

South Dakota
Unified Judicial System

SOUTH DAKOTA SUPREME COURT

Traveling Term of Court



MARCH
19-20

Judicial Primer
8:30 a.m.
Oral Arguments
9:00 a.m.

**Northern State
University**

Johnson Fine Arts Center
1200 S. Jay St., Aberdeen



or visit
<https://uj.s.sd.gov>

N

NORTHERN
STATE UNIVERSITY



Steven R. Jensen
CHIEF JUSTICE



Supreme Court
STATE OF SOUTH DAKOTA

March 19, 2024

To our Guests Observing the
March Term Arguments of the
South Dakota Supreme Court

Ladies and Gentlemen:

Your Supreme Court welcomes you to our March Term of
Court.

This booklet has been prepared as part of the continuing
effort of the Supreme Court to promote increased public
knowledge of the South Dakota Unified Judicial System.

We hope it will assist you in understanding some of
the functions of the Supreme Court and make your
observation of the Court hearings a more valuable and
enjoyable experience.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Steven R. Jensen". The signature is fluid and cursive, with the first name "Steven" and last name "Jensen" clearly visible.

Steven R. Jensen Chief Justice

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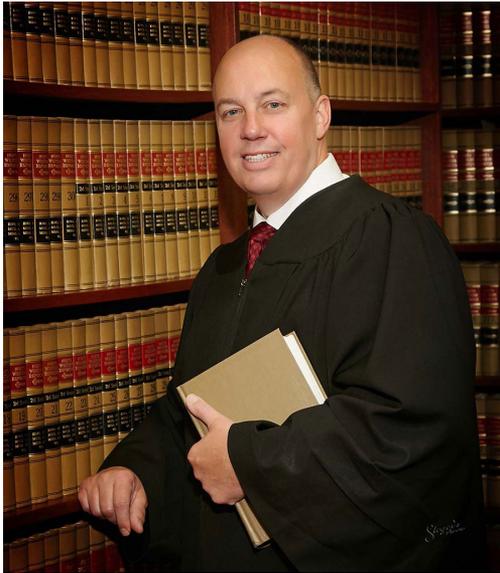
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Glossary of Terms

The Justices have extended an invitation to the public to attend any of the Court’s sessions. To assist with the Supreme Court visit, persons in attendance must abide by proper courtroom etiquette. The Supreme Court employs security methods to ensure the well-being of all who attend its proceedings, and all attending the morning court sessions will be requested to pass through a metal detector. Backpacks and book bags should not be brought, and other bags and purses are subject to inspection and search by security personnel.



CHIEF JUSTICE STEVEN R. JENSEN

Fourth Supreme Court District

Chief Justice Steven R. Jensen was appointed to the Supreme Court by Gov. Dennis Daugaard and sworn in on Nov. 3, 2017. He was elected to a four-year term as Chief Justice by members of the Supreme Court in 2021.

Chief Justice Jensen grew up on a farm near Wakonda, S.D. He received his undergraduate degree from Bethel University in St. Paul, Minn., in 1985 and his juris doctor from the University of South Dakota School of Law in 1988. He clerked for Justice Richard W. Sabers on the South Dakota Supreme Court before entering private practice in 1989 with the Crary Huff Law Firm in Sioux City, Iowa, and Dakota Dunes, S.D. In 2003, Chief Justice Jensen was appointed a circuit court judge for the First Judicial Circuit by Gov. M. Michael Rounds and became the presiding judge of the First Circuit in 2011.

Chief Justice Jensen served as chair of the Unified Judicial System's Presiding Judges Council, president of the South Dakota Judges Association, and on other boards and commissions. In 2009, he was appointed as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington D.C. He and his wife, Sue, have three children and three grandchildren.



JUSTICE JANINE M. KERN

First Supreme Court District

Justice Janine M. Kern was appointed to the Supreme Court on Nov. 25, 2014, by Gov. Dennis Daugaard.

Justice Kern received a bachelor of science degree in 1982 from Arizona State University and a juris doctor degree from the University of Minnesota Law School in 1985. Justice Kern worked in the Attorney General's office from 1985 to 1996 serving in a variety of capacities including the Appellate Division, Drug Prosecution Unit, and as director of the Litigation Division. She was appointed a circuit court judge for the Seventh Judicial District in 1996 and served 18 years on the trial court bench.

Justice Kern is a member of the American Law Institute, State Bar Association, Pennington County Bar Association, American Bar Association Fellows, and past president of the South Dakota Judges Association. She served on the Council of Juvenile Services from 2004 to 2013, Federal Advisory Committee on Juvenile Justice from 2004 to 2008, and on numerous other boards and commissions. Justice Kern and her husband, Greg Biegler, make their home in the beautiful Black Hills.



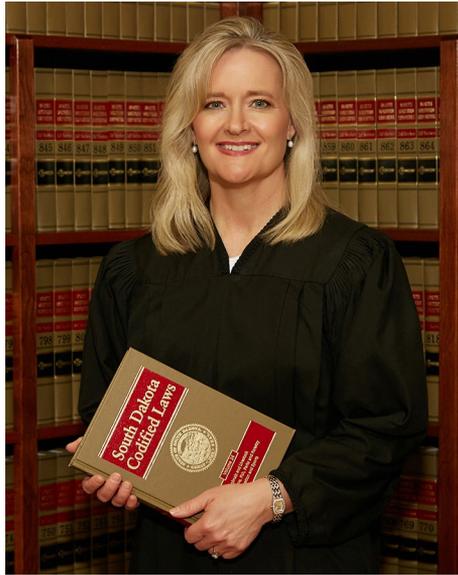
JUSTICE MARK E. SALTER

Second Supreme Court District

Justice Mark E. Salter became a member of the Supreme Court on July 9, 2018, following his appointment by Gov. Dennis Daugaard.

