

No. A12-0216

STATE OF MINNESOTA
IN COURT OF APPEALS

Mark A. VanGelder,

Appellant,

vs.

June M. Johnson,

Respondent.

BRIEF AND APPENDIX OF RESPONDENT JUNE JOHNSON

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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).

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STATEMENT OF THE ISSUES

- I. Did the district court err in finding that Respondent is entitled to quasi-judicial immunity as a parenting consultant hired pursuant to the terms of a court-approved marital termination agreement?
- II. Did the district court err in finding that Respondent acted under the scope of authority granted by the marital termination agreement signed by Appellant and his ex-wife?
- III. Did the district court err in finding that Respondent acted within the scope of the Judgment and Decree governing the parties' parenting consultant agreement?

STANDARD OF REVIEW

When reviewing a trial court's grant of summary judgment, the function of an appellate court is to determine (1) whether there are any genuine issues of material fact, and (2) whether the trial court erred in its application of the law.

Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427

(Minn.1988); *See also National Hydro Systems, a Div. of McNish Corp. v. M.A.*

Mortenson Co., 507 N.W.2d 27, 28 (Minn.Ct. App. 1993).

A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

There is no genuine issue of material fact when the record on the whole “could not lead a rational trier of fact to find for the non-moving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). To resist summary judgment, a party must produce more than mere averments; the party must establish the genuine issue for trial through substantial evidence. *Id.* at 69-71.

STATEMENT OF FACTS

Appellant, Mark A. VanGelder and his ex-wife, Mary Clifford are parties to a dissolution proceeding, Sherburne County District Court Case no. 71-F4-05-1162. A.1-27. The court in the dissolution proceeding filed a Judgment and Decree on May 27, 2005, based on a Marital Termination Agreement (hereinafter, "MTA") that directed the parties to hire a parenting consultant if the parties could not agree on a parenting issue. A.12. Under the MTA, the parties stipulated to allow the Parenting Consultant under Section 4(b) to have the authority to:

...resolve parenting and access time disputes by enforcing, interpreting, clarifying and addressing circumstances not specifically addressed by the parenting time provisions of this Order including the following issues: the time and location for the access exchange, any other parenting time decisions the parties cannot reach agreement on, and parenting issues which arise and impact the minor child. The parenting consultant shall also have the authority to make changes in the access schedules as the minor child grows older. A.13, ¶4b. (emphasis added).

On May 3, 2010, after a failed attempt at reconciliation, Appellant and his former wife, Mary Clifford, entered into a Parenting Consultant Agreement (hereinafter, "PCA") with Respondent, because the parties had reached an impasse concerning parenting time and other issues involving their minor daughter. A.28-31. Pursuant to the agreement, Respondent was to assist Appellant and his ex-wife with their parenting issues. A.28. A parenting issue is defined in the MTA as: "... a disagreement between the parties about access time with the minor child, including a dispute about an anticipated denial of a future

scheduled visit, a parenting issue dispute may also include parenting issues which may arise, or the future school breaks of the child and the time periods the parents spend with the child during that time (such as during spring break, winter break and summer vacation). A.13, ¶4c. (emphasis added) The scope of the PCA mirrored the MTA in that it gave Respondent the authority to make binding decisions for the parties. A.13, ¶4e; A.28, ¶3.

Appellant's attorney at the time, Ms. Debra Yerigan of Messerli & Kramer, denied Respondent's request to be appointed with a separate order from the court. A.42. "Ms. Yerigan said in this case there was already a complete appointment within the MTA. If the parties were in agreement with my contract, there would be no need." [to obtain a separate order appointing Respondent as parenting consultant] Resp. Dep. T. pg.44, ln.16-23; A.42. According to a comparison of the roles in Minnesota Family Cases, a Court ordered parenting consultant may only be ordered with consent of the parties and such order is made pursuant to Minnesota Rules of General Practice 114.02(a)(10) governing other ADR processes. A.98.

