

SOUTH DAKOTA SUPREME COURT

—Traveling Term of Court—



March 25-26, 2025

Black Hills State University, Spearfish

Jacket Legacy Room, David B. Miller Yellow Jacket Student Union

Judicial Primer
8:40 a.m.

Oral Arguments
9:00 a.m.

Judicial Q&A
11:15 a.m.



BLACK HILLS
STATE UNIVERSITY



SOUTH DAKOTA
UNIFIED JUDICIAL SYSTEM

Steven R. Jensen
CHIEF JUSTICE



Supreme Court
STATE OF SOUTH DAKOTA

March 25, 2025

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

Table of Contents

Chief Justice Steven R. Jensen	4
Justice Janine M. Kern.....	5
Justice Mark E. Salter	6
Justice Patricia J. DeVaney	7
Justice Scott P. Myren	8
Clerk of the Supreme Court	9
Supreme Court Law Clerks.....	9
South Dakota Courts	10
Supreme Court Process.....	12
Supreme Court District Map	15
Courtroom Protocol	16
Term of Court Case Summaries	17

Tuesday, March 25, 2025

8:40 a.m. Judicial Primer

9:00 a.m. State v. Gustafson..... 17

9:45 a.m. Frerk v. Heggen..... 20

10:30 a.m. NOPE v. DOC..... 22

11:15 a.m. Judicial Q&A

Wednesday, March 26, 2025

8:40 a.m. Judicial Primer

9:00 a.m. State v. Huante 24 |

9:45 a.m. Mahmoudi v. City of Spearfish..... 26

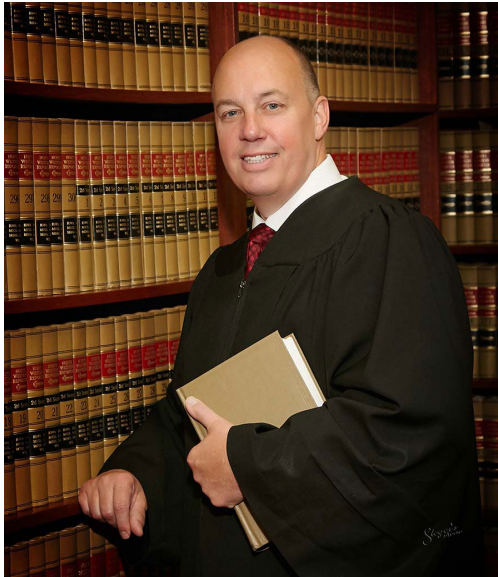
10:30 a.m. Culhane v. Thovson..... 29

11:15 a.m. Judicial Q&A

Glossary of Terms

 32 |

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 selected for a four-year term as Chief Justice by members of the Supreme Court in 2021. He was reselected to a second, four-year term as Chief Justice beginning Jan. 6, 2025.

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. 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.



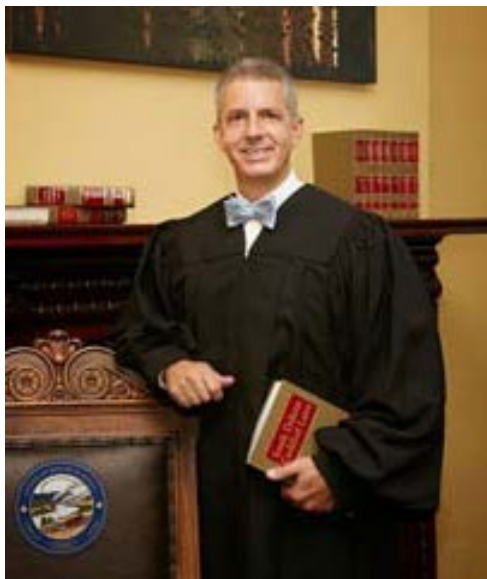
JUSTICE JANINE M. KERN

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.