Justice Salter received a bachelor of science degree from South Dakota State University in 1990 and his juris doctor degree from the University of South Dakota School of Law in 1993. After clerking for a Minnesota state district court, he served on active duty in the United States Navy until 1997 and later in the United States Naval Reserve. Justice Salter practiced law with the Sioux Falls firm of Cutler & Donahoe, where he became a partner before leaving in 2004 to return to public service with the United States Attorney's Office for the District of South Dakota. As an assistant United States attorney, Justice Salter focused on appellate practice and became the chief of the office's Appellate Division in 2009. He was appointed as a circuit court judge by Gov. Daugaard for the Second Judicial Circuit in 2013.

Justice Salter served as presiding judge of Minnehaha County Veterans Treatment Court from its inception in 2016 to 2018. He is an adjunct professor at the Knudson School of Law, where he has taught advanced criminal procedure and continues to teach advanced appellate advocacy. He and his wife, Sue, have four children.



JUSTICE PATRICIA J. DEVANEY

Third Supreme Court District

Justice Patricia J. DeVaney was appointed to the Supreme Court by Gov. Kristi Noem and sworn in on May 23, 2019.

Justice DeVaney was born and raised in Hand County and graduated from Polo High School. She received her bachelor of science degree in 1990 from the University of South Dakota and her juris doctor degree from the University of Virginia School of Law in 1993. Justice DeVaney began her career of public service as an assistant attorney general in the South Dakota Office of Attorney General, where she practiced law from 1993 to 2012. She began her practice in the Appellate Division, then moved to the Litigation Division where she spent 17 years as a trial lawyer, prosecuting major felony offenses as well as representing the state in civil litigation in both state and federal trial and appellate courts. She also handled administrative matters for state agencies and professional licensing boards. Justice DeVaney was appointed by Gov. Dennis Daugaard as a circuit judge for the Sixth Judicial Circuit in 2012.

Justice DeVaney has served on various committees and boards, including secretary-treasurer and president of the South Dakota Judges Association. She and her husband, Fred, have three children.



JUSTICE SCOTT P. MYREN

Fifth Supreme Court District

Justice Scott P. Myren, who was sworn in to the Supreme Court on Jan. 5, 2021, was appointed by Gov. Kristi Noem.

Justice Myren grew up on his family farm in rural Campbell County and graduated from Mobridge High School. He received a bachelor of science degree from the University of South Dakota in 1985 and earned his juris doctorate from Rutgers University in 1988. Justice Myren practiced law in Denver before returning to South Dakota to work as a staff attorney for the South Dakota Supreme Court. He served as an administrative law judge for the Office of Administrative Hearings and magistrate judge for the Sixth Judicial Circuit. In 2003, he was appointed as a circuit judge for the Fifth Judicial Circuit by Gov. M. Michael Rounds. He was re-elected by the voters in 2006 and 2014 and was appointed presiding judge in 2014.

Justice Myren served as chair of the Unified Judicial System's Presiding Judges Council, president of the South Dakota Judges Association, and has served on numerous committees. He was selected as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington D.C., in 2009. He and his wife, Dr. Virginia Trexler-Myren, have two daughters.

CLERK OF THE SUPREME COURT



Shirley Jameson-Fergel is the clerk of the Supreme Court. This office assists the Supreme Court, and especially the Chief Justice, in the organization of correspondence, exhibits and other documentation related to formal activities of the Court. This includes monitoring the progress of appeals; scheduling oral arguments before the Court; recording Court decisions, orders and directives; and controlling their release and distribution. The office is also

responsible for management of all legal records of the Court, compiling appellate statistics, and documenting and disseminating Court rules.

SUPREME COURT LAW CLERKS

Law clerks are employed by the Court to assist the Justices with research and writing opinions on the cases under consideration.



L-R: Rex Schlicht, Supreme Court's law clerk; Benjamin Schroeder, Justice Myren's law clerk; Gabrielle Unruh, Justice Salter's law clerk; Connor McCormick, Chief Justice Jensen's law clerk; Leo O'Malley, Justice Kern's law clerk; and Jennifer Williams, Justice DeVaney's law clerk

SOUTH DAKOTA COURTS

The South Dakota Unified Judicial System consists of the Supreme Court, circuit courts and State Court Administrator's Office. The Supreme Court is the state's highest court and final decision maker on South Dakota law. The circuit courts are the state's trial courts where criminal proceedings and civil litigation are handled. The State Court Administrator's Office provides centralized administrative assistance and support services for the South Dakota judiciary.



SUPREME COURT

The South Dakota Supreme Court is the state's highest court and the court of last resort for state appellate actions.

The Supreme Court is comprised of the Chief Justice, who is the administrative head of the Unified Judicial System, and four justices who are entrusted to deliver the final judicial authority on all matters involving the legal and judicial system of South Dakota.

Supreme Court justices are appointed by the Governor from a list of nominees selected by the South Dakota Judicial Qualifications Commission. One justice is selected from each of five geographic appointment districts. Permanent justices must be voting residents of the district from which they are appointed at the time they take office. Justices face a nonpolitical retention election three years after appointment and every eight years after that.

