



STATE OF MINNESOTA
IN COURT OF APPEALS

10-1876

~~OFFICE OF
APPELLATE COURTS~~

~~DEC 13 2010~~

FILED

LAURA STORMS,

Respondent,

vs.

CONNIE SCHNEIDER,

Appellant.

APPELLANT'S PRINCIPAL BRIEF

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ISSUE PRESENTED

Under Minn. Const. art. I, § 4 protects the right to a jury trial for all cases “at law.” Minn. R. Civ. P. 38.01 requires a jury trial for issues of fact in actions to recovery personal property. Is a party entitled to a jury trial if at the time of the adoption of the Minnesota Constitution the legal action is a case “at law” seeking the recovery of personal property and issues of fact exist?

Apposite Law:

Minn. Const. art. I, § 4

Minn. R. Civ. P. 38.01

Whallon v. Bancroft, 4 Gil 70, 4 Minn. 109 (1860)

Biled v. Barnard, 116 Minn. 307, 133 N.W. 795 (1911)

Olson v. Synergistic Technologies Business Systems, Inc.,
628 N.W.2d 142 (Minn. 2001)

The lower court denied the Appellant Connie Schneider’s demand for a jury trial believing the matter of replevin as equitable and thereby not entitled to a jury trial as a matter of law.

STATEMENT OF THE CASE

Appellant Connie Schneider, as a defendant to a replevin — a claim and delivery — proceeding, invoked her right to a jury trial. The right is protected under Minn. Const. art. I, § 4. She did not waive her right.

The Respondent Laura Storms commenced the underlying lawsuit for the return of an Our Lady of Immaculate Conception statue used in a reconsecration Mass in the National Basilica in Washington, D.C. Ms. Storms contended that she paid for the statue, thus, viewing the statue as personal property. Ms. Schneider, prepared her last remaining statue for the ceremony (blessed by Pope John Paul II), for the cost of materials, believing that it would be permanently displayed or gifted to the Basilica, and further believing these as terms for her completing the statue. When the terms were not met, Ms. Schneider took the statue back home with her after the reconsecration Mass. Nine months later, Ms. Storms commenced her replevin action.

The lower court, on the first day of trial, denied Ms. Schneider her right to a jury trial. The lower court's decision was based upon requested letter "briefs" counsel submitted to the court. Appellant's counsel, citing several Minnesota Supreme Court decisions and Minn. R. Civ. P. 38.01, asserted that because of the nature of the proceedings — in replevin — the case is one at law, found entitled to a jury trial in 1857 at the time of adoption of the

Minnesota Constitution. Therefore, Ms. Schneider's right to a jury trial extends to the present — unimpaired. In addition, Appellant's counsel also argued that Rule 38.01 listed the actions at law as the recovery of personal property, also protected a party's right to a jury trial, here, the Appellant Ms. Schneider.

On the other hand, Respondent's letter brief, without any legal authority cited, a conference between attorney and client and both concluded the action as "equitable," and therefore not entitled to a jury trial.

The matter proceeded to trial before the court. The court entered findings of fact, conclusions of law and judgment for the Respondent Ms. Storms. Accordingly, Ms. Schneider appealed the decision of the Honorable Dale B. Lindman.

STATEMENT OF THE FACTS

The legal dispute between the Appellant Connie Schneider and the Respondent Laura Storms started with the request for the preparation of a Virgin Mary statue for an Immaculate Conception ceremony in the National Basilica in Washington, D.C.¹ Ms. Storms contacted Ms. Schneider for the preparation of the Virgin Mary statue to be used during the reconsecration Mass with promises of it being permanently displayed or gifted to the

¹ Def.'s Amended Ans. ¶ 4, App. 21.

National Basilica.² As Ms. Schneider indicated in her Amended Answer to the Complaint, she believed Ms. Storms did not purchase the statute for her own personal use.³ On these conditions, for the statue, Ms. Schneider would accept material costs as payment.⁴ This particular statue was also the final production model of several that had previously been “blessed” by Pope John Paul II when he had visited the United States.⁵

But, upon personally delivering the statue to the National Basilica and after the Immaculate Conception ceremony, Ms. Schneider found that the Basilica did not have an intention of permanently displaying the statue nor accepting it as a gift.⁶ Although having received a check upon delivery of the statue in Washington, D.C. for an amount greater than the agreed to cost of

² *Id.* ¶¶ 25-26, App. 25-26.

