

NO. A09-1800

State of Minnesota
In Supreme Court

Linda Marie LaDonna Dahlin,

Respondent,

vs.

Randall Earl Thomas Kroening,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF THE ISSUES

Can a Judgment Creditor Obtain Multiple “Renewals” of a Judgment by Commencing a Common Law Action on a Judgment that Was Entered in a Prior Action on a Judgment?

District Court Holding: The district court held that a judgment renewal action does not create a new judgment and that a judgment therefore may not be renewed multiple times.

Court of Appeals Holding: The court of appeals reversed the district court and held that because an action on a judgment results in the entry of a new judgment, a judgment creditor may commence an action on such new judgment within the statutory limitations period.

Apposite Authorities:

Minn. Stat. § 541.04 (2008)

Newell v. Dart, 28 Minn. 243, 9 N.W. 732 (1881)

Fidelity Nat'l Financial Inc. v. Friedman, 238 P.3d 118 (Ariz. 2010)

William Blackstone, 3 *Commentaries* *421

STATEMENT OF THE CASE

Respondent Linda Marie LaDonna Dahlin (hereinafter "Dahlin") commenced the present action by serving a Summons and Complaint on Appellant Randall Earl Thomas Kroening (hereinafter "Kroening") on March 24, 2008. (App. Add., at pp. 7-12.¹) The Complaint alleged that a judgment was entered in Ramsey County District Court against Kroening and in favor of Dahlin on April 6, 1998; that no part of such judgment had been paid; and that a judgment "may be extended for an additional ten years by bringing an action upon the Judgment prior to the expiration" of the applicable limitations period. (App. Add., at p. 8.) On or around April 8, 2008, Kroening served an Answer asserting that the judgment alleged in Dahlin's Complaint had "survived for ten years after its entry and died on April 6, 2008." (App. Add., at p. 13.)

Dahlin filed a motion for summary judgment on May 20, 2008, and Kroening subsequently filed a motion for leave to amend his Answer. (See App. Add., at pp. 15-16.) The district court (the Honorable Elena L. Ostby) heard both of these motions on July 28, 2008. (App. Add., at p. 15.) The district court filed Findings of Fact, Conclusions of Law, and an Order on October 27, 2008, in which the court granted Kroening's motion for leave to amend his Complaint.

¹ Throughout this Brief, Appellant's Brief is cited as "App. Br.," the Addendum attached to Appellant's Brief is cited as "App. Add.," and the Addendum attached to this Brief is cited as "Resp. Add."

(App. Add., at pp. 15-21.) Further, based on its conclusion that Dahlin “did not seek to create a new judgment,” but instead sought “a second renewal of a judgment arising out of a dissolution that occurred nearly sixteen years ago,” the district court purported to “deny” Dahlin’s Summons and Complaint. (App. Add., at pp. 20-21.) Given the uncertainty as to the status of a “denied” summons and complaint, and based on Kroening’s failure to file his Amended Answer, Dahlin eventually applied for entry of default judgment. (See App. Add., at p. 22.) Relying on its October 27, 2008, Findings of Fact, Conclusions of Law, and Order, the district court denied Dahlin’s application for entry of default judgment in an Order filed on March 19, 2009. (*Id.*)

Dahlin filed a Notice of Appeal on June 3, 2009. (Resp. Add., at p. 7.) In an Order dated July 21, 2009, the Minnesota Court of Appeals dismissed Dahlin’s appeal because the October 27, 2008, and March 19, 2009, orders of the district court were not final judgments and were not independently appealable; the court of appeals also directed the district court administrator to enter a judgment in compliance with Rule 58.01 of the Minnesota Rules of Civil Procedure. (Resp. Add., at pp. 10-13.) The district court administrator issued a Notice of Entry of Judgment on August 11, 2009, and Dahlin subsequently filed a timely Notice of Appeal. (Resp. Add., at p. 14; Notice of Appeal (Sept. 29, 2009).) Although the district court administrator had again failed to properly enter a judgment, the

court of appeals accepted jurisdiction over the appeal but directed the district court administrator to enter a proper judgment based on the October 27, 2008, and March 19, 2009, orders. (Order (Dec. 7, 2009).) Such judgments were eventually entered on January 22, 2010.

