

WEDNESDAY, MAY 27, 2009  
10:00 A.M.

NO. 2

#25034

RANDALL F. MASAD and LORI J.  
MASAD,  
Plaintiffs and Appellants,  
  
vs.

DOUG WEBER, BOB KUEMPER,  
DENNIS BLOCK, DARYL SLYKHUIS,  
OWEN SPURREL, ROBERT RAE, TOM  
LINNEWEBER, BARB BOLDT, KRISTIN  
JENSEN, JEREMY ROLAND, RANDY  
FLICK JEFF BAKER, DARIN YOUNG,  
LAUREL PAULSON, DAVID LENTSCH,  
JODI WIESE, BRAD WOODWARD,  
LARRY WEINS, JORGENE WILLIAMS,  
SANDY WECHSLER, TROY PONTO,  
CHUCK GILSON, HARLAN  
TJEERDSMA, SHERRY O'CONNOR,  
NANCY CHRISTIANSEN, AARON  
MACH, KIRK GREENWOOD, BILL  
VANDERWOUDE, ANGELA HAWKEY,  
SAVELLA OLESEN, PAUL KURLE,  
JARED BROESDER, RYAN FETERL,  
RICK LESLIE, CHAD STRAATMEYER,  
CRYSTAL VAN VOOREN, DAROLD  
DIEDE, JODI STETTNIKS, AND  
JOHN DOE DEFENDANTS 1 - 10,  
Defendants and Appellees.

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(FOR APPELLANTS)

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(FOR APPELLEES)

The Honorable Stuart L. Tiede  
Second Judicial Circuit  
Minnehaha County

(CIV 07-246)

## STATEMENT OF LEGAL ISSUES

1. **Whether the trial court erred in determining that the Masads' negligence claim was barred by SDCL § 3-21-8 and SDCL § 3-21-9(5).**

- A. SDCL § 3-21-8
- B. SDCL § 3-21-9(5)

The trial court determined the Masads' negligence claim was barred by SDCL § 3-21-8 and SDCL § 3-21-9(5).

SDCL § 3-21-8.

SDCL § 3-21-9.

*Burhenn v. Dennis Supply Co.*, 2004 SD 91, 685 N.W.2d 778.

2. **Whether the trial court erred in determining that the application of SDCL § 3-21-8 and SDCL § 3-21-9(5) to bar the Masads' claim did not violate the South Dakota Constitution.**

- A. Open Courts
- B. Equal Protection
- C. Due Process

The trial court determined that the application of SDCL § 3-21-8 and SDCL § 3-21-9(5) to bar the Masads' claim did not violate the South Dakota Constitution.

*Kyllo v. Panzer*, 535 N.W.2d 896 (S.D. 1995).

*Oien v. City of Sioux Falls*, 393 N.W.2d 286 (S.D. 1986).

*Lyons v. Lederle Laboratories*, 440 N.W.2d 769 (S.D. 1989).

*Ex rel. Knowles v. United States*, 1996 SD 10, 544 N.W.2d 183.

3. **Whether the trial court erred in determining, as a matter of law, that Randy was not a third party beneficiary of the contract between Catering by Marlins, Inc. and the State.**

The trial court concluded that Randy was not a third party beneficiary of the contract between Catering by Marlins, Inc. and the State.

*Sisney v. Reisch*, 2008 SD 72, 754 N.W.2d 813.

SDCL § 53-2-6.

*Trouten v. Heritage Mut. Ins. Co.*, 2001 S.D. 106, 632 N.W.2d 856.

*Kotchina v. Luna Park Housing Corp.*, 815 N.Y.S.2d 594

(N.Y. App. Div. 2006).