

THE JUDICIAL OPINIONS OF JUSTICE ROGOSHESKE

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TOTAL	483

## MEMORABLE OPINIONS

Memorable opinions that come to mind include, first, the opinion involving an interpretation of a section of the Uniform Arbitration Act. Minnesota adopted the Uniform Act in 1957, the first state to adopt it. The reason for that is that it was recommended by the commissioners of the Conference on Uniform Laws, and Dean Pirsig was one of Minnesota's commissioners. He drafted the Uniform Act and urged its adoption in Minnesota. Well, the case was Layne-Minnesota Co. v. Regents of the University of Minnesota. Layne was the contractor that put the caissons down for building the West Bank of the University—in other words, the big cement foundation that had to go down to bedrock. The specifications were not accurate enough, according to Layne, and it cost them a lot of money to keep going down deeper, so they sued. They sued because the construction contract required that if a dispute arose with reference to the work the party could ask for arbitration; that is what Layne did. The University refused on the ground that the dispute about specifications was not an arbitrable issue. The Uniform Act was vague as to who would decide whether the issue was arbitrable, and so it was a case of first impression. Today almost all of the states have adopted the Uniform Act, and the section reads the same. I struggled over trying to determine the legislative intent of the act. In doing so, I visited frequently at lunch, at night, and over the phone with Dean Pirsig, who had all the correspondence with the other commissioners as he was drafting this law. After reviewing what Dean Pirsig had in terms of correspondence, I was persuaded and the rest of the court was persuaded that the act favored arbitration and that the arbitrators should be the ones who would decide arbitrability where it was reasonably debatable as to whether the parties intended to arbitrate that issue. Surprisingly, that decision has been cited more often in Shephard's Citations, I guess, than any other decision which I wrote. Also, incidentally, Chief Justice Knutson was very upset with me that I was talking to Maynard Pirsig, because the old

tradition was and always had been that the Supreme Court's working on an opinion was totally confidential; that no one other than the members of the court and the staff should know what opinion a judge is working on. I think he was right, except that I was so troubled about coming out with the right decision that I took that liberty.

Another case that comes to mind is Sherlock v. Stillwater Clinic in which a husband and wife sued a doctor in Dakota County for a wrongful birth, they called it, of a healthy child. They had, I think, seven children, were of the Catholic faith and wanted no more children. They struggled with that problem and finally it was decided that the husband would get a vasectomy. He went to a doctor, and that very simple operation was performed. The doctor, it was claimed, did not warn him about the waiting period, and his wife became pregnant with their eighth child. So he claimed medical malpractice in the form of negligence for failure to warn about the period of time from the surgery until the husband would be sterile. It was tried before Judge Bill Johnson, and the lawyers didn't seem to understand what an unusual claim it was to sue for damage for the birth of a healthy child. It was tried more or less like an ordinary malpractice case, with the jury awarding something like \$20,000 damages. The doctor took an appeal. Of course, there wasn't anything like this on the books at that time. There are now many of them. The problem was fashioning a rule for the recovery, if any, by the parents because of the birth of a healthy child. The rule we did fashion was that the parties could recover for the medical expenses and also for the damages for raising the child, but the jury would have to be instructed to subtract from those damages the anticipated pecuniary benefits that the child would bring the parents. I don't know if any cases have followed from it. Bob Sheran was the only dissenter, and in a very brief dissent he just said there ought not to be a cause of action for this type of tort.

