

NO. A06-0347

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**State of Minnesota  
In Court of Appeals**

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Robert H. Lehmann,

Appellant

vs.

Ronald Enright, as attorney in fact  
for S.E. and Marlys Enright, dba  
Pride-One Co. and Associated Bank,

Respondents

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**APPELLANT'S REPLY BRIEF**

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## **Argument**

### ***I. THE STANDING DOCTRINE DOES NOT PREVENT APPELLANT FROM OBJECTING TO GARNISHMENT OF HIS WIFE'S FUNDS.***

#### **A. A Defendant does not have to Establish Standing in order to Defend against a Garnishment.**

Respondent cannot cite any authority for his novel position that a defendant must have standing to object to garnishment of his wife's funds in a joint account. Every single case addressing standing has to do with whether a would-be plaintiff or non-party has standing to bring a claim. Appellant is not suing Respondent, claiming that Respondent should pay to Appellant the sums garnished. Appellant merely objects to Respondent's garnishment of the joint accounts on the basis that the funds in the accounts do not belong to Appellant.

None of the cases cited by Respondent have facts even remotely similar to the facts here. State by Humphrey v. Philip Morris, 551 N.W.2d 490 (Minn. 1996), concerns whether Blue Cross and Blue Shield may bring claims against tobacco companies based on various common law and statutory theories. Cochrane v. Tudor Oaks Condominium Project, 529 N.W.2d 429 (Minn. App. 1995) concerns a defendant's waiver of right to challenge the plaintiff's capacity to sue by not having raised the issue during protracted litigation. And Kilpatrick v. Kilpatrick, 673 N.W.2d 528 (Minn.App. 2004) concerns the right of a non-party public authority that had not made a motion to intervene, and had not received an assignment of child support, to bring a motion to modify child support.

As the United States Supreme Court explained in Flast v. Cohen, 88 S. Ct. 1942, 392 U.S. 83 (U.S. 1968):

The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.

88 S.Ct. at 1952, 392 U.S. at 99. (emphasis added). See, 59 Am. Jur. 2d Parties §35. (the purpose of the law of standing is to protect against improper plaintiffs.) In this case, Appellant is already a party. Respondent is trying to use the standing doctrine to limit the issues Appellant wishes to have adjudicated. To use a standing argument to try to prevent him from objecting to the garnishment of his wife's funds from their joint account is not only unsupported by any authority whatsoever, it runs counter to all existing authority on the issue of standing.

Respondent could have joined Mrs. Lehmann as a party to the garnishment under Rule 20.01 of the Minnesota Rules of Civil Procedure, but Respondent made no effort to do so. Instead, Respondent tries to turn the standing doctrine on its head by arguing that it prevents a defendant from defending against a plaintiff's actions. Such a result would violate due process under Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924). In that case, the U.S. Supreme Court stated that due process requires a proceeding which gives parties the opportunity to be heard respecting the justice of the remedy sought. Respondent, however, seeks to silence Appellant and prevent him from being heard regarding the justice of the remedy Respondent seeks.

**B. Appellant's Wife is not a Necessary Party to Appellant's Motion to Quash the Garnishment.**

If one were to accept Respondent's argument that Appellant has no standing to object to the garnishment of his wife's funds, it would follow by implication that the Respondent believes Mrs. Lehmann is a necessary party under Minn.R.Civ.P 19.01. A party who complains that a necessary party has not been joined should not be rewarded for not having joined that party himself. Serr v. Biwabik Concrete Aggregate Company, 278 N.W. 355, 202 Minn. 165 (1938).

For claims based on statutes, courts look to the underlying statute to determine who is a necessary party. Minneapolis-St. Paul Sanitary District v. City of St. Paul, 43 N.W.2d 219, 231 Minn. 379 (1950); Glazier v. Independent School District No. 876, 558 N.W.2d 763 (Minn. App. 1997).; Kelly v. Cataldo, 488 N.W.2d 822 (Minn. App. 1992).

In garnishment proceedings, Minn. Stats. §571.83 applies to joinder and intervention, addressing situations where a person who is not a party has or claims an interest in any of the property subject to the garnishment:

571.83 Joinder and intervention by persons in interest.

If it appears that a person, who is not a party to the action, has or claims an interest in any of the disposable earnings, other indebtedness, money, or other property, the court shall permit that person to intervene or join in the garnishment proceeding. If that person does not appear, the court may summon that person to appear or order the claim barred. The person so appearing or summoned shall be joined as a party and be bound by the judgment.

