

NO. A08-312

State of Minnesota
In Court of Appeals

GENNA L. CHRISTIAN
f/k/a GENNA L. PICARD,

Appellant,

v.

JUDITH M. BIRCH,

Respondent.

RESPONDENT'S BRIEF

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LEGAL ISSUES

1. WHETHER THE DISTRICT COURT PROPERLY AND NECESSARILY UTILIZED A CHOICE OF LAW ANALYSIS RESULTING IN THE DISMISSAL OF APPELLANT/PLAINTIFF'S CLAIM AS A MATTER OF LAW?

The St. Louis County District Court properly and necessarily applied the choice of law analysis resulting in a granting of summary judgment for Respondent based on Wisconsin's 3 year statute of limitations law

Wisc. Stat. §893.54; Enabling Act, Act of Congress, 9 Stat. 57, August 6th 1846; Wis.Const. Art. IX, §1.

Nodak Mut. Ins. Co. v American Family Mut. Ins. Co., 604 N.W.2d (Minn.2000); *Sanders et al. v St. Louis & N.O. Anchor Line*, 3 L.R.A. 390, 10S.W. 595 (MO. 1889); *Schumader v Schumader*, 676 N.W.2d 685, 690 (Minn.Ct.App.2004); *Milkovich v Saari*, 295 Minn. 153, 203 N.W.2d 408 (Minn.1973),

2. WHETHER THE DISTRICT COURT CORRECTLY DETERMINED IT DID NOT HAVE PERSONAL JURISDICTION OVER RESPONDENT, A WISCONSIN RESIDENT?

The St. Louis County District Court properly granted summary judgment determining it did not have personal jurisdiction over Respondent, a Wisconsin resident, involved in an auto accident in Wisconsin.

Does 1-22 v Roman Catholic Bishop, 509 N.W. 2d 598, 600 (Minn.Ct.App. 1983); *Marquette National Bank v Norris*, 270 N.W.2d 290, 295 (Minn. 1978); *Dent-Air, Inc. v Beech Mountain Air Serv, Inc.* 332 N.W.2d 904, 907 (Minn. 1983)

ISSUE RAISED ON APPEAL BY APPELLANT

1. When it is undisputed that Minnesota has concurrent jurisdiction over an occurrence, is it necessary or appropriate under the circumstances to engage in a choice of law analysis?

Held: The District Court found the concurrent jurisdiction over the accident created a choice of law issue, which the District Court ultimately resolved in favor of applying Wisconsin's Statute of Limitation, which, deprived that Court of subject matter jurisdiction. (Order, page 4-7).

State v George, 60 Minn. 503 (1895); *Opsahl v Judd*, 30 Minn.126, 14 N.W. 575 (1883); *Spafford v Spahn*, 274 Minn. 180, 142 N.W.2d 727 (1966); *Smoot v Fisdler*, 248 S.W.2d 38 (Mo.App.St. L. 1952); Minn.Const.Art 2 §2; Enabling Act, Act of Congress, 11 Stat. 166 February 26th 1857; Minn.Stat.§484.02.

2. When only common law negligence is pled, did the Court err by finding Minnesota's statute of limitations was substantive and as a consequence engage in a choice of law analysis?

Held: The District Court found Minnesota's statute of limitations to be substantive, per *Danielson*, thereby triggering a choice of law analysis. (Order, pages 4-7).

Danielson v National Supply Co., 670 N.W.2d 1,5 (Minn.Ct.App. 2003); *In Re Daniel's Estate*, 294 N.W. 465 (1940); *Kenecott Holdings Corp. v Liberty Mut. Ins. Co.*, 578 N.W.2d 358, 361 n.7 (Minn.1998)

3. Assuming *arguendo* that a choice of law analysis was appropriate did the District Court abuse its discretion by finding Wisconsin's statute of limitations applied?

