

**TUESDAY, NOVEMBER 17, 2009  
9:00 A.M.**

**NO. 1**

**#25278**

**BRYAN LOCKE AND BENJI LOCKE,  
Plaintiffs and Appellants,**

**vs.**

**LONALD L. GELLHAUS,  
Defendant and Appellee.**

Mr. Ronald A. Parsons, Jr.  
Mr. Scott A. Abdallah  
Johnson, Heidepriem,  
Abdallah & Johnson, LLP  
Attorneys at Law  
PO Box 2348  
Sioux Falls SD 57101  
Ph 338-4304

**(FOR APPELLANTS)**

Mr. Mark W. McNeary  
Attorneys at Law  
PO Box 1359  
Aberdeen SD 57401-1359  
Ph 380-9693

**(FOR APPELLANTS)**

Mr. Roy A. Wise  
Mr. Zachery W. Peterson  
Richardson, Wyly, Wise, Sauck,  
& Hieb, LLP  
Attorneys at Law  
PO Box 1030  
Aberdeen SD 57402-1030  
Ph 225-6310

**(FOR APPELLEE)**

The Honorable Scott P. Myren  
Fifth Judicial Circuit  
Brown County

**(CIV 07-750)**

**(20-20-10)**

**STATEMENT OF THE ISSUE**

- I. Did the defendant, an abutting property owner, owe a common law duty to the general public to use ordinary care in maintaining an excavation or artificial condition in a municipal sidewalk created for the benefit of the abutting property?**

The trial court held that the defendant owed no duty in this case.

- *Rapid City v. First Nat'l Bank of the Black Hills*, 107 N.W.2d 693 (S.D. 1961)
- *Zens v. Chicago, Milwaukee, St. Paul & Pac. RR. Co.*, 386 N.W.2d 475 (S.D. 1986)
- *Pagett v. Northern Electric Supply Co.*, 167 N.W.2d 58 (Minn. 1969)
- *Dodson v. New England Trust. Co.*, 71 N.E.2d 503 (Ohio Ct. App. 1946)