The Supreme Court:

- Holds court terms throughout the calendar year.
- Has appellate jurisdiction over circuit court decisions.
- Has original jurisdiction in cases involving interests of the state.
- Issues original and remedial writs.
- Has rule-making power over lower court practice and procedure and has administrative control over the Unified Judicial System.
- Renders advisory opinions to the Governor, at their request, on issues involving executive power.



CIRCUIT COURTS

Circuit courts are the state's trial courts of general jurisdiction through which the bulk of criminal proceedings and civil litigation are processed.

South Dakota has seven judicial circuits, 44 circuit judges and 17 magistrate judges. Circuit court services are available in each county seat.

Circuit court judges are elected by the voters within the circuit where they serve. The judges must be voting residents of their circuit at the time they take office. In the event of a vacancy, the Governor appoints a replacement from a list of nominees selected by the Judicial Qualifications Commission.

- Circuit courts are trial courts of original jurisdiction in all civil and criminal actions.
- Circuit courts have exclusive jurisdiction in felony trials and arraignments and civil actions involving damages of more than \$12,000.
- Jurisdiction of less serious civil and criminal matters is shared with magistrate courts, over which the circuit courts have appellate review.



SUPREME COURT

SUPREME COURT PROCESS

The judicial system of South Dakota has two levels. The circuit courts are the lower courts through which criminal prosecutions and most civil lawsuits are processed. The South Dakota Supreme Court is the state's highest court and the court of last resort for parties who seek to change adverse decisions of the circuit court. The Supreme Court is the final judicial authority on all matters involving the legal and judicial system of South Dakota.



Appellate Jurisdiction

When an individual involved in a legal action is convinced that the judge in the circuit court has made an error in deciding the law of the case, that party may bring the case to the Supreme Court for a remedy. This is called an “**appeal**,” and the court hearing the appeal is called the “**appellate**” court. The party bringing the appeal is an “**appellant**” and the other party—usually the party who was successful in the lower court—is the “**appellee**.” Most of the work of the Supreme Court involves its appellate jurisdiction.

- In an appellate action, the Court may decide to hear “oral arguments” in the case, in which both parties are permitted to come before the Court and give a short presentation (an argument) to support their position in the case.

SUPREME COURT

- There is no trial, the lawyers do not confront each other, and the Court does not take testimony from witnesses.
- Usually, the attorneys for the parties involved stand before the Court and speak for 15 minutes to emphasize or clarify the main points of the appeal.
- The members of the Court may ask questions or make comments during the lawyer's presentation.
- After hearing oral arguments, the Court discusses the case, and one justice is assigned to write the opinion in the case.
- Other justices may write concurring or dissenting opinions to accompany the majority opinion, all of which are published as formal documents by the West Publishing Company in the North Western Reporter. Opinions are also available online at: <http://ujs.sd.gov>.



Original Jurisdiction

In addition to its appellate jurisdiction, the Supreme Court has its own area of “**original**” jurisdiction. It is also responsible for a wide range of administrative duties involving the personnel and procedures of the court system and the professional conduct of attorneys throughout the state.



Justices

The five members of the Supreme Court (four justices and a chief justice) are responsible for making decisions as a group regarding appellate cases and other judicial business.

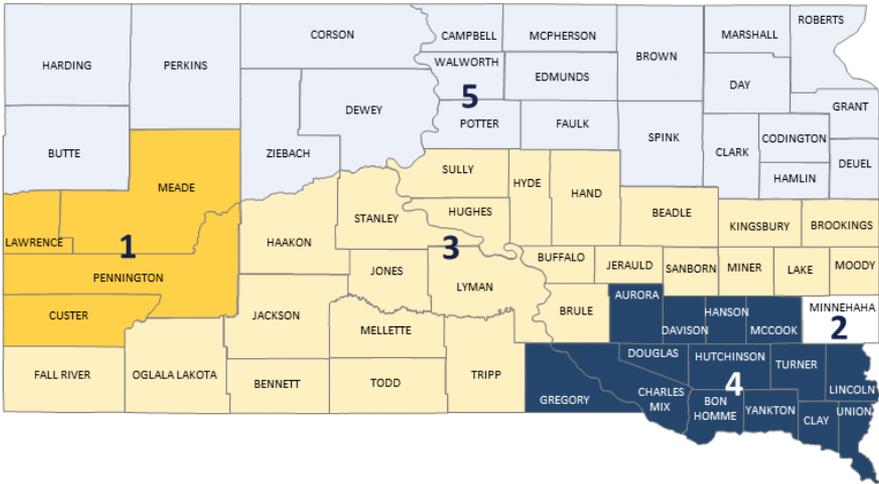
It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench to assist in the decision-making process. Such an appointment may occur when a justice is disqualified. A justice may be disqualified when the justice appears to have a conflict or personal involvement in a case, or if there is a vacancy on the Court caused by the illness or departure of a justice.



Those who sit on the Supreme Court must be licensed to practice law in the state, and permanent justices must be voting residents of the district from which they are appointed at the time they take office. There is no formal age requirement for those who serve on the Court, but there is a statutory requirement that a justice must retire shortly after reaching the age of 70. A retired justice, if available, may be called back to temporary judicial service in any of the state's courts.

Under the terms of a constitutional amendment passed by the voters in 1980, vacancies on the Supreme Court are filled by the Governor's appointment. This appointment must be made from a list of two or more candidates recommended by the Judicial Qualifications Commission. All Supreme Court justices must stand, unopposed, for statewide approval or rejection by the electorate in a retention election. For newly-appointed justices, the retention vote is held at the next general election following the third year after appointment. After the first election, justices stand for retention election every eighth year.

