

Nos. A05-1377 and A05-1378

State of Minnesota
In Supreme Court

David Granville and Marlyss Granville as parents and natural guardians
of Kailynn Granville, a minor, and Jacqueline Johnson as parent and
natural guardian of Shanel Andrews, a minor,

Appellants,

vs.

Minneapolis Public Schools,
Special School District No. 1,

Respondent.

APPELLANTS' INFORMAL SUPPLEMENTAL BRIEF

Erik D. Willer (#330395)
Michael L. Weiner (#127991)
Christopher J. Moreland (#278142)
YAEGER, JUNGBAUER
& BARCZAK, PLC.
745 Kasota Avenue
Minneapolis, MN 55414
(612) 333-6371

Attorneys for Appellants

Charles A. Bird (#8345)
BIRD, JACOBSEN & STEVENS, P.C.
305 Ironwood Square
300 Third Avenue S.E.
Rochester, MN 55904
(507) 282-1503

Attorneys for Amicus Curiae
Minnesota Trial Lawyers Association

Diane B. Bratvold (#18696X)
Shanda K. Pearson (#340923)
Steven P. Aggergaard (#336270)
RIDER BENNETT, LLP
33 South Sixth Street
Suite 4900
Minneapolis, MN 55402
(612) 340-8900

Attorneys for Respondent

Louise Dovre Bjorkman (#166947)
David M. Classen (#0387179)
LARSON • KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
(651) 312-6500

Attorneys for Amicus Curiae
Minnesota Defense Lawyers Association

(Additional Counsel listed on following page)

Joseph E. Flynn (#30508)
Jennifer K. Earley (#253789)
KNUTSON, FLYNN & DEANS
1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120
(651) 222-2811

*Attorneys for Amicus Curiae
Minnesota School Board Association*

INTRODUCTION

Appellants/Petitioners respectfully submit this supplemental brief in response to this Court's request that the parties address whether Minn. Stat. § 466.12 was "revived" through the general repealer of Act of Mar. 15, 1996¹ (the Act), titled "An act relating to state government; repealing obsolete laws." As discussed below, the short answer to the Court's question is "no." The legislature did not, in its 1996 "general repealer" statute, "specifically provide[]" its intent to "revive" § 466.12, as required by Minn Stat. § 645.36. Moreover, the title of this repealer Act, the circumstances surrounding the Act, and the substance of § 466.12, all demonstrate that the legislature never intended to revive § 466.12. Rather, the legislature was simply cleaning up its books by removing expired or obsolete laws.

FACTS

In its original enactment of § 466.12 in 1963, the legislature envisioned a finite life for the section. Subdivision 4 contained a sunset provision which read "This section is in effect on January 1, 1964, but all of its provisions shall expire on January 1, 1968."² In 1969, when subdivision 3a was added, the legislature extended the repeal date, this time until July 1, 1974³

¹ ch. 310 § 1, 1996 Minn. Laws 185

² Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396 (R.A. 12-19).

³ Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515-16 (R.A. 22-24).

On July 1, 1974, exactly as the legislature intended, § 466.12 expired of its own terms. At issue here is the intent of the legislature 22 years later, when it repealed “obsolete laws” and included in its laundry list of over 300 “obsolete laws” the sunset provision above.⁴ In order to answer this question, one needs to examine the title and content of the 1996 repealer, the applicable rule of statutory construction (Minn Stat. § 645.36), the circumstances surrounding this 1996 legislation, and the substantive content of § 466.12.

Every section repealed by the Act addressed, exactly as the title of the Act describes, obsolete laws. The attached appendix categorizes each one of the 300 plus sections and subdivisions repealed by the Act, which generally fall into one of the following categories: One hundred and forty-three statutes addressed requirements or options that had long since passed. As general examples, § 115A.09 requires the board of waste management to prepare an inventory of suitable hazardous waste sites by January 1, 1982, § 15.793 addressed temporary classifications that expired on July 1, 1982, § 89.014 requested the commissioner of natural resources to present a forestry report to the relevant legislative committees prior to December 31, 1983, and § 412.018 allowed certain cities to opt out of specific incorporation rules prior to July 1, 1975. These sections were repealed because they had become irrelevant.