In an opinion published on July 6, 2010, the Minnesota Court of Appeals reversed the district court's "denial" of Dahlin's Complaint. *Dahlin v. Kroening*, 784 N.W.2d 406, 413 (Minn. Ct. App. 2010). Specifically, the court of appeals concluded that Minnesota common law has long recognized a cause of action on an existing judgment and that the district court's characterization of the present action as an action for a second renewal of a judgment, rather than an action to create a new judgment, is a meaningless "semantic distinction" that does not affect the legal analysis of the issue. *Id.* at 409-11.

In an Order dated September 21, 2010, this Court granted Kroenings' petition for further review of the decision of the court of appeals.

STATEMENT OF THE FACTS

The Ramsey County District Court entered a Judgment and Decree of Dissolution on May 16, 1978, that required Kroening to pay to Dahlin a total of \$20,000.00 in spousal maintenance, payable in monthly payments of \$250.00. (*See* Resp. Add., at p. 5.) On April 12, 1988, the Ramsey County District Court found that Kroening was in default of this obligation in the total amount of \$8,750.00

and that Dahlin had previously obtained a judgment for spousal maintenance arrearages in the amount of \$1,750.00. (Resp. Add., at p. 6.) Accordingly, the court ordered the entry of a judgment in favor of Dahlin and against Kroening in the amount of \$7,000.00, which judgment was subsequently docketed in Ramsey County on October 24, 1988. (*Id.*; App. Add., at p. 1.)

During the ensuing 10 years, Kroening failed to satisfy the April 12, 1988, judgment. On or around March 4, 1998—shortly before the expiration of the 10-year limitations period for enforcement of a judgment—Dahlin commenced a new action alleging that such judgment had been duly filed and docketed but had not been paid and that a judgment “may be extended for an additional ten years by bringing an action upon the Judgment prior to the expiration” of the 10-year limitations period. The Complaint in Dahlin’s new action sought a judgment in the original judgment amount of \$7,000.00 plus “interest at the judgment rate.” (App. Add., at pp. 2-5.)

On April 6, 1998, the Ramsey County district court entered and docketed a new judgment in favor of Dahlin and against Kroening in the amount of \$7,227.00. (App. Add., at p. 6.) After Kroening again failed to pay any part of the

April 6, 1998, judgment during the ensuing 10-year period, Dahlin commenced the present action on March 24, 2008, as set forth above.²

ARGUMENT

I. Standard of Review.

As the court of appeals correctly recognized, the Minnesota Rules of Civil Procedure do not contemplate or permit the “denial” of a summons and complaint. *Dahlin*, 784 N.W.2d at 408. But this matter was before the district court on Dahlin’s motion for summary judgment when the court issued its Findings of Fact, Conclusions of Law, and Order on October 27, 2008. (App. Add., at pp. 15-21.) On such a motion, the district court may grant summary judgment in favor of the non-moving party if the undisputed facts establish that

² Dahlin’s Complaint alleges that “no part of the [April 6, 1998 judgment] has been paid” (App. Add., at p. 8), but the record does not contain any admissible evidence either supporting or challenging this factual allegation. The district court, however, “denied” Dahlin’s Complaint based on the legal conclusion that a judgment cannot be renewed multiple times. Moreover, Kroening has not argued to either the district court, the court of appeals, or this Court that he paid any portion of the judgment, and the court of appeals assumed that the April 6, 1998, judgment remains unsatisfied, *see Dahlin*, 784 N.W.2d at 408. Given the factual record and the procedural posture in this case, this Court must assume for purposes of this appeal that the April 6, 1998 judgment has not been satisfied. *See, e.g., McIntosh County Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 544-45 (Minn. 2008); *Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 564 (Minn. 2008) (holding that when review the entry of summary judgment, this Court must “ ‘view the evidence in the light most favorable to the party against whom judgment was granted’ ” (quoting *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993))).

such party is entitled to judgment as a matter of law. *E.g., Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 280, 230 N.W.2d 588, 591-92 (1975); *Anderson v. Lappegaard*, 302 Minn. 266, 275, 224 N.W.2d 504, 510 (1974). Under the circumstances of this case, the court of appeals correctly concluded that “the district court’s decision was essentially a *sua sponte* grant of summary judgment on a matter of law.”³ *Dahlin*, 784 N.W.2d at 408.