The District Court found that the maintenance of interstate order and advancement of the forum states interest favored the application of Wisconsin's statute of limitations; that the simplification of the judicial task and predictability of result were neutral with regards to which statute of limitations to apply; and that the fifth factor should not apply since the other factors supported applying Wisconsin's statute of limitations. (Order, pages 4-7)

Danielson v National Supply Co., 670 N.W.2d 1, 5 (Minn.Ct.App. 2003)

4. Can the District Court exercise jurisdiction over a person who causes an accident over the territorial waters of Minnesota, in a Minnesota traffic lane, such that Minnesota's long arm statute is satisfied?

The District Court held that the Plaintiff made no showing of specific contracts which would allow Minnesota to exercise personal jurisdiction over the Defendant and that Defendant did not purposefully avail herself of the laws and jurisdiction of Minnesota. (Order, pages 7-10).

STATEMENT OF THE CASE AND FACTS

On January 9, 2004, Respondent drove her vehicle in Wisconsin while intoxicated. She improperly entered the eastbound lane of traffic on the Blatnik Bridge, traveling westbound. The Blatnik Bridge allows for two-way travel over navigable water, the St. Lawrence River. Respondent collided with Appellant, on the Wisconsin side of the bridge. Respondent was arrested by Wisconsin law enforcement, charged and plead no contest to driving while intoxicated causing injury pursuant to Wisconsin law, in Wisconsin's Douglas County Court. No charges were brought by Minnesota law enforcement. Wisconsin took jurisdiction of the matter. Appellant, aware of Wisconsin's criminal charges, provided a victim impact statement during the sentencing phase of the Wisconsin criminal conviction. *Criminal Complaint File RA0039.*

On May 30, 2007, more than three years after the accident, Appellant had the Douglas County, Wisconsin, Sheriff's Department serve her Minnesota Summons and Complaint upon Respondent, in Wisconsin. Respondent Answered the Complaint alleging Minnesota Courts did not have personal jurisdiction nor subject matter jurisdiction based on the 3-year Wisconsin Statute of Limitations.

Respondent filed her Answer along with a Rule 12 Motion to Dismiss on August 9, 2007. Appellant was likewise served with the Motion to Dismiss on August 9, 2007. Appellant untimely opposed the Motion to Dismiss; however, Respondent not wishing to further delay the matter, withdrew the objection so the matter could be heard on November 21, 2007. Because the motion considered information outside the initial pleadings, the District Court heard the motion as a summary judgment motion pursuant to Minnesota Rules of Civil Procedure 56.

St. Louis County District Court Judge Shaun R. Floerke granted Respondent's Motion to Dismiss on January 2, 2008. And again denied Appellants request for reconsideration on January 24, 2008. Appellant then brought this appeal, alleging the District Court abused its discretion and erred as a matter of law in applying Wisconsin's 3-year statute of limitation, which effectively prohibits Appellant from bringing her action, and by its determination that Minnesota does not have personal jurisdiction over Respondent, a Wisconsin resident and employee for an accident that occurred in Wisconsin.

ARGUMENT

I. STANDARD OF REVIEW

Appellant appeals from the St. Louis County District Court's grant of summary judgment to Respondent. Her appeal presents only two legal issues, specifically whether Minnesota Court's have personal jurisdiction over Respondent and whether Minnesota or Wisconsin laws should be applied. Accordingly, this court reviews de novo the district court's decision to grant summary judgment on the issues. *See Lefto v Hogsbreath Enterprises, Inc.*, 581 N.W. 2d 855, 856 (Minn.1998) (summary judgment based on application of statute to undisputed facts presents a legal question subject to de novo review).

Summary judgment is properly granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn.R.Civ.P.56.03 (2007); *see also Nicollet Restoration v City of St. Paul*, 533 N.W.2d 845, 847-848 (Minn. 1995) (articulating the summary judgment standard and citing *Celotex Corporation v Catrett*, 477 U.S. 322, 325, 106 S.Ct. 2548, 2552, 2553 (1986)). Minnesota courts construe and apply Minn.R.Civ.P. 56.03 according to the instructive