³ *Id.* ¶ 26, App. 25.

⁴ *Id.* ¶ 30, App. 26.

⁵ *See* Schneider’s Proposed Findings of Fact ¶ 4, App. 64.

⁶ *Def.’s Amended Ans.* ¶ 32, App. 26.

materials⁷ — Ms. Schneider immediately returned the check to Ms. Storms and in turn, took the statue back home to Saint Paul, Minnesota.⁸

As a result of Ms. Schneider's actions, nine months later in August 2007, Ms. Storms started a replevin action against Ms. Schneider for the return of the statue.⁹ Accompanying the service of the summons and complaint was a motion for a replevin hearing.

After the replevin hearing, in which the lower court determined that Ms. Schneider must return the statue to Ms. Storms,¹⁰ the litigation of the matter continued. On August 23, 2007, Ms. Schneider answered the Plaintiff's Complaint, demanded a jury trial, and asserted compulsory counterclaims for breach of contract.¹¹

⁷ The original cost for materials to prepare the statute was \$1,800. Def.'s Amended Ans. ¶ 72, App. 31. The check returned to Ms. Storms in Washington, D.C. was for \$2,500. Schneider's Proposed Findings of Fact, ¶ 22, App. 67.

⁸ See Findings of Fact, ¶¶ 13 and 15, App. 4; Amended Ans. ¶¶ 8 and 33, App. 23, 27; Schneider's Proposed Findings of Fact ¶ 23, App. 67.

⁹ Plt.'s Comp. (Aug. 3, 2007), App. 11.

¹⁰ Or. Granting Plt.'s Mot. to Rec. Poss. (Aug. 22, 2007); App. 18.

¹¹ Def.'s Amended Ans. (Aug. 23, 2007); App. 21. The necessary filing fee for a jury was also submitted to the Clerk of Court. Ltr. Aug. 23, 2007), App. 35.

Ms. Storms would later move for partial summary judgment. On April 28, 2009, the lower court denied her motion.¹² The litigation eventually proceeded to trial. Prior to the scheduled trial date, presiding Judge Dale Lindman requested letter “briefs” on the legal issue regarding Ms. Schneider’s right to a jury trial.¹³

Ms. Schneider’s counsel submission noted that a claim for replevin under Minn. Stat. § 565.23, et.seq. and Minn. R. Civ. P. 38, parties to a replevin action are entitled to a jury trial.¹⁴ First, counsel argued by quoting Rule 39.01, a jury trial is a substantiated right in a replevin action because it is an action for the recovery of specific real or personal property:

In actions for the *recovery* of money only, or of *specific real or personal property*, the issues of fact *shall* be tried by a jury, unless a jury trial is waived or a reference is ordered.¹⁵

In addition, counsel argued that a replevin action is an action at law, and as such under the Minnesota Constitution, art. I, § 4, is a constitutional right to a jury trial:

¹² Or. Denying Plt’s. Mot. Partial SJ (Apr. 28, 2009). App. ----. The Order also granted certain Schneider motions in limine, but are not issues of the instant appeal.

¹³ Schneider’s Ltr Br. (Dec. 21, 2009), App. 38; Storms’ Ltr. Br. (Dec. 1, 2009), App. 41.

¹⁴ Schneider’s Ltr. Br., App. 38.

¹⁵ *Id.* (emphasis in the original).

The Minnesota Supreme Court has interpreted this provision [“the right by jury shall remain inviolate and shall extend to all cases *at law*” (original emphasis) as it existed in the Territory of Minnesota when the Minnesota Constitution was adopted. *Ewert v. City of Winthrop*, 278 N.W.2d 545, 550 (Minn. 1979).¹⁶

Counsel further explained to the lower court the historic foundation of the confusion arising from misinterpreting the availability of jury trials to only those cases involving damages and not equitable relief.¹⁷ Thus, counsel showed that the applicable question for a proper legal analysis “is not based on the nature of the relief but rather whether the action is one ‘at law.’”¹⁸

Based on this analysis, Ms. Schneider’s counsel cited a 1911 Minnesota Supreme Court case, *Biled v. Barnard*,¹⁹ that declared replevin actions as actions at law that entitled parties to a jury trial:

That plaintiff was entitled to a jury trial and to a general verdict is beyond doubt. It was an action at law, in replevin, and it is immaterial that questions of law, as well as questions of fact, were involved. It was the duty of the court to decide the law questions and to instruct the jury accordingly.²⁰

¹⁶ *Id.*, App. 39.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*; *Biled v. Barnard* 116 Minn. 307, 133 N.W. 795, 796 (1911).