Minn. Stats §571.83 (2005). By its clear language, this statute permits, but does not require, that such a person be joined as a party to the garnishment. Since under the

garnishment statutes, Mrs. Lehmann is not a necessary party, Respondent's standing argument fails.

**C. Even if Appellant must Demonstrate that he has Standing to Object to the Garnishment, he has a Sufficient Stake in the Matter to Satisfy that Requirement.**

Even if Appellant must demonstrate that he has standing to object to the garnishment, he has a sufficient stake in the matter to satisfy that requirement. Parties with far less at stake than Appellant have been held to have standing.

"An individual has standing to maintain a suit by showing an 'injury to some interest, economic or otherwise, which differs from injury to the interests of other citizens generally.'" Vern Reynolds Construction, Inc. v. City of Champlin, 539 N.W.2d 614, 617 (Minn. App. 1995), quoting Channel 10, Inc. v. Independent Sch. Dist. No. 709, 298 Minn. 306, 215 N.W.2d 814 (1974). Standing is a question of law, which is reviewed de novo. Rukavina v. Pawlenty, 684 N.W.2d 525 (Minn.App. 2004).

The injury can be indirect. If a plaintiff can show injury to property, the fact that he did not have title to the property at the time of the act complained of will not defeat standing. In Vern Reynolds Construction, Inc, supra, the Court held that a landowner who purchased land without notice that a taking had previously occurred had standing to sue for inverse condemnation on a showing that the former owner was not compensated.

The injury can be difficult or impossible to trace back to the act complained of with any exactitude, and that will not defeat standing. Taxpayers have been held to have standing to challenge the appropriation of federal funds to finance instruction in reading,

arithmetic, and other subjects in religious schools, and to purchase textbooks and other instructional materials for use in such schools. Flast v. Cohen, *supra*.

The injury may have been suffered by persons affiliated with the prospective plaintiff. Blue Cross and Blue Shield was held to have "associational" standing to permit it to pursue equitable relief against tobacco companies. State by Humphrey v. Philip Morris, *supra*. See 59 Am. Jur. 2d Parties §38 (standing to assert the rights of third parties is appropriate if the litigant can show a sufficient personal stake and adverseness so that the court is not asked to render an advisory opinion); The Beaconsfield, 158 U.S. 303, 15 S. Ct. 860, 39 L. Ed. 993 (1895) (bailees of cargo damaged in collision can sue for damages done to the cargo); Jersey Shore Medical Center-Fitkin Hospital v. Estate of Sidney Baum, 417 A.2d 1003, 84 N.J. 137 (N.J. 1980) (hospital has standing to assert deceased husband's claim for medical expenses against widow).

Like the bailee in The Beaconsfield, Appellant has liability exposure arising from his wife's loss of funds paid to satisfy a judgment against Appellant. This could arise from an equitable claim for indemnity. See, e.g., Hendrickson v. Minnesota Power & Light Company, 104 N.W.2d 843, 258 Minn. 368 (1960). (Indemnity is the remedy securing the right of a person to recover reimbursement from another for the discharge of a liability which, as between himself and the other, should have been discharged by the other; indemnity is appropriate where one party has a primary or greater liability or duty which justly requires him to bear the whole of the burden as between the parties); Zontelli & Sons v. City of Naswauk, 373 N.W.2d 744 (Minn. 1985).

Another injury suffered by Appellant from the garnishment arises from the fact that he has been unable to work since 2004 and his wife's funds in the joint account support them both. A-3 Certainly, Appellant's claim to standing surpasses that of Respondent's claim to standing for rent due to his parents.<sup>1</sup>

For all of these reasons, Respondent's standing argument fails.

## ***II. THIS CASE IS DISTINGUISHABLE FROM PARK ENTERPRISES.***

Respondent bases his right to garnish the joint accounts on Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951). The facts here, however, are distinguishable from those in that case and therefore Park Enterprises does not apply.