SUPREME COURT DISTRICT MAP



- **Chief Justice Steven R. Jensen**
Appointed to the Supreme Court in 2017 from district four.
- **Justice Janine M. Kern**
Appointed to the Supreme Court in 2014 from district one.
- **Justice Mark E. Salter**
Appointed to the Supreme Court in 2018 from district two.
- **Justice Patricia J. DeVaney**
Appointed to the Supreme Court in 2019 from district three.
- **Justice Scott P. Myren**
Appointed to the Supreme Court in 2021 from district five.

Our Mission

Justice for All

Our Vision

We are stewards of an open, effective and accessible court system, worthy of the public's trust and confidence.

COURTROOM PROTOCOL

The following list of do's and do not's was prepared for the benefit of anyone attending one of the Supreme Court's sessions. Your cooperation in observing proper courtroom protocol will assure that the lawyers presenting argument before the Court will not be unduly distracted and that the proper respect for the judiciary will be maintained. Your cooperation is appreciated.



DO

- Remove caps/hats before entering the courtroom.
- Enter the courtroom prior to the commencement of an argument.
- Stand when the justices enter and leave the courtroom.
- Listen attentively.
- Turn cell phones off before entering the courtroom.



DO NOT

- Bring food, drinks, cameras or recording equipment into the courtroom.
- Enter or leave the courtroom during the course of an argument.
- Chew gum or create any distraction.
- Engage in any conversation once an argument begins.

SUPREME COURT PRIMER



Prior to court on both March 19 and 20, State Court Administrator Greg Sattizahn will provide a brief history of the South Dakota Supreme Court, what attendees will see that day in the court process, who is involved in the cases, and what happens after oral arguments are heard.

As state court administrator, Sattizahn is the non-judicial officer who implements the rules and policies of the South Dakota Supreme Court as they apply to the operations and administration of the courts. He has served in this position for the South Dakota Unified Judicial System (UJS) since 2013.

Sattizahn previously held positions with the UJS as the director of policy and legal services and legal and legislative counsel. Sattizahn also served as a law clerk and staff attorney for the South Dakota Supreme Court and was engaged in private law practice. He earned his undergraduate degree from Iowa State University and juris doctor from the University of South Dakota School of Law.

TERM OF COURT CASE SUMMARIES

Seven cases are scheduled for oral argument during the Supreme Court's March 2024 Term of Court. For these cases, attorneys are permitted to appear before the Court to emphasize certain points of the case and respond to the Court's questions.

In addition to these oral arguments, numerous other cases will be considered by the Court during this term without further argument by the attorneys. These cases are on the Court's "non-oral" calendar.

The case summaries on the following pages have been prepared only for the cases scheduled for oral argument. The case number, date and order of argument appear at the top of each summary.

CASES

Cases #30309, #30311

Tuesday, March 19, 2024—Number 1

Weiland v. Bumann

Todd Weiland and Patrick Bumann were involved in a car accident on November 10, 2017, south of Humboldt in Minnehaha County. At the time, Bumann was on duty as a trooper with the South Dakota Highway Patrol (SDHP). He was driving westbound on Highway 42 near the Highway 19 intersection. Bumann noticed an eastbound vehicle that was speeding and had expired license plate tags.

Bumann intended to turn his patrol car around, pursue the eastbound vehicle, and initiate a traffic stop. At the time, Bumann was in a no-passing zone and his view of oncoming traffic was obstructed by two large trucks pulling trailers in front of him.

Bumann activated his patrol car's emergency lights and began to make a U-turn, but, as he did, he noticed a vehicle approaching in the eastbound lane. Bumann attempted to drive his vehicle to the shoulder of the road to avoid impact, but the two vehicles collided. The other vehicle was driven by Weiland. A deputy sheriff with Minnehaha County arrived on scene following the accident and completed an accident report. Neither party sought medical care in the time immediately following the accident.

Though he had received some chiropractic care earlier, Weiland sought medical treatment nearly two years after the 2017 accident. Weiland was seen at Sanford Clinic in Sioux Falls and at the Ortman Chiropractic Clinic, where Weiland worked as a chiropractor. In addition to chiropractic intervention, Weiland was also treated with massage, physical therapy, and radiofrequency ablations.

Weiland initiated this personal injury suit against Bumann and the SDHP¹ in March 2020. Bumann denied liability and asserted that Weiland's own negligence contributed to the collision and, further, that Weiland had failed to mitigate his damages. Weiland filed a motion for partial summary judgment seeking to prevail without a trial on his claim of negligence and to defeat Weiland's claims of contributory negligence and failing to mitigate damages. After a hearing, the circuit court denied Weiland's motion.

CASES

The parties disagreed over what standard of care was applicable to Bumann while on duty as a highway patrolman. The circuit court judge determined Bumann was held to an ordinary negligence standard even though he was engaged in law enforcement activity at the time of the collision. The court also ruled on other pretrial motions regarding evidence that could be admitted at trial. These included decisions to: (1) exclude the deputy sheriff's accident report; (2) redact portions of an SDHP letter that contained an internal report and administrative decision regarding the accident; and (3) preclude Weiland from discussing statements by Bumann's insurance adjuster. The court also ruled that Weiland could not present a "per diem" argument in which he claimed a daily rate of damages for non-economic damages, such as pain and suffering and the loss of enjoyment of life.