²⁰ Schneider’s Ltr. Br., App. 39 (original emphasis of counsel) citing *Biled*, 116 Minn. at 309-10, 133 N.W. at 796.

Counsel cited other supporting case law including a subsequent Minnesota Supreme Court case, *Geo. A. Hormel Co. v. First Nat. Bank*,²¹ noting that the dismissal or change of replevin action as one at law to an action in equity results in the loss of a jury trial and, a New York Court of Appeals case, that like Minnesota, recognized replevin actions as at law under the common law and not as equitable actions thereby entitling parties to a jury trial.²² Finally, as a comparison, counsel cited one last Minnesota case, *Rognrud v. Zubert*, to emphasize that parties are entitled to jury trials in circumstances involving ejectment proceedings even though the remedy is the recovery of real property.²³

In contrast, Respondent counsel's letter "brief" filing with the court shows a mere attorney conferral with his client and the attorney's "thoughts" to the lower court without citing any legal authority:

I have now conferred with my client and we believe that since this is an action in equity that this matter should be tried to the Court as the ultimate fact finder. Therefore, we cannot agree with the request of the Defendant in this case that this matter be tried to a jury. We believe the matter should be properly resolved by a Court trial.²⁴

²¹ *Id.*; *Geo. A. Hormel Co. v. First Nat. Bank* 171 Minn. 65, 212 N.W. 738 (1927) (changing action from one at law as a replevin action to one in equity resulted in loss of jury trial).

²² *Id.*; *Boyle v. Kelley*, 42 N.Y.2d 88, 365 N.W.2d 866 (1977).

²³ *Id.*, App. 40; *Rognrud v. Zubert* 165 N.W.2d 244, 247 (Minn. 1969).

²⁴ Resp. Counsel Ltr. (Dec. 1, 2009), App. 41.

At trial, the lower court informed the parties that it believed the matter to be an equitable action, and “therefore, not an action subject to a jury trial but instead is an action to be tried before the Court.”²⁵ The court accepted both parties’ letter “briefs” as part of the record and stated that the arguments made in the letters formed the basis of the court’s decision.²⁶ The court further elaborated on its decision by stating that because the issue required a finding of entitlement of possession, the case is one of equity thereby divesting the Appellant Ms. Schneider from a jury trial:

It’s something that I believe the parties will only be satisfied with a finding of possession, a finding of entitlement to possession. And under those circumstances, this is clearly a case in equity and not a case for legal replevin, which involves a claim for dollars and cents rather than possession of chattel. As such, I believe that this is then a case to be tried to the Court not to a jury and that is how we will proceed.²⁷

After the trial before the court, it rendered a decision in favor of the Respondent Ms. Storms.²⁸ Appellant believes the lower court erred as a matter of law in denying Ms. Schneider her right to a jury trial regarding this “at law” replevin action.

²⁵ Tr. Trans. (June 7, 2010) 1: 9-14; App. 43; 9: 14-16; App. 51.

²⁶ *Id.* at 2:7-9; App. 44; 9:18-20; App. 51; 10: 6-25; App.52.

²⁷ *Id.* 10:17-25; App. 52.

²⁸ Or. (Aug. 23, 2010). App. 1.

LEGAL ARGUMENT AND AUTHORITIES

Introduction

The court's decision erred as a matter of law when it denied Appellant Connie Schneider her right to a jury trial. Under two principles of law governing replevin actions, Ms. Schneider's right is inviolate.

First, the Minnesota Supreme Court's interpretation of Minn. Const. art. I, § 4, demands that if a right to a jury trial existed at the time of the adoption of the constitution in 1857, that right remains unimpaired. Thus, because replevin actions were common law proceedings in 1857 with the right to a jury trial, such legal proceedings occurring today are subject to jury trials. As one Supreme Court decision declared, "This is an ordinary action of claim and delivery, presenting issues of fact, and therefore for jury... That, as bearing upon defendants' title to and right to possession of the property in controversy, certain principles of equity are invoked, does not alter the case."²⁹

Second, Minn. R. Civ. P. 38.01 constitutes an attempt to list those actions that were at the time of the Minnesota's Constitution's adoption thought of as legal as distinguished from equitable. Again, because of the

²⁹ *Tancre v. Pullman*, 35 Minn. 476, 477, 29 N.W. 171 (1886) (citation omitted).

existence of the statute governing the recovery of personal property existed in 1857, the historic right to a jury trial is preserved as inviolate.