Respondent worked with Ms. Yerigan to incorporate the terms of the MTA into Respondent's parenting consultant agreement. Resp. Dep. T. pg. 70, ln. 9-15; A.49. For example, Respondent's contract provided that if the parties didn't agree with her decisions, they had only 15 days to bring an objection before the district court. Resp. Dep. T. pg. 72, ln.1-25; pg.73 ln.1-4; A.49-50. Ms. Yerigan provided Respondent with a copy of the MTA providing 20 days to bring such an objection.

Resp. Dep. T. pg.42, ln.24-25; pg.43, ln. 1-7; A.42. Based on the MTA and Ms. Yerigan's representations, Respondent altered her contract to "mirror" the terms of the MTA. Resp. Dep. T. pg. 40, ln.1-12; A.41. Ms. Yerigan told Respondent there was a complete appointment. Resp. Dep. T.42; ln.16-23; A.49.

In her role as parenting consultant, Respondent interviewed Appellant and his former wife separately. Resp. Dep. T.40; ln. 21-25; A.41. Respondent gathered information from the parties based on their initial meetings, such as their daughter's school records and report cards; daughter's therapist's opinions and impressions, and monitored Appellant's email exchanges to and from his former wife. Resp. Dep. T. pg.78, ln. 16-25; pg.79, ln. 1-22; pg. 87, ln. 3-24; A.51; A.53. In addition, Respondent communicated with Appellant's attorney and his ex-wife's attorney and provided both attorneys with copies of her decisions as required by the MTA. A.85; (showing both attorneys copied on May 31, 2010 decision); A.13, ¶¶; (Provides that the parenting consultant "must put decision in writing and provide a copy to the parties and their counsel" – not to the district court.)

After completing her initial analysis, Respondent issued a decision, dated May 31, 2010. A.79-85. This decision established a new parenting time schedule and made recommendations, including that Appellant complete the previously court-ordered co-parenting course. App.80-82. In the months after that decision, Respondent continued monitoring Appellant's email exchanges with his former wife and continued monitoring the minor child's school records and therapist notes and impressions. A.59-60. Based on all the information provided to her,

Respondent issued a second decision, with additional recommendations to address new issues brought to Respondent's attention such as the minor child's reported embarrassment at being forced to accompany Appellant to his place of business, which is an adult bookstore. A.86-88.

In accordance with the PCA, Respondent met with each parent, gathered information from the minors' therapist and attempted to assist them by facilitating communication about parenting time and other parenting issues.

A.51. As provided in the PCA, Respondent produced written decisions which were submitted to Appellant, his former wife, and their respective attorneys. A.28-31.

Pursuant to the PCA and the MTA, Appellant and his former wife had 20 days to appeal any decision made by Respondent to the district court. A.14; A.28.

Appellant failed to timely appeal either decision made by Respondent in her role as parenting consultant. RA-026-031. (Honorable Judge Hancock's January 26, 2010 Order)¹ Neither did Appellants' former wife object to any of Respondent's decisions. RA-028. (Judge Hancock's Findings of Fact, No. 5) Instead, Appellant filed a motion to vacate Respondent's decisions, but the court denied the motion. RA-031.

Procedurally, Appellant then filed a direct action against Respondent, alleging negligence and breach of contract. RA-050-055. (Appellant's Stearns County District Court Complaint) Respondent brought a motion for summary

¹ This order was later vacated as to the parenting time schedule pursuant to a stipulation between Ms. Clifford and Appellant.

judgment, which was granted by Honorable Judge Landwehr on January 18, 2012. RA-032-049. (Respondent's Notice of Motion and Motion, Memorandum of Law in Support of Motion for Summary Judgment) This appeal followed.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN FINDING RESPONDENT IS ENTITLED TO QUASI-JUDICIAL IMMUNITY, BECAUSE PARENTING CONSULTANTS ARE AN INTEGRAL PART OF THE JUDICIAL PROCESS IN FAMILY LAW CASES.

