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NO. A09-1800

State of Minnesota  
**In Supreme Court**

LINDA MARIE LaDONNA DAHLIN,  
*Respondent,*

vs.

RANDALL EARL THOMAS KROENING,  
*Appellant.*

**APPELLANT'S BRIEF AND ADDENDUM**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUE PRESENTED.....	1
STATEMENT OF THE CASE AND FACTS.....	1
STANDARD OF REVIEW.....	3
ARGUMENT.....	3
<b>I.    MINNESOTA LAW IS SILENT REGARDING MULTIPLE           RENEWALS OF A JUDGMENT.....</b>	<b>4</b>
<b>A. Minnesota statutes establish a ten-year existence for a           judgment.....</b>	<b>4</b>
<b>B. Minnesota common law provides a procedure for           extending a judgment, but does not authorize unlimited           extensions of a judgment.....</b>	<b>4</b>
<b>II.   MINNESOTA STATUTE AND COMMON LAW REGARDING           RENEWAL OF JUDGMENTS INDICATE THAT IT IS           INTENDED AND UNDERSTOOD AS A PROCEDURAL           METHOD TO EXTEND THE LIFE OF THE JUDGMENT.....</b>	<b>6</b>
<b>A. Statutory construction of Minnesota Statutes § 541.04.....</b>	<b>6</b>
<b>B. Interpretation of common law mentioning renewal of           judgments .....</b>	<b>8</b>
<b>III.  PERMITTING MULTIPLE RENEWALS OF A JUDGMENT IS           CONTRARY TO THE INTENT OF THE MINNESOTA           LEGISLATURE.....</b>	<b>9</b>
<b>IV.   PUBLIC POLICY FAVORS FINALITY OF JUDGMENTS.....</b>	<b>12</b>
CONCLUSION.....	14
INDEX TO ADDENDUM.....	16

## TABLE OF AUTHORITIES

### CASES

<i>Appletree Square 1 Ltd. Partnership v. W.R. Grace &amp; Co.</i> , 815 F. Supp. 1266 (D.Minn. 1993).....	13
<i>Coleman v. Akers</i> , 87 Minn. 492, 92 N.W. 408 (1902).....	13
<i>Dahlin v. Kroening</i> , 784 N.W.2d 406 (Minn. App. 2010).....	3,4,5,6,7,12
<i>Del Hayes &amp; Sons, Inc. v. Mitchell</i> , 304 Minn. 275, 230 N.W.2d 588 (1975).....	3
<i>Dutcher v. Culver</i> , 24 Minn. 584 (1877).....	5
<i>Hauser v. Mealey</i> , 263 N.W.2d 803 (Minn. 1978).....	12
<i>Hubred v. Control Data Corp.</i> , 442 N.W.2d 308 (Minn. 1989).....	3
<i>Newell v. Dart</i> , 28 Minn. 243, 9 N.W. 732 (1881).....	8
<i>In re Stadsvold</i> , 754 N.S.2d 323 (Minn. 2008).....	7
<i>State by Cooper v. French</i> , 460 N.W.2d 2 (Minn. 1990).....	2
<i>Wallace v. Comm’r of Taxation</i> , 289 Minn. 220, 184 N.W.2d 588 (1971).....	9

### STATUTES

11 U.S.C. § 303.....	13
Minn. Stat. § 541.04.....	4,7,8,12
Minn. Stat. § 548.09.....	4,7,9
Minn. Stat. § 548.091.....	4,9,10,11
Minn. Stat. § 550.011.....	13
Minn. Stat. Ch. 571.....	13

Minn. Stat. Ch. 582..... 13

Minn. Stat. Ch. 576.01..... 13

**RULES**

Minn. R. Civ. P. 30..... 13

Minn. R. Civ. P. 33..... 13

Minn. R. Civ. P. 34..... 13

Minn. R. Civ. P. 69..... 13

**OTHER AUTHORITIES**

William Blackstone, 3 Commentaries (1768)..... 5,8

## STATEMENT OF ISSUE PRESENTED

**Whether a judgment creditor can obtain a new judgment by bringing a civil action on a previously renewed judgment within ten years of entry of that renewed judgment.**

The district court correctly concluded that Respondent could not obtain a new judgment because, although Respondent filed her cause of action within ten years of a previously renewed judgment, there is no authority for renewing a judgment more than once. The Minnesota Court of Appeals reversed, holding that the common-law cause of action to renew a judgment permitted Respondent's action to renew her 1998 judgment against Appellant, which arose from a judgment entered in 1988.