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JUSTICE ROGOSHESKE'S MAJORITY OPINIONS

ACTION

Schwalich v. Guenther, 166 N.W.2d 74 (1969)  
Skaja v. Andrews Hotel Company, 161 N.W.2d 657 (1968)

ADMINISTRATIVE LAW AND PROCEDURE

Amdahl v. Fillmore County, 258 N.W.2d 869 (1977)  
Minneapolis Van and Whse. Co. v. St. Paul Term. Whse Co., 180 N.W.2d 175 (1970)

ADOPTION

\* Eggert v. Van De Weghe, 155 N.W.2d 454 (1967)  
In re Parks' Petition, 127 N.W.2d 548 (1964)

ANIMALS

Ryman v. Alt, 266 N.W.2d 504 (1978)  
Filzen v. Nelson, 149 N.W.2d 78 (1967)

APPEAL AND ERROR

Adee v. Evanson, 281 N.W.2d 177 (1979)  
Oltmans v. Orthopaedic and Fracture Clinic, P.A., 278 N.W.2d 538 (1979)  
Vernon J. Rockler & Co., Inc. v. Glickman, Isenberg, Lurie & Co., 273 N.W.2d 647 (1978)  
Anderson v. Graham Inv. Co., 263 N.W.2d 382 (1978)  
Godbout v. Norton, 262 N.W.2d 374 (1977)  
Bowman v. Pamida, Inc., 261 N.W.2d 594 (1977)  
\* Sherlock v. Stillwater Clinic, 260 N.W.2d 169 (1977)  
Winona Nat. and Sav. Bank v. Dahlen Transport Co., 256 N.W.2d 469 (1977)  
Duck v. Modern Roadways, Inc., 253 N.W.2d 822 (1977)  
Goblirsch v. Western Land Roller Co., 246 N.W.2d 687 (1976)  
Stanger v. Gordon, 244 N.W.2d 628 (1976)  
Skeim v. Independent School District No. 155, 234 N.W.2d 806 (1975)  
In re Probate Court, Hennepin County, 198 N.W.2d 260 (1972)  
\* Thill v. Modern Erecting Company, 193 N.W.2d 298 (1971)  
Great Northern Oil Co. v. St. Paul Fire & M. Ins. Co., 189 N.W.2d 404 (1971)  
\* Lee v. Crookston Coca-Cola Bottling Company, 188 N.W.2d 426 (1971)  
Hall v. Community Credit Company, 178 N.W.2d 245 (1970)  
Kielsa v. St. John's Lutheran Hospital Association, 177 N.W.2d 420 (1970)  
Schunk v. Weiland, 176 N.W.2d 119 (1970)  
R & L Lumber Co. v. Summit Fidelity & Surety Co., 170 N.W.2d 594 (1969)  
Chicago Avenue Floral Company v. Traxler, 169 N.W.2d 220 (1969)  
\* McCormack v. Hanksraft Company, 154 N.W.2d 488 (1967)  
Hirth v. Village of Long Prairie, 143 N.W.2d 205 (1966)  
Hoyt v. Twin City Building & Improvement C., 142 N.W.2d 626 (1966)  
\* Ginsberg v. Williams, 135 N.W.2d 213 (1965)  
Radke v. Brenon, 134 N.W.2d 887 (1965)  
Cramond v. American Fed. of Lab. & Cng. of Ind. Org., 126 N.W.2d 252 (1964)  
Dahl v. Northwestern National Bank of Minneapolis, 121 N.W.2d 321 (1963)

\* Citations preceded by an asterisk were chosen by Justice Rogosheske as being memorable, noteworthy, or significant decisions.

Eggeston v. Keller Drug Company, 120 N.W.2d 305 (1963)  
Lange v. Nelson-Ryan Flight Service, Inc., 116 N.W.2d 266 (1962)  
Independent School District No. 857, Winona Co. v. Seem, 116 N.W.2d 395 (1962)  
In re Everett's Trust, 116 N.W.2d 601 (1962)

