

1. **THE TRIAL COURT ERRED GRANTING THE MOTION TO DISMISS FOR FAILURE TO PROSECUTE PURSUANT TO SDCL 15-6-41(b)**

- A. Standard of Review
- B. The Trial Court Erred Finding Plaintiffs' Alleged Delays Egregious
- C. The Trial Court Erred Finding Attorney Wassom's Diagnosis of Prostrate Cancer Failed To Explain The Alleged Delay
- D. The Trial Court Erred Finding That The Eischens' Alleged Failure to Prosecute This Case With Reasonable Promptitude was Egregious
- E. Lack of Prejudice
- F. Less Extreme Remedy

The trial court granted Defendants' Motion to Dismiss for Failure to Prosecute.

Rotenberger v. Burghduff, 727 N.W.2d 291 (SD 2007)

Swenson v. Sanborn County Farmers Union Oil Co., 594 N.W.2d 339 (SD 1991)

London v. Adams, 578 N.W.2d 145 (SD 1998)

Duncan v. Pennington County Housing Auth., 382 N.W.2d 425 (SD 1986)

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2. **THE TRIAL COURT IMPROPERLY GRANTED PARTIAL SUMMARY JUDGMENT AGAINST THE EISCHENS ON THE BASIS OF SOVEREIGN IMMUNITY**

- A. Summary Judgment Standard
- B. The Trial Court Improperly Granted Summary Judgment Because Wayne Township Failed To Show That It Possessed Insurance Coverage
- C. The Trial Court Improperly Granted Summary Judgment Because Wayne Township Assumed A Contractual Duty
- D. The Trial Court Improperly Granted Summary Judgment Because Wayne Township Volunteer Fire Department Failed To Make Out Their Prima Facie Case
- E. The Trial Court Improperly Granted Summary Judgment Because A Special Relationship Existed Between The Parties

The trial court granted partial summary judgment against the Eischens.