On appeal from summary judgment, this Court must “review the record to determine whether there is any genuine issue of material fact, and whether the district court erred in its application of the law.” *McIntosh County Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 544-45 (Minn. 2008). The Court must not “weigh the evidence or make factual determinations,” and the evidence must be viewed “in the light most favorable to the nonmoving party.” *Id.* at 545; *accord Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

II. Because an Action on a Judgment Is an Independent Cause of Action that Results in the Entry of a New Judgment, Minnesota Law Allows Multiple “Renewals” of a Money Judgment.

The sole issue presented on this appeal is whether a judgment creditor may “renew” an unsatisfied judgment multiple times by commencing a common law action on a judgment that is set to expire. Kroening concedes that Minnesota

³ Kroening agrees that the district court’s order should be considered as a *sua sponte* grant of summary judgment. (*See App. Br.*, at p. 3.)

law recognizes “a cause of action to renew a judgment” but nonetheless argues that neither statute nor common law authorizes a second (or subsequent) “renewal” of a judgment. (App. Br., at pp. 3-9.) Kroening’s argument, however, ignores the fundamental nature of a judgment as a new indebtedness and the fact that a common law action on a judgment is a separate cause of action from the cause of action that resulted in the original judgment and that such an action must be commenced in a separate legal proceeding and necessarily results in a new and separate judgment that may form the basis for a new action on the judgment. Based on a full and proper understanding of these issues, the court of appeals correctly reversed the district court and held that Dahlin is entitled to “renew” her judgment against Kroening by commencing the present action on the April 6, 1998, judgment entered by the Ramsey County District Court.

A. A Money Judgment Represents a New Indebtedness Owed by the Judgment Debtor to the Judgment Creditor.

A judgment is “the final determination of the rights of the parties in an action or proceeding.” Minn. R. Civ. P. 54.01; *accord Black’s Law Dictionary* 858 (8th ed. 2004) (defining “judgment” as “[a] court’s final determination of the rights and obligations of the parties in a case”). A judgment requiring the payment of money establishes a debtor-creditor relationship between the parties and evidences the existence of a debt in the amount of the judgment. *Erickson v.*

Patterson, 47 Minn. 525, 527, 50 N.W. 699, 699 (1891); accord *Frost v. St. Paul Banking & Inv. Co.*, 57 Minn. 325, 331, 59 N.W. 308, 308-09 (1894); see also *Chader v. Wilkins*, 284 N.W. 183, 186 (Iowa 1939) (describing a judgment as “a contract of record” and stating that “[t]he obligation of such a judgment defendant is a debt” that arises *ex contractu*); *Livingston v. Livingston*, 66 N.E. 123, 125 (N.Y. 1903) (“A judgment creates an obligation of the highest nature known to the law, and it is enforceable against the judgment debtor as upon his promise to perform it . . .”). Further, the docketing by the court administrator of a money judgment—including a judgment for spousal maintenance, see Minn. Stat. § 548.091, subd. 1(b) (2010)—creates a lien for the unpaid amount of the judgment “upon all real property in the county then or thereafter owned by the judgment debtor.” Minn. Stat. § 548.09, subd. 1 (2010). Thus, the entry of a money judgment creates a new secured indebtedness that is owed by the judgment debtor to the judgment creditor and that satisfies the existing obligation or liability of the judgment debtor to the judgment creditor. See *Gould v. Hayden*, 63 Ind. 443, 449 (1878) (quoted below).

