

No. A07-310

State of Minnesota
In Supreme Court

City of West St. Paul,

Appellant,

vs.

Alice Jane Krengel,

Respondent.

**BRIEF OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES**

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LEGAL ISSUE

- I. State law provides that a public nuisance exists upon proof of two or more separate incidents of statutorily defined nuisance activity committed “within the previous 12 months within the building.” Can a permanent injunction be issued against a property owner that enters into and violates an abatement plan when two or more incidents of nuisance activity are committed within 12 months of the notice of injunctive action but are not committed within 12 months of the permanent-injunction hearing?

The court of appeals held that a permanent injunction cannot be issued unless two or more incidents of nuisance activity were committed within 12 months of the permanent-injunction hearing.

INTRODUCTION

The League of Minnesota Cities (League) has a voluntary membership of 830 out of 855 cities in Minnesota. The League represents the common interests of cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. The League has a public interest in this appeal as a representative of the hundreds of cities throughout the state that must abate public nuisances to protect their citizens' safety and quality of life.¹ This case will also impact all other levels of government in our state because the "attorney general, county attorney, city attorney, or attorney serving the jurisdiction where the nuisance is located" can enforce the nuisance statutes at issue. Minn. Stat. § 617.80, subd. 9.

In this case, the city of West St. Paul – after years of responding to numerous complaints – notified Krengel of its intent to seek an injunction under the state nuisance statutes to prohibit her from occupying her home for one year. *See* Minn. Stat. §§ 617.80-617.87. Appellant's Appendix (AA) at A 1. The Notice of Injunctive Action referenced numerous incidents of alcohol-related nuisance activity by Krengel and by persons visiting her house. After receiving the Notice of Injunctive Action, Krengel voluntarily entered into an abatement plan as authorized by Minn. Stat. § 617.82. AA at A 4. After Krengel violated the abatement plan, the city again notified Krengel of its

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity made a monetary contribution to its preparation or submission.

intent to seek an injunction to prohibit her from occupying her home for one year. AA at A 8.

The district court issued a permanent injunction finding that the city had satisfied the statutory requirements by proving that two or more separate incidents of nuisance activity occurred within 12 months of the original Notice of Injunctive Action. AA at A 16, 26. A divided court of appeals' panel reversed interpreting the statutory language to require proof that two or more separate incidents of nuisance activity occurred within 12 months of the permanent-injunction hearing. AA at A 38. The statutory language at issue, however, is contained in the same statutory section that details the requirements for a notice of injunctive action and simply requires that two or more separate incidents of nuisance activity be "committed within the previous 12 months within the building" without expressly stating how the 12-month period should be measured. Minn. Stat. § 617.81, subd. 2.

STATEMENT OF THE CASE AND FACTS

The League concurs with the city's Statement of the Case and Facts.

ARGUMENT

The city's brief demonstrates why the court of appeals' decision should be reversed. The League concurs with the city's legal arguments and will not repeat them here. Instead, this brief will highlight the statewide significance of this appeal and explain why it is good public policy to interpret the statutory language in a way that allows abatement plans to be effective.

I. This case will have a significant, statewide effect on cities' ability to protect their citizens' safety and quality of life by abating public nuisances.

This case will have a significant, statewide effect because prosecutors at all levels of state government are authorized to enforce the state nuisance statutes. Minn. Stat. § 617.80, subd. 9. Indeed, all Minnesota communities struggle to use their limited resources to abate public nuisances to protect their citizens' safety and quality of life. The state nuisance statutes offer an efficient, cost-effective way to abate public nuisances through the use of voluntary abatement plans. Minn. Stat. § 617.82.

Hennepin County and Ramsey County, for example, have frequently relied on the state nuisance statutes in their community-prosecution programs. Deborah K. McKnight & Emily F. Shapiro, Minnesota's Public and Private Nuisance Laws, Information Brief, Minnesota House of Representatives, Research Department, October 2000. LMC Addendum (LMC ADD) at ADD-8. Between late 1995 and 2000, the Hennepin County Attorney's Office opened approximately 1,000 nuisance property cases, and the majority of these were resolved through voluntary abatement by property owners under the state nuisance statutes. *Id.* LMC ADD at ADD-8, ADD-11.

Nuisance property exists throughout our state and has a significant impact on the safety and quality of life for surrounding communities. The following types of nuisance property, for example, have been identified as causing the most problems in Twin Cities communities:

- property with drug-related complaints;
- prostitution-related saunas;

- properties where pit-bull dogs are bred;
- chronic party houses;
- trash houses; and
- houses used as “chop shops” by automobile or bicycle theft rings.