#### ARBITRATION

- \* Brothers Jurewicz, Inc. v. Atari, Inc., 296 N.W.2d 422 (1980)
- Children's Hospital, Inc. v. Minnesota Nurses Ass'n., 265 N.W.2d 649 (1978)
- U.S. Fidelity & Guaranty Co. v. Fruchtman, 263 N.W.2d 66 (1978)
- \* State v. Berthiaume, 259 N.W.2d 904 (1977)
- \* Dunshee v. State Farm Mut. Auto. Ins. Co., 228 N.W.2d 567 (1975)
- \* Har-Mar Incorporated v. Thorsen & Thorshov, Inc., 218 N.W.2d 751 (1974)
- Layne-Minnesota Co. v. Regents of Univ. of Minn., 123 N.W.2d 371 (1963)

#### ARREST

- \* State v. Kyles, 257 N.W.2d 378 (1977)
- State v. Stark, 179 N.W.2d 597 (1974)
- State v. Mastrian, 171 N.W.2d 695 (1969)
- \* State v. Beltowski, 160 N.W.2d 705 (1968)

#### ASSAULT AND BATTERY

State v. Mings, 289 N.W.2d 497 (1980)  
State v. Benford, 289 N.W.2d 498 (1980)  
State v. Jones, 266 N.W.2d 706 (1978)  
State v. Henderson, 185 N.W.2d 892 (1971)  
State v. Russell, 138 N.W.2d 690 (1965)

#### ATTACHMENT

Nelson v. Carlson, 287 N.W.2d 613 (1979)

#### ATTORNEY AND CLIENT

Ronningen v. Hertogs, 199 N.W.2d 420 (1972)

#### AUTOMOBILES

- Cooper v. Friesen, 207 N.W.2d 742 (1973)
- Sturlaugson v. Renville Farmers Lumber Company, 204 N.W.2d 430 (1973)
- State, Department of Highways v. Beckey, 192 N.W.2d 441 (1971)
- Beier v. International Harvester Company, 178 N.W.2d 618 (1970)
- Erschens v. County of Lincoln, 177 N.W.2d 28 (1970)
- Ruona v. Freeway Dodge, Inc., 171 N.W.2s 212 (1969)
- Higman v. Independent School Dist. No. 37 of Beltrami Co., 161 N.W.2d 696 (1968)
- Gibeau v. Mayo, 158 N.W.2d 589 (1968)
- Cahill v. Peterson, 151 N.W.2d 258 (1967)
- State v. Schweiger, 150 N.W.2d 210 (1967)
- \* Zylka v. Leikvoll, 144 N.W.2d 358 (1966)
- Wimperis v. Saltzinger, 140 N.W.2d 323 (1966)
- Aanenson v. Engelson, 124 N.W.2d 360 (1963)
- State v. Peterson, 123 N.W.2d 177, (1963)
- Anderson v. Eikeland, 123 N.W.2d 316 (1963)
- Rahja v. Current, 119 N.W.2d 699 (1963)
- \* Kelsey v. Chicago, Rock Island and Pacific R. Co., 117 N.W.2d 559 (1962)
- Capriotti v. Beck, 117 N.W.2d 563 (1962)

AVIATION

Walsh v. Pagra Air Taxi, Inc., 282 N.W.2d 567 (1979)

BAILMENT

Wallinga v. Johnson, 131 N.W.2d 216 (1964)

National Surety Corp. v. Todd County Dairy Coop., 130 N.W.2d 511 (1964)

Fingerhut Manufacturing Co. v. Mack Trucks, Inc. 125 N.W.2d 734 (1964)

BANKS AND BANKING

Hanka v. Pogatchnik, 276 N.W.2d 633 (1979)

Jackson v. Valley National Bank of Eagan Township, 152 N.W.2d 472 (1967)

Rheinberger v. First National Bank of Saint Paul, 150 N.W.2d 37 (1967)

BASTARDS

State v. Lender, 124 N.W.2d 355 (1963)

BILLS AND NOTES

Zapp Nat. Bank v. Metro. Plan. & Redev. Corp., 242 N.W.2d 96 (1976)

BREACH OF THE PEACE

\* Matter of Welfare of S. L. J., 263 N.W.2d 412 (1978)