In Park Enterprises, the 1951 decision relied upon by Respondent, the Court focused on the signature card the depositors signed when opening the account, which gave each depositor "complete and absolute authority" over the account. Park Enterprises v. Trach, 233 Minn. 467, 470, 47 N.W.2d 194, 196 (1951). Respondent has not produced any signature card or any other evidence of an agreement between Appellant and his wife with respect to their rights in the joint accounts at issue here, however. Nor has Respondent argued that Appellant and his wife agreed to a different way of determining ownership rights in these accounts other than the method outlined in the Multiparty Accounts Act. For these reasons, the legal issue of whether joint account owners may vary the rule of Minn. Stats. §524.6-203(a) by agreement is not before the Court.

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<sup>1</sup> Even assuming that valid, unrevoked powers of attorney have been executed naming Ron Enright as attorney-in-fact for S.E. and Marlys Enright, the Complaint in this action is improperly captioned because Ron Enright is not the real party in interest. Haugland v. Maplevue Lounge & Bottleshop, Inc., 666 N.W.2d 689 (Minn. 2003)

Another fact distinguishing Park Enterprises from this case is the fact that Appellant has been unable to earn any income since October, 2004 and all of the funds in the joint accounts have come from his wife's earnings and inheritance. A-47-48, A-64. In Park Enterprises, the situation was different:

Defendant and intervenor have independent incomes. Each of them, from time to time, has deposited portions of his or her individual funds to the credit of this joint account and from time to time has withdrawn funds from the account for family or individual purposes. It is impossible to determine on an evidentiary basis the exact amount of funds each of them has contributed to the joint account.

Park Enterprises, 233 Minn at 468, 47 N.W.2d at 195.

Yet another distinguishing feature between this case and the facts before the Court in Park Enterprises relates to the legal characterization of the type of account. The Court in Park Enterprises was unable to categorize the account at issue there:

This type of account is difficult, if not impossible, to classify under traditional categories of legal ownership. The account is distinguished from a joint tenancy because of the fact that it is joint and several, whereas in a joint tenancy there is joint ownership only. \*fn2 The survivorship feature of the account readily distinguishes it from a tenancy in common, \*fn3 and yet is not sufficient alone to make it a joint tenancy. \*fn4 "Joint and several," when used to designate a type of ownership, is somewhat of a legal anomaly notwithstanding the fact that the term appears in M.S.A. 48.30. By definition, several ownership is a denial of joint ownership. \*fn5 Since the type of ownership which the bank and its depositors have created by their contract defies classification under traditional concepts of property ownership, we are forced to treat this case as presenting a contract question and must decide what the incidents of this type of ownership are primarily by reference to the terms of the contract creating it.

Park Enterprises, 233 Minn at 469, 47 N.W.2d at 195. The Multiparty Accounts Act has greatly clarified this confusion by defining the term, "joint account:"

"Joint account" means an account so designated, and any account payable on request to one or more of two or more parties and to the survivor of them.

Minn. Stats. §524.6-201 Subd. 4 (2005). Because the Multiparty Accounts Act has clarified the definition of a "joint account," along with the rights of the joint owners, the Park Enterprises Court's analysis regarding those subjects is no longer applicable.

For these reasons, this case is distinguishable from Park Enterprises.

### ***III. RESPONDENT MISINTERPRETS THE MULTIPARTY ACCOUNTS ACT AND APPLIES INCORRECT LEGAL STANDARDS.***

Respondent argues that the Multiparty Accounts Act has not modified Park Enterprise's analysis, but he does not explain why. In fact, the Multiparty Accounts Act clearly has modified operation of the subrogation theory discussed in Park Enterprises.

Respondent correctly states that statutory interpretation is reviewed de novo. Illinois Farmers Insurance Co. v. Glass Service Co., Inc., 683 N.W.2d 792 (Minn. 2004). His other purported statements of the law regarding statutory construction and his application of those statements to the Multi-party Accounts Act, however, are incorrect. Respondent's unstated conclusion appears to be that the provisions of Minn. Stats. §524.6-202 and §524.6-203(a) which mandate that the rule that ownership rights be in proportion to contributions be applicable to controversies with creditors should simply be ignored.

“A statute should be interpreted, whenever possible, to give effect to all of its provisions, and ‘no word, phrase, or sentence should be deemed superfluous, void, or insignificant.’ Minnesota Equal Access Network Services v. Burlington Northern & Santa Fe Railroad Company, 646 N.W.2d 911, 914 (Minn.App. 2002), quoting Amaral v. Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999). “Words and phrases are to be

construed according to their plain and ordinary meaning.” Id., quoting Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn. 1980); Minn. Stats.