principles set forth by the United States Supreme Court in the *Celotex* trilogy of cases decided in 1986. See *DHL, Inc v Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citing *Celotex*, 477 U.S. 317, 106 S.Ct.2548; *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505 (1986); and *Matsushita Electric Industrial Co. v Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348 (1986)). Pursuant to *Celotex*, this court has held that summary judgment is not a disfavored procedural shortcut to be applied sparingly, but is an integral part of the Minnesota Rules of Civil Procedure as a whole, which are designed to secure the just, speedy and inexpensive determination of every action. *Dixon v Depositors Insurance Company*, 619 N.W.2d 752, 757 (Minn.App. 2000) (quoting *Celotex*, 477 U.S. at 327, 106 S.Ct. at 2555). Accordingly, this court has repeatedly held that summary judgment is particularly appropriate in situations, such as the one involved in this appeal, where the judicial task involves only a question of law. See *Auto Owners Insurance Company v Perry*, 730 N.W.2d 282, 284 (Minn.App.2003) (citing *Knudsen v Transp. Leasing/Contract, Inc.*, 672 N.W.2w 221, 223 (Minn.App.2003) *reu den'd* (Minn.Feb. 25, 2004)).

Summary judgment procedure is axiomatic. The moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which is believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553 (quoting Fed.R.Civ.P.56(c)). Once the moving party sustains that responsibility, Minn.R.Civ.P.56.05 requires the nonmoving party “to go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553

(quoting Fed.R.Civ.P.56(e)); see *Nicollet Restoration*, 553 N.W.2d at 848. “A genuine issue of material fact for trial must be shown by substantial evidence.” *Gunderson v Harrington*, 632 N.W.2d 695, 704 (Minn.2001) (quoting *Brookfield Trade Center v Ramsey County*, 609 N.W.2d 868, 874 (Minn.2000)). “Substantial evidence’... refers to legal sufficiency and not quantum of evidence.” *Murphy v Country House, Inc* 307 Minn. 344, 352, 240 N.W.2d 507, 512 (1976). The plain language of Minn.R.Civ.P. 56.06 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552. Under such circumstances, “there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial”. *Id.*, 477 U.S. at 323, 106 S.Ct. at 2552 (quoting Fed.R.Civ.P. 56(c)); see *Nicollet Restoration*, 533 N.W.2d at 844 (applying Minnesota’s nearly identical summary judgment standard).

While the court must draw all doubts and factual inferences of the case in the light most favorable to the non-moving party, see *Nord v Herreid*, 305 N.W.2d 337, 340 (Minn.1981) (citing *Anderson v Rapid Transit Co.*, 250 Minn. 167, 186, 84 N.W.2d 593,605 (1957), “the court is not required ‘to save the non-moving party by drawing unreasonable inferences’.” *Ackerman v American Family Mutual Insurance Company*, 435 N.W.2d 835, 840 (Minn.App.1989) (quoting *City of Savage v Varey*, 358 N.W.2d 102 (Minn.App. 1984) *cert. den’d.*, (Minn.1985)). The non-moving party may not avoid summary judgment “simply because there is some metaphysical doubt as to a factual issue.” *Bob Useldinger & Sons, Inc. v Hangsleben*, 505 N.W.2d 323, 329 (Minn. 1993). “A mere argument... does not meet the

requirements of Rule 56...”. *Williamson v Prascunas*, 66 N.W.2d 645, 653, (Minn.Ct. App.2003). The non-moving party cannot rely “upon the naked allegations of his pleadings” to defeat a summary judgment motion. *Morgan v McLaughlin*, 290 Minn. 389, 393, 188 N.W.2d 829, 832 (1971). Surmise, speculation, and general assertions do not create genuine issues of material fact. *See Erickson v General United Life Insurance Company*, 256 N.W.2d 259 (Minn. 1977) (general assertions); *see also Foxnes v Hubbard Broadcasting, Inc.*, 302 Minn. 471, 475, 225 N.W.2d 534, 537 (1975) (surmise and speculation). Rather, the non-moving party can defeat a summary judgment motion only by presenting “specific facts showing that there is a genuine issue for trial.” Minn.R.Civ.P. 56.05.