B. Minnesota Law Recognizes that a Money Judgment May Be “Renewed” by the Commencement of a Common Law Action on the Judgment Within the Applicable Limitations Period.

Under Minnesota statute, a money judgment (except for a child support judgment) survives for a period of 10 years after its entry. Minn. Stat. § 548.09,

subd. 1. This statute is consistent with common law, which provided a limited duration during which a judgment could be executed upon and enforced. *Fidelity Nat'l Fin. Inc. v. Friedman*, 238 P.3d 118, 119 (Ariz. 2010) (“At common law, judgments generally became dormant if not executed upon within a year of entry and were unenforceable after twenty years.”); William Blackstone, 3 *Commentaries* *421 (“But all these writs of execution must be sued out within a year and a day after the judgment is entered; otherwise the court concludes *prima facie* that the judgment is satisfied and extinct.”). But the common law mitigated the effect of this limitation on judgment creditors by providing two mechanisms to permit enforcement of a judgment after this period: (1) a writ of scire facias; and (2) the commencement of a new action of debt on the judgment. *Fidelity Nat'l Fin.*, 238 P.3d at 119-20; William Blackstone, 3 *Commentaries* *421.

The Arizona Supreme Court recently described the common law cause of action on a judgment, as codified in that state, as follows:

[E]very judgment continues to give rise to an action to enforce it, called an action upon a judgment. . . . As was true at common law, the defendant in an action on the judgment under our statutory scheme is generally the judgment debtor, and the amount sought is the outstanding liability on the original judgment. The judgment debtor cannot deny the binding force of the judgment, but can assert such defenses as satisfaction or partial payment. If indebtedness remains on the original judgment, the action results in a new judgment in the amount owed.

Fidelity Nat'l Fin., 238 P.3d at 121 (internal citations and quotation marks omitted). Or as the Indiana Supreme Court recognized more than 130 years ago:

A judgment is a “debt of record;” and, whether foreign or domestic, an action may be maintained thereon for the recovery of such debt, even where it might appear that the judgment plaintiff could enforce the collection of his judgment by an execution issued out of the court in which it was rendered. The judgment plaintiff, of course, controls his judgment. He may enforce its collection by the process of the court in which he obtained his judgment, or he may if he may elect so to do, use his judgment as an original cause of action, and bring suit thereon in the same or some other court of competent jurisdiction, and prosecute such suit to final judgment. This procedure he may pursue as often as he elects, using the judgment last obtained as a cause of action on which to obtain the next succeeding judgment; but the very freedom with which this may be done, *ad infinitum*—and we know of no law or legal principle which would prevent its unending repetition—is, to our minds, a convincing and conclusive reason why each successive personal judgment ought to and must be regarded as a complete merger and extinguishment of the preceding judgment, with all its qualities and incidents.

Gould, 63 Ind. at 448-49 (internal citation omitted). Finally, the United States Supreme Court has recognized that an action on a judgment is a separate and distinct cause of action based on the indebtedness evidenced by the judgment and not on the underlying claim that resulted in the entry of the judgment:

A cause of action on a judgment is different from that upon which the judgment was entered. In a suit upon a money judgment for a civil cause of action, the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money in the nature of a debt upon the specialty.

Milwaukee County v. M.E. White Co., 296 U.S. 268, 275 (1935). Accord *Town of Fletcher v. Hickman*, 165 F. 403, 404 (8th Cir. 1908) (holding that “[t]he obligation of the judgment debtor is to pay the judgment when rendered” and that if the debtor fails to perform this obligation, a judgment creditor may bring an action on a judgment and obtain “a second judgment”); see also *Gaines v. Miller*, 111 U.S. 395, 399 (1884) (“Their only remedy was to enforce the judgment or to bring another suit upon it.”).