### **Apposite cases:**

Appellant believes this appeal presents an issue of first impression for this Court.

## STATEMENT OF THE CASE AND FACTS

On May 16, 1978, a Judgment and Decree of Dissolution entered in Brown County required that Appellant pay Respondent a total of \$20,000.00 in \$250.00 per month installments. After Appellant ceased making monthly payments, Respondent obtained a judgment for the unpaid spousal maintenance originating from the 1978 Judgment and Decree of Dissolution in Ramsey County District Court, File No. RS-26867, in the amount of \$7,000.00, dated April 12, 1988. (AA.1).

On March 5, 1998, Respondent served a Summons and Complaint on Appellant for the purpose of extending the Ramsey County judgment for an additional ten years.

(AA.2-4). Appellant did not file or serve an answer to this complaint, and default judgment was entered in Ramsey County District Court File No. F9-88-26867 on April 6, 1998. (A.A.6).

On March 24, 2008, Respondent again served a Summons and Complaint on Appellant in Ramsey County District Court for the purpose of extending the judgment in Ramsey County District Court File No. F9-88-26867 for an additional ten years. (A.A.7-12). Appellant served an Answer on Respondent. (A.A.13-14). Respondent subsequently moved for summary judgment and, prior to the hearing, Appellant moved for leave to serve an Amended Answer. The district court heard arguments on both Respondent's motion for summary judgment and Appellant's motion for leave to serve an Amended Answer. Following the hearing, the district court issued an Order for Judgment on October 27, 2008 granting Appellant's motion for leave to amend his answer and denying Respondent's Summons and Complaint. (A.A.15-21).

On February 18, 2009, Respondent filed an Application for Default Judgment. In its March 19, 2009 order, the district court denied Respondent's Application for Default Judgment on the basis that its October 27, 2008 Order had already dismissed Respondent's Summons and Complaint. (A.A.22-23). Respondent filed a Notice of Appeal on June 3, 2009. After requesting supplemental briefing by the parties, the Minnesota Court of Appeals issued an order directing the Ramsey County Court Administrator to enter judgment in compliance with Minn. R. Civ. P. 58.01. On August 11, 2009, the Ramsey County Court Administrator entered judgment on the district court's October 27, 2008 order and the district court's March 19, 2009 order. The

Minnesota Court of Appeals reversed the district court in a sharply divided opinion filed July 6, 2010. *See Dahlin v. Kroening*, 784 N.W.2d 406 (Minn. App. 2010). Appellant then petitioned this Court for review, which was granted by order dated September 21, 2010.

### STANDARD OF REVIEW

The district court denied Respondent's summons and complaint. Although denial of a summons and complaint is not included in the Minnesota Rules of Civil Procedure, it appears analogous to a *sua sponte* grant of summary judgment by the district court. A district court may grant summary judgment *sua sponte* if, under the same circumstances, it would grant summary judgment on motion of a party. *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 280, 230 N.W.2d 588, 591-92 (1975). On appeal from summary judgment, this court asks "(1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court need not defer to the district court's application of the law when material facts are not in dispute. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

### ARGUMENT

The district court correctly concluded that no authority exists to renew a judgment more than once. In reversing the district court, the court of appeals held "the practice of bringing an action to renew a judgment remains lawful." *Dahlin* 784 N.W.2d at 409. But in its decision, the court of appeals mischaracterized Appellant's defense as an argument

that Minnesota law prohibits any action to renew a judgment. This, however, is not Appellant's defense. Appellant argues instead that Minnesota law prohibits the renewal of a judgment more than once.

