

OFFICE OF
APPELLATE COURTS

JUL 13 2010

No. A08-825

FILED

STATE OF MINNESOTA
IN SUPREME COURT

Middle-Snake-Tamarac Rivers Watershed District,

Appellant,

vs.

James Stengrim,

Petitioner.

PETITIONER JAMES STENGRIM'S PETITION FOR REHEARING

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INTRODUCTION

James Stengrim ("Stengrim") submits this Petition for Rehearing as the June 30, 2010 decision of the Minnesota Supreme Court has left the parties with more questions than answers in regards to the procedure the district court must follow on remand. First, Stengrim reads the decision as allowing him to bring another motion to dismiss before the district court under Minn. Stat. § 554.02 (2008) if he has sufficient facts to demonstrate that the Middle-Snake-Tamarac Rivers Watershed District's ("the District") claim against him "materially relates to an act of [Stengrim] that involves public participation." On the other hand, the District has already taken the position in a letter to Stengrim and implicitly in its Petitioner for Costs as a Prevailing Party that Stengrim cannot bring another motion to dismiss since the Supreme Court stated that the district court properly denied Stengrim's motion to dismiss under the anti-SLAPP statute.

Based on Stengrim's and the District's opposite interpretations of the Supreme Court's decision in this case, it is clear that the Supreme Court's written decision failed to make clear the procedures the district court should follow on remand and/or failed to give the parties clear guidance moving forward. This is a material question in this case. Indeed, without any clear guidance from the Supreme Court, Stengrim will bring another anti-SLAPP motion in the district court, and no matter how it is resolved,

either the District or Stengrim will likely appeal. The Supreme Court has an opportunity to clarify the issues now for sake of judicial economy.

Second, the Supreme Court has overlooked, failed to consider, or misinterpreted the district court's order that denied Stengrim's anti-SLAPP motion. Specifically, the district court held that Stengrim's "actions alone do not violate the settlement agreement as they are not a challenge to the 'establishment of the project.'" Despite this finding, the district court denied Stengrim's Motion for Summary Judgment brought under Minn. Stat. § 554.02 by somehow reasoning Minnesota's anti-SLAPP statutes do not apply to suits to enforce settlement agreements.

The Supreme Court, however, disagreed with the district court (and agreed with the Court of Appeals on this issue) and held that Minnesota's anti-SLAPP statutes can in fact apply to suits to enforce settlement agreements. Nonetheless, the Supreme Court held that the district court properly denied Stengrim's motion to dismiss under the anti-SLAPP statute because it "did not have enough facts and that there were genuine issues of material fact" However, the record is clear that the district court never analyzed whether the District's claim against Stengrim materially relates to an act that involves public participation as the Supreme Court ruled must first be done because the district court found that anti-SLAPP did not apply to breach of settlement agreement suits. This decision by the

district court was the basis of the Court of Appeals' decision reversing and remanding the case to the district court for further proceedings.

Since the district court never even addressed this preliminary issue, it is unknown what material issues of fact the district court determined to exist, and more importantly, whether those alleged factual issues are relevant to whether Stengrim met his minimal burden to show that the District's claim relates to an act of public participation. Stengrim asserts that the Supreme Court could not, on the facts before it, find that the district court properly denied Stengrim's anti-SLAPP motion when the district court never even analyzed the elements of the statute that the Supreme Court has stated must be followed. *See Rebne v. Rebne*, 216 Minn. 379, 382, 13 N.W.2d 18, 20 (1944) (It is not for the appellate courts to weigh the evidence. That responsibility rests upon the trier of fact.)

For all the above reasons, and to prevent the parties from having to once again tread the appellate review waters, Stengrim's Petition for Rehearing should be granted.

DISCUSSION

I. RULE 140 OF THE MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE

Rule 140.01 of the Minnesota Rules of Civil Appellate Procedure allows a party to petition for rehearing, by setting forth, with particularity:

- (a) any controlling statute, decision or principle of law; or

- (b) any material fact; or
- (c) any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

Minn. R. Civ. App. P. 140.01(a-c). The proper use for a petition for rehearing was described 150 years ago as follows:

It is, perhaps, impossible to lay down a general rule which shall be applicable to every case that may arise. But we may say, in general, that the applicant [for a rehearing] must be able to show some manifest error of fact, into which counsel or the court have fallen in the argument or decision of the case; as, for example, that a provision of statute decisive of the case has, by mistake, been entirely overlooked by counsel and the court; or, perhaps, that a case has been decided upon a point not raised at all upon the argument, and that there be strong reason to believe that the court has erred in its decision; or, unless, in a case where great public interests are involved, and the case has either not been fully argued, or strong additional reasons may be urged, to show that the court has erred in its ruling.

