. on the Judiciary, 1995 Leg., 78th Sess. Tape #2* (Minn. March 29, 1995) (Statement of Jean Wagenius).

contrary, the discussion is that the public nuisance activity has to occur over a 12 month period. If the statutory process to eliminate nuisance activity is required to begin by giving the property owner notice pursuant to Minn. Stat. § 617.81, subd. 4, it only stands to reason that the 12 month language used refers to the 12 month period immediately preceding the notice. Therefore, in order to achieve the Legislative intent where an abatement plan has been violated, the “proof” referred to in Minn. Stat. § 617.83 must include nuisance activity as descended in the first notice of 2005 which initiated the injunctive process. This interpretation not only effectuates the Legislature’s intent, but is also consistent with Minn. Stat. § 617.82(a) when it refers to a nuisance action regarding “the nuisance activity described in the notice.”

II. WHERE UNDISPUTED NUISANCE ACTIVITY OCCURS WHICH RESULTS IN AN ABATEMENT PLAN AND IT IS UNDISPUTED THAT THE ABATEMENT PLAN WAS BREACHED, ARE THE NUISANCE ABATEMENT PROCEDURES FOUND IN MINN. STAT. § 617.80 THROUGH § 617.87 TOLLED WHILE EFFORTS WERE MADE TO VOLUNTARILY ADDRESS THE NUISANCE ACTIVITY DURING THE TERM OF THE ABATEMENT PLAN?

Both State and Federal courts have determined that the purpose underlying Minnesota’s nuisance statute is to encourage property owners to take action to eliminate the nuisance activity themselves. *See City of St. Paul v. Spencer*, 497 N.W.2d 305 (Minn. App. 1993), review denied (Minn. April 20, 1993); *Hvamstad v. Suhler*, 915 F.2d 1218 (8th Cir. 1990).

Appellant and Respondent entered into a one-year abatement plan. The statute does not limit the term or the nature of the steps that constitute abatement under the plan. “Nothing in the statute stands in the way of an agreement like the one formulated by the

parties, lasting for a year and calling for correction of conduct underlying the occurrence of nuisance events rather than the cessation of those events.” See, Judge Crippen’s dissent citing Minn. Stat. § 617.82(a), *W. St. Paul v. Krengel*, 748 N.W.2d 333, 346 (Minn. App. 2008). Minn. Stat. § 617.82(a) clearly provides that if the notice recipient complies with the abatement plan, the prosecutor may not proceed to file a nuisance action regarding the nuisance activity described in the notice. That statute is equally clear in implying that if the recipient of the notice fails to comply with the abatement plan, the prosecutor may then file a nuisance action “regarding the nuisance activity described in the notice”.⁶

Minn. Stat. § 617.82(a) provided Respondent with 2 choices regarding the nuisance activity stated in the notice required by Minn. Stat. § 617.81, subd. 4. Respondent could have either abated the nuisance or entered into and complied with an abatement plan within the stipulated time period. Respondent chose the latter but then did not comply with the terms of the abatement plan. It stands to reason and is consistent with the language found in the statute and the intent of the legislature that when Respondent did not comply with the Abatement Plan, she authorized the City to proceed with the injunctive action. The statute does not say “regarding nuisance activity that occurs within 12 months of filing the action,” but it does say “regarding the nuisance activity described in the notice” § 617.82(a).

⁶ The Court of Appeals majority stated that “there simply is no provision in the statute for staying or tolling the statutory procedures while an abatement plan is in force.” However, the implication of § 617.82(a) is clear when there is abatement plan non-compliance. The majority opinion of the Court of Appeals, in describing the procedures of the Nuisance Statute completely ignores this language of Minn. Stat. § 617.82(a) “regarding the nuisance activity described in the notice.” See 748 N.W.2d at 341, 344.

The City's re-initiation of the injunction action after Abatement Plan failure necessarily relates back to the original twelve month timeframe for nuisance activity. The fact that the injunction action was stayed by entering into an Abatement Plan does not erase the qualifying nuisances that occurred between September 2004 and July 2005 upon which the original action was based. Respondent'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 Respondent to continue to stay the injunction action by entering into abatement plans that she could perpetually violate without consequence.

The abatement plan provision contained in the Public Nuisance Statute provides the parties with a mechanism by which to avoid the litigation process in favor of a negotiated and constructive dispute resolution process. It is only proper and within the intent of the statute that the statute provision regarding "within the previous 12 months" be tolled as the parties proceed in good faith to pursue the arrangement they have contracted to follow.

Read together, the provisions of Minn. Stat. § 617.82 are in harmony. The nuisance activity cited in the 2005 Notice has not been abated as provided by law. The abatement plan, when chosen by the parties, has the nature of tolling the abatement enforcement steps while efforts are made to voluntarily address the nuisance activity cited earlier.

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 timeframe was tolled from August 17, 2005 (when the Abatement Plan was signed) to June 27, 2005 (when the City served Respondent with the Notice to re-initiate the Injunctive Action).

CONCLUSION

The Court of Appeals' interpretation of the statutory language and application of "within the previous 12 months" creates an unworkable statute for prosecuting attorneys seeking to eliminate public nuisances that plague their jurisdictions. Prosecuting attorneys will need a fortuitous collaboration of multiple variables to capture two statutorily-defined nuisances within the timeframe as interpreted by the Court of Appeals' decision. The Appellate Court's interpretation requires a different time period for measuring whether a public nuisance exists at each procedural state enumerated under the Public Nuisance Law, Minn. Stat. §§ 617.80-.87. Application of the statutory language consistent with the Court of Appeals' decision will greatly hamper, or perhaps even eliminate, the use of abatement plans. All of these results, intended or not, are inconsistent with the intent of the legislature.

The District Court, in issuing the Permanent Injunction, used the proper timeframe for calculating "within the previous 12 months." That timeframe, in order to be consistent with both the Legislature's intent and the procedure found throughout the provisions of the Minnesota Public Nuisance Statute, is the 12 months immediately proceeding the original Notice pursuant to Minn. Stat. § 617.81, subd. 4.

Appellant, City of West St. Paul, respectfully requests that this Court reverse the Court of Appeals and affirm the District Court Order which enjoined Respondent from the use of the building on her property for any purpose for one year, from August 7, 2006 to August 7, 2007.

Dated: 8/14/08

Respectfully submitted,

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CASE NO: A07-310

STATE OF MINNESOTA
IN SUPREME COURT

City of West St. Paul,

Appellant,

vs.

Alice Jane Krengel,

Respondent.

CERTIFICATE OF BRIEF LENGTH

Date of Filing of Court of Appeals' Decision
May 6, 2008

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a [monospaced] [proportional] font. The length of this brief is 5,896 words. This brief was prepared using Microsoft Office Word 2003.

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