The principles of law remain intact and unchanged since 1857. The Appellant has a constitutionally protected right to a jury trial in a replevin — claim and delivery — action.

Standard of Review and Relief Requested

A. The standard of review is de novo.

The lower court denied the Appellant's right to a jury trial, a right protected under the Minnesota Constitution, art. I, § 4. Thus, this Court is to review the lower court's interpretation and application of the Minnesota Constitution de novo.³⁰ In addition, Appellant raised the issue of the application of Minn. R. Civ. P. 38.01, upon which the lower court considered in its determination. Therefore, because the construction and application of a rule of procedure is a legal issue, de novo review applies.³¹ In reaching that decision, the court relied upon letter briefs submitted to the court. Because the lower court acted to deny the Appellant Ms. Schneider a jury trial based

³⁰ *Olson v. Synergistic Technologies Business Systems, Inc.*, 628 N.W.2d 142, 148 (2001), *citing State v. Wicklund*, 589 N.W.2d 793, 797 (Minn. 1999).

³¹ *Id.*, 628 N.W.2d at 153, *citing State v. Nerz*, 587 N.W.2d 23, 24-25 (Minn. 1998).

on a determination on a substantive question of law, rather than its discretion, its action is reviewed de novo.³²

B. Reversal of the denial of a jury trial, vacating the judgment, and remanding for a new trial is the proper relief.

This Court should reverse the lower court's decision, vacate the judgment of the underlying proceedings, and remand the matter in accordance with a decision granting Appellant Connie Schneider the right to a jury trial. Thus, Ms. Schneider is entitled to a new trial before a jury.

³² See *Frost-Benco Elec. Ass'n v. Minnesota Public Utilities Com'n*, 358 N.W.2d 639, 642 (Minn. 1984); *K.B. v. Evangelical Lutheran Church in America*, 538 N.W.2d 152, 153 (Minn. App. 1995). Governing Minnesota law did not require Appellant to move for a new trial before this appeal. In *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minnesota*, 664 N.W.2d 303, 310 (Minn. 2003), the Minnesota Supreme Court held that motions for a new trial are not required to substantive questions of law raised at trial: “[w]hile permissive, motions for a new trial ... are not prerequisite for appellate review of substantive questions of law when a genuine issue of law is properly raised and considered at the district court level.” The Court explained the difference between a procedural rule and substantive questions of law. Substantive law is “the part of the law that creates, defines and regulates the rights, duties and powers of parties.” *Id.* at 310 n.5. Therefore, the Court differentiated between the lower court's authority of discretion in procedural matters requiring post-trial motions for appellate review, and substantive conclusions of law by the lower court to which appellate courts need not give deference to the lower court or require post-trial motions. *Id.* at 310.

I. Historically, because replevin existed at the time of the adoption of the Minnesota Constitution as an action entitled to a jury trial, the guarantee of the right to a jury trial remains today.

Appellant Connie Schneider demanded a jury trial in a civil proceeding of replevin — claim and delivery — thereby invoking her constitutionally protected right to a jury trial under the Minnesota Constitution. She never waived that right.

The Minnesota Constitution, adopted in 1857, pronounces the right to a jury trial under Article 1, Section 4: “the right of trial by jury shall remain inviolate and shall extend to all cases at law.”³³ As the Minnesota Supreme Court has consistently stated since 1860 in *Whallon v. Bancroft*,³⁴ concerning the first two lines of Article I, Section 4, that if the right to a jury existed for a particular action in the Territory of Minnesota at the time of the

³³ In 1971, Minnesota established a Minnesota Constitutional Study Commission that determined which the State’s Constitution required only minor changes. The Commission produced what was also adopted as a constitutional amendment in 1974; a general revision of the 1857 constitution — not a new constitution. Because the Minnesota Constitution has been in continuous effect since 1857, it remains as one of the oldest state constitutions in the United States. Mary Jane Morrison, *The Minnesota State Constitution*, 12 (Greenwood Press 2002).

