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I. CIVIL PROCEDURE

A. Appealable Summary Judgment Motions

Generally, an order denying a motion for summary judgment is not appealable unless the district court certifies the question presented as important and doubtful. An exception to this rule exists where the motion denied is based on governmental immunity from suit or lack of personal jurisdiction. In *McGowan v. Our Savior's Lutheran Church*, the Minnesota Supreme Court formulated as another exception to this general rule, motions based on a lack of subject matter jurisdiction. Specifically, the court held that an order denying an employer's motion for summary judgment in an employee's action for negligence against the employer was immediately appealable, where the dismissal of the action was based on the district court's lack of subject matter jurisdiction under the exclusivity provision of the Workers' Compensation Act.

In this case, Diane McGowan commenced a negligence action against her employer, Our Savior's Lutheran Church. McGowan was working as director of the homeless shelter at the church when she was attacked and raped by a shelter client. McGowan sought damages for the injuries she sustained as a result of being raped while at work.

On the district court level, the church argued that the Minnesota Workers' Compensation Act barred McGowan's
lawsuit. The church sought to have the suit dismissed based on the district court’s lack of subject matter jurisdiction. McGowan argued that her injuries were excluded by the Minnesota Workers’ Compensation Act under Minnesota Statutes section 176.011, otherwise known as the “assault exception.” McGowan argued that her injuries fall under this exception, as they are the product of an intentional assault that was personal to her and unrelated to her employment at the church.

The district court denied the church’s motion. The court found that a genuine issue of material fact existed regarding the assailant’s motive for the attack and that a question as to whether the “assault exception” applied in this case remained. Upon this finding, the church filed a direct appeal and a petition for discretionary review in the Minnesota Court of Appeals. The court of appeals held that this was an appeal from a nonappealable order and denied the petition for review. The Minnesota Supreme Court considered the issue of whether an order denying an employer’s motion for summary judgment in an employee’s negligence action is immediately appealable when dismissal of the action is sought based on the district court’s lack of subject matter jurisdiction.

Rule 103.03(h) of the Minnesota Rules of Civil Appellate Procedure states that an order denying a motion for summary judgment is not appealable unless the district court certifies the question presented as important and doubtful. Exceptions to

9. Id. Prior to this suit, McGowan received workers’ compensation benefits for the injuries resulting from the rape. Id.
10. Id.
11. Minnesota Statutes § 176.011, subdivision 16 (1994) reads in relevant part: “Personal injury” means injury arising out of and in the course of employment . . . . But shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment. MINN. STAT. § 176.011, subd. 16 (1994).
12. McGowan, 527 N.W.2d at 891.
13. Id.
14. Id.
15. Id.
16. Id.
17. Id. at 892. The court also considered the substantive issue of whether McGowan’s claim falls within the ‘assault exception’ of the Minnesota Workers’ Compensation Act. Id. at 893.
18. MINN. R. CIV. APP. P. 103.03(h).
this rule exists where the motion denied is based on governmental immunity from suit or lack of personal jurisdiction.19

The rationale behind the government immunity exception is that government officials with immunity should not be "forced to endure the expense and delay of proceeding to trial."20 This same rationale applies to the personal jurisdiction exception.21 In Hunt v. Nevada State Bank,22 the court reasoned that an order denying a motion to dismiss is appealable as "it is more realistic to view such an order not merely as a retention of an action for trial, but as a determination of right, for a defendant is compelled thereby to take up the burden of litigation in this state that might otherwise be avoided."23

The Minnesota Supreme Court concluded that to be consistent with this rationale, the denial of a motion based on subject matter jurisdiction should not be treated differently.24 The issue raised by the church's motion falls into 'that small class which finally determines claims of right, separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.'25

The court reasoned that if the district court is without subject matter jurisdiction it is senseless to have the parties go through a trial.26 Therefore, the order denying the church's motion is immediately appealable because if McGowan's claim falls under the scope of the Minnesota Workers' Compensation Act the district court is without jurisdiction to proceed further.27

19. See supra note 2.
20. McGowan, 527 N.W.2d at 832 (citing Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)).
21. Id. at 833.
23. Id. at 88-89, 172 N.W.2d at 300.
24. McGowan, 527 N.W.2d at 833.
26. Id.
27. Id.
B. Personal Jurisdiction

In *Domtar v. Niagara Fire Insurance Co.*, the Minnesota Supreme Court held that a Minnesota court could exercise personal jurisdiction over a Canadian insurance company. Domtar, a Canadian corporation, owned a portion of the St. Louis River/Interlake/Duluth Tar Site (site) located in Duluth, Minnesota. On the site, Domtar operated a tar processing plant until 1955, when Domtar sold its interest.