Kroening argues that at common law, the renewal of a judgment is merely an extension of the existing judgment and does not create a new, independent judgment. (App. Br., at p. 8.) In support of this proposition, Kroening cites Blackstone for the proposition that a defendant “may not be harassed a second time on the same judgment.” (*Id.*) Kroening’s reliance on Blackstone, however, is misplaced—the cited text states that when a judgment has been paid, “satisfaction ought to be entered on the record, [so] that the defendant may not be liable to be hereafter harassed a second time on the same account.” William Blackstone, 3 *Commentaries* *421. When viewed in context, Blackstone’s statement that a defendant should not be “harassed a second time” merely meant that a defendant may not be forced to satisfy a judgment a second time and did not relate in any way to whether a judgment may be renewed multiple times.

Thus, under the common law, a judgment provides a new basis for a cause of action on a debt, and such an action is an independent proceeding that results in a new, independent judgment.

1. This Court Has Recognized that an Action on a Judgment Is a Valid Cause of Action that Results in a New Judgment.

Although this Court has never expressly analyzed the historical underpinnings of an action on a judgment, this Court has recognized, both implicitly and explicitly, the existence of this cause of action throughout the history of this state.⁴

In a case decided by this Court the same year that Minnesota became a state, Alfred Tracy commenced an action on a Missouri judgment entered in December 1840 against William Holcombe, one of the judgment debtors. *Holcombe v. Tracy*, 2 Minn. 241, 242 (1858). Holcombe answered and alleged that the action was barred by the statute of limitations, but the trial court awarded the plaintiff a judgment on the pleadings. *Id.* This Court reversed the trial court, concluding that there was an issue of fact as to when the statute of limitations

⁴ Recently, the propriety of renewing a judgment by commencing a new action on the judgment was raised in the lower courts, but this issue was not raised in the proceedings before this Court. This Court noted the practice that “[j]udgment creditors sometimes seek to renew an existing judgment by commencing a new civil action within the 10-year limitations period and obtain[ing] a new judgment” and assumed without deciding that this practice was proper. *Shamrock Development, Inc. v. Smith*, 754 N.W.2d 377, 380 n.2 (Minn. 2008) (emphasis added).

began to run, *id.* at 246-47, but this Court did not express any doubt or concern as to the validity of the underlying cause of action on the judgment.

This Court addressed the nature of the common law action on a judgment most directly in *Newell v. Dart*, 28 Minn. 243, 9 N.W. 732 (1881). In that case, a judgment creditor commenced an ancillary proceeding in aid of execution of a judgment, but the 10-year limitations period on the judgment expired during the course of the proceedings. *Id.* at 248-49, 9 N.W. at 733. This Court expressly distinguished the ancillary proceeding in aid of execution of an existing judgment, which had been brought in that case, from “an action brought upon the judgment as a cause of action in order to obtain a new judgment” and noted that “nothing but a renewal within the life of the judgment will continue the lien of the judgment.” *Id.* at 249-50, 9 N.W. at 733 (emphasis added); *see also Town of Fletcher*, 165 F. at 404 (recognizing that “[t]he right to enforce payment of a judgment by process of execution is merely cumulative” with the right to bring a new action on the judgment).

In a subsequent case, this Court was faced with the question of whether the Minnesota statute of limitations precluded the commencement of an action on foreign judgment where the foreign judgment was more than 10 years old but was still valid and able to be renewed under the laws of the state from which it originated. *Gaines v. Grunewald*, 102 Minn. 245, 246, 113 N.W. 450, 451 (1907). In

analyzing this issue, this Court discussed the legal rule applicable to an action on a domestic Minnesota judgment:

No action could then, or now, be maintained on such judgments after the expiration of 10 years from the entry thereof; for by virtue of the statute such judgments in all cases ceased to exist as such, or as a cause of action, after 10 years from their rendition. The cause of action on such a judgment, however, is saved by commencing it at any time within 10 years from the time of its rendition, although the action is not finally determined until after the expiration of the 10 years.

Id. at 247, 113 N.W. at 451 (internal citations omitted).