³⁴ 4 Gil. 70, 74, 4 Minn. 109, 113 (1860); see also *Ewert v. City of Winthrop*, 278 N.W.2d 545, 550 (Minn. 1979).

constitution's adoption, the right cannot be impaired, including by any legislative action:

The effect of this clause in the Constitution is, first, to recognize the right of trial by jury as it existed in the Territory of Minnesota at the time of the adoption of the State Constitution; and second, to continue such right unimpaired and inviolate. It neither takes from or adds to the right as it previously existed, but adopts it unchanged. Wherever the right of trial by jury could be had under the territorial laws it may now be had, and the Legislature cannot abridge it; and those cases which were triable by the Court without the intervention of a jury, may still be so tried.

In short, the right of a jury trial extends to issues of fact in civil cases which existed at common law at the time of the adoption of the constitution. The historical test boils down to a determination of whether a case at the time of the constitution's adoption in 1857 would have been "legal" under the Territory of Minnesota's common law or "equitable" and thereby heard without a jury. Actions at law — cases at law — generally involved rights and remedies "legal" in character. In Minnesota, in 1857, replevin was a common law action³⁵ and therefore remains today a case at law entitling a party to a jury trial.³⁶

³⁵ See, 66 Am.Jur. 2nd, Replevin, § 1 (2009).

³⁶ See e.g., *Coti v. Waples*, 1 Gil. 110, 1 Minn. 134, 141 (1854) (Discussion regarding Wisconsin statute of replevin, in force in the Territory of Minnesota at the time, as common law action of replevin, its historical connection to New York law and common law rules).

The action of replevin was replaced with the statutory action for claim and delivery of personal property under Minn. Rev. St. (Terr.) c.70, § 122 (1851) titled “Claim and Delivery of Personal Property,” the historic predecessor to the present governing law found in Minn. Stat. §§ 565.24, *et seq.* and §§ 542.06, *et seq.*³⁷ Despite the legislative codification of replevin procedures, its action did not affect the right to a jury trial.

Long ago, the Minnesota Supreme Court declared that as an action in law, parties in a replevin action are entitled to a jury trial, regardless “if questions of law, as well as questions of fact, were involved. It was the duty of the court to decide the law questions and to instruct the jury accordingly.”³⁸ The case law is consistent with some of the Minnesota Supreme Court’s earliest decisions on the replevin statute of claim and delivery. For instance, in the 1868 decision in *Blackman v. Wheaton*³⁹ and later in 1886, in *Tancre v. Pullman*, the actions were in replevin and triable by jury:

This is an ordinary action of claim and delivery, presenting issues of fact, and therefore for jury. Gen. St. 1878, c. 66 § 216; *Blackman v. Wheaton*, 13 Minn. 326 (Gil.299). That, as bearing upon defendants’ title to and right to possession of the property in controversy, certain principles of equity are invoked, does not alter the case.⁴⁰

³⁷ *A & A Credit Co. v. Berquist*, 203 Minn. 303, 41 N.W.2d 582 (Minn. 1950).

³⁸ *Biled v. Barnard*, 116 Minn. 307, 309-10, 133 N.W. 795, 796 (1911).

³⁹ *Blackman v. Wheaton*, 13 Gil. 299, 13 Minn. 326 (1868).

⁴⁰ *Tancre v. Pullman*, 35 Minn. 476, 477, 29 N.W. 171 (1886).

Thus, as early as 1868 the Minnesota Supreme Court has stood steadfast on the principle of law that the fact in cases where certain principles of equity were involved concerning the question of title and the right of possession did not alter the nature of the cases. In other words, when a plaintiff has title to property which gives a right to possession (but is without affirmative equitable relief) the action to recover for the wrongful detention of that property is essentially a legal one, even though the plaintiff's title to the property may have originally been equitable.⁴¹

The Minnesota Supreme Court as recently as 2001 in *Olson v. Synergistic Technologies Business Systems, Inc.* reiterated the purpose of Minn. Const. art. I, § 4 to recognize the right to a jury trial if it existed at the time of the Minnesota Constitution's adoption. The *Olson* court citing the 1915 case of *Morton Brick & Tile Co. v. Sodergren*, stated:

In actions originally at law either party may demand a jury trial. In actions which, according to the former practice, were equitable actions pure and simple neither party can demand a jury trial as of right as to any issue. In mixed actions, that is, in actions where legal issues are united with equitable issues, the legal issues are triable by a jury and the equitable issues by the court.⁴²

⁴¹ See also, *Geo. A. Hormel Co. v. First Nat. Bank*, 212 N.W. 738 (Minn. 1927) (Where plaintiff dismissed replevin for stock and both parties sought only equitable remedies the defendant was not entitled to jury trial.)