In 1987 the Minnesota Pollution Control Agency (MPCA), following an investigation, determined that hazardous substances had been released at the site, thereby contaminating the groundwater. In response to this discovery, the MPCA issued to Domtar a Request For Response Action (RFRA). Domtar, alleging that Canadian General issued to Domtar general liability policies that would cover the time Domtar owned part of the site, sought a judgment in Minnesota court declaring that Canadian General Insurance Company is obliged to defend Domtar against the MPCA. Domtar also requested that Canadian General Insurance Company reimburse Domtar for investigation costs.

Canadian General moved to dismiss Domtar’s claims based on lack of personal jurisdiction. The district court denied this motion, concluding that Canadian General was subject to personal jurisdiction in Minnesota. The Minnesota Court of Appeals affirmed the decision of the district court. In its appeal to the Minnesota Supreme Court, Canadian General contended that its contacts in Minnesota are constitutionally insufficient to subject it to personal jurisdiction in Minnesota.

The Minnesota Supreme Court in its opinion stated that to
sustain personal jurisdiction over a foreign corporation the court must find the following: (1) that personal jurisdiction is authorized by the Minnesota long-arm statute; and (2) that the exercise of such jurisdiction does not violate the due process requirement that the nonresident defendant have certain "minimum contacts" with the forum state. The Minnesota long-arm statute "permits courts to assert jurisdiction over defendants to the extent that federal constitutional requirements of due process will allow." Thus, the court concluded that it only needed to consider whether it is consistent with federal constitutional requirements of due process for a Minnesota court to assert jurisdiction over Canadian General.

To satisfy federal due process, it must be established that Canadian General has had minimum contacts in Minnesota. The minimum contacts requirement may be satisfied in two different contexts: general personal jurisdiction and specific personal jurisdiction. General jurisdiction requires the defendant to have "continuous and systematic" contacts with the forum state. The court quickly concluded that Canadian General's activities within Minnesota were insufficient to constitute 'continuous and systematic' contacts, thus Minnesota does not have general personal jurisdiction over Canadian General.

The court then examined Canadian General's contacts in Minnesota to see if they were sufficient to impose specific personal jurisdiction. Specific personal jurisdiction exists when "the defendant's contacts with the forum state are limited,

41. Domtar, 533 N.W.2d at 29 (Minn. 1995) (citing Valspar Corp. v. Lukken Color Corp., 495 N.W.2d 408, 410 (Minn. 1992)).
42. Id.
43. Id. at 30; see also Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 (1984).
44. Domtar, 533 N.W.2d at 30 (citing Helicopteros Nacionales, 466 U.S. at 415-16; Real Properties, Inc. v. Mission Ins. Co., 427 N.W.2d 665, 669 (Minn. 1988)). "General personal jurisdiction exists when a nonresident defendant's contacts with the forum state are so substantial and are of such a nature that the state may assert jurisdiction over the defendant even for causes of action unrelated to the defendant's contacts with the forum state." Id.
45. Id.
46. Id.
yet connected with the plaintiff’s claim such that the claim arises out of or relates to the defendant’s contact with the forum.”

A single contact with the forum can be sufficient to constitute specific personal jurisdiction if the cause of action arises out of that contact.

Domtar argued to the court that Minnesota may assert specific jurisdiction over Canadian General based on its agreement to insure Domtar’s Minnesota tar manufacturing operations. Courts have been known to impose specific personal jurisdiction on out-of-state insurers. Several courts have concluded “that a court may assert specific personal jurisdiction over a nonresident insurer when (1) the insurer knows of its insured’s contact with the forum; (2) the risk insured against transpires in the forum state; and (3) the forum state is not excluded from the geographic coverage of the insurance policy.”