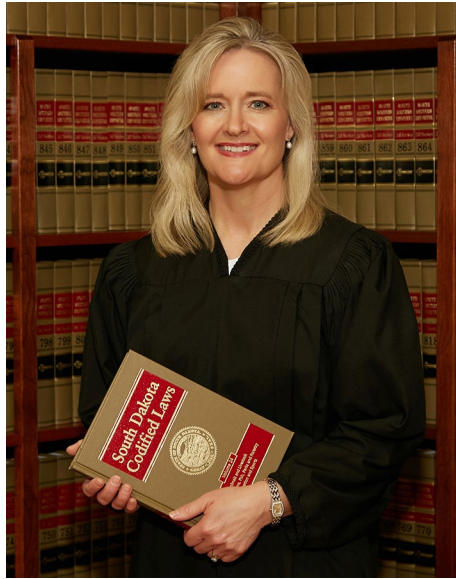
JUSTICE MARK E. SALTER

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: Shanell Nieuwendorp, Supreme Court's law clerk; Will West, law clerk for Justice Myren; Brendan Goetzinger, law clerk for Justice Salter; Emalee Larson-Sudenga, law clerk for Chief Justice Jensen; Emily Toms, law clerk for Justice Kern; Pat Archer, law clerk for Justice DeVaney; Dana Van Beek Palmer, Supreme Court'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 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.



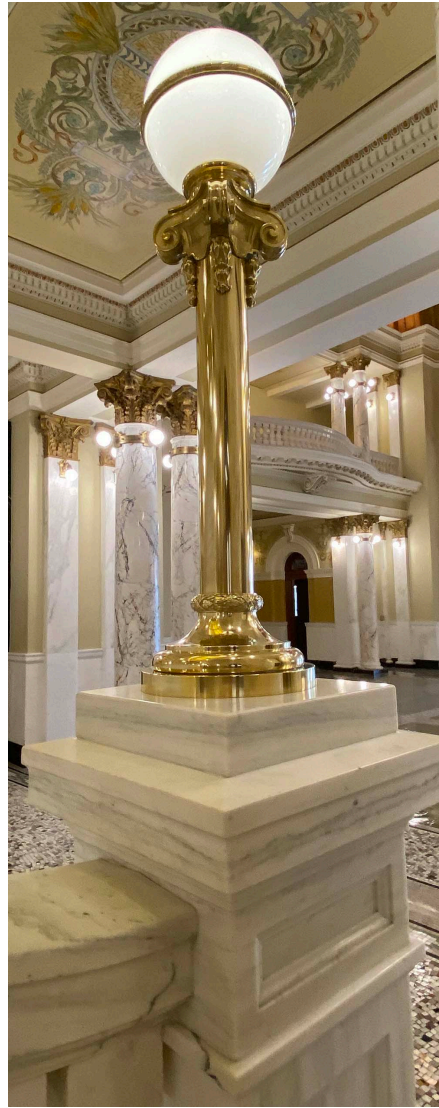
CIRCUIT COURTS

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, 46 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.

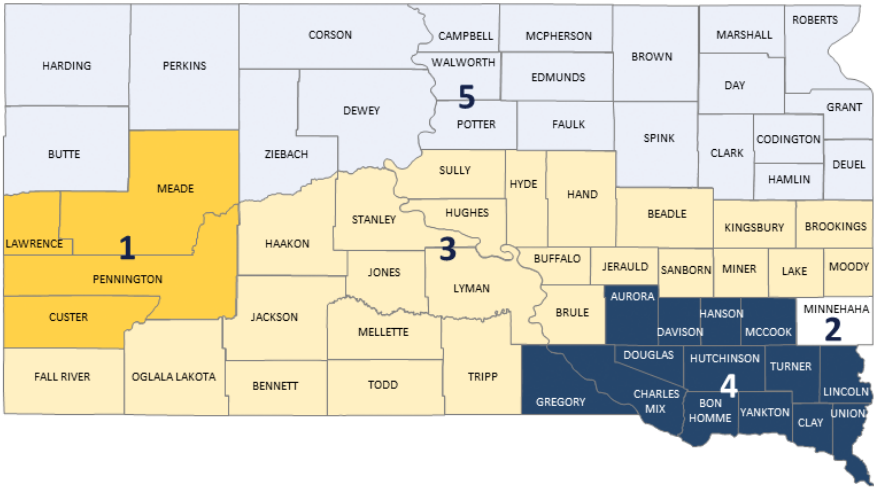
It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench to assist in the decision-making process. Such an appointment may occur when a justice is disqualified. A justice may be disqualified when the justice appears to have 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.