⁴² *Morton Brick & Tile Co. V. Sodergren*, 628 N.W.2d 142, 149 (Minn. 2001)

The *Olson* Court has not deviated from principles the Minnesota Supreme Court has expressed since the inception of statehood as discussed above. But, the *Olson* Court did find that the label of the pleadings or the prayer for relief is not conclusive of the nature of the controversy. Thus, a trial court must look at the nature and character of the controversy to determine whether the action is legal or equitable.⁴³

In the instant case, the record reflects the nature of the controversy as one for replevin — claim and delivery — under Minn. Stat. § 565.24.⁴⁴

Replevin existed at the time of the adoption of Minnesota’s Constitution in 1857, and, as an action at law, the Appellant Ms. Schneider is entitled to a

⁴³ *Olson*, 628 N.W. 2d at 149. Compare for instance equitable claims that seek monetary relief, such as a claim for breach of fiduciary duty, which is an equitable proceeding despite the fact that the action seeks monetary relief. *Iowa Ctr. Assocs. V. Watson*, F.Supp. 1108, 1111(N.D. Ill. 1978) (applying Minnesota law and stating actions for breach of fiduciary duty are equitable claims); *Uselman v. Uselman*, 464 N.W.2d 130, 137 (Minn. 1990) (recognizing that “actions for a breach of trust lie in equity.”).

⁴⁴ Complaint; App. 11; Motion for Recovery, App. 14; Order Granting Motion for Recovery; App. 18. As this Court understands, replevin, or claim and delivery, is a possessory action in which the plaintiff, being entitled to immediate possession of personal property, seeks to obtain possession of the property prior to final judgment. Accordingly, the Respondent Ms. Storms commenced her legal action, and sought an immediate hearing, under Minn. Stat. § 565.24.

jury trial. Therefore, as a matter of law, the lower court erred in denying Ms. Schneider's right to a jury trial.

II. Appellant's right to a jury trial is also preserved under Rule 38.01 of the Minnesota Rules of Civil Procedure.

Appellant Ms. Schneider is guaranteed a jury trial under the Minnesota Constitution, Minn. R. Civ. P. 38.01. Rule 38.01 entitles her to a jury trial because Respondent Ms. Storms sought recovery of specific personal property:

In actions for the recovery of money only, or of specific real or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.

Because construction and application of the rule of procedure is a legal issue, review is de novo.⁴⁵

Rule 38.01 is a jury trial rule of civil procedure that constitutes an attempt to list those actions that were at the time of the Minnesota Constitution's adoption thought of as legal, as distinguished from equitable.⁴⁶ The rule "defines the scope of the right to a jury trial in Minnesota, but it

⁴⁵ *State v. Nerz*, 587 N.W.2d 23, 24-25 (Minn. 1998).

⁴⁶ *Rognrud v. Zubert*, 282 Minn. 430, 165 N.W.2d 244 (1969).

does not enlarge or diminish the historical right to a jury trial guaranteed by the Minnesota Constitution.”⁴⁷

The Minnesota Supreme Court in *Olson* followed the same necessary analytical steps in a previous determination to a right to trial in discussing the existing statutory scheme in Mason’s Minn. Stat. § 9288 (1927).⁴⁸ In short, because the specific language of the statute governs the recovery of personal property, and existed at the time of the adoption of the state’s Constitution, Rule 38.01 merely served the purpose of preserving the historical right to a jury trial as inviolate:

Mason's Minn. Stat. § 9288 provided that in “actions for the recovery of money only, or of specific real or personal property, or for a divorce on the grounds of adultery the issues of fact shall be tried by a jury * * *.” Mason's Minn. Stat. § 9288. This statute was in force at the time of the adoption of the Minnesota Constitution and the specific language of the statute was merely intended “to preserve in substance the common law distinction between actions at law and suits in equity.” Mason's Minn. Stat. § 9288 annot. 2. Minn. R. Civ. P. 38.01 reflects the language of Mason's Minn. Stat. § 9288 and also serves the same purpose of preserving the historical right to a jury trial inviolate. See 1A David F. Herr & Roger S. Haydock, *Minnesota Practice Civil Rules Ann.*, § 38.4 (3d ed.1998).⁴⁹

⁴⁷ *Olson*, 638 N.W.2d at 153, citing *Indianhead Truck Line, Inc. v. Hvidsten Transp., Inc.*, 268 Minn. 176, 192, 128 N.W.2d 334, 3346 (Minn. 1964).