The other issue this court is called upon to decide is whether the District Court erred in the application of the law. Choice of law and personal jurisdiction issues are questions of law reviewable de novo. *Schumacher v Schumacher*, 676 N.W.2d 685, 690 (Minn.Ct.App.2004) (choice of law), *see also State Farm Fire & Cas. v Aquila, Inc.*, 718 N.W.2d 879, 883 (Minn.2006) (applicability of a statute of limitations is a question of law); *State of Wisconsin v Beck*, 204 Wis.2d 464, 555 N.W.2d 145 (Wisc.App. 1996) (personal jurisdiction); *V.H. v Estate of Birnbaum*, 543 N.W.2d 649 (Minn.1996) (personal jurisdiction).

II. THE DISTRICT COURT PROPERLY AND NECESSARILY UTILIZED A CHOICE OF LAW ANALYSIS RESULTING IN THE DISMISSAL OF APPELLANT’S CLAIM AS A MATTER OF LAW.

Appellant’s attempt to bring a personal injury action under the laws of Minnesota for a Wisconsin accident is improper. The Wisconsin 3-year statute of limitation bars Appellant’s claim. Wisc.Stat. §893.54. Each of the State’s case law, enabling acts and constitutions are explicitly clear that along the navigable waters and atop the bridges that allow for interstate travel over navigable waters such as the St. Lawrence in this case, each

state begins with concurrent jurisdiction. Enabling Act, Act of Congress, 9 Stat. 57, August 6th 1846; Enabling Act, Act of Congress, 11 Stat. 166 February 26th 1857; Minn.Const.Art 2 §2; Wis.Const. Art. IX §1; *State of Wisconsin v Beck*, 204 Wis.2d 464, 555 N.W.2d 145 (Wisc.App, 1996); *State v George*, 60 Minn. 503 (1895); Minn.Stat.§484.02. There is no dispute by the parties that initially, both Minnesota and Wisconsin had concurrent jurisdiction.

Appellant argues that the Missouri Court of Appeals holding in *Smoot v Fischer* 248 S.W.2d 38 (Mo.App.St.L. 1952) should govern this present action. In *Smoot*, there was concurrent jurisdiction as in the case at bar. However, *Smoot* is distinguishable by the fact that there were not criminal charges or a criminal conviction involving the same incident in the neighboring state as in this case. Secondly, *Smoot* is a Missouri case, not a Minnesota case. It is therefore only used as a persuasive argument. Thirdly, and most importantly, in 1973, twenty-one years after *Smoot* was decided, the Minnesota Supreme Court adopted the chosen methodology of using the 5-factor choice of law analysis for all cases including those based in common law negligence. *Milkovich v Saari*, 295 Minn. 155, 203 N.W.2d 408 (Minn. 1973).

Appellant's argument for the *Smoot* application automatically fails when Minnesota and Wisconsin law enforcement authorities agreed that Wisconsin had jurisdiction and the State of Wisconsin took jurisdiction of this incident by accepting the Wisconsin criminal complaint and plea of Respondent relative to this incident. *Aff'd Heinen*, A20-21; *Aff'd Birch*, A59-60; *Criminal File RA0037-0068*; *Sanders v St. Louis & N.O. Anchor Line*, 3 L.R.A. 390, 10 S.W. 595 (Mo. 1889) (where a court of one state assumed jurisdiction in a particular case the same should be exclusive therein until relinquished); *Smoot v Fischer*, 248 S.W.2d 38

(Mo.App.1952) (where the state assumes jurisdiction, it retains exclusive jurisdiction); *State v Nelson*, 92 Wisc.2d 855, 285, N.W.2d 924 (Wisc.App.1979)(the state first acquiring jurisdiction of the person may prosecute the offense, and its judgment is a finality in both states, so that one convicted or acquitted in the courts of the one state cannot be prosecuted for the same offense in the courts of the other); *Orthmann v Apple River Campground, Inc* 765 F.2d 119, 121 (8th Cir. 1985)(first to acquire jurisdiction).