**I. Minnesota law is silent regarding multiple renewals of a judgment.**

**A. Minnesota Statutes establish a 10-year existence for a judgment.**

The district court concluded that Minnesota statutes prohibit an action to renew a judgment that has previously been renewed. Limitations periods for judgments are codified in the Minnesota Statutes. Under Minnesota law, a judgment survives, and the lien continues, for ten years after entry of the judgment. Minn. Stat. § 548.09 (2008). A ten-year period of existence for spousal maintenance judgments is also delineated by statute. Minn. Stat. § 548.091, subd. 2 (2008). Spousal maintenance judgments are to be regarded as any other judgment. Minn. Stat. § 548.091, subd. 1b (2008).

In addition, “[n]o action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment.” Minn. Stat. § 541.04 (2008). The legislature has not detailed any procedure for an action to revive or renew a judgment; therefore the cause of action for reviving or renewing a judgment lies in Minnesota common law.

**B. Although Minnesota common law provides a procedure for extending a judgment, Minnesota common law does not authorize unlimited extensions of a judgment.**

Appellant does not dispute that Minnesota common law does provide a cause of action to renew a judgment. The court of appeals observed “[t]his cause of action to renew a judgment has long been part of the legal practice in Minnesota to accompany and

ameliorate the strict statutory language limiting the life of a judgment to ten years. The extant English common law, as modified by English statutes passed before the American Revolution, was adopted as the common law of Minnesota in 1877.” *Dahlin*, 784 N.W.2d at 409. (citing *Dutcher v. Culver*, 24 Minn. 584, 591 (1877)).

The court of appeals majority opinion then referenced Blackstone for the premise that “under English common law as modified by statute at that time, the concept that ‘the defendant may not be liable to be . . . harassed a second time on the same [judgment]’ after the judgment had expired was limited by the plaintiff’s right to bring an action before the judgment expired requiring ‘the defendant to show cause why the judgment should not be revived, and execution had against him.’” *Id.* (quoting William Blackstone, 3 Commentaries \*421 (1768)).

But Blackstone is silent as to whether the defendant can be harassed a third time. The court of appeals majority opinion did not reference any common law authorizing multiple renewals arising from the same judgment, and no caselaw holds that a judgment can be renewed more than once. The majority ultimately concluded that a judgment obtained in an action to renew a prior judgment is a new judgment with the same legal character and effect as any other judgment, and that caselaw does not indicate a judgment creditor is limited to a single action to renew. *Id.* at 410. However, caselaw also does not indicate that a renewed judgment obtained according to this process is, in fact, entitled to the same legal character and effect as any other judgment, or if the “new” judgment is merely a procedural extension of the original judgment. Therefore, no caselaw indicates that a judgment creditor can bring a cause of action arising from an original judgment

that is brought more than ten years after the original judgment, even if a renewed judgment has been obtained in the intervening time.

**II. Minnesota statute and common law regarding renewal of judgments indicate that it is intended and understood as a procedural method to extend the life of the judgment.**

The district court in the present case found that Respondent “did not seek to create a new judgment, rather the [Respondent] moved the Court for a second renewal of judgment arising out of a dissolution that occurred nearly sixteen years ago.”<sup>1</sup> The district court correctly concluded that Minnesota law merely provides a procedure for renewing a judgment which still relates back to the original judgment, not a process for establishing a new cause of action and a new judgment.

**A. Statutory construction of Minnesota Statutes section 541.04.**

A judgment survives for ten years after entry. Minn. Stat. §548.09, subd. 1. To renew a judgment for a second ten-year period, Recourse must be had to Minn. Stat. § 541.04. “[n]o action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment.” Minn. Stat. § 541.04 (2008). The operative words of this statute are “unless begun within ten years after the entry of such judgment.” These words set forth a time period of ten years within which an action upon an original judgment

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<sup>1</sup> In its October 24, 2008 Findings of Fact, Conclusions of Law, and Order, the district court correctly noted that a Brown County judgment arising from the original Dissolution Judgment and Decree was docketed on December 24, 1992. However, the original Dissolution Judgment and Decree was entered in 1978, and Appellant obtained a judgment on the unpaid spousal maintenance in Ramsey County on April 13, 1988. Therefore, rather than 16 years, as the district court concluded, Appellant has had over 20 years to enforce her judgment.

must be maintained. Because these words set forth a time period and nothing more, and the statute itself does not create a cause of action, the statute is clearly only procedural.