Quasi-judicial immunity is not a new concept in Minnesota law. *Brown v. Dayton Hudson Corp.*, 314 N.W.2d 210, 214 (Minn. 1981). While judicial immunity protects judges and other judicial officers, quasi-judicial immunity protects officers of the court, those appointed to carry out the court's orders, and certain political officers. *Dzubiak v. Mott*, 503 N.W.2d 771, 775-6 (Minn. 1993) (extending immunity from malpractice suits to public defenders); *L&H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 376-77 (Minn. 1989) (granting immunity to arbitrator even where arbitrator had conflict of interest); *Tindell v. Rogosheske*, 428 N.W.2d at 387 (Minn. 1998) (extending immunity to guardian ad litem, who acted as officer of the court and must be free to present vigorous and autonomous representation of child's best interests); *Myers through Myers v. Price*, 463 N.W.2d 773, 776 (Minn. Ct. App. 1990) (court-appointed therapist and his clinic found immune under quasi-judicial immunity doctrine), *rev. denied*, (Minn. Feb. 4, 1991); *Cf. Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302 (Minn. 2007) (legal secretary granted witness immunity for statements made in an affidavit used for litigation purposes in an action brought against a law firm by a third party).

The doctrine of quasi-judicial immunity protects individuals who perform quasi-judicial functions. *Zagaros v. Erickson*, 558 N.W.2d 516, 523 (Minn. Ct. App. 1997); *See also Peterka v. Dennis*, 744 N.W. 2d 28, 31 (Minn. Ct. App. 2008), *rev'd on other grounds*, 764 N.W.2d 829, 833 n.2 (Minn. 2009). Quasi-judicial immunity applies to persons who are an integral part of the judicial process. *Myers v. Price*, at 775. (recognizing that because judicial immunity protects the judicial process, immunity “extends to persons who are integral parts of that process”).

The Minnesota Supreme Court held that immunity for guardians ad litem in family court proceedings, “prevents harassment from disgruntled parents who could take issue with any or all of the guardian’s actions or recommendations to the Court.” *See Tindell*, 428 N.W.2d at 387. In Minnesota, courts have applied quasi-judicial immunity to commissioners, psychiatrists, medical doctors, assessors, accountants and guardians ad litem. *Id.*

In the case most analogous to this one, the Minnesota Supreme Court found that although a district court’s order appointing a neutral evaluator to a dissolution proceeding “did not specifically indicate that it was appointing Dennis [the specific neutral] under Rule 706, the practical effect of the court’s order, as well as the conduct of the parties and Dennis [the neutral business evaluator] was such an appointment.” *Peterka v. Dennis*, 744 N.W. 2d 28, 31 (Minn. Ct. App. 2008), *rev'd on other grounds*, 764 N.W.2d 829, 833 n.2 (Minn. 2009).

In this case, Appellant makes much of the fact that Respondent was not specifically named in the marital termination agreement providing for the selection of a parenting consultant should the divorcing parties reach impasse regarding their minor child. Appellant attempts to argue that since Respondent did not obtain a separate order appointing her as a neutral parenting consultant that fact alone somehow took their parenting consultant agreement outside the scope of the court's purview and that this is a purely private contract. Appellant is incorrect in his reading of Minnesota case law and of the public policy favoring application of quasi-judicial immunity to neutral professionals who serve an integral part of the judicial process.

Appellant argues that Respondent never reported to the Court, nor gave copies of any of her decisions to the Court, nor interacted with the Court. *See* App. Br., pg. 11. Furthermore, Appellant points out that Respondent "failed" to obtain an order from the Court formally appointing her as the parenting consultant. *Id.* What Appellant did not point out is that Appellant's attorney at the time, Ms. Debra Yerigan of Messerli & Kramer denied Respondent's request to be appointed under a separate court order. Resp. Dep. T. pg.44, ln. 16-23; A.42. ("Ms. Yerigan said in this case there was already a complete appointment within the MTA. If the parties were in agreement with my contract, there would be no need.") [to obtain a separate court order naming Respondent as parenting consultant] In fact, Respondent worked with Ms. Yerigan to incorporate the terms of the MTA into Respondent's parenting consultant agreement. Resp. Dep.

T. pg. 70, ln. 6-15; A.49; Resp. Dep. T. pg. 71, ln. 8-19; A.49; Resp. Dep. T. pg.72, ln. 1-11; A.49.

Appellant also claims that Respondent's failure to submit her written decisions to the court somehow took her out of the judicial process. However, Appellant also failed to point out that in accordance with the terms of the MTA and the PCA, Respondent was only to provide copies of her written decisions to the parties and their attorneys. A.13; A.28. In other words, there was never a requirement that Respondent submit her written decisions to the court. However, if Appellant had wanted to object to Respondent's decisions, he could have done so within 20 days in the district court pursuant to the terms of the MTA and the PCA. If Appellant had done so, Respondent would have been subject to questioning and would have been required to testify as to her written decisions thus making Respondent immune from civil liability.