The case was tried to a jury over the course of three days in November 2022. Following its deliberation, the jury found that Bumann had acted negligently and that Weiland's own negligence was less than slight compared to Bumann's. The jury awarded Weiland \$17,500 in non-economic damages, \$1,161.50 in past medical expenses, and \$0 in future medical expenses.

Weiland now appeals and raises the following issues:

1. Whether the circuit court erred when it denied Weiland's motions for summary judgment and judgment as a matter of law regarding negligence, contributory negligence, and failure to mitigate.
2. Whether the circuit court abused its discretion when it excluded evidence from the accident report, the SDHP's investigation, and the insurance adjuster's representations.
3. Whether the circuit court abused its discretion when it denied Weiland's request to include South Dakota Pattern Jury Instruction 1-20-60.
4. Whether the circuit court erred when it precluded Weiland from presenting a per diem calculation of damages to the jury.

CASES

In addition to Weiland’s issues, Bumann raises the following issues:

1. Whether the circuit court’s denial of summary judgment on the issue of negligence is moot.
2. Whether Weiland preserved the issue of exclusion of Bumann’s insurance adjuster representations for appeal.
3. Whether the circuit court erred in applying a negligence standard to Bumann.
4. Whether the court erred when it denied Bumann’s motion for judgment as a matter of law on certain future damages.

Mr. Michael D. Bornitz and Ms. Abigale M. Farley, Attorneys for Appellant Todd Weiland

Ms. Melanie L. Carpenter and Mr. Jake R. Schneider, Attorneys for Appellee Patrick Bumann

1. The SDHP is not a party to this appeal. It successfully defended Weiland’s claim on the basis of sovereign immunity and was dismissed from the case.

CASES

Case #30339

Tuesday, March 19, 2024—Number 2

MRose Development Co. v. Turner County Commissioner

Christie Stewart lives in Sioux Falls but owns 145 acres of family farmland located on Swan Lake in Turner County. Stewart wishes to develop her land so that she can retire there and also give a lot to each of her two sons. To accomplish this, Stewart engaged MRose Development Co., LLC, to develop a portion of her land into 15 lakefront lots.

But Stewart’s land is currently included in the “A-1 Agricultural District” under the 2008 Revised Zoning Ordinance for Turner County. This means that the land is designated primarily for agricultural use, not lakefront residential development. As it is currently zoned, only one single-family dwelling is permitted per 40 acres, and the lot on which the single-family dwelling is situated must consist of 2.5 acres.

Consequently, MRose submitted an application to the Turner County Planning and Zoning Commission to change the Agricultural District zoning designation for Stewart’s property. MRose sought to have the land included in a separate zoning category known as the “LR Lake Residential District.” The zoning change would allow MRose to proceed with its proposed development because land within the Lake Residential District is not subject to the same single-family residential restrictions that apply to land within the Agricultural District.

The Planning and Zoning Commission recommended the Turner County Board of County Commissioners (BOCC) approve MRose’s rezoning application. Over the course of several meetings, the BOCC heard public comment, much of which opposed rezoning Stewart’s land to Lake Residential. The BOCC eventually rejected MRose’s application by a vote of 3-2.

There is no transcript from the BOCC proceedings, and the BOCC did not provide an explanation for its decision.

CASES

MRose appealed the BOCC's decision to a circuit court judge. At a subsequent hearing, the circuit court received testimony and also sought clarification from the parties about their positions. MRose argued that the 2008 Ordinance “already contemplate[s] that this would be a use permitted on the lake[,]” and so the BOCC did not have any discretion to deny the rezoning application. The BOCC, however, contended that MRose was “skipping a step” that required the BOCC to exercise its independent authority to evaluate the rezoning.

Additionally, MRose argued the lack of a record from the BOCC meetings justified the admission of certain evidence at the hearing before the circuit court. The BOCC argued the lack of a record was not detrimental since it had never been the BOCC's practice to record its sessions, and MRose could have used discovery tools, such as depositions, to gather the evidence that the record lacked.

After taking the case under advisement and receiving further written arguments from the parties, the circuit court reversed the BOCC's decision. The court concluded that the BOCC could not exercise its discretion to deny MRose's rezoning application and had no other choice than to include it in the Lake Residential District because the property was situated along Swan Lake. Therefore, in the court's view, MRose's proposal to develop Stewart's land was authorized by the operative language in the zoning ordinance's provisions relating to the Lakefront Residential District.

The BOCC appeals, raising the following issues:

1. Whether the circuit court erred by reviewing the BOCC's decision de novo, or without deference to the BOCC.
2. Whether the circuit court erred when it interpreted the Ordinance to mandate the BOCC to grant MRose's rezoning application.
3. Whether the BOCC's decision to deny MRose's rezoning application was arbitrary or capricious.

Mr. Ronald A. Parsons and Ms. Katelynn B. Hoffman, Attorneys for
Appellant Turner County Board of Commissioners

Mr. Shawn M. Nichols and Mr. Andrew Hurd, Attorneys for Appellee
MRose Development Co., LLC

CASES

Cases #30317, #30338

Tuesday, March 19, 2024—Number 3

Helfenstein v. SCS Carbon Transport

Summit Carbon Solutions Transport, LLC (SCS) is currently developing an interstate pipeline through South Dakota for the transportation of carbon dioxide (CO₂). The planned project includes 1,900 miles of underground pipelines spanning five states: South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. In South Dakota, the SCS pipeline will traverse 18 counties: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner. Once completed, the pipeline will be used to transport CO₂ from ethanol plants to an underground storage facility in North Dakota. So far, 34 third-party facilities have signed contracts or letters of intent with SCS. These entities will receive federal tax and carbon-offset credits and pay SCS a “Tipping & Transportation fee.”