TERM OF COURT CASE SUMMARIES

Six cases are scheduled for oral argument during the Supreme Court’s March 2025 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.

Case #30723

Tuesday, March 25, 2025—Number 1

State v. Gustafson

In August 2020, the State of South Dakota commenced an action to condemn certain private property in conjunction with a reconstruction of the Interstate 29 (I-29) and 41st Street interchange in Sioux Falls (the Project). To complete this Project, the State deemed it necessary to acquire a portion of private property owned by Charles and Heather Gustafson. Their property is located at the northwest corner of the intersection of 41st Street and Carolyn Avenue and abuts the right of way running along the northbound on-ramp to I-29. The State paid the Gustafsons compensation for the fair value of the parts of their property taken for a permanent easement and a temporary construction easement.

The Project also provided for the closure of the intersection at 41st Street and Carolyn Avenue. It is through this intersection that travelers on 41st Street—a very busy corridor surrounded by many retail businesses and restaurants—could access Gustafsons’ property by turning north onto Carolyn Avenue, then driving a very short distance before turning left into the property’s parking lot. A Pizza Hut had been operating on this property for several years prior to the

CASES

announcement of the Project. As part of the Project plans, Carolyn Avenue, which abuts the eastern border of Gustafsons' property, would become a dead-end street ending in a cul-de-sac where the intersection used to be. The Gustafsons claim they are entitled to compensation for the loss of the short access to and from 41st Street resulting from the closure of this intersection. They claim they have been uniquely damaged by the closure because they can no longer obtain high-density retail tenants, as their property is now suitable only for low-density commercial or office use.

The State claims the Gustafsons are not entitled to compensation because, in 1958, it previously acquired control of the right of direct access to what is now 41st Street from the Gustafsons' predecessors, Lloyd and Lillian Eagan. At that time, when I-29 was initially constructed, the State acquired, as part of the right of way for the I-29 on-ramp, a strip of property across the southern border of the Eagans' property abutting what was then a section-line road (now 41st Street). The Eagans signed a contract with the State in which they agreed to transfer this property to the State in exchange for compensation for the acquisition of their property, as well as any damages resulting from the construction of the project. In doing so, the State maintains the Eagans relinquished their right, as previously abutting landowners, to directly access what is now 41st Street. The State thus claims that the Gustafsons do not have a property right of direct access to 41st Street, as they do not own property abutting 41st Street.

The Gustafsons dispute the State's claim that the right to access 41st Street was relinquished by the Eagans. The intersection connecting 41st Street to what is now Carolyn Avenue existed in 1958, and this was the only route by which the Eagans could access 41st Street once I-29 was constructed. The Gustafsons contend that the Eagans retained a special private property right to access 41st Street through this intersection because the 1958 project plans show that this intersection was to remain open. They thus contend they are now entitled to the compensation for the loss of this existing access as a result of the subsequent closure of the intersection.

CASES

The State disputes this claim and asserts that even if the Eagans retained such right of access given the lack of any other in 1958, the Gustafsons can no longer claim a special right of access to 41st Street via this particular intersection. The State contends that there are now several other connecting streets and access points affording reasonable 41st Street access to and from the Gustafsons' property. The State notes that the governing law applicable to restriction of access claims requires the Gustafsons to prove both a "substantial impairment" of access, and an injury peculiar to their property, in order to be compensated for the loss of property value resulting from the closure of the existing intersection. The State claims no substantial impairment or unique injury exists.