Derby v. Gallup, 5 Minn. 119 (1860).

A petition for rehearing may also be granted to clarify some portion of an ambiguous opinion. See *Gudvangen v. Austin Mut. Ins. Co.*, 284 N.W.2d 813 (Minn. 1978) (rehearing granted to specify that 1977 amendments to No-Fault Act had no retroactive effect). The Supreme Court has even clarified ambiguous portions of some opinions, although the petition for rehearing has been denied. See *Bilotta v. Kelley Co.*, 346

N.W.2d 616 (Minn. 1984) (rehearing denied, but new opinion substituted to retroactively apply new design-defect instructions to product liability suits); *Mack v. City of Minneapolis*, 333 N.W.2d 744 (Minn. 1983) (rehearing denied with opinion modified to clarify that amended workers' compensation settlement statute would not apply retroactively absent specific legislative intent for such application.) There have also been instances in which the supreme court has modified an opinion on its own motion. See *Camocho v. Todd & Leiser Homes*, 706 N.W.2d 49 (Minn. 2005).

In this case, the June 30, 2010 decision of the Supreme Court should be clarified to determine whether the Supreme Court intended that (1) Stengrim is free to bring another anti-SLAPP motion in the district court; and (2) the district court analyze each parties' burden of proof—Stengrim's "minimal" burden to establish the District's claim is based on public participation and if so met, the District's clear and convincing burden that Stengrim's actions are somehow not immune.

II. STENGRIM'S PETITION FOR REHEARING SHOULD BE GRANTED TO CLARIFY THAT HE CAN BRING ANOTHER ANTI-SLAPP MOTION IN THE DISTRICT COURT ON REMAND

Unlike the district court in this case, the Supreme Court held that Minnesota's anti-SLAPP statutes can apply to suits for an alleged breach of a settlement agreement. *Middle-Snake-Tamarac Rivers Watershed District v. Stengrim*, A08-825 at p. 10 (Minn. June 30, 2010). Therefore, "a

district court must make a preliminary determination about whether the underlying 'claim materially relates to an act of the moving party that involves public participation.'" *Id.* at p. 11. "[A]pplicability of the anti-SLAPP provisions is a threshold question that the district court must first analyze before Minn. Stat. § 554.02, subd. 2, comes into play." *Id.* "Discerning between a SLAPP action and a legitimate lawsuit may present challenges, but it is necessary because such discernment is the entire purpose of the anti-SLAPP statutes." *Id.*

In this case, the initial burden is on Stengrim to show that the underlying "claim materially relates to an act of the moving party that involves public participation." *Id.* at p. 12. Once this "minimal burden" is satisfied, then the plaintiff or responding party must show by clear and convincing evidence that the acts at issue are not immune under Minn. Stat. § 554.03. *Id.*

Here, Supreme Court referred to Stengrim's initial anti-SLAPP motion as "premature." *Stengrim*, A08-825 at p. 13. The Supreme Court went on to state that "[b]ecause the district court determined that it did not have enough facts and that there were genuine issues of material fact concerning the effect of the settlement agreement on Stengrim's actions, we conclude that the district court properly denied Stengrim's motion to dismiss under the anti-SLAPP statute." *Id.* at pp. 13-14.

Stengrim reads the Supreme Court's decision as allowing him to bring another motion to dismiss before the district court under Minn. Stat. § 554.02 (2008) if he has sufficient facts to demonstrate that the District's claim against him "materially relates to an act of [Stengrim] that involves public participation." *Id.* at p. 12. On the other hand, the District takes the position that Stengrim cannot bring another motion to dismiss since the Supreme Court stated that the district court properly denied Stengrim's motion to dismiss under the anti-SLAPP statute. (See July 6, 2010 correspondence from Jerry Von Korff to Kelly S. Hadac, a copy of which is attached hereto as Exhibit 1)

As the Supreme Court can anticipate, Stengrim intends to bring another motion to dismiss under the anti-SLAPP Statute in the district court on remand. The District claims Stengrim breached the Settlement Agreement when he (1) asked questions to the Office of Legislative Auditor; and (2) made data practice requests. (Respondent's Appendix ("RA") at RA-1) Stengrim will argue (once again) that these activities, since they are stated in the District's Complaint, are materially related to the District's claim and are themselves examples of public participation. The district court should then be required to analyze this issue since it has never done so in the past because it held that the anti-SLAPP statutes simply do not apply to suits for breach of a settlement agreement. (Order at RA-327-332)

Stengrim is legally entitled to a ruling from the district court on whether he can satisfy his “minimal burden” to show that making data practice requests and talking to government agencies are acts of public participation.¹ If Stengrim meets this minimal burden on remand, then the district court must then determine if the District has proven by clear and convincing evidence that Stengrim’s acts are not immune under Minn. Stat. § 554.03. *Stengrim*, A08-825 at p. 12.