§645.08(1) (2005). The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Miller v. Colortyme, 518 N.W.2d 544 (Minn. 1994); Minn. Stats. §645.16 (2005). When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law should not be disregarded.” Minn. Stats. §645.16 (2005).

The language of Minn. Stats. Section 524.6-203(a) is clear and unambiguous:

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Minn. Stats. §524.6-203(a) (2005). Similarly, the language of §524.6-202 clearly and unambiguously states that this ownership rule applies to controversies between account owners and creditors:

The provisions of sections 524.6-203 to 524.6-205 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons **and their creditors** and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

Minn. Stats. §524.6-202 (2005) (emphasis added). The underlined phrase, quoted out of context by Respondent, simply carves out an exception to protect financial institutions. To read this last sentence as also protecting creditors would nullify the inclusion of "and their creditors" in the previous sentence. Also, it stands to reason that the legislature saw that the underlined phrase was necessary because it realized it was changing the common

law regarding creditor rights, and wanted to clarify that the rights of financial institutions were governed by different rules than creditors.

Respondent further mis-states these provisions by stating that:

Secs. 524.6-203 to 524.6-205 deal with survivorship, and not garnishment or the rights of a creditor against a garnishee bank, inter vivos.

Resp. Br. 11. In fact, the plain language of §524.6-203(a) states that it applies "during the lifetime of all parties." As discussed above, the plain language of §524.6-202 expressly makes these provisions applicable to creditors.

Where a statute is unambiguous, there is no need for statutory construction. Ewers v. 49615 and 49642 Thunderbird Aviation, Inc., 289 N.W.2d 94 (Minn. 1979); Kersting v. Royal-Milbank Insurance, 456 N.W.2d 270 (Minn. App. 1990). "Principles of statutory construction direct that we consider laws that are later in point of time to prevail when in conflict with earlier laws." Bradley v. First National Bank of Walker, NA, 711 N.W.2d 121 (Minn.App. 2006). Where a statute does not expressly modify or supercede common law, the Court decides whether the two are in irreconcilable conflict. Harbor Broadcasting, Inc. v. Boundary Waters Broadcasters, Inc., 636 N.W.2d 560 (Minn.App. 2001). It is the province of the legislature to modify the common law. Jung v. St. Paul Fire Department Relief Association, 27 N.W.2d 151, 223 Minn. 402 (1947).

The applicable provisions of the Multiparty Accounts Act, Minn. Stats. §§ 524.6-202 and 524.6-203(a), irreconcilably conflict with the common law approach applied to joint accounts in Park Enterprises. These statutes clearly and unambiguously modify the rights of creditors of joint accounts, making the rights of creditors subject to the same formula

of net contributions and deposits as govern the rights of the joint owners. Respondent's argument to the contrary completely ignores the phrase, "and their creditors" in §524.6-202. Such an interpretation is contrary to the rule that "no word, phrase, or sentence should be deemed superfluous, void, or insignificant."

The Minnesota Multiparty Accounts Act was first adopted by the Minnesota legislature in 1973. In re: Conservatorship of Gobernatz, 603 N.W.2d 357 (Minn.App. 1999). Because these statutes were enacted after the holding in Park Enterprises, the statutes modify the prior common law.

Uniform laws adopted by the Minnesota legislature are to be "interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Minn. Stats. §645.22 (2005). The cases cited in Appellant's brief from other jurisdictions that have also adopted this uniform law support the conclusion that a creditor may not garnish funds in a joint account contributed by an owner other than the debtor. Appellant's Brief, 24-26.

For all of these reasons, Respondent's arguments regarding the Multiparty Accounts Act must fail.

#### ***IV. RESPONDENT'S ARGUMENTS REGARDING APPELLANT'S MOTION TO VACATE MIS-STATE THE LAW, THE EVIDENCE AND APPELLANT'S ARGUMENTS.***

##### ***A. There is no Evidence Tending, Directly or by Reasonable Inference to Sustain the District Court's Findings Challenged by Appellant.***

Respondent argues that Appellant has not complied with Minn. R. Civ. App. P. 128.02(c) because he has not summarized the evidence tending, directly or by reasonable inference to sustain the findings of fact or determination. The findings Appellant challenges have no evidence to support them.