Wisconsin took charge, assumed jurisdiction over the incident, including the criminal charges and has not relinquished it's jurisdiction. Minnesota has not assumed jurisdiction, and is not entitled to. *Order A 7-10*. Appellant attempts to split hairs and linguistics by asserting that there is no civil action pending in Wisconsin therefore Wisconsin does not have a jurisdictional claim and fails to address the fact that Wisconsin immediately assumed jurisdiction for this incident by arresting and charging Respondent with a Wisconsin crime of driving while intoxicated in Wisconsin and causing injury. *Criminal File RA0037-0068*.

As if Wisconsin's assertiveness over the criminal component of this incident wasn't enough to confer Wisconsin with the jurisdiction, the court must then determine if there is a conflict between the laws of the concurrent jurisdictions. *Nodak Mut. Ins. Co. v American Family Mut. Ins. Co.*, 604 N.W.2d 91 (Minn.2000). The choice of law analysis was properly applied because the choice of one law over the other is outcome determinative. *Transcript RA 10* (Counsel agrees case is over if Wisconsin law applies); Minn.Stat. §541.051 (6-year statute of limitations); Wisc.Stat. §893.54 (3-year statute of limitations); *Nodak Mut. Ins. Co. v American Family Mut. Ins. Co.*, 604 N.W.2d 91 (Minn.2000) (citing *Myers v Government Employees Ins. Co.*, 302 Minn. 359, 363, 225 N.W.2d 238, 241 (1974)) (when the choice of one forum's law will allow for a recovery and the application of the other forum's will not is a conflict

and choice of law analysis must be applied).

Appellant argues that the District Court erred by applying the choice of law analysis because Minnesota views statute of limitations as procedural rather than substantive and therefore Minnesota law should rule. *Brief* p. 13-16. Appellant misstates the finding and direction of the *Danielson* court and fails to acknowledge Wisconsin views their statute of limitation as substantive¹. *Danielson v National Supply Co.*, 670 N.W.2d 1,5 (Minn.Ct.App. 2003) *rev den'd* (Oct. 16, 2003); *Fee v Great Bear Lodge of Wisconsin Dells, LLC*, Not Reported in D.Supp.2d, 2004 WL898916 (D.Minn. 2004). The *Danielson* Court looks to the Restatement (Second) of Conflict of Laws §142 and quotes the Restatement stating:

[T]hat courts no longer characterize the issue of limitations as ipso facto procedural and hence governed by the law of the forum. Instead, the courts select the state whose law will be applied to the issue of limitations by a process essentially similar to that used in the case of other issues of choice of law.

Id. at 5. The *Danielson* Court goes on to acknowledge that there must be a conflict of law and that more than one state's law may constitutionally be applied. *Id.*² The *Danielson* Court provides specific instruction and direction to apply the choice of law analysis to statute of limitations choice of law questions. The Minnesota Supreme Court refused to review this Court's ruling in *Danielson*, thereby making *Danielson* the controlling case. This Court correctly recognized that statute of limitations are outcome determinative and that applying a

¹ When one state views their statute of limitation as procedural and the other as substantive, the choice-influencing analysis must apply. *Fee v Great Bear Lodge of Wisconsin Dells, LLC*, Not Reported in D.Supp.2d, 2004 WL898916 (D.Minn. 2004)

² In *Danielson* the injured party was a resident of Minnesota, who purchased a ladder in Texas at a Camping World store and fell off the Texas purchased ladder in Arizona. The defendant store, Camping World, did business in Minnesota and had a registered agent in Minnesota. The substantial contacts of the parties to Minnesota was not an issue in the *Danielson* Court's decision. *Danielson v National Supply Co.*, 670 NW2d 1,5 (Minn.Ct.App. 2003) *rev den'd* (Oct 16, 2003)

procedural classification is inappropriate. In *Danielson* you said:

It appears from the Restatement that courts are increasingly recognizing that the statute of limitations is outcome determinative, that it may be inappropriate to use the procedural classification, and that determining what statute of limitations is to be applied should be decided the same as substantive law conflicts generally. Restatement (Second) of conflicts of Laws §142 cmt.e. Because Minnesota has shown some inclination to apply the choice-influencing consideration analysis is to establish that there actually is a true conflict of laws and that more than one state's law may be constitutionally applied.