Furthermore, Stengrim anticipates that the District will argue on remand that the Supreme Court has already approved the denial of Stengrim’s anti-SLAPP motion and therefore anti-SLAPP no longer applies at all to this case. In fact, the District has already set forth its position by stating “[t]he reversal of the Court of Appeals decision removes the SLAPP claims from this litigation. . . .” (See July 6, 2010 correspondence from Jerry Von Korff to Kelly S. Hadac, a copy of which is attached hereto as Exhibit 1) This position is quite different from Stengrim’s reading of the case that allows him to bring another anti-SLAPP motion.

In light of the opposing interpretations of the Supreme Court’s Opinion, Stengrim’s Petition for Rehearing should be granted to clarify the issues on remand, including the fact that Stengrim may once again bring

¹ Although the Supreme Court ruled that the district court properly denied Stengrim’s anti-SLAPP motion, the district court never made this evaluation and the Supreme Court never discussed whether making data practices requests or talking to government agencies are protected acts of public participation. Stengrim, at a minimum, is entitled to a ruling on this issue as it is the first step in an anti-SLAPP motion. It is unknown, and illogical, to deny an anti-SLAPP motion without even considering the first step of the anti-SLAPP analysis as set forth by the Supreme Court.

his anti-SLAPP motion, which motion the district court must analyze using the proper statutory criteria as set forth by the Supreme Court.

III. STENGRIM'S PETITION FOR REHEARING SHOULD BE GRANTED BECAUSE THE SUPREME COURT OVERLOOKED, FAILED TO CONSIDER, OR MISCONCEIVED THE DISTRICT COURT'S ORDER

The district court held that Stengrim's "actions alone do not violate the settlement agreement as they are not a challenge to the 'establishment of the project.'" (Order at RA-331) Nonetheless, the Supreme Court stated, and which formed the basis for its decision, that "the district court has the authority to deny a defendant's anti-SLAPP motion where a defendant has entered into a settlement agreement and contractually agreed not to hinder the establishment of a project" *Stengrim*, A-08-825 at p. 13. This statement by the Supreme Court is contrary to a finding already made by the district court, which is the trier of fact, where the district court held that Stengrim did not violate the settlement agreement as he never challenged the establishment of the project. (Order, RA-331) Was the Supreme Court weighing the evidence? If so, that would be improper. See *Rebne v. Rebne*, 216 Minn. 379, 382, 13 N.W.2d 18, 20 (1944) (It is not for the appellate courts to weigh the evidence. That responsibility rests upon the trier of fact.) In light of the Supreme Court's statement above, it is strikingly clear that it failed to consider the district court's finding that Stengrim did not breach the settlement agreement.

Furthermore, the Supreme Court failed to consider the fact that the district court never analyzed whether Stengrim can satisfy his initial “minimal burden” to show that data practice requests and talking to government agencies are acts of public participation. The district court never considered this because it simply ruled Minnesota’s anti-SLAPP statutes do not apply to breach of settlement agreement cases, a holding that the Supreme Court, and the Court of Appeals, rightfully rejected.

Nonetheless, the Supreme Court held that the district court properly denied Stengrim’s motion to dismiss under the anti-SLAPP statute because it “did not have enough facts and that there were genuine issues of material fact. . . .” *However, since the district court never even addressed this preliminary issue, it is impossible to know what material issues of fact the district court found to exist, and more importantly, whether those alleged factual issues are material to whether Stengrim met his minimal burden to show that the District’s claim relates to an act of public participation.* Stated differently, Stengrim asserts that the Supreme Court could not, on the facts before it, find that the district court properly denied Stengrim’s anti-SLAPP motion when the district court never even analyzed the elements of the statute that the Supreme Court has stated must be followed.

Accordingly, Stengrim’s Petition for Rehearing should be granted to clarify the issues on remand, including the fact that Stengrim may once

again bring his anti-SLAPP motion, which motion the district court must analyze using the proper statutory criteria as set forth by the Supreme Court.

CONCLUSION

Stengrim agrees with the Supreme Court in terms of how future district court judges should interpret and apply the plain language of Minnesota's anti-SLAPP statutes. By this Petition, Stengrim now wants clarification that he has the opportunity to bring an anti-SLAPP motion on remand so the district court can, once and for all, discern whether this is a SLAPP action or a legitimate lawsuit. Stengrim is entitled to receive such a ruling. *Stengrim*, A-08-825 at p. 11 (stating that "[d]iscerning between a SLAPP action and a legitimate lawsuit may present challenges, but it is necessary because such discernment is the entire purpose of the anti-SLAPP statutes.")

Dated: July 12, 2010

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