The court focused on the decision in Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co., where the Ninth Circuit Court of Appeals held that a Montana court had specific personal jurisdiction over a Canadian insurer whose insured was involved in a Montana car accident. The dispute in Farmers Insurance arose from a single car accident in Montana. The owner of the car and his wife resided in Canada at the time of the accident and were insured by Portage La Prairie Mutual Insurance Company, a Canadian insurer.

At the time of the accident Lisa Lorango was driving the vehicle. Lorango was insured by Farmers Insurance, a California insurance company. Although both insurance companies,
Portage and Farmers, were obligated to provide liability, only Farmers provided coverage. Thus, Farmers brought an action in Montana federal district court against Portage seeking declaratory relief and damages for Portage’s refusal to reimburse Farmers.

The court concluded that because Portage’s insurance policy coverage extended into Montana, and because an insured event resulted in litigation, Portage had purposefully availed itself of the privilege of conducting activities in the forum state. The court reasoned that personal jurisdiction over Portage derived from its contractual obligation to indemnify and defend its insured, a duty that foreseeably required litigation in any forum where the insured risk traveled.

The court also distinguished this situation from the U.S. Supreme Court’s decision in *World Wide Volkswagen Corp. v. Woodson*, where the court did not find the existence of specific personal jurisdiction over an insurer whose only contact with the forum state is the issuance of an insurance policy covering an accident that occurred in the forum state. In *World Wide Volkswagen*, the plaintiffs who had purchased an automobile from a New York dealer and distributor, sued the dealer and distributor in Oklahoma, after being involved in a collision in Oklahoma. The Supreme Court held that the mobility of the automobile and the defendant’s ability to foresee its movement to other states were not enough to satisfy the requirements of due process. Thus, the Oklahoma court could not constitutionally assert jurisdiction over the defendants.

The court in *Farmer’s Insurance* reasoned that unlike the sellers in *World Wide*, the liability insurers contracted to defend and indemnify the insured for claims that will foreseeably result in the litigation of foreign states. If Portage wished to avoid suit in Montana it could have excluded that state from the policy

57. *Id.*
58. *Id.* at 32.
59. *Id.*
60. *Id.*
62. *Domtar*, 533 N.W.2d at 32.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
territory. The approach of asserting personal jurisdiction over insurance companies exemplified by Farmers Insurance Exchange faithfully observes the Supreme Court's emphasis in contract cases on the future consequences contemplated by the parties when executing the contract. In the general liability insurance context, the parties contemplate that the insurer will defend and indemnify the insured. Further, the defense is presumably contemplated to occur where the insured is sued.

In *Domtar*, the Minnesota Supreme Court, in determining if specific personal jurisdiction exists, first analyzed whether the insured knew of the insured's contacts with the forum state. In evaluating whether Canadian General knew of Domtar's operations in Minnesota, the court noted that the insurer has a commercial interest in knowing about the insured's contacts with the forum state to fix premiums. The court then examined Canadian General's underwriting practice and its approach to insuring United States risks, while also reviewing the operations of Domtar and the possibility that Domtar could be liable for groundwater contamination in Minnesota. The court concluded that Canadian General constructively knew that Domtar operated a plant in Minnesota, and by deciding to issue a general insurance policy to Domtar, Canadian General purposefully established the required minimum contacts with Minnesota.

Based on the above conclusions, the court held that Domtar's coverage claim against Canadian General arises out of Canadian General's minimum contacts with Minnesota, thereby supporting a Minnesota court's assertion of specific personal jurisdiction.

The court then examined whether a Minnesota court's
assertion of specific jurisdiction over Canadian General would be in sync with "traditional notions of fair play and justice." In deciding this question, courts consider various factors including the burden on the defendant to litigate in the forum state, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution, and the shared interest of the states in furthering social policy. Because Canadian General is familiar with the judicial system in the United States, this familiarity supports the reasonableness of retaining jurisdiction in Minnesota. Thus, Canadian General was subject to specific personal jurisdiction in Minnesota.

C. Submission of Jurisdiction; Vacation of Void Judgments

Generally, a valid judgment cannot be rendered against a party without due service of process. However, in Peterson v. Eishen, the Minnesota Supreme Court upheld an exception to this rule, holding that where a defendant takes some affirmative step to invoke the power of the court or to implicitly recognize its jurisdiction, that defendant submits to the jurisdiction of the court, although improperly served.