The District Court found, in paragraph 10 of its Findings of Fact:

. . .the documents submitted by Mr. Lehmann do not state that he was unable to understand the nature of the proceedings that have taken place herein. Likewise, the submissions do not state that Mr. Lehmann was incapable of contacting an attorney or otherwise acting in a manner that would protect his interests in this lawsuit.

A-85. Because this finding refers to a purported lack of evidence, even if it were accurate, there could be no evidence to summarize tending to support it. The finding does not state that Mr. Lehmann was able to understand the nature of the proceedings or that he was capable of contacting an attorney or otherwise acting in a manner that would protect his interests in this lawsuit. Instead, it simply states Mr. Lehmann did not submit any evidence tending to prove these things.

In fact, both the affidavits of Appellant and his wife do contain such statements.

Appellant's affidavit states:

When I received other legal papers in the mail, I didn't understand them and I was so tired, and my mind was so foggy from the medication, I just couldn't deal with the lawsuit.

...

I was physically unable to comply with the document production request due to the chronic extreme fatigue and confusion I was experiencing.

...

Throughout this time period, I was aware that I was receiving papers in the mail from Plaintiff's attorney, but I was physically unable to deal with the issues presented because of the debilitating side effects from my various medications. I probably read the papers I received in the mail, but I did not understand them.

A-47-48. Appellant's wife's affidavit states:

My husband has been extremely ill for a number of years. He has had heart attacks and mini-strokes over the last five years. In October, 2004, he really fell apart when he became violently ill and was hospitalized. Since then, until his recent surgery at the end of September, he has been non-functional. During that period, (a) he was unable to perform most of the tasks that normal people perform, and (b) I could see that it was a struggle for him to understand things I would say to him.

A-63. For these reasons, the challenged findings are clearly erroneous.

**B. Respondent Mis-states the Evidence in the Record.**

Respondent goes on at length arguing the Hinz factors and it's difficult to tell where the "facts" end and the argument begins because, except for Mr. Enright's Affidavit regarding Appellant's use of the leased premises submitted after the hearing, the only evidence Respondent presented on these crucial issues came from the affidavits of Respondent's counsel. Combining the roles of advocate and witness blurs the distinction between evidence and argument. See, Comments to Minn. R. Prof. Conduct Rule 3.7.

Respondent states that the record does not contain any statement from Mr. Lehmann "attesting to his inability to comprehend and protect his interests in this litigation." Respondent's Br. 16 As detailed above, the record does, in fact, contain several such statements. Respondent states that Lehmann's affidavit fails to disclose that he was physically or mentally prevented from attending to the ordinary affairs of daily living during the period between March 18, 2005 and May 20, 2005. Respondent's Br. 16-17. Even if one assumes that participating in litigation is part of a non-lawyer's "ordinary affairs of daily living," Respondent again conveniently overlooks the testimony

in both Zandra Lehmann's and Appellant's affidavits described above. Respondent again mis-states the facts when he states that there is no statement from Appellant attesting to his inability to comprehend and protect his interests in this litigation. Respondent's Br. 18

Respondent argues that Appellant wasn't prevented from understanding the discovery request. Respondent's Br. 17 Respondent, of course, has no basis for knowing what Appellant was or was not prevented from understanding, nor when nor for how long. Had Appellant actually understood the discovery request, he would have been able to respond to it. Appellant's confusion was at least in part caused by Respondent. Although Respondent argues that the discovery request was "directed to" both defendants, this argument is directly contradicted by the documents signed by Respondent's attorney. Respondent's Br. 21; Appellant's Br. 10, A-23-24, RA-7. So, although Appellant had only signed the lease as President of Lehmann Engineering, Inc., and Respondent's discovery request was directed only to Lehmann Engineering, Inc., Appellant was understandably confused about who might be liable if the discovery requests were not answered.

Respondent further mis-states the facts when he argues that:

"[r]esponses to discovery would have provided Plaintiff with evidence about Mr. Lehmann's defense to the action, would have allowed the Plaintiff to learn which one of the defendants was actually in possession of the premises during the period of non-payment, so that liability for the rent could have been determined under Minn. Stat. Sec. 504B.125

Respondent's Br. 18. In actual fact, the discovery requests directed to Lehmann Engineering, Inc. were discovery in aid of execution, designed only to identify assets of

the corporation following the default judgment that had been entered against it on March 14, 2005. A-24-5, A-87. Respondent did not come up with his theory under Minn. Stat. Sec. 504B.125 until sometime well after the August 2, 2005 judgment against Appellant. Appellant's Br. 29 fnote. 6.