Id. at 6. This Court did not stop here, but went on to affirmatively state:

Because our supreme court generally favors use of the choice-influencing consideration analysis and because of the shift of this choice of law approach, **we follow §142 of the Restatement, which applies the choice-influencing consideration analysis to statute of limitations conflicts.**

Id. at 9 (*emphasis added*).

The District Court applied the correct choice of law analysis. Minnesota has “adopted the significant contacts test for choice-of-law analyses.” *Id.*; see *Jepson v General Cas. Co of Wis.*, 513 N.W.2d 467, 469 (Minn.1994). In *Milkovich v Saari*, 295 Minn. 155, 203 N.W.2d 408 (1973), the Minnesota Supreme Court “adopted a methodology of analysis for resolving conflicts of laws questions. The analysis involves the following “choice-influencing considerations” (295 Minn. 161, 203 N.W.2d 412): (1) predictability of result, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4)

advancement of the forum's governmental interest, (5) application of the better rule of law. Before applying the five factor analysis, the court must first determine whether the choice of one law will be "outcome determinative," i.e., whether there is an actual conflict. *Myers v Government Employees Ins. Co. supra.* *Hauge v Allstate Ins. Co.*, 289 N.W.2d 43 (Minn.1978) *rebr'g* 1979. *Fee v Great Bear Lodge of Wisconsin Dells, LLC*, Not Reported in D.Supp.2d, 2004 WL898916 (D.Minn. 2004) *see also* *Bettbauer v The Med. Protective Co.*, 172 Wis.2d 141, 493 N.W.2d 40, 43 (Wisc. 1992). That is exactly what the St. Louis County District Court did.

The District Court determined there was an actual conflict of Minnesota versus Wisconsin law, and the parties agreed the choice of law was outcome determinative, Appellant automatically is barred from bringing her case if Wisconsin law is applied, and is not if Minnesota law is applied. An actual conflict exists. *Memo A 4, Transcript RA 10* at lines 15-19. The 5-factor test set forth in *Milkovich* in 1973 remains the controlling analysis 295 Minn. 155, 203 N.W.2d 408 (1973); *Jepson v General Cas. Co of Wis.*, 513 N.W.2d 467, 469 (Minn.1994); *Nodak Mut. Ins. Co. v American Family Mut. Ins. Co.*, 604 N.W.2d (Minn.2000); *Myers v Government Employees Ins. Co.*, 302 Minn. 359, 363, 225 N.W.2d 238, 241 (1974); *Medtronic, Inc., v Advanced Bionics Corp.* 630 N.W.2d 438 (Minn.Ct.App.2001); *Jacobson v Universal Underwriters Ins. Group*, 645 N.W.2d 741 (Minn.Ct.App. 2002); *Danielson v National Supply Co.*, 670 N.W.2d 1,5 (Minn.Ct.App. 2003) *re u den'd* (Oct. 16, 2003)

Appellant alternatively argues that if the District Court applied the correct choice of law analysis, it abused its discretion in finding Wisconsin law applied. In making this alternative argument, Appellant relies on *Boatwright v Budak*, 625 N.W.2d 483 (Minn.Ct.App.2001) which did not apply the first three factors of the choice influencing test. The *Boatwright* court did not fail to address issues, the parties in *Boatwright* agreed the first 3

factors did not apply and therefore there was no conflict for the *Boatwright* court to determine. *Id.* The *Milkovich v Saari*, 295 Minn. 155, 203 N.W.2d 408 (1973) case which Appellant also relies on for this false premise, does not stand for the proposition that factors 1-3 should not be considered. What the *Milkovich* court does say is that when there is no constitutional barrier to the application of either state's law the five-factor choice influencing test should be used. And that in cases where the competing rules are the common-law rules of negligence and a guest statute, the first three factors (predictability of results, maintenance of international and interstate relations, and simplification of the judicial task) are of "relatively little importance". *Id.*