A court trial was held on the issue of the compensability of the loss of the existing intersection access to and from 41st Street. The circuit court concluded that in 1958, the State mitigated a compensable element of damage—the taking of all direct access to the Eagans' property—by keeping the access via the existing intersection open. As a result, the court concluded that the Eagans, and subsequently the Gustafsons, retained a special right to access 41st Street via this intersection. The court alternatively ruled that the closure of the 41st Street and Carolyn Avenue intersection has caused a substantial impairment of access to and from the Gustafsons' property, and that their resulting injury is unique and not of the kind suffered by the public in general. The court therefore concluded that the Gustafsons are entitled to compensation for damages as a result.

The State raises one issue on appeal:

1. Whether the circuit court erred in determining that the closure of the intersection at 41st Street and Carolyn Avenue constitutes a taking or damaging of property for which the Gustafsons must be compensated.

Mr. Marty J. Jackley, Ms. Karla L. Engle, Mr. Dustin W. DeBoer and Mr. Shane M. Pullman, Attorneys for Appellant South Dakota Department of Transportation

Mr. Clint Sargent and Ms. Raleigh Hansman, Attorneys for Appellees Charles and Heather Gustafson

CASES

Case #30773

Tuesday, March 25, 2025—Number 2

Frerk v. Heggen

While driving late at night on October 12, 2019, Amber Frerk struck a black cow that was on the highway. The cow belonged to Bruce Heggen and had been confined in a pasture owned by Leo and Joanne Heggen. The pasture was adjacent to Highway 11, a paved, high-traffic road in rural Minnehaha County. The pasture was enclosed with a five-wire barbed fence as well as an electric high-tensile wire fence.

In September 2022, Frerk sued the Heggens, alleging that because of their negligence, she suffered personal injuries resulting from the collision. Although it is unknown exactly how the cow escaped from the pasture, Frerk contends the cow likely got out because of inadequately maintained fencing that may have been compromised due to heavy rains and flooding in the month preceding the collision. Frerk alleged the Heggens breached the duty of care owed by livestock owners because they should have reasonably anticipated that their livestock would escape or stray onto the roadway and cause injury. She bases her claim, in part, on the opinion of her expert who inspected the condition of the fencing in the spring of 2023, as well as other alleged instances of cattle escaping enclosures on the Heggens' property. Frerk's complaint also asserted a claim of negligence per se based on alleged violations of Minnehaha County ordinances prohibiting animals from running at large and prohibiting a person from leaving an obstruction on a road right-of-way.

The Heggens denied Frerk's claims. Bruce Heggen maintains that he regularly checked the pasture to ensure that his cattle were still in it, that the fences were in place and working as intended, and that the gates were all closed. According to Bruce, he performed these checks earlier in the day and again before dark on October 12. After the accident, Bruce again checked the fencing and gates and found no areas where the fencing was down, nor gates open, and there were no signs of how the cow had escaped.

CASES

The Heggens filed a motion for summary judgment, claiming they were entitled to a judgment as a matter of law because there are no material facts in dispute. Frerk resisted, asserting that she had produced sufficient evidence to support her claims and was thus entitled to have a jury resolve the factual issues. The circuit court granted the Heggens' motion. The court concluded there are no genuine issues of material fact as to whether the Heggens breached their duty of care. The court also dismissed Frerk's negligence per se claim, ruling that the county ordinances are not applicable because they are geared toward a different purpose and do not create a standard of care or a protected class of persons, nor do they contemplate injuries to a protected class of persons.

Frerk appeals, raising the following issues on appeal:

1. Whether the circuit court erred in granting the Heggens' motion for summary judgment.
2. Whether the circuit court erred when it determined that the Minnehaha County ordinances do not apply in this case.

Ms. Kylie M. Schmidt, Mr. John C. Quaintance and Mr. Mike Ogborn,
Attorneys for Appellant Amber Frerk

Mr. Ryan W.W. Redd and Ms. Delia M. Druley, Attorneys for Appellees
Leo Heggen, Joanne Heggen and Bruce Heggen

CASES

Case #30890

Tuesday, March 25, 2025—Number 3

NOPE v. DOC

House Bill 1017, enacted by the 2023 Legislature, authorized the Department of Corrections (DOC) to purchase real property for a new men’s state prison. The DOC later selected two 160-acre parcels of state-owned land in rural Lincoln County as the site for the new prison. The land is designated for agricultural use under Lincoln County’s Zoning Ordinance.