The court of appeals majority concluded that the renewal of a judgment creates a new judgment with the same legal character and effect as any other judgment. *Dahlin*, 784 N.W.2d at 410. For this to be true, the new judgment would have to embody a new cause of action separate from and independent of the cause of action that underlies the original judgment. But no support for such a position exists in Minn. Stat. § 541.04. The creation of a new cause of action is clearly substantive, whereas Minn. Stat. § 541.04 is clearly only procedural. A proper reading of Minn. Stat. § 541.04 can only lead to the conclusion (1) that a judgment obtained thereunder is only a procedural renewal of the original judgment and (2) that the renewed judgment exists only by virtue of and therefore must be based upon the cause of action underlying the original judgment. Because section 541.04 is exclusively procedural, it cannot be construed as the authority for the creation of a new cause of action. Therefore, the court of appeals' holding, in effect, creates a new cause of action out of whole cloth – a substantive creation which is not only beyond the scope of the strictly procedural statute, but also, in the words of the dissenting opinion, “exceeds the scope of this court’s authority.” *Dahlin*, 784 N.W.2d at 413 (Harten, J. dissenting).

Therefore, pursuant to Minn. Stat. § 541.04, an action to renew a judgment is only procedural and must relate back to the cause of action embodied in the original judgment. With this statute thus properly construed as being only procedural, it follows that the underlying cause of action remains intact and is not replaced. Thus a judgment thereon

can be procedurally renewed one time if the action is brought “within ten years after the entry of such judgment.” But once the second ten-year period has run, no further action upon the original judgment can be maintained.

**B. Interpretation of common law mentioning renewal of judgments.**

Common law also suggests that the long-standing practice of renewing a judgment is intended to be merely an extension of the existing judgment, and not a completely independent judgment. Indeed, Blackstone states that a plaintiff may bring an action before a judgment expires requiring “the defendant to show cause why the judgment should not be *revived*, and execution had against him.” Blackstone, 3 Commentaries \*421 (emphasis added). Blackstone also indicates that historically an action on a judgment was confined to one renewal. *Id.* (stating that a defendant shall not be harassed a *second* time on the same judgment). This Court has also stated that “nothing but a renewal within the life of the judgment will *continue* the lien of the judgment. *Newell v. Dart*, 28 Minn. 243, 250, 9 N.W. 732, 733 (1881) (emphasis added). Therefore, even if the renewed judgment is termed a “new” judgment, caselaw suggests that it is but a procedural extension of the original judgment, and therefore a cause of action cannot be brought on the renewed judgment to again extend the life of the original judgment.

The district court recognized that Respondent’s action is not only seeking to renew a judgment arising from a previous renewal of judgment, but also that Respondent’s action arises more than ten years after the original judgment was granted. Respondent’s Summons and Complaint in the present case arise from the same facts as the previous renewal. Because Respondent commenced the present cause of action more than ten

years after the entry of the original judgment and no authority exists that permits multiple renewals of a judgment, the district court did not err in dismissing Appellant's Summons and Complaint.

**III. Permitting multiple renewals is contrary to the intent of the Minnesota legislature.**

Minnesota law indicates that Appellant is not entitled to multiple renewals of a judgment because the legislature has confined multiple renewals of a judgment to child support judgments. “[D]istinctions in language in the same context are presumed to be intentional, and [the courts] apply the language consistent with that intent.” *In re Stadsvold*, 754 N.W.2d 323, 328-29 (Minn. 2008). Furthermore, “courts cannot supply that which the legislature purposely omits or inadvertently overlooks.” *Wallace v. Comm’r of Taxation*, 289 Minn. 220, 230 184 N.W.2d 588, 594 (1971).

Minn. Stat. § 548.09, subd. 1 addresses the length of time for which a judgment for spousal maintenance arrearages survives. It states:

From the time of docketing the judgment is a lien, in the amount unpaid, upon all real property in the county then or thereafter owned by the judgment debtor . . . . The judgment survives, and the lien continues, for ten years after its entry. Child support judgments may be renewed pursuant to section 548.091.