⁴⁸ *Id.*, 638 N.W.2d at 154.

⁴⁹ 628 N.W.2d at 154.

The cited statute, Mason's Minn. Stat. § 9288 (1927), also found in Dunnell's Revised Minn. Stat. (1905), both have the same notations regarding the historical relevance to the adoption of Minnesota's Constitution in 1857:

This provision was in force at the time of the adoption of the constitution.⁵⁰

The record reflects that the Respondent's Complaint sought the recovery of personal property, first by asserting the Appellant Ms. Schneider owned the statute: "[Respondent Ms. Storms] agreed to pay [Ms. Schneider] \$1,800 for [her] to make the Statue;"⁵¹ [Ms. Storms] took possession of the Statue;"⁵² "After [Ms. Storms] took possession of the Statue, a service was performed at the Basilica involving the Statue."⁵³

And then the statue had been taken: "[Appellant Ms. Schneider] took the Statue ... [Ms. Storms] objected ... but could not prevent [Ms. Schneider] from doing so;"⁵⁴ [Ms. Schneider] took the Statute ... wrongfully detaining the Statue...."⁵⁵

⁵⁰ Mason's Minn. Stat. § 9288; Dunnell's Revised Laws, Minnesota § 4164 (1905).

⁵¹ Complaint ¶ 4, App. 11.

⁵² *Id.* ¶ 6, App. 11.

⁵³ *Id.*

⁵⁴ *Id.* ¶ 7, App. 12

⁵⁵ *Id.* ¶ 8.

Finally, Ms. Storms sought the return of her personal property; seeking the statute's return: "[Ms. Storms] will suffer irreparable harm if she is not granted immediate possession of the Statue;"⁵⁶ [Ms. Storms] has demanded the return of the Statue...;⁵⁷ and seeking an order from the court under Minn. Stat. § 565.24 "granting possession of the Statue to [Ms. Storms]."⁵⁸

Thus, the underlying action of the Respondent Ms. Storms is for the recovery of personal property. Thus, Ms. Schneider is guaranteed to a jury trial. The lower court erred in denying the Appellant Ms. Schneider her right to a jury trial. The lower court's decision reversed. The matter should be remanded for a retrial.

CONCLUSION

Appellant Connie Schneider invoked her constitutionally protected right to a jury trial — a right inviolate — under Minnesota's Constitution in a replevin — claim and delivery — proceeding against her. But, the lower court erred when it took that right from her in the denial of a jury trial. The historical background and law supports the fact that at the time of the

⁵⁶ *Id.* ¶ 9.

⁵⁷ *Id.* ¶ 10.

⁵⁸ *Id.* (¶ 1 of claim for relief).

adoption of Minnesota's Constitution in 1857, replevin existed in common law and as a statute. Thus, Ms. Schneider's right to a jury trial remains inviolate.

The rules of court under Minn. R. Civ. P. 38.01 further substantiate Ms. Schneider's right to a jury trial in an action for the recovery of personal property – firmly and historically connected to Minnesota's past as of 1857. The predecessor statute to the present statutes governing claim and delivery, and corresponding right to a jury trial, were available at the time of this State's adoption of its Constitution. By denying Ms. Schneider's right to a jury trial, the lower court erred in the deprivation of that right.

Therefore, this Court should reverse the lower court's decision, vacate the judgment of the underlying proceedings, and remand the matter in accordance with a decision granting Appellant Connie Schneider the right to a jury trial.

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Dated: December 8, 2010

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STATE OF MINNESOTA
IN COURT OF APPEALS

A10-1876

LAURA STORMS,

Respondent,

vs.

CONNIE SCHNEIDER,

Appellant.

**LR 7.1(c) WORD COUNT
COMPLIANCE CERTIFICATE**

I, Erick G. Kaardal, certify that the Appellant's Principal Brief complies with Local Rule 7.1(c) with a word count of 5,043.

I further certify that, in preparation of this motion, I used Microsoft Word 2003, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

Dated: December 8, 2010.

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