The case at hand is most nearly analogous to *Tindell*, because just as the guardian ad litem in that case acted with authority from the court to make decisions, so did Respondent. The Marital Termination Agreement (hereinafter, "MTA") entered into by Appellant and his former wife provided the scope of the parenting consultant's authority for some time in the future should they ever need to hire one. The MTA provided the scope of authority that any parenting consultant hired by the parties would have to follow.

Appellant cites several cases which are not binding on this court nor actually apply to alternative dispute resolution processes in general, much less to

the role of a parenting consultant in family law proceedings. *See Stewart v. Cooley*, 23 Am. Rep. 690 (Minn. 1877) (an attorney sued a judge for conspiracy and malicious prosecution for being arrested and charged with perjury); *State v. Tapia*, 468 N.W.2d 342 (Minn. Ct. App. 1991) holding that a bail bondsman lacked authority to forcibly enter the private dwelling of a third party in order to arrest principal who had jumped bond on misdemeanor charge. These cases do little to assist the court in determining whether quasi-judicial immunity applies to third party neutrals in family law proceedings.

The decisions of a parenting consultant are provided with the authority of the court, because the parenting consulting process is a form of alternative dispute resolution which provides a remedy if either parent objects to the binding decision of a parenting consultant. Because Respondent was hired under the authority of the MTA and her decisions were subject to review by the district court, Respondent is entitled to quasi-judicial immunity as a third party neutral functioning as an integral part of the family law judicial process.

A. PUBLIC POLICY COMPELS THE GRANTING OF QUASI-JUDICIAL IMMUNITY TO NEUTRALS IN DIVORCE PROCEEDINGS, BECAUSE WITHOUT IT, SUCH PROFESSIONALS MAY NOT BE WILLING TO ASSIST THE COURTS IN SUCH FAMILY LAW MATTERS.

Just as guardians ad litem are targets for the wrath of disgruntled parents, so are parenting consultants. The Family Law Section of the Minnesota State Bar Association argued in its amicus brief to the Minnesota Supreme Court in *Peterka v. Dennis*, 744 NW.2d 28, 31 (Minn. Ct. App. 2008) *rev'd on other*

grounds, 764 N.W.2d 829, 833 n.2 (Minn. 2009), “...that public policy compels granting quasi-judicial immunity to neutrals selected pursuant to both stipulated and non-stipulated orders.”

To hold otherwise would discourage negotiated settlement of cases and seriously hamstring the selection of a mutually-acceptable expert trusted by the parties and counsel or as might be assigned from an existing panel maintained by a judicial district for appointment of guardians ad litem, parenting expeditors, parenting consultants, financial neutral evaluators, custody evaluators or Rule 114 certified neutrals. Where attorneys and parties have input into the selection of a neutral to handle and resolve parental disputes, valuation or other financial issues, the likelihood of cooperation and resolution is substantially higher than through the imposition of an unacceptable authority figure or decision-maker. R.A.1-25. (Minnesota State Bar Association Family Law Section and Minnesota Chapter of American Academy of Matrimonial Lawyers Amicus Brief)

In this case, divorcing parents agreed to hire a parenting consultant if they reached impasse on parenting issues. The divorcing parties consented, in advance, to submitting any parenting issues to this type of neutral third party so that the courts would not have to hear every fight about who gets what weekends for visitation; or who gets which holidays; or whether the minor child in this case should be taken on the premises of an adult bookstore. These are precisely the kinds of issues a parenting consultant should address and this promotes judicial efficiency.