Another fifty-two repealed sections addressed definitions of certain words (person

⁴Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn Laws 185.

- 20 times, and commissioner - 16 times, were the most common). Thirty-seven of the repealed laws had already been re-codified and transferred to other sections of the Minnesota statutes or were dependant upon previously repealed sections. The remainder of the repealed sections were a hodge-podge of assorted statutes that had long ago ceased to be relevant (the initiation of staggered terms for commissioners, bonding provisions for bonds which had been retired, etc.)

Most important, an examination of each one of the 300 plus repealed statutes shows that not a single one revived or re-enacted any law. The Act passed 131-0 in the House vote. The Senate appears to have given general orders to pass the Act. Buried among these items was subdivision 4 of § 466.12. There is no explanation in the Act or the legislative history as to why the sunset provision was repealed 22 years later.

Further, § 466.12, as originally passed and in its current wording, directs schools seeking immunity to contact the “commissioner of insurance” for verification that insurance is unavailable at the statutory rate. As Respondent conceded below, the commissioner of insurance no longer exists. See Laws 1983, ch. 289, § 114 subd. 1. The office formerly known as the commissioner of insurance is now known as the commissioner of commerce.

ISSUE

Was Minn. Stat. § 466.12, which expired by its own terms on July 1, 1974, revived by the Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn. Laws 185, 187?

ARGUMENT

The present question is before the Court because the Revisor of Statutes, when compiling the Act's list of obsolete laws, included only subdivision 4 of § 466.12 instead of the entire statute. Subdivision 4 contained a repealer that caused the entire statute to "sunset" on July 1, 1974. Respondent has argued that by repealing only the repeal date, the legislature intended to revive the entire statute. That argument is borne out in neither the facts nor the law.

When looking to the intent of the legislature, the courts of this State have long held that the title of a statute or bill is "very significant as to the intent of the Legislature." State v. Elmquist, 276 N.W. 735 (Minn. 1937). Not only is the title important in divining intent, it is also a constitutional imperative that the title of a bill reflect its subject matter. MINN. CONST. art IV, sec. 17 ("No law shall embrace more than one subject, which shall be expressed in its title."). The Act at issue here is titled "An act relating to state government; repealing obsolete laws." The Act was intended to have one purpose, and only one purpose; the repeal of obsolete laws.

The Minnesota Legislature has also provided, in Chapter 645, guidance on how its statutes are to be interpreted. Included in Chapter 645 is a specific directive on how the courts are to interpret the legislature's intent where it repeals a statute that itself had repealed another statute. The legislature advises courts by this rule of statutory construction that unless the legislature specifically directed that the prior statute was to be

revived, the mere repeal of the repealer should not be construed to do so.

When a law is repealed which repealed a former law, the former law shall not thereby be revived, unless it is so specifically provided. MINN STAT. § 645.36 (emphasis added).

The purpose of this specific rule of statutory construction is obvious, namely to ensure that before a statute that was already repealed and without legal force and effect is revived, the legislature's intent to do so must be clear and unmistakable. And, it also stands to reason that the longer the statute was without legal force and effect, the more certain the legislature would want to make its intent known.