In this case, the District Court correctly determined the first and third factors were neutral. *Memo A8.* Appellant's arguments that the parties should have somehow predicted that an accident would occur in Minnesota because Respondent was intoxicated on the Wisconsin side of the bridge is without foundational factual support or legal support. The facts of the case support that while Minnesota and Wisconsin had concurrent jurisdiction, the vehicles involved were on the Wisconsin side of the bridge. If the court were to apply the predictability factor, which Respondent does not believe applies in this case, it would have to favor Wisconsin law. The *Medtronic* court notes that the predictability factor "represents the ideal that litigation on the same facts, regardless of where the litigation occurs, should be decided the same to avoid forum shopping." *Medtronic, Inc., v Advanced Bionics Corp.* 630 N.W.2d at 454 (Minn.Ct.App.2001) (citing *Nodak Mut. Ins. Co. v American Family Mut. Ins. Co.*, 604 N.W.2d (Minn.2000)). The relative ease in applying a 3-year versus 6-year statute of limitations goes without saying, is of equal ease.

The second factor, maintenance of interstate order, correctly favors Wisconsin law. The purpose of this is concisely summed up by the *Medtronic* Court. The second factor is primarily concerned with whether the application of Minnesota law would manifest disrespect for Wisconsin's sovereignty or vice versa or impede the interstate movement of people and goods. *Medtronic, Inc., v Advanced Bionics Corp.* 630 N.W.2d at 454 (Minn.Ct.App.2001). "An aspect of this concern is to maintain a coherent legal system in which the courts of different states strive to sustain, rather than subvert, each other's interest in areas where their own interests are less strong." *Id.* The *Medtronic* court citing *Jepson v General Cas. Co of Wis.*, 513 N.W.2d 467, 469 (Minn.1994) states, "The primary issue under this factor is whether applying Minnesota law would 'manifest disrespect' for California's sovereignty or impede interstate commerce. Evidence of forum shopping, or that application of Minnesota's law would promote forum shopping, would indicate such disrespect." *Medtronic, Inc., v Advanced Bionics Corp.* 630 N.W.2d at 454 (Minn.Ct.App.2001).

The 8th Circuit Court of Appeals likewise notes this second factor "requires that the state whose laws are applied have sufficient contacts with the facts in issue." *Fee v Great Bear Lodge of Wisconsin Dells, LLC*, Not Reported in D.Supp.2d, 2004 WL898916 (D.Minn. 2004) RA 21-24. In *Fee* the only contact between Wisconsin, which was determined to be the forum state, and Minnesota was that the plaintiffs were residents of Minnesota, like the case at bar, the Defendant is a Wisconsin resident, the incident occurred in Wisconsin, both Appellant and her fiancé were occupying a car registered in Wisconsin, Respondent's vehicle was registered in Wisconsin, Wisconsin authorities convicted Respondent, Appellant and her fiancé retained a law firm in Wisconsin³. There is not sufficient Minnesota contacts to favor

³ Appellant Counsel's letterhead notes that he is licensed to practice law in both Minnesota and Wisconsin. The offices' address is located in Superior Wisconsin.

Minnesota law. The District Court correctly found that applying Minnesota law in this scenario, would promote forum shopping and therefore factor two favored Wisconsin law.

The fourth prong of the choice-influencing analysis, advancement of the forum state's government, again correctly favored Wisconsin law. *Order A9*. The District Court correctly pointed out that Minnesota has a strong interest in compensating tort victims. *Id.* Appellant was not deprived of her cause of action thereby violating Minnesota's want to compensate tort victims as she would have the court believe. She had the opportunity to bring her action in Wisconsin and have it heard on the merits, she chose for whatever reason, not to commence her action within the three years following the incident and is now prohibited under Wisconsin law from bringing her action as a result. "In circumstances where personal jurisdiction or venue is uncertain, a plaintiff who willfully delays the discovery of facts that would remove such doubts faces a steep hurdle in arguing any injustice based on the application of the choice-of-law rules of the transferee forum, including that forum's applicable statute of limitations." *Eggleton v Plasser & Theurer Exp. Von Bahnbaumaschinen Gesellschaft*, 495 F.3d 582 (C.A. 8 Neb. 2007).