In 1982 Larry Eishen was declared the father of Mary Peterson's child in a default paternity adjudication. In a subsequent hearing, orders for child support were entered against Eishen despite his failure to appear, and the county began to collect these payments by intercepting Eishen's tax returns. In 1986 Eishen voluntarily submitted a blood test to

74. Id. at 34 (citing International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945)). "The concept of 'fair play and substantial justice' can defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities." Asahi Metal Indus. v. Superior Court, 480 U.S. 102, 116; Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477-78 (1985). The defendant bears the burden of presenting "a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King, 471 U.S. at 477.
75. Donmar, 533 N.W.2d at 34.
76. Id.
77. Id.
78. Lange v. Johnson, 295 Minn. 320, 204 N.W.2d 205 (1973).
79. 512 N.W.2d 338 (Minn. 1994).
80. Id. at 340.
81. Id. at 338.
82. Id.
the county attorney's office, who filed the results with the district court. In 1991 Eishen moved the district court to vacate the judgment of paternity and child support orders for want of adequate service of process.

Eishen's motion was denied by a family court referee. The referee found that the service of process in 1982 was adequate and Eishen knew of the appellant's claims, yet did not seek relief of judgment within a reasonable time. However, the district court reversed this finding, concluding service was inadequate. The Minnesota Court of Appeals agreed with the district court.

The Minnesota Supreme Court reasoned that although a valid judgment cannot be rendered against a party without due service of process, a party who takes or consents to any step in a proceeding that assumes jurisdiction exists has made a general appearance that subjects him to the jurisdiction of the court. The issue in front of the court was then whether Eishen took any step that would bring him under the jurisdiction of the court. Concluding that the blood test was not a contact with the court, the court determined that Eishen did not submit to the jurisdiction of the court.

The court in this case also addressed the question of whether Eishen's motion to vacate the judgment of paternity and child support orders was timely. The court examined Rule 60.02 of the Minnesota Rules of Civil Procedure and chapter 83. Id. at 339. Id. at 340 (citing Slayton Gun Club v. Town of Shetek, 286 Minn. 461, 176 N.W.2d 544 (1970)). Id. at 341. Id.

Rule 60.02 provides the following:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment (other than a divorce decree), order or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (a) Mistake, inadvertence, surprise, or excusable neglect; (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule.
518 of the Minnesota Statutes which discuss the reopening of a void judgment. The court stated as follows:

although the language of the rule and the statute indicate that the motions to vacate void judgments must be made within a reasonable time . . . there is no time limit for commencing proceedings to set aside a judgment void for lack of jurisdiction over the subject matter or over the parties. 95

Thus, Eishen's motion was found to be timely. 96

D. Trial Court's Discretion In Scheduling Matters

The Minnesota Supreme Court stated in the order of Rice Park Properties v. Robins, Kaplan, Miller & Ciresi 97 that the district court "has considerable discretion in scheduling matters and in furthering what it has identified as the interests of judicial administration and economy." 98 In this order, the Minnesota Supreme Court reversed the writ of mandamus sought by the plaintiff, Rice Park properties. 99 The writ compelled the Ramsey County District Court to vacate its stay of unlawful detainer proceedings pending the final disposition in a related and earlier filed declaratory judgment action commenced by the defendant, Robins, Kaplan, Miller & Ciresi. 100 The Court reasoned that although Minnesota Statutes section 566.08 envisions prompt dispositions of these summary proceedings, the orders of the district court will be honored, as long as the court does not abuse its discretion. 101

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59.03; (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) The judgment is void . . . . The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order or proceeding was entered or taken.

MINN. R. CIV. P. 60.02.

95. Peterson, 512 N.W.2d at 341; see Lange v. Johnson, 295 Minn. 320, 204 N.W.2d 205 (1973); Beede v. Nides Fin. Corp., 209 Minn. 354, 296 N.W. 413 (1941).

96. Id., 512 N.W.2d at 341.

97. 532 N.W.2d 556 (Minn. 1995).

98. Id. at 556

99. Id.

100. Id.

101. Id.