In *Brennan v. Friedell*, a judgment creditor brought an action “to renew a personal judgment.” 215 Minn. 499, 500, 10 N.W.2d 355, 356 (1943). This Court analyzed the judgment debtor’s asserted defenses that an execution sale that had been conducted to partially satisfy the judgment was fraudulent and invalid and that “the fair and reasonable value” of the property sold should be credited toward the unsatisfied judgment and, without expressing any question as to the general propriety of renewing a judgment, reversed the trial court’s denial of the judgment creditor’s demurrer. *Id.* at 500-02, 10 N.W.2d at 356.

Finally, in two separate cases, this Court has also addressed issues regarding service of a valid summons in an action on a judgment or an action to renew a judgment without raising any question with respect to the validity of the underlying cause of action. *Tharp v. Tharp*, 228 Minn. 23, 36 N.W.2d 1 (1949); *Siewert v. O’Brien*, 202 Minn. 314, 278 N.W. 162 (1938).

As these cases demonstrate, throughout the history of this state, this Court has recognized the common law action on a judgment as a separate and new cause of action that results in a new judgment against the judgment debtor.

2. By Establishing a Statutory Limitations Period Within Which an Action on a Judgment Must Be Commenced, the Minnesota Legislature Has Recognized the Common Law Action on a Judgment.

As noted above, Minn. Stat. § 548.09, subd. 1, provides that a money judgment (except for a child support judgment) survives for a period of 10 years after its entry. Consistent with this 10-year lifespan of a money judgment, Minnesota statute establishes a 10-year limitations period within which to commence an action on a judgment: “No action shall be maintained upon a judgment or decree of a court of the United States, or any state or territory thereof, unless begun within ten years after the entry of such judgment.” Minn. Stat. § 541.04 (2008).⁵

Kroening argues that the court of appeals erred in concluding that the renewal of a judgment creates a new judgment because Minn. Stat. § 541.04 is

⁵ Earlier this year, the Minnesota Legislature amended Minn. Stat. § 541.04 to further provide that an action on a judgment for child support must be “begun within 20 years after entry of the judgment.” Act of April 15, 2010, ch. 238, § 4, 2010 Minn. Laws 383, 388. The present case, however, does not involve a child support judgment, and this amendment did not alter the statutory language applicable to other money judgments. Accordingly, this amendment does not impact the legal analysis in this case.

“exclusively procedural” and “cannot be construed as the authority for the creation of a new cause of action.” (App. Br., at p. 7.) Dahlin agrees that this statute does not create a cause of action on a judgment, but this point is wholly irrelevant because, as described above, the cause of action on a judgment was created by and exists at common law. See *Larson v. Wasemiller*, 738 N.W.2d 300, 304 (Minn. 2007) (“Ultimately, we need not determine whether the statute creates a cause of action because, at the very least, the statute does not negate or abrogate such a cause of action and this leaves us free to consider whether the cause of action exists at common law.”); *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000) (“We have for as long presumed that statutes are consistent with the common law, and if a statute abrogates the common law, the abrogation must be by express wording or necessary implication.”). Minnesota Statutes § 541.04 cannot reasonably be construed to negate or abrogate the common law cause of action on a judgment—indeed, the statute expressly recognizes the existence of such a cause of action by establishing a limitations period within which such an action must be commenced.

Kroening also argues that permitting multiple judgment renewals is contrary to the intent of the Minnesota Legislature. (App. Br., at pp. 9-12.) Minnesota Statutes § 548.091, subdivision 3b (2010), creates a separate administrative process by which child support judgments may be renewed by

the court administrator upon the filing of a notice of renewal and proof of service and without the commencement of a new judicial action on the judgment. The statute also provides that “[c]hild support judgments may be renewed multiple times until paid.” *Id.* As the court of appeals thoroughly and correctly explained in its opinion in this case, Minn. Stat. § 548.091, subd. 3b, does not express any intent to limit or alter the common law regarding the renewal of a judgment through the commencement of an actions on the judgment, but instead merely provides an easier and cheaper administrative process for child support judgment creditors to renew their judgments. *Dahlin*, 784 N.W.2d at 411-12; *see also Gerber v. Gerber*, 714 N.W.2d 702, 705 (Minn. 2006) (holding that Minn. Stat. § 548.091, subd. 3b, “shows nothing more than 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”).