Minnesota's statutory rule that the repeal of a repealer does not revive the original statute is consistent with the majority of American jurisdictions. See NORMAN J. SPRINGER, 1A SUTHERLAND STATUTORY CONSTRUCTION § 23:32 (6th ed.)(stating the majority of states have enacted such statutes and indicating in order to overcome this presumption, the repeal should contain an express declaration if there is an intent to revive the original statute); accord, Union Bank v. Superior Court, 115 Cal.App.4th 484, 489 (2004)(“repeal of an Act repealing a former Act does not revive the former Act, or give it any force and effect. This result can only be accomplished by the reenactment of the former Act”); MCI Telecom. Inc. v. Ameritech, Inc., 596 N.W.2d 164, 177 (Mich. 1999)(agreeing “that the repeal of a repealing act does not reinstate the legislation first repealed.”); Lily Lake Road Defenders v. County of McHenry, 619 N.E.2d 137, 149 (Ill. 1993)(“Repeal of the repealing statute does not revive the repealed law. The legislature

must expressly reenact a statute which has been repealed by implication to render it valid and enforceable again.”); see also, Sunflower Racing, Inc. v. Comm’rs of Wyandotte Co., 885 P.2d 1233, 1241 (Kan. 1994); State Bank of Barksdale v. Cloudt, 258 S.W. 248 (Tex. 1924); Hannon v. Metro. Dev. Comm’n, 685 N.E.2d 1075, 1082 (Ind. Ct. App. 1997).

This rule of statutory construction also avoids confusion over the legislature’s intent. See Jackson v. Michigan Corr. Comm’n, 21 N.W.2d 159, 162 (Mich. 1946) (“Doubtless, one major reason for the change in the common law by the adoption of the statutory [anti-revival] rule of construction was to obviate uncertainty and confusion.”)

The Act that repealed the repeal date contained in § 466.12 subd. 4 contained no specific directive that the entirety of § 466.12 was intended to be revived through repeal of the repeal date. The Act passed through the legislature without a single “no” vote and without debate. Nothing in the legislative history, nothing by way of contemporaneous events, and nothing that occurred after this 1996 legislation⁵ remotely shows that the legislature intended to revive § 466.12.

It is anticipated that Respondent will argue that another canon of statutory construction controls over the clear anti-revival/repeal language of § 645.36, specifically that the legislature is presumed to act with full knowledge of what it does. See Goodyear Tire & Rubber Co. v. Dynamic Air, Inc., 702 N.W.2d 237 (Minn. 2004). However, this

⁵ It is important to remember, as explained in Appellants’ initial briefing, at p. 15, that the Respondent (the only district in the state to seek immunity under this statute) knew of this statute not because of lobbying the legislature to revive § 466.12 or publicity over its revival, but only because it “stumbled” across it while investigating how to become self insured.

argument is both self defeating and runs afoul of yet another canon of statutory construction, namely, that a specific provision controls a general provision. See MINN. STAT. § 645.26. To follow the presumption that the legislature has acted with full knowledge in repealing only subdivision 4 also requires the same application of the presumption to the fact that the legislature knew that repealing a repealer, without “specifically provid[ing]” its intent to revive the prior law, would not in fact revive the prior law. Additionally, the general canon that the legislature acts with full knowledge is trumped by the more direct and specific canon that the repeal of a repealer does not revive the prior law.

Likewise, it is anticipated that Respondent will argue, as it did at oral argument, that a “sunset provision” is not the same as a repealer and should not therefore be governed by § 645.36. The argument is a distinction without a difference. See Trichilo v. Sec. of Health and Human Serv., 823 F.2d 702, 705 (2nd Cir. 1987)(recognizing that a sunset provision is a repealer and that any argument about how to properly describe the term as “much ado about nothing and wholly academic.”). Regardless of whether subdivision 4 is characterized as a “repealer” or a “sunset provision”, the legislature’s actions show the same legislative intent and the same result, namely the end of the legislation.