Id. LMC ADD at ADD-9. Prosecutors for Ramsey County and Hennepin County have successfully used the state nuisance statutes to develop strong programs to reduce problems from nuisance properties like these, and many neighborhood communities have been strengthened as a result. *Id.* LMC ADD at ADD-2, ADD-10.

I. It is good public policy to interpret the state nuisance statutes in a way that allows abatement plans to be effective.

The court of appeal’s decision is problematic because it severely weakens the effectiveness of abatement plans. Prosecutors will now need to ensure that both the temporary-injunction and permanent-injunction hearing can be scheduled before the 12-month look-back period expires. As a result, prosecutors will most likely seek immediate judicial action under the state nuisance statutes and forego the use of abatement plans.

The court of appeals’ majority opinion claims that abatement plans can remain a useful tool if prosecutors simply make the time period of an abatement plan short enough to allow the required court hearings to be scheduled if an abatement plan is breached. *City of West St. Paul v. Kregel*, 748 N.W.2d 333, 345 n.4 (Minn. Ct. App. 2008). AA at A 38. In order to do this, however, the time period for abatement plans would be so short that in many situations they could not be effective. This is especially true given our overburdened court system. In this case, for example, it took approximately 3 ½ months

from the time the city sought an injunction after Kregel breached the abatement agreement until the time when the permanent-injunction hearing was held.

In addition, cities with nuisance property owners often find that there are multiple issues fueling their nuisance activity – issues like mental-health, financial, and alcohol and chemical-dependency issues. It takes time to address these problems; and it also takes time to determine whether progress has been made, especially when nuisance activity is episodic. In this case, for example, the city ran out of time because it drafted a thoughtful abatement plan that attempted to address the underlying alcohol issues that had been fueling nuisance activity at Kregel’s property for years. *Id.* at 336. AA at A 38.

The court of appeals’ majority opinion not only makes abatement plans ineffective. It also frustrates the legislature’s decision to authorize the use of abatement plans and the important public policies underlying this decision. Indeed, there are several reasons why abatement plans serve the public interest.

First, abatement plans benefit our overburdened court system because they are designed to avoid the need for court intervention. Minnesota courts have already recognized that a key purpose of the state nuisance statutes is to encourage property owners to voluntarily abate nuisances. *City of St. Paul v. Spencer*, 497 N.W.2d 305, 308 (Minn. Ct App. 1993); *Hvamstad v. Suhler*, 915 F.2d 1218, 1220 (8th Cir. 1990). It is generally better to address nuisance property through voluntary abatement because our backlogged courts often do not have the time or resources to adequately address these safety and quality-of-life nuisances.

Second, abatement plans benefit the public because they preserve government resources that would be required for court proceedings. Governmental entities across Minnesota struggle to use their limited financial resources to deal with the significant problems nuisance properties cause. Abatement plans allow these financial resources to be stretched further. In addition, well-drafted abatement plans benefit the public because they are designed to address the roots of problems causing nuisance activity – in contrast with an injunction, which serves as a temporary fix. In this case, for example, the city made a serious attempt through an abatement plan to address the underlying roots of a problem that has existed for years.

Third, abatement plans benefit nuisance property owners by providing them with an opportunity to avoid an injunction evicting them from their homes. Property owners voluntarily enter into these contractual agreements in order to avoid eviction. As a result, if a property owner chooses to breach an abatement plan, an injunction should be a permissible consequence for the violation. Courts should not reward nuisance property owners that violate abatement plans by forcing cities to use their limited resources to start all over again with prosecution under the nuisance statutes. It is bad public policy to allow nuisance property owners to use abatement plans to manipulate the system in this way.

CONCLUSION

This case will have a significant, statewide effect on cities' ability to protect their citizens' safety and quality of life by abating public nuisances. The district court and Judge Crippen have offered a more compelling contextual reading of the state nuisance statutes – a reading that is consistent with the statutory language, is in the public interest, and allows abatement plans to be effective. The effective use of abatement plans benefits the court system, the public, and nuisance property owners. A nuisance property owner that voluntarily enters into and violates an abatement plan should not be allowed to force a city to use its limited resources to start all over again with prosecution under the state nuisance statutes.

For all of these reasons, the League respectfully requests that this Court reverse the court of appeals' decision and affirm the trial court's decision.

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Respectfully submitted,

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