A group of individual landowners along with an organization known as NOPE-Lincoln County (the Appellants) commenced this action against the State of South Dakota, the DOC and the DOC Secretary (the State). The Appellants sought a declaration from the circuit court that the State was subject to Lincoln County’s Zoning Ordinance and could not build a prison on the proposed site without seeking a conditional use permit or a rezoning request, both of which provide for public notice and an opportunity for public comment.

The State moved for dismissal because, in its view, the Appellants were unable to state a claim upon which relief could be granted. In support, the State asserted that the Appellants lacked standing, which is the legal right to bring a lawsuit. Additionally, the State argued the Appellants’ claims are barred by sovereign immunity, a legal doctrine which prohibits citizens from suing the government without its consent. In South Dakota, the government as well as its officials enjoy sovereign immunity when performing discretionary governmental duties. But sovereign immunity is waived and therefore does not apply to “ministerial” governmental duties—duties governed by rules or standards so clear and specific that the government official has no real choice about how and when to carry them out.

The Appellants resisted the State’s motion to dismiss, arguing that their affected property rights established standing. And, though Appellants concede HB 1017 granted the State discretion in making its selection, they argue it did not grant discretion to do so in violation of local zoning rules, which the Appellants allege apply to the State as a ministerial duty.

CASES

The circuit court found that two of the named Appellants established standing. Nevertheless, the court determined that sovereign immunity barred the Appellants' claims. As a result, the court granted the State's motion to dismiss, concluding Appellants failed to state a claim upon which relief could be granted.

From this final judgment, Appellants appeal.

Mr. Arvid J. Swanson, Attorney for Appellants NOPE-Lincoln County, Inc., Mike Hoffman, Michelle Jensen, Jay White and Tom Eiesland

Mr. Marty J. Jackley and Mr. Grant M. Flynn, Attorneys for Appellees the South Dakota Department of Corrections and Kelly Wasko, Secretary

CASES

Case #30764

Wednesday, March 26, 2025—Number 1

State v. Huante

Dallas Quick Bear was shot in the back of the neck in a Rapid City bar shortly after midnight on February 20, 2022. The next day, Timothy Huante went to the public safety building in Rapid City to discuss the shooting with detectives. Huante reported that he had spent the previous evening drinking heavily with friends and that, at some point, he ended up at the bar where Quick Bear was shot. Huante reported to detectives that he had trouble remembering details from the previous evening. The detectives suspected Huante was still intoxicated, so they told Huante to come back another day.

As part of their investigation, law enforcement recovered security camera footage from inside the bar on the night of the shooting and a revolver that was stashed near a loading dock. Security camera footage focused on the loading dock purportedly shows Huante stashing the revolver.

Huante returned for a second interview with detectives on February 22, 2022. He again explained that he could not remember many details from the night of the shooting but told the detectives that he remembered handling a firearm at some point during the evening. Detectives confronted Huante with a still image of the security camera footage from the loading dock, and he confirmed that he was the person in the photograph. However, he denied any involvement in the shooting. Huante agreed to submit to a polygraph examination.

After Huante completed the polygraph, he was informed that he had failed. Detectives then proceeded to conduct a third interview with Huante. During this interview, Huante repeatedly stressed that he could not remember what happened the night of the shooting and requested the detectives tell him what they knew about the shooting. As the interview wore on, Huante's confidence that he was innocent began to wane. He eventually confessed to killing Quick Bear and was charged with first-degree murder.