In June 2022, a number of South Dakota landowners (Landowners) began receiving notices from SCS claiming authority to survey their property prior to initiating eminent domain proceedings. In support of their position, SCS cited SDCL 21-35-31, which grants “person[s] vested with authority to take private property” the right to examine and survey such property. Pursuant to this provision, SCS filed an application with the South Dakota Utilities Commission for a siting permit under the South Dakota Energy Conversion and Transmission Facilities Act. According to SCS, although the surveys would generally only result in “small soil disturbances at discrete locations,” certain properties would be subject to more invasive geotech drilling and deep-dig surveys. SCS has obtained a \$5 million performance bond for the payment of any actual damage caused by the surveys.

Landowners refused to grant SCS access to their properties and several suits were filed in both the Third and Fifth Judicial Circuits, seeking declaratory and injunctive relief against SCS. These cases were consolidated and SCS counterclaimed for declaratory and injunctive relief confirming its right to survey. In January 2023, SCS moved for summary judgment against Landowners in the Third Circuit. The Third Circuit Court found that SDCL 21-35-31 was not

CASES

an unconstitutional taking and that, as a common carrier pipeline, SCS was entitled by the statute to conduct the surveys. Accordingly, the Third Circuit Court granted SCS's motion for summary judgment and entered a declaratory judgment authorizing SCS to survey the properties. In February 2023, SCS filed a similar summary judgment motion in the Fifth Circuit, which was also granted in full along with a similar declaratory judgment for SCS. Landowners now appeal from both judgments, raising the following issues:

1. Whether the circuit courts erred in finding that SDCL 21-35-31 does not constitute a taking of private property that violates the state and federal constitutions.
2. Whether the circuit courts erred in finding SDCL 21-35-31 affords Landowners adequate due process of law.
3. Whether the circuit courts erred in holding that SCS is a common carrier vested with the power of eminent domain.
4. Whether the Third Circuit Court erred by making certain factual findings related to SCS's status as a common carrier sua sponte, which were then adopted by the Fifth Circuit Court.
5. Whether the circuit courts erred in finding SCS complied with all requirements of SDCL 21-35-31(2).
6. Whether the circuit courts erred by failing to require SCS to establish that its bond was sufficient to account for any and all damages caused to Landowners' properties as a result of the demanded examinations and surveys.
7. Whether the circuit courts erred in denying Landowners' motion to continue summary judgment proceedings to conduct discovery pursuant to SDCL 15-6-56(f).
8. Whether the circuit courts erred in finding SDCL 21-35-31 authorizes the extensive surveys and examinations sought by SCS.

Mr. Nicholas G. Moser, Mr. Brian E. Jorde, and Mr. Christopher J. Healy, Attorneys for Appellant Landowners

CASES

Mr. Brett K. Koenecke, Mr. Justin L. Bell, Mr. Cody L. Honeywell, Mr. Cash E. Anderson, Mr. Brian D. Boone, Mr. Michael R. Hoernlein, Mr. Matthew P. Hooker, and Mr. Bret A. Dublinske, Attorneys for Appellee SCS Carbon Transport, LLC

CASES

Case #30426

Wednesday, March 20, 2024—Number 1

State v. Hahn

Eighty-five-year-old Delores Moen was awakened around 12:30 a.m. on August 24, 2023, to the sounds of loud pounding at the front door of her Rapid City house. Delores was frightened and fled from her home through a rear patio door. Neighbors also heard the noise, and one of them heard a male voice shouting, “I’m going to . . . kill you . . .” The neighbors called the police and later found Delores hiding in her back yard.

Two neighbors were able to see a man running from Delores’ home and provided police with a description. When officers arrived, they observed significant damage to the front door of Delores’ house. As they were continuing their investigation, they observed a nearby man, later identified as Brandon Hahn, who matched the description Delores’ neighbors had provided.

When officers approached Hahn, he became confrontational. He resisted their efforts to detain him and eventually arrested him, physically struggling with officers as they attempted to restrain and transport him. One officer noted that Hahn appeared to be intoxicated.

Hahn was charged with first-degree intentional damage to property, which is a felony that required the State to prove that the damage to Delores’ door was at least \$1,000 but less than \$2,500. Hahn was also charged with a misdemeanor count of obstructing a public officer. Prosecutors also sought to establish an enhanced statutory maximum prison sentence because Hahn had been previously convicted of four felonies.

Hahn pled not guilty and asserted his constitutional right to a jury trial. After hearing the evidence, the jury returned a guilty verdict on both the intentional damage to property charge and the obstructing a public officer charge. Hahn asserted at trial and now on appeal that the State failed to sufficiently prove the value of the damage to Delores’ door.

CASES

On this topic, the evidence at trial indicated the door had been significantly damaged by what appeared to be efforts to kick it in, which had also shattered the wooden door frame. The steel front door was original to the house that had been built in 1962.

At trial, the jury was instructed that “[t]he value of the damage to the property in question is equal to the value of reasonable repairs that will restore the property to substantially the same condition as it was immediately prior to the damage.” The trial court judge also instructed the jury, “If you find the value of reasonable repairs exceeds the value of the property as it was immediately prior to the damage, then you must find the amount of damage is equal to the fair market value of the property immediately prior to the damage.”