When Appellant's affidavit refers to details, Respondent tries to argue that such details show that Appellant was not disabled at the time of the events described, no matter how much time has elapsed between the time of the event and the time of the affidavit, no matter what changes might have taken place in Appellant's physical condition between those two times, and no matter whether or not the events might have been documented by dated writings. When Appellant cannot remember dates, Respondent argues that Appellant is "intentionally vague." These conclusions are unsupported by the evidence.

### **C. Respondent Mis-States Appellant's Arguments and District Court's Findings of Fact.**

Respondent states "Lehman argues that he does not have personal liability on the lease because the Lease was signed individually. Appellant's Br., p. 29" Respondent's Br. 21. Perhaps this is a typographical error, because it does not make any sense. Appellant's brief on page 29 argues that Appellant signed the lease only as President of Lehmann Engineering, Inc. Appellant's Br. 29.

#### **1. Appellant Does Claim that the District Court Applied an Erroneous View of the Law**

Contrary to Respondent's assertion, Appellant does claim that the District Court applied an erroneous view of the law. The District Court erred by not considering all of the Hinz factors, by not applying them in a liberal manner to further the policy of resolving cases on their merits, and by not following Taylor v. Steinke, 203 N.W.2d 859, 295 Minn. 244 (Minn. 1973) and the Court of Appeals cases following Taylor to balance the relative weakness of one of the Hinz factors against the strength of the others.

## **2. Respondent Mis-States the District Court's Findings of Fact.**

Respondent seeks to mischaracterize these challenges to the law applied by the District Court as challenges to the District Court's findings. Respondent argues that:

1. substantial evidence supports the trial court's findings that Lehmann had no reasonable excuse for failure to defend the May 20, 2005 judgment.  
Respondent's Br. 16; and
2. substantial evidence supports the trial court's findings that Lehmann had no reasonable excuse for failure to defend the August 2, 2005 judgment.  
Respondent's Br. 17

Actually, the special term judge made no such findings. A-83-85. Also lacking are any findings on the other Hinz factors of (a) a reasonable case on the merits; (b) due diligence after notice of the entry of judgment; and (c) no substantial prejudice to the opposing party if the motion to vacate is granted. A-83-85.

Even if the special term judge's findings were read to infer or imply the findings Respondent argues were actually made, (a) the absence of any findings on the other Hinz factors means that there was no balancing of the relative weakness of one of the Hinz factors against the strength of the others; and (b) the appellate court need not defer to such implied findings because all of the evidence came from affidavits and documents.

Respondent's statement that the decision in NSP v. Williams, 343 N.W.2d 627 (Minn. 1984) has been supplanted by the amendment to Minn.R.Civ.Pr. 52.01 is inaccurate. Subsequent to the Court of Appeals' cited opinion in City of Lake Elmo v. City of Oakdale, 468 N.W. 2d 575 (Minn. App. 1991), the Minnesota Supreme Court cited and followed NSP in In Re Olsen, 562 N.W.2d 797 (Minn. 1997):

when the "critical evidence is documentary, there is no necessity to defer to the trial court's assessment of the meaning and credibility of that evidence." Northern States Power Co. v. Williams, 343 N.W.2d 627, 630 (Minn. 1984) (quoting Great Northern, 308 Minn. at 225, 243 N.W.2d at 305).

In Re Olsen at 800. The Olsen Court also stated that:

if we are "left with the definite and firm conviction that a mistake has been made," we may find the trial court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings.

In Re Olsen at 800..