CASES

Huante hired an expert witness, Dr. Stephen Manlove, to testify about false confessions. Dr. Manlove is a psychiatrist. False confessions are a phenomenon where an innocent person confesses to a crime they did not commit. Huante wanted Dr. Manlove to testify about false confessions generally, the types of people susceptible to giving false confessions, and interrogation techniques more likely to result in false confessions. The State objected to Dr. Manlove's proposed testimony and requested the circuit court to hold a hearing where his qualifications could be discussed.

After the hearing, the circuit court denied the State's request to prohibit Dr. Manlove from testifying at the trial. The circuit court evaluated Dr. Manlove's qualifications and determined that they satisfied the requirements for somebody to testify as an expert. Under the circuit court's decision, Dr. Manlove was permitted to testify about the things Huante wanted him to do. However, the circuit court did not allow Dr. Manlove to testify whether he believed that Huante's confession was false. The circuit court reasoned it was for the jury to decide whether Huante's confession was false. Before trial, the State filed a petition for discretionary appeal, which this Court granted. Huante's trial has not occurred.

Mr. Marty J. Jackley and Ms. Erin E. Handke, Attorneys for Appellant State of South Dakota

Ms. Angela M. Colbath, Mr. Gregory J. Sperlich and Mr. Kyle Beauchamp, Attorneys for Appellee Timothy Huante

CASES

Case #30742

Wednesday, March 26, 2025—Number 2

Mahmoudi v. City of Spearfish

Dahl Road is located in Spearfish, S.D. In 1995 and 1996, the City of Spearfish undertook two improvement projects on Dahl Road—the 1995 Consolidated Street Improvement Project and the 1996 Dahl Road Sewer Improvement Project. As part of these projects, a metal surface drain culvert was installed beneath the roadway, leaving the culvert’s end partially exposed in the roadside ditch. There are no sidewalks on either side of Dahl Road.

On December 4, 2016, Hamideh Mahmoudi, an ultra-marathon runner, was running along Dahl Road, facing oncoming traffic. To avoid an approaching vehicle, she stepped off the side of the road, and her foot became lodged in the culvert. This incident caused her to sustain a sprained ankle and a 5 cm laceration on her right shin; the laceration severed a vein and subsequently became infected, further complicating her injuries and necessitating additional medical treatment.

Mahmoudi filed suit against the City one year later, alleging nuisance, negligence and recklessness. Mahmoudi alleged that the City was responsible for maintaining public rights-of-way—including roadways and ditches—and that it had left the culvert “in the public right-of-way, uncapped, and partially exposed.” Mahmoudi claimed that the City owed her and the public a duty to exercise reasonable and ordinary care to ensure the safety of the right-of-way and that it breached this duty by failing to inspect, identify and remove hazards; provide safe walking surfaces; train its employees on pedestrian safety issues; and post conspicuous, meaningful warning signs to alert the public to potential hazards.

In its answer, the City admitted that it was responsible for maintaining public rights-of-way within city limits and that it had a duty to keep them safe for public use. However, the City denied failing to meet this standard and asserted that it had exercised ordinary care in maintaining the culvert. As affirmative defenses, the City claimed that Mahmoudi’s complaint failed to state a claim for relief, that Mahmoudi assumed the risk or was contributorily

CASES

negligent, that her allegations were unforeseeable and thus did not constitute a breach of duty, and that her injuries resulted from intervening events for which the City was not liable.

On February 29, 2024, the City moved for summary judgment, asserting that it owed no common law duty to maintain, repair or ensure the safety of highways because municipalities are not liable for highway defects unless a statute imposes such liability. The City noted that although SDCL 31-32-10 imposes a limited statutory duty once notice is given that a highway is damaged or “out of repair,” Mahmoudi neither cited this statute nor alleged its violation. The City argued that the common law duties Mahmoudi relied on were abrogated by SDCL 31-32-10 and, absent a breach of the duty imposed by that statute, it could not be held liable for negligence. The City also argued that Mahmoudi’s nuisance claim failed as a matter of law because SDCL 21-10-1 exempts statutorily authorized actions or maintenance from constituting a nuisance, and the City was authorized to construct and maintain the culvert under SDCL 9-45-3. The City also argued that Mahmoudi had alleged only common law negligence and that neither her complaint nor any discovery materials provided sufficient support for a claim of gross negligence.