BROKERS

Rees-Thomson-Scroggins, Inc. v. Nelson, 150 N.W.2d 568 (1967)

BUILDING AND LOAN ASSOCIATIONS

Lerbakken v. Twin City Federal S. & L. Ass'n., 230 N.W.2d 596 (1975)

BURGLARY

State v. Mills, 290 N.W.2d 616 (1980)

State v. Wenberg, 289 N.W.2d 503 (1980)

Rosillo v. State, 278 N.W.2d 747 (1979)

State v. Widell, 258 N.W.2d 795 (1977)

State v. Witte, 158 N.W.2d 266 (1968)

State v. Wallace, 156 N.W.2d 206 (1968)

CARRIERS

American Courier Corp. v. Loomis Armored Car, Inc., 200 N.W.2d 175 (1972)

CHARITIES

Trepanier v. McKenna, 125 N.W.2d 603 (1963)

CIVIL RIGHTS

Minnesota Min. and Mfg. Co. v. State, 289 N.W.2d 396 (1979)

State v. Henry, 154 N.W.2d 503 (1967)

COMMERCE

Harris v. Commissioner of Revenue, 257 N.W.2d 568 (1977)

Chicago R.I. & P.R. Co. v. Air-0-Flex Equipment Co., 126 N.W.2d 773 (1964)

COMPROMISE AND SETTLEMENT

Mr. Steak, Inc. v. Sandquist Steaks, Inc. 245 N.W.2d 837 (1976)

#### CONSPIRACY

Campbell v. St. Mary's Hospital, 252 N.W.2d 581 (1977)  
State v. St. Christopher, 232 N.W.2d 798 (1975)

#### CONSTITUTIONAL LAW

City of Duluth v. Sarette, 283 N.W.2d 533 (1979)  
United Realty Trust v. Property Development & Research Co., 269 N.W.2d 737 (1978)  
State v. Forge, 262 N.W.2d 341 (1977)  
Sieber v. Sieber, 258 N.W.2d 754 (1977)  
Neeland v. Clearwater Memorial Hospital, 257 N.W.2d 366 (1977)  
State v. King, 257 N.W.2d 693 (1977)  
State v. Grey, 256 N.W.2d 74 (1977)  
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\* In re Estate of Parkarinen, 178 N.W.2d 714 (1970)  
Johnson v. State, Civil Service Department, 157 N.W.2d 747 (1968)  
Hanlon v. Towey, 142 N.W.2d 741 (1966)  
State v. Young, 141 N.W.2d 15 (1966)

#### CONTRACTS

Matter of Trust Known as Great Northern Iron Ore Properties, 263 N.W.2d 610 (1978)  
Lidstrom v. Mundahl, 246 N.W.2d 16 (1976)  
Klar v. Park Construction Company, 161 N.W.2d 839 (1968)  
Independent Sch. Dist. No. 877 v. Loberg Plumbing & H. Co., 123 N.W.2d 793 (1963)  
\* Cederstrand v. Lutheran Brotherhood, 117 N.W.2d 213 (1962)

#### CONTRIBUTION

Lametti v. Peter Lametti Construction Co., 232 N.W.2d 435 (1975)  
Milbank Mut. Ins. Co. v. Village of Rose Creek, 225 N.W.2d 6 (1974)  
Samuelson v. Chicago, Rock Island & Pacific R. Co., 178 N.W.2d 620 (1970)  
Reese v. Henke, 174 N.W.2d 690 (1970)

#### CORPORATIONS

Losinski v. American Dry Cleaning Co., 281 N.W.2d 884 (1979)  
Am. Pollut. Prev. Co. v. Nat Alfalfa, etc., 230 N.W.2d 63 (1975)  
Miller v. Miller, 222 N.W.2d 71 (1974)

#### COSTS

State v. Paulson, 188 N.W.2d 424 (1971)

#### COURTS

Leslie v. Minneapolis Soc. of Fine Arts, 259 N.W.2d 898 (1977)  
McMillen v. State, 182 N.W.2d 845 (1970)

