

Case No. A07-1587

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**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

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Mary Hoeft, et al.

*Appellants,*

vs.

Hennepin County, et al,  
City of St. Louis Park, et al.

*Respondents.*

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**RESPONDENT CITY OF ST. LOUIS PARK'S BRIEF**

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## ARGUMENT

### **Introduction**

Appellants are the parents of the deceased St. Louis Park Police Officer Ryan Hoeft who died on November 6, 2001. The action was brought in Appellants' individual capacities. The claim against the City requested the Court to enter a declaratory judgment declaring that the St. Louis Police Department "failed to properly preserve the .45 caliber gun and patrol car as material evidence relating to the cause of death." (App. 229)<sup>1</sup>

#### **I. There is no justiciable controversy between Respondent St. Louis Park and Appellants.**

Appellants are neither the personal representatives of the Estate of Ryan Hoeft nor have they been appointed as trustees for purposes of a wrongful death claim. Minn. Stat. § 573.01 (2006) states:

A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. [action by wrongful death] All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

"The existence of a justiciable controversy is essential to a court's power to adjudicate." *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273 (Minn. Ct. App. 2001). If the parties to a declaratory action present no justiciable controversy, the Court is without jurisdiction to declare rights. *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977). The justiciable controversy requirement compels

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<sup>1</sup> The St. Louis Park Police Department is not a separate legal entity.

the party seeking declaratory judgment to request the court to adjudicate present rights on established facts and not to render advisory opinion or to address political question.

*Thuma v. Kroschel*, 506 N.W.2d 14 (Minn. Ct. App. 1993).

Each party to declaratory judgment action must have tangible interest in the controversy. *Port Authority of City of St. Paul v. Fisher*, 296 Minn. 276, 132 N.W.2d 183 (1964). The Minnesota Court of Appeals described declaratory actions as they relate to justiciability requirements as follows:

[a] declaratory action presents a justiciable controversy if it: 1) involves definite and concrete assertions of right that emanate from a legal source; 2) involves a genuine conflict in tangible interests between parties with adverse interests; and 3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.

*Unbank Co., LLP v. Merwin Drug Co., Inc.*, 677 N.W.2d 105, 107 (Minn. Ct. App. 2004).

Here, there is no underlying cause of action asserted by Appellants against the City. Appellants ask the Court to determine if the City “properly preserved” the gun and patrol car after the Hennepin County Sheriff’s Department completed its investigation and returned the items to the City. Additionally, there is no conflict of tangible legal interests between the Appellants in their individual capacities and the City.

**II. The Trial Court’s denial of Appellants’ motion to amend its complaint was not an abuse of discretion.**

Appellants could have brought an action at any time against Prudential Life Insurance Company to collect the life insurance proceeds. The statute of limitations is

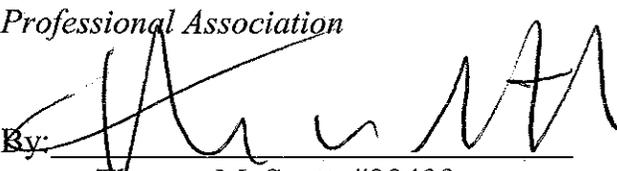
six years. Minn. Stat. § 541.05 (2006). The proposed amended complaint does not set forth a claim against the City upon which relief can be granted.

**CONCLUSIONS**

The District Court's judgment should be affirmed.

Respectfully submitted this 20th day of November, 2007.

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**CERTIFICATION OF BRIEF LENGTH**

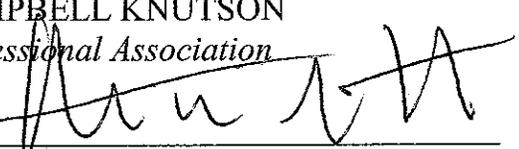
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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a 13 pt. Times New Roman font. The length of the brief is 921 words. This brief was prepared using Microsoft Word software.

Dated: November 20, 2007

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