Additional proof that the legislature never intended to revive the provisions of § 466.12 is found in the fact that since 1983, there no longer exists a “Commissioner of

Insurance” to certify that a school cannot get insurance at the rate of \$1.50 per student. If the legislature had intended to revive § 466.12, it would have taken the time to change the language of subdivision 3a to ensure that a government position actually exists which can certify that a school district could not obtain insurance at the given rate \$1.50.⁶

It is useful, when examining the Minnesota Legislature’s actions in 1996, to compare these with the actions of a legislative body that did intend to revive a statute by repealing the sunset date that had already passed. In 1980, during the Carter presidency, Congress enacted the Equal Access to Justice Act (EAJA) and included a sunset date of October 1, 1984. Congress found that the law was working well and attempted to repeal the sunset provision prior to it taking effect in 1984. However, President Reagan was now in office, and because he had certain concerns about the law, he vetoed Congress’s attempt to repeal the sunset provision. See generally, Allen v. Bowen, 821 F.2d 963 (3rd Cir.1987), Trichilo v. Sec. of Health and Human Serv., 823 F.2d 702 (2nd Cir. 1987).

Congress ultimately satisfied President Reagan’s concerns about the EAJA, but by then, the sunset date had passed. In order to ensure that its intent to revive the EAJA was clear and explicit, Congress took care to state that the EAJA “shall be effective on or after the date of the enactment of this Act as if [it] had not been repealed by [the sunset

⁶ In 1983, as part of a reorganization of state government, Minnesota’s Commerce Department took over responsibility for insurance, and the position of Commissioner of Insurance was replaced by the Commissioner of Commerce. Laws 1983, ch. 289, § 114.

provision] of the Equal Access to Justice Act.”⁷ As clear as this language was, Congress went even further to express its intent, stating: “This amendment is necessary because by its terms the EAJA Act was set to expire or permanent authorization of the Act would have been in place by October 1, 1984. Because of the hiatus which occurred between October 1, 1984 and this bill, it is necessary to revive those provisions of the law which were repealed, and subdivision 6(a) does that.” Allen v. Bowen, 821 F.2d at 966, fn. 1 (3rd Cir.1987) (citing H.R.Rep. No. 120, 99th Cong., 1st Sess. 20-21.)

Here, of course, the legislature made no attempt to evidence its intent to revive the entirety of § 466.12 because it had no intent to do so.

Finally, the above example of Congress taking care to evidence its intent to revive the EAJA also demonstrates a striking contrast with the instant statute. Congress’s repeal of the sunset provisions of that statute reflected its reasoned and considered approval of the substance of the law. Here, of course, the substance of the statute at issue would deprive injured schoolchildren of a remedy. We must give the legislature enough credit to assume that if they had intended to deprive every public school child in the state of a remedy, they would have at least discussed the topic and had an open debate about the issue. This was never done. Further, one must anticipate at least one “no” vote from either a House or Senate member. No such “no” vote appears in the record. All of the conclusions to be drawn from the evidence in this matter point to the fact that the

⁷ Public Law 99-80, HR 2378, Aug. 5, 1985, Subd 6(a)

legislature viewed the Act as a purely procedural issue intended to remove obsolete laws, not as a means to create statewide immunity.

At the end of the day, and based upon all of the factors that go into evaluating the legislature's intent, particularly § 645.36, the legislature's 1996 Act was just what it's title indicated, a repeal of "obsolete laws." Twenty two years after it expired of its own accord, § 466.12 was in fact such an obsolete law. Section 466.12 was not "revived" in 1996.

CONCLUSION

Because Minnesota statutory law is clear that the repeal of a repealer does not revive the previously repealed law unless accompanied by an explicit legislative intent and because the legislature never evidenced any such intent here, the legislature's 1996 Act did not revive § 466.12. As such, Respondent's claim of sovereign immunity based upon § 466.12 must fail and these cases should be remanded for trial on the merits.

Respectfully submitted,

**YAEGER, JUNGBAUER & BARCZAK,
PLC**



Erik D. Willer, #330395
Michael L. Weiner #127991
Christopher J. Moreland #278142
745 Kasota Avenue
Minneapolis, MN 55414
(612) 333-6371
ATTORNEYS FOR PLAINTIFF

Dated: 3-23-07

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) (with amendments effective July 1, 2007).