Minnesota also has a strong interest in preventing its courts from becoming bogged down or drained with out-of-state litigants utilizing Minnesota courts and their limited resources to obtain a longer period during which the litigant could commence an action. Wisconsin's 3-year statute of limitation is not inconsistent with Minnesota's concept of compensation, it simply limits the duration in which an injured party may bring his/her cause of action. Wisconsin's law has an interest in preventing stale claims.

The *Jepson* court addressed this issue of border jumping by issuing the following statement:

Minnesota does not have an interest in encouraging forum shopping, particularly where we would be sending a message to those people living on our borders to take advantage of the benefits our neighboring states offer in terms of lower insurance rates, lower vehicle registration fees, and sales taxes, and then, if they are injured, take advantage of Minnesota's greater willingness to compensate tort victims. Minnesota does not have an interest in encouraging that conduct.

Jepson, 513 N.W.2d at 471-472.

III. THE DISTRICT COURT CORRECTLY DETERMINED IT DID NOT HAVE PERSONAL JURISDICTION OVER RESPONDENT, A WISCONSIN RESIDENT WITH NO SUBSTANTIAL CONTACTS TO MINNESOTA.

The facts of the case are undisputed as to Respondent's non-existent contacts with Minnesota. *Aff'd Birch* A59-60; *Memo* RA33-34. Appellant attempts to require Minnesota find personal jurisdiction over Respondent based on the concurrent jurisdiction covering the navigable waters. *Brief* at 11. Out of respect for the court, Respondent will not reiterate and duplicate the reasons and supporting case law cited above in support of the lack of jurisdiction based on Wisconsin quickly and immediately assuming jurisdiction over the incident.

The District Court correctly applied the minimum contact test to determine the fairness in exercising personal jurisdiction over a non-resident. "When personal jurisdiction is challenged, the plaintiff has the burden of presenting a prima facie case demonstrating sufficient minimum contacts." *Does 1-22 v Roman Catholic Bishop*, 509 N.W. 2d 598, 600 (Minn.Ct.App. 1983); *citing Dent-Air, Inc v Beech Mountain Air Serv*, 332 N.W.2d 904, 906-07

(Minn.1983). The District Court properly analyzed the justice and fairness test set out in *International Shoe v Washington*, 326 U.S. 310 (1945) and followed by the *Marquette National Bank* and *Dent-Air* courts. *Marquette National Bank v Norris*, 270 N.W.2d 290, 295 (Minn. 1978); *Dent-Air, Inc. v Beech Mountain Air Serv, Inc.* 332 N.W.2d 904, 907 (Minn. 1983).

CONCLUSION

Appellant's failure to commence her personal injury case against Respondent within 3-years pursuant to Wisconsin's statute of limitation renders Appellant's claim time barred. There is not concurrent jurisdiction as Wisconsin quickly and rightfully assumed jurisdiction of this incident when Wisconsin authorities arrested Respondent, charged Respondent with Causing Injury by Intoxicated Use of a Motor Vehicle in Douglas County Wisconsin, accepted Respondent's plea of no contest to the Wisconsin charges, and imposed a jail sentence. The clear choice of law analysis favors Wisconsin law, as does jurisdiction. The District Court of St. Louis County properly and correctly applied both jurisdictional and choice of law analysis rendering Appellant's claim time barred and the Minnesota Court without jurisdiction. The District Court's Order and Memorandum should be affirmed.

Respectfully submitted,

Dated: June 19, 2008

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CERTIFICATION OF COMPLIANCE

I hereby certify that this brief conforms to Minn.R.Civ.App.P.132.01, subs. 1 and 3, for a brief produced using the following font: Garamond , 13-point. The length of this brief is 4,294 words. This brief was prepared using Microsoft Word 2003.

Respectfully submitted,

Dated: June 19, 2008

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