Family law litigants who dislike a parenting consultant’s decisions have a remedy in that they may object to them before the district court or they may seek removal of a parenting consultant. Parenting consultants are hired, under the

auspices of the district courts, to perform an integral judicial function in assisting the court with parenting issues. Such persons should not be subject to personal liability because they act as an extension of the court and promote judicial efficiency. In divorce proceedings, emotions run high. Some family law litigants become offended when they don't get what they want from the divorce process, the court, or the parenting consultant. Appellant cites to *Dzubiak v. Mott*, 503 N.W.2d 771 (Minn. 1993) (court finds public defenders immune from civil liability) in attempting to show that Respondent should not be entitled to quasi-judicial immunity. However, in that case, the Minnesota Supreme Court stated, "Historically, we have extended immunities to participants within the judicial system." *Dzubiak v. Mott*, at 774. The *Dzubiak* court continued, "Immunity in a judicial setting encourages independence; it is though unlikely that officials will commit abuses since the appellate review process is likely to prevent serious abuses." In this case, Appellant waived the opportunity to object to Respondent's decisions because he failed to timely raise them. Furthermore, many of Appellant's cases are outdated and fail to address more modern court processes, which rely upon alternative dispute resolution and third party neutrals as an integral part of the judicial process.

Those who practice in family law are aware that some divorces involve high conflict parties. However, rather than allow such litigants to aim their cannon at the neutral, such third-party neutrals ought to be protected by quasi-judicial immunity or the courts will eventually lose them. The result will be the further

backlogging of the already-strained judicial system and will pose delays in the process for family law litigants fighting to get onto burgeoning district court dockets.

II. THE DISTRICT COURT DID NOT ERR IN FINDING THAT RESPONDENT ACTED UNDER THE AUTHORITY OF THE MARITAL TERMINATION AGREEMENT BECAUSE THE COURT EXPLAINED THE SCOPE OF A PARENTING CONSULTANT'S AUTHORITY AND THE DIVORCING PARTIES AGREED.

Appellant's marital termination agreement ("MTA") explained the scope of authority of a parenting consultant. Section 4 of the MTA outlines the general scope of a parenting consultant's role and states, in relevant part:

The parenting consultant shall first try to mediate a resolution with the parents, and if mediation is deemed not possible by the parenting consultant, then the parenting consultant shall arbitrate the issue and advise the parents of his/her decision. A.12.

Respondent stated in her deposition that she was not hired to be a mediator in the true sense of the word because a mediator does not issue binding decisions. Resp. Dep. T.93, ln. 2-23; A.55. A parenting consultant merely attempts to find solutions to the already-existing impasse. If it becomes clear that is not possible, according to the scope of authority in the MTA, the parenting consultant may arbitrate the matter and make binding decisions for the parties.

Through the course of her engagement as parenting consultant, Respondent noticed that the tone of the Appellant's emails and those of his former wife were getting more and more acrimonious and conflictual. Respondent saw it was not feasible to "mediate" the parties' parenting issues.

Rather, Respondent issued binding decisions and the parties had 20 days to dispute the decisions or make formal objection to the decisions in the district court.

Section 4(b) of the MTA specifically provided the scope of authority of the parenting consultant and states in its entirety:

Authority: The parenting consultant will resolve parenting and access time disputes by enforcing, interpreting, clarifying and addressing circumstances not specifically addressed by the parenting time provisions of this Order including the following issues: the time and location for the access exchange, any other parenting time decisions the parties cannot reach agreement on, and parenting issues which arise and impact the minor child. The parenting consultant shall also have the authority to make changes in the access schedule as the minor child grows older. A.13.

The source of authority for the Respondent in this matter is provided by the marital termination agreement (“MTA”) which the divorcing parties signed and the court approved. Appellant cannot now dispute the authority given to the Respondent because that level of authority would have been given to any parenting consultant hired by the parties. The authority provided to any parenting consultant hired by the parties would have been the same as the Respondent in this matter.

The parties were not free to engage a parenting consultant whose authority was outside the scope of that granted by the court, or whose authority was in direct violation of the MTA, or they would run the risk of being in contempt of the court’s order. Appellant makes the strained argument that he unilaterally hired the Respondent on his own private terms and that those terms were somehow

outside the realm of the court's reach. Appellant wishes to show that somehow his private agreement with Respondent is a basis for finding Respondent had no authority to make decisions as a parenting consultant. Appellant's interpretation of the court's order and the court's delegation of power to parenting consultants is simply wrong.