#### CRIMINAL LAW

State v. Miller, 316 N.W.2d 23 (1982)  
\* State v. Clark, 296 N.W.2d 359 (1980)  
\* Martin v. State, 295 N.W.2d 76 (1980)  
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State v. Butler, 295 N.W.2d 658 (1980)  
\* State v. Garner, 294 N.W.2d 725 (1980)

State v. Seefeldt, 292 N.W.2d 558 (1980)  
Schultz v. State, 290 N.W.2d 778 (1980)  
 \* DeGidio v. State, 289 N.W.2d 135 (1980)  
Burnell v. State, 287 N.W.2d 412 (1979)  
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State v. Crisler, 285 N.W.2d 679 (1979)  
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Bangert v. State, 282 N.W.2d 540 (1979)  
State v. Larson, 281 N.W.2d 481 (1979)  
State v. Ford, 276 N.W.2d 178 (1979)  
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State v. Mathison, 263 N.W.2d 61 (1978)  
 \* State v. Goulette, 258 N.W.2d 758 (1977)  
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State v. Smith, 203 N.W.2d 348 (1972)  
State v. Kooiman, 185 N.W.2d 534 (1971)  
Black v. State, 184 N.W.2d 419 (1971)  
 \* Beltowski v. State, 183 N.W.2d 563 (1971)  
State v. Ahlstrand, 179 N.W.2d 170 (1970)  
Brown v. State, 176 N.W.2d 605 (1970)  
City of St. Paul v. Franklin, 175 N.W.2d 16 (1970)  
Pratt v. State, 175 N.W.2d 182 (1970)  
State v. LaValla, 167 N.W.2d 36 (1969)  
State v. Taylor, 167 N.W.2d 138 (1969)  
State v. Williams, 163 N.W.2d 868 (1969)  
State v. Gaulke, 161 N.W.2d 662 (1968)  
State v. Wolske, 160 N.W.2d 146 (1968)  
State v. Tahash, 159 N.W.2d 99 (1968)  
State v. Lloyd A. Fry Roofing Company, 158 N.W.2d 851 (1968)  
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State v. Williams, 155 N.W.2d 739 (1968)  
State v. Jackson, 154 N.W.2d 827 (1967)  
State v. Tahash, 152 N.W.2d 301 (1967)  
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State v. Searles, 142 N.W.2d 478 (1966)  
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State v. Sutton, 138 N.W.2d 46 (1965)  
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State v. Gage, 136 N.W.2d 662 (1965)  
State v. Tahash, 131 N.W.2d 214 (1964)  
State v. Kline, 124 N.W.2d 416 (1963)  
State v. Kuluvar, 123 N.W.2d 699 (1963)  
State v. Plagman, 121 N.W.2d 621 (1963)  
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State v. Tahash, 116 N.W.2d 399 (1962)

#### DAMAGES

\* Northern Petrochem Co. v. Thorsen & Thorshov, Inc. 211 N.W.2d 159 (1973)  
Schore v. Mueller, 186 N.W.2d 699 (1971)

#### DEATH

Davis v. Liesenfeld, 240 N.W.2d 548 (1976)  
DeCourcy v. Trustees of Westminster Presby. Ch., 134 N.W.2d 326 (1965)

#### DECLARATORY JUDGMENT

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Town of Stillwater v. Minnesota Municipal Com'n., 219 N.W.2d 82 (1974)

#### DEDICATION

Leeper v. Hampton Hills, Inc., 187 N.W.2d 765 (1971)

#### DISCOVERY

\* Anderson v. Florence, 181 N.W.2d 873 (1970)  
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#### DISMISSAL AND NONSUIT