Minn. Stat. § 548.09, subd. 1. Minn. Stat. § 548.091 (2008) specifically addresses judgments arising from unpaid amounts of child support or judgments arising from unpaid amounts of maintenance under a judgment or decree of dissolution. Minn. Stat. § 548.091, subd. 1 (2008) addresses maintenance judgments and states that “[a] judgment entered and docketed under this subdivision has the same effect and is subject to the same

procedures, defenses, and proceedings as any other judgment in district court, and may be enforced or satisfied in the same manner as judgments under section 548.09.” Renewal of a judgment is not mentioned in either Minn. Stat. § 548.091, subd. 1 or Minn. Stat. §548.09.

Minn. Stat. § 548.091, subds. 1a, 2a, and 3a (2008) address child support judgments, and subd. 3a states that “[a] judgment entered and docketed under this subdivision has the same effect and is subject to the same procedures, defenses, and proceedings as any other judgment in district court, and may be enforced or satisfied in the same manner as judgments under section 548.09, except as otherwise provided.” The language of Minn. Stat. § 548.091, subd. 1 (addressing maintenance judgments) and Minn. Stat. § 548.091, subd. 3a (addressing child support judgments) is nearly the same, except for the inclusion of the phrase “except as otherwise provided” for child support judgments. Minn. Stat. § 548.091, subd 3b (2008) provides for an administrative renewal process for child support judgments. It also states “[c]hild support judgments may be renewed multiple times until paid.” Minn. Stat. § 548.091, subd. 3b. This language permitting multiple renewals is not included in those parts of Minn. Stat. § 548.091 that address judgments arising from unpaid amounts of maintenance under a judgment or decree of dissolution.

In *Gerber v. Gerber*, this Court rejected an argument that the administrative process for renewing a child support judgment prevented income withholding, an administrative remedy and determined that “the legislature recognized that *judicial remedies* on child support judgments are subject to the statute of limitations, and that

there must be an expedited process to avoid its application.” 714 N.W.2d 702, 705 (Minn. 2006). However, the administrative renewal process still must occur within the ten-year statute of limitations; therefore the inclusion of the language “child support judgments may be renewed multiple times” indicates an intention by the legislature to include a remedy not otherwise available at common law.

The legislature would not have needed to include the language in Minn. Stat. § 548.091, subd. 3b providing that child-support judgments may be “renewed multiple times until paid” if the legislature intended that a judgment under Minn. Stat. § 548.09 could be renewed repeatedly and without limitation under the guise of Minn. Stat. § 541.04. The legislature’s intentional inclusion of this language in Minn. Stat. § 548.091 indicates that the legislature believed such language was necessary to effectuate its purpose – that is, to permit multiple renewals of a judgment for unpaid child support. This language is separate and distinct from the language providing for the particular administrative process and thus clearly indicates the legislature’s intent to carve out an exception to the established practice under Minnesota law that a judgment can be renewed only once.

Because Minn. Stat. § 548.091 also addresses judgments for unpaid amounts arising from a judgment or decree of dissolution, but does not contain similar language permitting multiple renewals until the judgment is satisfied, it follows that the legislature did not intend for a party to have multiple renewals of a judgment for unpaid amounts arising from a judgment or decree of dissolution. The statute of limitations for judgments

has been a legislative matter, and the courts should not create a new limitations period by permitting unlimited renewals of a judgment.

The court of appeals majority concluded that the amendments to Minn. Stat. § 548.091 did not demonstrate legislative intent to restrict renewal of all other judgments because that would be contrary to the long-standing common-law practice permitting renewal of judgments. But this determination overlooks the crux of Appellant's argument. Appellant is not arguing that a judgment cannot be renewed or revived. Appellant is arguing that the common-law practice permits one cause of action arising from an original judgment, and not repeated causes of action that relate back to an original judgment but are begun more than ten years after the original judgment. Contrary to the assumption on the part of the court of appeals majority, Appellant does not argue that the legislature's use of the language permitting multiple renewals of child support judgments indicates an intent to eliminate the common law remedy. Appellant argues that the common law remedy is limited to only one renewal.