Delores’ insurance company valued the damage at \$1,384, and after deducting her \$1,000 deductible, the insurance company issued her a check for \$384. The actual repairs totaled \$1,474 which included \$300 for a carpenter, \$599 for a new door, and \$575 for a new locking mechanism.

Hahn argues that these repair costs are an incorrect means of establishing the value of the damage. He asserts that the jury must consider the market value of the damaged door. The trial court did not accept this argument, and Hahn now seeks appellate review of that single issue.

Mr. Kyle Beauchamp, Attorney for Appellant Brandon Hahn

Mr. Marty J. Jackley, Attorney General, and Ms. Jennifer M. Jorgenson, Assistant Attorney General, Attorneys for Appellee State of South Dakota

CASES

Cases #30294

Wednesday, March 20, 2024—Number 2

State v. Ironheart

On June 5, 2022, Kaleb Ironheart exited the passenger door of a vehicle parked outside the entrance of a Hy-Vee wine and spirits store located in Sioux Falls, S.D. Upon exiting the vehicle, Ironheart quickly entered the store and walked toward the wine and whiskey aisle located in the back. Ironheart then grabbed a bottle of Fireball whiskey and began to walk back toward the front of the store. Instead of paying for the bottle, Ironheart yelled an expletive at Hy-Vee staff and ran out the front door.

Francis Gergen, a Hy-Vee employee, noticed Ironheart run for the exit. Gergen followed Ironheart out of the building, attempting to retrieve the bottle. Once outside, Ironheart ran past his escape vehicle and toward the center of the parking lot. While still being followed by Gergen, Ironheart reached into his pocket, pulled out a knife, and turned toward Gergen repeatedly saying, “What are you gonna do?” After seeing Ironheart’s knife, Gergen abandoned his pursuit and stepped away from Ironheart. Ironheart then entered the vehicle and drove away.

Ironheart was indicted on June 23, 2022, for first-degree robbery in violation of SDCL 22-30-1,-3,-6, and -7 and aggravated assault by physical menace with a dangerous weapon in violation of SDCL 22-18-1.1(5). A jury trial commenced on September 19, 2022. After the State rested its case, Ironheart moved for a judgment of acquittal for both charges. The motion was denied, and after resting his case, Ironheart renewed his motion for a directed verdict which was also denied. The jury found Ironheart guilty of both offenses, and he was sentenced to 10 years in prison for each offense. The sentences were ordered to run concurrent to one another.

Ironheart appeals and raises a single issue:

1. Whether the circuit court erred in denying Ironheart’s motion for judgment of acquittal when it found that there was sufficient evidence, if believed by the jury, to prove that Ironheart used force or the fear of force to obtain or retain possession of the stolen property.

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Mr. Christopher Miles, Ms. Katheryn Dunn, and Mr. Alex Braun,
Attorneys for Appellant Kaleb Ironheart

Mr. Marty J. Jackley, Attorney General, and Mr. John M. Strohman,
Assistant Attorney General, Attorneys for Appellee State of South
Dakota

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#30441

Wednesday, March 20, 2024—Number 3

Jucht v. Schulz

Jucht and Schulz farm on abutting land. Schulz sprayed a chemical mixture onto his property, which Jucht alleges drifted onto his property and damaged his crops. Jucht sued Schulz for negligence, strict liability, trespass, and nuisance, requesting actual and punitive damages and injunctive relief. Schulz filed a motion to dismiss the claims, arguing that Jucht failed to state a claim upon which relief can be granted. Schulz argued that, under SDCL 38-21-46, Jucht was required to notify Schulz “by certified mail” of the alleged drift of the chemical mixture onto Jucht’s crops. SDCL 38-21-46 says:

Any person claiming damages from any use of a pesticide shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:

1. Thirty days after the date that the damages were observed or should have been observed; or
2. If a growing crop is alleged to have been damaged, before the time that twenty-five percent of the crop has been harvested or destroyed.

This section does not apply if the person seeking reimbursement for damage was the applicator of the pesticide.

Schulz argued that, by failing to comply with the notification requirement of the statute, Jucht is precluded from bringing a claim. The circuit court held a hearing on the matter and granted the motion to dismiss.

Jucht appeals the order granting the motion to dismiss and raises two main issues in his brief:

1. Whether non-compliance with SDCL 38-21-46 precludes bringing suit; and
2. Whether actual notice fulfills the “notify by certified mail” language in SDCL 38-21-46.

Mr. Mitchell Peterson and Ms. Elizabeth Hertz, Attorneys for Appellant Kevin Jucht

Mr. Matthew McIntosh, Attorney for Appellee Nathan Schulz

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Case #30343

Wednesday, March 20, 2024—Number 4

State v. Waldner

In July 2021, Michael Waldner, Jr., and Mark Waldner were indicted by a Brule County grand jury with varying degrees of rape and sexual contact with E.H., a child under 16 years of age. The charged conduct allegedly occurred from January 2019 to December 2020.

While the investigation underlying these charges was ongoing, law enforcement discovered that E.H. had made journal entries following the alleged rapes detailing what she had experienced. With E.H.'s consent, law enforcement obtained the journal, and it was provided to defense counsel as part of the discovery the State produced in conjunction with the law enforcement reports. These reports and the contents of the journal indicated that E.H. had authored other diaries or journals. Based on this information and defense counsel's belief that these other writings could contain information relevant to the pending charges and to E.H.'s credibility, the Waldners filed a discovery motion seeking to obtain all of E.H.'s diaries and journals. The Waldners also issued a subpoena duces tecum to secure these documents. The circuit court granted the Waldners' motion for further discovery and directed the State to obtain and submit these items to the court.