Mahmoudi opposed summary judgment, asserting that the City should be bound by its own admission of duty in its answer. Although she did not cite SDCL 31-32-10 in her complaint, Mahmoudi argued that her allegations were sufficient to place the City on notice of her claim. She also claimed that the requirements for liability under SDCL 31-32-10 were met because “the culvert that was to be maintained by [the City] became out of repair, resulting directly in an injury to [Mahmoudi].” Additionally, she argued that the City had constructive notice of the damaged culvert since City employees “had repeated open views of the culvert while mowing, weeding and plowing” snow. Mahmoudi also argued that the City’s motion was predicated on sovereign immunity, which the City had waived by failing to plead the same as an affirmative defense in its answer.

Regarding her nuisance claim, Mahmoudi acknowledged that SDCL 21-10-1 exempts statutorily authorized actions from being considered a nuisance, but argued that this authorization does not permit a

CASES

public entity to negligently create a nuisance and then avoid liability. She also contended that her gross negligence claim was supported by the undisputed fact that the City had not inspected or maintained the culvert in the 20 years since its installation, nor had it implemented an inspection policy like those required for townships under SDCL 31-14-33.

Following a hearing on the motion, the circuit court granted summary judgment in favor of the City.

Mahmoudi appeals the circuit court's ruling, raising four issues:

1. Whether the circuit court erred in holding that the City did not owe Mahmoudi a duty under either the common law or SDCL 31-32-10.
2. Whether the City waived the defenses it relied on in its summary judgment motion by failing to affirmatively plead immunity in its answer.
3. Whether the circuit court erred in holding that SDCL 21-10-2 barred Mahmoudi's nuisance claim against the City.
4. Whether the question of gross negligence should be submitted to a jury for determination.

Ms. Heather Lammers Bogard, Attorneys for Appellant Hamideh Zakipour Mahmoudi

Ms. Cassidy M. Stalley, Attorneys for Appellee City of Spearfish

CASES

Case #30782

Wednesday, March 26, 2025—Number 3

Culhane v. Thovson

Bill Thovson's wife, Paula, was tragically killed in a car accident in North Dakota on July 28, 2020, when a truck pulling a goose neck trailer ran through a stop sign causing Paula's vehicle to strike the truck. One week later, Thovson contacted attorney Seamus Culhane with Turbak Law Office, P.C. regarding his wife's fatal car crash. Turbak Law Office began working on the case the next day and learned that a recording system from a nearby convenience store captured video footage of the crash. On August 5, Turbak Law contacted the manager of the convenience store and asked that he preserve the video. Thovson signed a Legal Services Agreement on August 7, 2020. By the terms of the agreement, Culhane agreed to represent Thovson in relation to his wife's death on a 33.33% contingent-fee basis to be calculated after the deduction of costs. Culhane contacted the North Dakota State Highway Patrol seeking any reports, sent anti-spoilation letters to individuals who may have information about the accident, and notified National Farmers Union Property and Casualty Company (NFUPCC) that he was representing Thovson. NFUPCC was the insurer of the at-fault driver, Dean Johs, and the owner of the vehicle, Charles Johs, his father.

Because he was not licensed in North Dakota, Culhane contacted Thomas Dickson, a North Dakota attorney, seeking his assistance on the case. NFUPCC tendered the policy limit of \$250,000 on Charles Johs' policy on August 24, 2020. Two days later, NFUPCC tendered the policy limits on Dean Johs' policy, an additional \$250,000. After Dickson agreed to assist with the case, Thovson signed a second Legal Services Agreement on August 27, 2020, specifying that the 33.33% contingent fee would be split equally between Culhane and Dickson. Both agreements included the following provision:

It is the right and responsibility of the client to decide whether or not to accept any settlement offer. If the client refuses to accept an offer that is, in the opinion of Turbak Law Office, P.C., fair and reasonable, Turbak Law Office, P.C. has the right to withdraw from representation of the client on the matter and retain a lien against the claim for costs incurred in pursuit of the claim and for fees equal to 33.33% (1/3) of that offer, less costs.