#### **IV. Public policy favors finality of judgments.**

Public policy calls for a balanced approach to this area of creditor-debtor law and the Court's decision in this case should reflect a public policy grounded in the principle of finality of judgments. The common-law remedy and Minn. Stat. § 541.04 should not be read together to support unlimited renewals of judgments. "[I]t is for the public good that there be an end to litigation." *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978).

Although refusing to base its decision upon any principle of public policy, the court of appeals majority notes that "in a public policy contest between the plight of

nonpaying judgment debtors and the plight of unpaid judgment creditors, we cannot say that judgment debtors would necessarily inspire the most sympathetic narratives.”

*Dahlin*, 784 N.W.2d at 412-13. This narrow view assumes, therefore, that the reason for nonpayment is always outright refusal to pay and thus contrary to public policy. But this view fails to recognize a consideration which, although seldom expressed, still always exists. This consideration is that public policy recognizes that judgments are unpaid, not only by judgment debtors who refuse to pay, but also by judgment debtors who are unable to pay. It is in recognition of the latter that public policy calls for a balanced approach. This balanced approach is already in practice by permitting one renewal within ten years of entry of a judgment.

Creditors have many tools at their disposal to locate the assets of a debtor including post-judgment interrogatories, depositions, document production requests, and orders for disclosure of assets. Minn. R. Civ. P. 30, 33, 34, 69; Minn. Stat. § 550.011. Once assets are found, the options available to creditors are innumerable, including sheriff's levies, garnishments, foreclosures, receiverships, and even involuntary bankruptcy. Minn. Stat. Ch. 550, 571, 582, 576.01; 11 U.S.C. § 303. If a creditor is unable to collect a judgment with all these remedies after 20 years the creditor is either not trying, or the debtor is uncollectable. The law favors litigants that pursue their rights or lose them. *See, e.g., Coleman v. Akers*, 87 Minn. 492, 493, 92 N.W. 408, 408 (1902) (finding that the “spirit of our laws and public policy both require reasonable diligence in bringing litigation to a close,” and vacating a judgment for failure to prosecute the action) *Appletree Square 1 Ltd. Partnership v. W.R. Grace & Co.*, 815 F. Supp. 1266, 1279

(D.Minn. 1993) (plaintiff may not “sit on its hands and wait for the full details” of an injury to be known before pursuing its rights).

If unlimited renewals of a judgment are permissible under Minn. Stat. § 541.04, nothing prevents a judgment creditor from repeatedly renewing the judgment, and continuing litigation until the death of one of the parties. Respondent has had some form of judgment against Appellant arising from her dissolution from Appellant since 1978. Respondent has not tried to collect her judgment, and there is no indication that Respondent will be able to satisfy her judgment in the next proposed ten-year renewal period, which could therefore result in another Summons and Complaint for renewal being filed in 2018. Respondent has indicated that the only procedure for renewal is by filing a new Summons and Complaint; therefore multiple renewals result in, essentially, repeated litigation of the same judgment. To persist in litigation over a matter that has not been satisfied for over twenty years is in direct contravention of the desire to have finality in litigation in Minnesota.

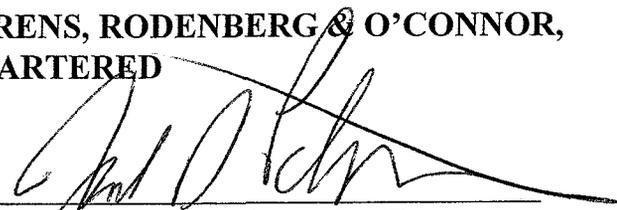
### CONCLUSION

There is no authority permitting unlimited causes of action that relate back to an original judgment. Appellant is trying to renew a judgment for which the underlying cause of action is a judgment and decree over 30 years old. If Appellant were allowed to renew her judgment a second time, this court would be opening the door for unlimited renewals of judgments that would cease only upon the death of one of the parties. Because the law favors finality, the district court’s order dismissing Appellant’s

Summons and Complaint as outside the ten-year statute of limitations for a cause of action on a judgment should be affirmed.

Dated: October 20, 2010

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