Appellant attempts to dismiss the fact that he himself submitted to a marital termination agreement which provided for a parenting consultant to have broad authority and issue binding decisions, subject to the court's review. Appellant's argument fails because he does not show that Respondent was acting outside the authority delegated to her by the court through the terms of the MTA which were mirrored in the parties' PCA and was directed by Appellant's own attorney.

III. THE DISTRICT COURT DID NOT ERR IN FINDING THAT RESPONDENT ACTED WITHIN THE SCOPE OF THE PARTIES' PARENTING CONSULTANT AGREEMENT BECAUSE THE PARTIES AGREED TO GIVE THE PARENTING CONSULTANT BROAD POWER.

On May 3, 2010, Appellant and his former wife, Mary Clifford, entered into a parenting consultant agreement with Respondent. The agreement explained the role of the parenting consultant as one who will assist Appellant and his former wife with "issues involving their child including but not limited to access schedules, parenting styles, discipline of the child, extra-curricular activities, educational issues and any other issues surrounding the child that the parties agree to submit to the parenting consultant." A. 28, ¶ 1. In fact, the only issue the parenting consultant

specifically would not address, according to the PCA, was financial issues. The PCA further provides that the parenting consultant may provide:

information about the family situation, facilitate discussion, cooperation and agreements between the parties or express an opinion about a situation. The contracted consultant may offer impressions, opinions and recommendations in the role as parenting consultant. These impressions, opinions and recommendations may be unpleasant for one or all parties to hear, and the parties may not be in agreement with the contracted consultant's statements. A.28, ¶ 1.

Both Appellant and his former wife signed the parenting consultant agreement. Both Appellant and his former wife were represented by counsel during the pendency of their dissolution. Appellant has not alleged that he did not understand the terms of the marital termination agreement. Appellant has not alleged that he did not understand the terms of the parenting consultant agreement.

If Appellant did not agree with the broad scope of parenting issues on which a parenting consultant may make decisions, Appellant should have told his attorney the time the MTA was drafted. Appellant, along with his former wife, selected Respondent with the input of their respective attorneys to serve as a parenting consultant pursuant to the terms of their marital termination agreement. Appellant affirmatively agreed to submit to the binding decisions of Respondent or else object to them in district court. Neither Respondent nor his former wife timely objected to any of Respondent's decisions. Because Appellant agreed to the terms of the MTA and the PCA creating broad duties for Respondent to address any issues affecting

the minor child, Appellant's argument that Respondent acted outside the scope of such agreements fails.

CONCLUSION

The district court did not err in finding that Respondent is entitled to quasi-judicial immunity because Respondent was appointed to the matter pursuant to a valid marital termination agreement and an integrated parenting consultant agreement analyzed by Appellant's own attorney. Public policy compels a finding of quasi-judicial immunity under the facts of this case because Respondent followed the provisions of a court-approved marital termination agreement and worked alongside the attorneys for both Appellant and his ex-wife in attempting to address the impasse they were experiencing regarding their minor child.

The district court did not err in finding that Respondent acted within the scope of the divorcing parties' parenting consultant agreement and did not err in finding that Respondent's decisions and recommendations fell squarely within the mandates of the court-appointed authority for a parenting consultant, because Respondent had broad authority to address any parenting issues affecting the minor child.

Both Appellant and his ex-wife voluntarily submitted to the marital termination agreement requiring them to submit their parenting impasses to a parenting consultant. Neither parent timely objected to Respondents decisions;

one cannot now complain that Respondent's decisions were outside the scope of the parties' agreement.

QUINLIVAN & HUGHES, P.A.

Dated: _____

04-09-2012

By: _____



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RULE 132.01 subd. 3 CERTIFICATE

Pursuant to Rule 132 of the Minnesota Rules of Civil Appellate Procedure, the undersigned certifies that:

1. Respondent's Brief was prepared using Word 2010 in 13 point text;
2. Respondent's Brief contains 4,407 words including all text, headings, footnotes, and quotations; and
3. Respondent's Brief complies with the typeface and word count requirements of Rule 132.01.

QUINLIVAN & HUGHES, P.A.

Dated: _____

04-09-2012

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