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#### DIVORCE

Wiese v. Wiese, 295 N.W.2d 271 (1980)  
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Bogen v. Bogen, 261 N.W.2d 606 (1977)  
McGough v. McGough, 249 N.W.2d 885 (1977)  
Johnson v. Johnson 169 N.W.2d 595 (1969)  
Smith v. Smith, 163 N.W.2d 852 (1968)  
Johnston v Johnston, 158 N.W.2d 249 (1968)

#### DRAINS

In Re Repair of Judicial Ditch No. 1, etc., 210 N.W.2d 859 (1973)

#### DRUGS AND NARCOTICS

State v. Hawkins, 278 N.W.2d 750 (1979)

#### ELECTIONS

Christenson v. Allen, 119 N.W.2d 35 (1963)

#### ELECTRICITY

Vieths v. Ripley, 295 N.W.2d 659 (1980)

#### EMINENT DOMAIN

- Currell v. State, Dept of Transp., 290 N.W.2d 772 (1980)  
Courteaus, Inc. v. State, Dept of Highways, by Spannaus, 268 N.W.2d 65 (1978)  
\* Johnson Bros Groc. v. State Dept. of Highways, 229 N.W.2d 504 (1975)  
County of Hennepin v. Holt, 207 N.W.2d 723 (1973)  
\* Victor Company v. State, 186 N.W.2d 168 (1971)  
State v. Prow's Motel, Inc., 171 N.W.2d 83 (1969)  
State v. Wren, Inc., 146 N.W.2d 547 (1966)  
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Buck v. City of Winona, 135 N.W.2d 190 (1965)  
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State v. Widen, 128 N.W.2d 755 (1964)  
State v. North Star Concrete Company, 122 N.W.2d 118 (1963)

#### ESTOPPEL

- Sacred Heart Farmers Co-op. Elevator v. Johnson, 232 N.W.2d 921 (1975)

#### EVIDENCE

- Fintel v. Tri-State Ins. Co. of Minnesota 281 N.W.2d 875 (1979)  
Rosenthal v. Kolars, 231 N.W.2d 285 (1975)  
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#### EXTRADITION

- State ex rel Brown v. Telander, 163 N.W.2d 858 (1968)

#### FALSE PRETENSES

- State v. Wells, 121 N.W.2d 68 (1963)

#### FORGERY

- State v. Walter, 184 N.W.2d 426 (1971)  
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#### FRAUD

- Anders v. Dakota Land and Development Co., Inc., 289 N.W.2d 161 (1980)  
Cady v. Bush, 166 N.W.2d 358 (1969)

#### FRAUDS, STATUTE OF

- Malevich v. Hakola, 278 N.W.2d 541 (1979)  
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#### GAME

- State v. Rudolph, 289 N.W.2d 484 (1979)

#### GARNISHMENT

- Northwestern National Bank v. Delta Studios, Inc., 184 N.W.2d 3 (1971)  
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GRAND JURY

- \* State v. Falcone, 195 N.W.2d 572 (1972)

GUARANTY

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- \* State v. Linehan, 311 N.W.2d 507 (1981)
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- \* Matter of Plum Grove Lake (Lake 3 564), Becker County, 297 N.W.2d 130 (1980)
- Nyquist v. Town Center, Crow Wing County, 251 N.W.2d 695 (1977)
- Megarry Brothers, Inc. v. State, 188 N.W.2d 919 (1971)

HOMESTEAD

- Dvorak v. Maring, 285 N.W.2d 675 (1979)

HOMICIDE

- \* State v. Leinweber, 228 N.W.2d 120 (1975)
- State v. Thurston, 216 N.W.2d 267 (1974)
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- Regan v. Stromberg, 285 N.W.2d 97 (1979)
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ILLEGITIMATE CHILDREN

- \* Hepfel v. Bashaw, 279 N.W.2d 342 (1979)

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- Johnson v. McGough Const. Co., Inc., 294 N.W.2d 286 (1980)
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INFANTS

- \* Matter of Welfare of J.W.M., 290 N.W.2d 770 (1980)
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