At the time the order granting this discovery request was entered, E.H. was not represented by counsel, and she had not been given the opportunity to be heard on the matter. After retaining an attorney, E.H. filed a motion to quash the subpoena, asserting her right to privacy under Article 6, Section 29 of the South Dakota Constitution, more commonly known as Marsy's Law, which provides certain rights to crime victims. The rights delineated under this provision include a victim's right to "refuse an interview, deposition or other discovery request." Shortly after E.H. filed her motion to quash, the Waldners withdrew their subpoena. However, they noted that the withdrawal was based on their success in obtaining an order from the court requiring these documents to be produced in response to their discovery motion.

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E.H. then filed a motion to vacate the court’s discovery order. After recognizing that E.H. had the right to be heard and that the proper way to secure these documents was via a subpoena pursuant to SDCL 23A-14-5 (Rule 17(c)), rather than through a discovery order, the court granted, in part, E.H.’s motion to vacate the previously issued order. The Waldners then reissued the same subpoena duces tecum directing E.H. to produce “[a]ny and all . . . diaries, journals, or other documents of any nature” she possessed “for the time period of January 1, 2010, through the present.”

E.H. again moved to quash the Waldners’ subpoena, reasserting her constitutional right to privacy, particularly, her right to refuse discovery requests. She further asserted that the Waldners failed to make the necessary showing to obtain evidence pursuant to a Rule 17(c) subpoena that is required by the governing case law. This showing is commonly referred to as the Nixon test, which requires a requesting party to establish that the desired documents are (1) relevant, (2) admissible, and (3) requested with adequate specificity.

After a hearing on the motion to quash, the circuit court denied E.H.’s motion. The court ordered her to comply with the subpoena by producing “all diaries and/or journals . . . that she has authored or written” for an in-camera review by the court, after which the court would determine whether any of the diary or journal entries would be disclosed to the State and the defense. E.H. filed a petition for an intermediate appeal to this Court, asserting that the court erred by denying her motion to quash and entering this order. The State thereafter joined E.H.’s petition. The Court granted the petition to appeal but directed the parties to address a jurisdictional issue along with the merits of the claims E.H. and the State are asserting. The following issues are presented in this appeal:

1. Whether this Court has jurisdiction to hear an appeal from an intermediate order brought by the alleged victim in a criminal case.
2. Whether the circuit court erred by requiring E.H. to produce her diaries and journals in light of her constitutional right to privacy.

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3. Whether the circuit court further erred by ordering an in-camera review of the requested documents without determining if E.H. had waived her constitutional rights and without analyzing whether the Nixon factors required for sustaining a Rule 17(c) subpoena had been established.

Mr. Jeremy Lund, Attorney for Appellant E.H.

Mr. Marty J. Jackley, Attorney General, and Ms. Chelsea Wenzel, Assistant Attorney General, Attorneys for Appellee State of South Dakota

Mr. Timothy R. Whalen, Attorney for Appellee Michael M. Waldner, Jr.

Mr. Kent Lehr, Attorney for Appellee Mark Waldner

GLOSSARY OF TERMS

Affirm

When the Supreme Court “affirms” a circuit court’s action, it declares that the judgment, decree or order must stand as decided by the circuit court.

Appeal

The Supreme Court’s review of a circuit court’s decision in a lawsuit. The Supreme Court does not consider new evidence or listen to witnesses. Rather, it reviews the record of a case and applies the proper law to determine if the circuit court’s decision is correct.

Appellant

The person who takes an appeal from the circuit court to the Supreme Court. (In other words, the person who does not agree with the result reached in circuit court.)

Appellee

The person in a case against whom an appeal is taken; that is, the person who does not want the circuit court’s decision reversed. Sometimes also called the “respondent.”

Brief

A document written by a person’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which his legal position is based. The brief tells the Supreme Court the facts of the case, the questions of law involved, the law the attorney believes should be applied by the Court, and the result the attorney believes the Court should reach.

Defendant

The person sued by the plaintiff or prosecuted by the state in the circuit court.

GLOSSARY OF TERMS

Oral Argument

An opportunity for the attorneys to make an oral presentation to the Supreme Court when the appeal is considered. Oral arguments also give the Court an opportunity to ask the attorneys questions about the issues raised in their briefs.

Plaintiff

The person who brings a lawsuit in the circuit court.

Record

All the papers filed in a circuit court case including any transcripts. This includes the original complaint, motions, court orders, and affidavits and exhibits in the case.

Remand

The Supreme Court “remands” an appealed case back to the circuit court for some further action. For example, the Supreme Court might remand a case to the circuit court and require that court to hear additional evidence and make further factual findings that are important in deciding the case.

Reverse

When the Supreme Court “reverses” a circuit court decision, it finds that a legal error was made and requires that the decision be changed.

Transcript

A document that contains a verbatim account of all that was said in a circuit court case by the parties, the attorneys, the circuit judge, and any witnesses. The transcript is prepared by the court reporter, and it is reviewed by the Supreme Court as part of the appeal process.



SOUTH DAKOTA SUPREME COURT JUSTICES

L-R: Justice Patricia J. DeVaney, Justice Janine M. Kern, Chief Justice Steven R. Jensen, Justice Mark E. Salter, and Justice Scott P. Myren



SOUTH DAKOTA SUPREME COURT

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