Further, this Court has consistently recognized that statutes are presumed to be consistent with the common law and that any abrogation of common law must be “by express wording or necessary implication.” *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 776 (Minn. 2004); *Ly*, 615 N.W.2d at 314. As described above, the common law recognized that an action on a judgment is a separate cause of action that results in a new judgment that may be enforced

(either through ancillary collection proceedings or by another action on the new judgment) within the 10-year limitations period. Because the express authorization of multiple renewals of a child support judgment through a unique administrative procedure does not expressly or necessarily alter the common law procedures applicable to other money judgments, *see* Minn. Stat. § 548.091, subd. 3b, this statute is not sufficient to abrogate or negate the common law rule on this subject.

As set forth above, the overwhelming weight of authority—both from this Court and from other courts—establishes that an action on a judgment is an independent cause of action to collect the indebtedness that is evidenced by the judgment and is not merely a continuation or ancillary proceeding of the earlier action that resulted in the prior judgment. As such, the new proceeding must necessarily result in a new judgment making a final determination of the parties' rights and obligations with respect to the new cause of action. *See* Minn. R. Civ. P. 54.01. And this new judgment evidences a new indebtedness and may be enforced in the same manner as any other judgment, including by commencing a action on the new judgment within 10 years of its entry. Minnesota law thus permits multiple “renewals” of judgments as described herein.

C. Public Policy Concerns Do Not Support a Limit on the Renewal of Money Judgments.

Finally, Kroening argues that the public policy in favor of finality of judicial decisions requires that a money judgment may only be renewed one time. (App. Br., at pp. 12-14.) Specifically, Kroening suggests 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.” (*Id.*, at p. 13.)

Kroening’s public policy argument, however, ignores the simple fact that a judgment debtor is legally obligated to pay the amount of the judgment to the judgment creditor, and the issue of the renewal of a judgment only arises where a judgment debtor (such as Kroening) has failed to satisfy that obligation. As the Eighth Circuit recognized in *Town of Fletcher*, “[i]f the judgment debtor desired to escape the vexation and annoyances of successive suits, it is pertinent to suggest that he had it in his power to do so, and at the same time save his creditor from greater vexation and annoyance, by discharging his obligation and paying his debt when due.” 165 F. at 405. Moreover, if a judgment debtor is truly unable to pay a judgment, federal statute provides such a debtor a means to obtain a fresh start and free himself of judgment debts by filing for bankruptcy. Finally, the requirement that a judgment creditor take affirmative steps to maintain her judgment by commencing a new cause of action on the judgment within 10 years is sufficient to ensure that stale and uncollectable judgments do not pile up on

the judgment rolls and that the judgment debtor and other potential creditors of the judgment debtor have notice of the continued viability of the judgment debt. Accordingly, there is no need to impose an arbitrary limit that a judgment creditor may renew a judgment once, but only once, in order to address the public policy concerns raised by Kroening.

CONCLUSION

A judgment represents a new indebtedness that may be enforced by the commencement of a new common law action on the judgment within the statutory limitations period. This action is an independent proceeding that results in the entry of a new judgment that may form the basis for a new action on such judgment. Accordingly, Dahlin respectfully requests that this Court affirm the decision of the Minnesota Court of Appeals and hold that Dahlin is entitled to "renew" her April 6, 1998, judgment against Kroening through the present common law action on such judgment.

Dated this 22nd day of November, 2010.

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No. A09-1800

STATE OF MINNESOTA
IN SUPREME COURT

Linda Marie LaDonna Dahlin,

Respondent,

vs.

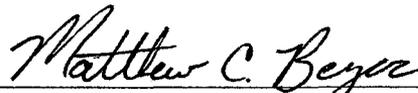
Randall Earl Thomas Kroening,

Appellant.

CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a 13 point font. The length of this brief is 5,347 words. This brief was prepared using Microsoft Word 2003.

Dated this 22nd day of November, 2010.



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