CASES

Culhane, Dickson and Thovson continued to explore additional sources of recovery including additional insurance coverages, other potential defendants, and Dean and Charles Johs' personal assets. However, the investigation was not fruitful and in November 2020, Culhane and Dickson notified Thovson that commencing suit was "not a practical alternative." The parties met on November 20, 2020, and Thovson allegedly agreed that he would accept the \$500,000 settlement from NFUPCC if Culhane and Dickson agreed to seek an additional voluntary payment from Charles, reduce their contingency fee to 30%, and "eat" the out-of-pocket costs incurred to date.

Dickson contacted Charles Johs' attorney and requested an additional \$100,000 personal contribution from Charles toward a settlement. Charles refused this demand which was communicated to Thovson on December 8, 2020. Culhane and Dickson then asked Thovson to accept the original settlement from NFUPCC based on their understanding of their agreement during the November 20 meeting. Thovson declined to do so at that time.

In January 2021, Culhane and Dickson notified Thovson of their intent to withdraw as counsel and file a lien for their attorney fees against the settlement proceeds pursuant to the terms of their contract if Thovson continued to refuse to take the settlement offer. Culhane and Dickson sent Thovson a letter on January 19, 2021, notifying him of their withdrawal and enclosed an attorney's lien statement in the amount of \$170,049.81 representing their 33% contingency fee for the settlement.

Thovson did not retain new counsel and instead communicated directly with NFUPCC. Eighteen months later, on July 18, 2022, Thovson agreed to accept the \$500,000 settlement from NFUPCC. Thereafter, NFUPCC issued three checks: (1) a \$250,000 check payable to Thovson, (2) a \$79,950.19 check payable to Thovson, and (3) a \$170,049.81 check payable to Thovson and Turbak Law. On September 8, Culhane and Dickson notified Thovson that they received the check and asked that he endorse it so they could be paid. Thovson declined and Culhane and Dickson filed an action alleging breach of contract and seeking a declaratory judgment to enforce their attorney's lien. Thovson denied that he was required to pay the contingent fee and argued that under the South Dakota Rules of Professional Conduct, Culhane and Dickson were prohibited from

CASES

collecting their fees after withdrawing from representation because Thovson refused to accept a settlement offer. Thovson argued that such a withdrawal is not for “good cause,” and they were precluded from receiving their fees. Thovson also filed a counterclaim, asserting breach of fiduciary duty, breach of contract, actual fraud and rescission under North Dakota law, and deceit pursuant to SDCL 16-18-26(1).

Following discovery, both parties moved for summary judgment. The circuit court granted Culhane and Dickson’s motion for summary judgment and ordered that they be paid \$170,049.81 plus \$31,303.59 in prejudgment interest. The court also granted Culhane and Dickson’s motion for summary judgment on Thovson’s counterclaims, resulting in dismissal of his claims for breach of contract, deceit, breach of fiduciary duty and fraud. Further, the court determined that North Dakota law did not apply, but that even if it did, Thovson failed to provide notice of rescission for two of his claims as required under North Dakota law.

Thovson appeals, raising the following issues:

1. Whether the circuit court erred by declining to apply North Dakota law.
2. Whether the circuit court erred by granting Culhane and Dickson’s motion for summary judgment and enforcing their attorney’s lien.
3. Whether the circuit court erred by granting Culhane and Dickson’s motion for summary judgment on Thovson’s counterclaims.

Mr. Michael L. Gust and Mr. Mark Schwab, Attorneys for Appellant Bill Thovson

Mr. Richard J. Thomas, Mr. Chris Angell and Ms. Nancy J. Turbak Berry, Attorneys for Appellees Seamus Culhane, Turbak Law Office, P.C., Thomas Dickson and Dickson Law Office

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

Appellee

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

Brief

A document written by a party’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which their 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 party 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 party 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.

NOTES

NOTES



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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