**D. Respondent Applies an Incorrect Legal Standard in Arguments Regarding Whether Appellant Has a Reasonable Case on the Merits.**

Establishing a reasonable case on the merits requires significantly less than what might be required to succeed on the merits in a motion for summary judgment. See Appellant's Brief 29. See, e.g., Finden v. Klaas, 128 N.W.2d 748, 750, 268 Minn. 268, 271 (1964)("It cannot be disputed that defendant, in his proposed answer, alleges that he acted in self-defense. Clearly, this is a complete defense to the merits if it is established"); Taylor v. Steinke, 203 N.W.2d 859, 295 Minn. 244 (Minn. 1973) ("The goal of all litigation is to bring about judgments after trials on the merits and for this reason courts should be liberal in opening default judgments. . . This is particularly true where, as here,

there is indicated the possibility of a valid defense and where no substantial prejudice will result to plaintiff if the judgment is vacated")

Respondent's brief ignores this standard and instead argues as though this were a summary judgment motion, with an entirely different standard of proof. Appellant's defense that he signed the lease only as President of Lehmann Engineering, Inc., amply supports the requirement of a reasonable case on the merits of the underlying lawsuit. The fact that Respondent directed his discovery requests only to Lehmann Engineering, Inc., as an aid to collecting his default judgment against the corporation, amply supports the requirement of a reasonable case on the merits of Appellant's lack of individual liability for sanctions for the corporation's failure to respond to that discovery.

**E. Respondent Applies an Incorrect Legal Standard in Arguments Regarding Whether the District Court Abused its Discretion in Denying Appellant's Motion to Vacate the Judgments Against him Individually**

In ruling on a motion to vacate, a court should consider all of the Hinz factors, apply them in a liberal manner to further the policy of resolving cases on their merits, and balance the relative weakness of one of the Hinz factors against the strength of the others. Hinz v. Northland Milk & Ice Cream Co., 237 Minn. 28, 53 N.W.2d 454 (1952); Taylor v. Steinke, 295 Minn. 244, 246, 203 N.W. 2d 859, 860 (1973). Respondent's argument ignores these legal standards, as did the District Court.

The Court of Appeals has stated:

This court frequently has reversed the denial of a motion to vacate a default judgment where the defaulting party's weak excuse for failing to answer the lawsuit was outweighed by a strong showing on the three remaining factors.

Valley View, Inc. v. Schutte, 399 N.W.2d 182, 185-86 (Minn. Ct. App. 1987); Hill v. Tischer, 385 N.W.2d 329, 332 (Minn. Ct. App. 1986); Spicer v. Carefree Vacations, Inc., 379 N.W.2d 728, 730 (Minn. Ct. App. 1986); see also Taylor v. Steinke, 295 Minn. 244, 246, 203 N.W.2d 859, 860 (1973). In Spicer, the weak excuse was the party's failure to realize the significance of the legal documents. Spicer at 730. This court nonetheless found the trial court erred in considering only the "weak" excuse as a factor in denying the motion. Id. In Hill, the inadequate excuse was forgetfulness, but this court found the trial court abused its discretion when it failed to balance all the factors as in Guillaume. Hill at 332.

The Minnesota Supreme Court recently has examined all the Hinz factors rather than focus upon one as justification for a denial of a motion to vacate a default judgment. Hearne v. Waddell, 341 N.W.2d 876 (Minn. 1984). In Hearne, the court ruled that the trial court abused its discretion in failing to grant a motion to vacate a default judgment despite the trial court's finding of a "weak" excuse. Id. at 877. The court noted that the trial court found a reasonable defense on the merits, ruled there was no substantial prejudice, and followed the favored policy of obtaining a judgment on the merits. Id.

Recent case law thus favors a balancing of all the factors set out in Hinz. Balancing is particularly favored in cases such as this where the weakest of the four factors is the party's excuse for failing to answer. Given the strong policy favoring trying all cases on their merits and the trial court's finding that Zahn satisfied three of the four Hinz factors, we find the case should be reversed and remanded for a determination on the merits.

Riemer v. Zahn, 420 N.W.2d 659, 662 (Minn. App. 1988).

### **Conclusion**

For all of the reasons set forth above and in Appellant's Brief, Appellant requests the Court to reverse the district court's order and (a) vacate the garnishment of the two joint accounts titled in the names of Zandra and Robert Lehmann because all of the funds in the two accounts belong to Zandra Lehmann and Enright does not have a judgment against her; (b) vacate the judgments against Appellant individually under Rule 60.02 of the Minnesota Rules of Civil Procedure; (c) re-instate Appellant's Answer to the

Plaintiff's Complaint; (d) order Enright's attorney to return Appellant's original Answer to Appellant's attorney so that it can be filed with the Court; and (e) allow Appellant to amend his Answer to add a claim for attorney's fees and court costs pursuant the lease agreement.

Respectfully submitted,

Date: May 2, 2006



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