MONDAY, OCTOBER 3, 2011
9:00 A.M.

NO. 1

#25922

WILLIAM ADRIAN; JESSE BAYSINGER; DAVID CUNY; SCOTT CUNY; SCOTT EDOFF; DUAINE FETTER; WAYNE FORTUNE; JERALD HEINRICHS, RICK HORTON; WAYNE HUETHER; WILLIAM HUETHER; DONALD JOBGEN; DUANE JOBGEN; MARVIN JOBGEN; CHARLES KRUSE; DANIEL KRUSE; KEVIN KRUSE; PHILIP KRUSE; KUDRNA RANCH; BERTT MAY; LARRY MAY; LYLE O'ROURKE; DARRELL PETERSON; RASMUSSEN-LEHMAN LLC; RICHARD RAUSCH; JOHN SIDES; TUBBS LAND AND CATTLE LLC; RAYMOND AND BERTHA WARNER; JIM WHITCHER; MONTE WHITCHER; WALT WHITCHER; RALPH WHITE; WAYNE WHITE; GARY WILLIAMS; DENNIS ZELFER; ALVIN ZIETLOW,
Plaintiffs and Appellants,

vs.

JEFF VONK, SECRETARY OF SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS; and THE SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS; and BILL EVEN, SECRETARY OF SOUTH DAKOTA DEPARTMENT OF AGRICULTURE; and THE SOUTH DAKOTA DEPARTMENT OF AGRICULTURE,
Defendants and Appellees.

Mr. James P. Hurley
Bangs, McCullen, Butler,
Foye & Simmons
Attorneys at Law
333 West Boulevard Ste. 400
PO Box 2670
Rapid City SD 57709-2670
Ph: 343-1040

(FOR APPELLANT)

Mr. Timothy M. Engel
Mr. Douglas A. Abraham
May, Adam, Gerdes & Thompson LLP
Attorneys at Law
503 South Pierre Street
PO Box 160
Pierre SD 57501-0160
Ph: 224-8803

(FOR APPELLEE)

The Honorable Janine Kern
Seventh Judicial Circuit
Pennington County

(CIV 05-153)

20-20-10

STATEMENT OF LEGAL ISSUES

1. Whether Defendants' Acts and Omissions Caused the Continuing Prairie Dog Nuisance?

   SDCL 41-11-15
   SDCL 21-10-1
   SDCL 34A-8A-5

2. Whether There Is A Legal Basis For Defendants' Motion for Reconsideration and for Summary Judgment?

   SDCL 15-6-56
   SDCL 15-6-59(b)
   SDCL 15-6-60(b)
   SDCL 34A-8A-5

3. Whether Defendants' Legal Authority is Without Merit?

   Jensen v. Lincoln County Bd. Comm'rs, 718 N.W.2d 606 (S.D. 2006)

4. Whether Defendants' Motion for Reconsideration to Judge Kern to Reverse the Judgment of Judge Fuller was Judge Shopping?

   Hahne v. Hahne, 444 N.W.2d 360 (S.D. 1989)

   Selle v. Pierce, 494 N.W.2d 634 (S.D. 1993)

   Winkelman v. Moses, 279 N.W.2d 897 (S.D. 1979)

   Lee v. Rapid City Area Sch. Dist., No. 51-4, 526 N.W.2d 738, 740 (SD 1995)

5. Whether the Doctrine of Res Judicata Barred Reconsideration and Re-litigation of the Judgment Entered by Judge Fuller?

   Interest of L.S., 721 N.W.2d 83 (S.D. 2006)

   Christians v. Christians, 637 N.W.2d 377, 387 (S.D. 2001)

   Sodak Distributing Co. v. Wayne, 77 S.D. 93 N.W.2d 791, 794 (S.D. 1958)

6. Whether SDCL 15-6-59 or SDCL 15-6-60 Provides Authority for Defendants' Motion to Reverse Judge Fuller's Judgment?

SDCL 15-6-59 (b)
SDCL 15-6-60(b)

Overvaag v. City of Dell Rapids, 319 N.W.2d 171 (S.D. 1982)

Chapter 34A-8A

7. Whether Defendants' Motion for Reconsideration to Judge Kern to Reverse the Judgment of Judge Fuller was Judge Shopping?

Selle v. Pierce, 494 N.W.2d 634 (S.D. 1993)

Winkelman v. Moses, 279 N.W.2d 897 (S.D. 1979)

Hahne v. Hahne, 444 N.W.2d 360 (S.D. 1989

8. Whether the Doctrine of Res Judicata Barred Reconsideration and Re-litigation of the Judgment Entered by Judge Fuller?

Interest of L.S., 721 N.W.2d 83 (S.D. 2006)

Christians v. Christians, 637 N.W.2d 377, 387 (S.D. 2001)

Sodak Distributing Co. v. Wayne, 77 S.D. 93 N.W.2d 791, 794 (S.D. 1958)

9. Whether SDCL 15-6-59 or SDCL 15-6-60 Provides Authority for Defendants' Motion to Reverse Judge Fuller's Judgment?

SDCL 15-6-59
SDCL 15-6-60
SDCL 34A-8-7
SDCL 34A-8A-6

10. Whether Plaintiffs Have Legal Authority For This Lawsuit?

Pourier v. South Dakota Dept. of Revenue and Regulation, 788 N.W.2d 602, 606 (S.D. 2010)

SDCL 15-6-23(a)

11. Whether Plaintiffs Urgently Need Relief From The Continuing Nuisance?

SDCL 41-11-15

12. Whether Prairie Dogs Have Been Declared a Public Nuisance?

SDCL 21-10-3
SDCL 41-11-15

13. Whether the Defendants' Acts and Omissions Caused the Continuing Nuisance?

SDCL 21-10-1

The Federal Register Vol. 59, No. 122, Monday, June 27, 1994

14. Whether Defendants' Federal Supremacy Defense Has Merit?

SDCL 41-11-15

15. Whether Defendants' Statutory Obligations Are Ministerial Acts?

Hanson v. US, 584 N.W.2d 881,885 (S.D. 1998)

16. Whether Defendants Had Adequate Notice of Plaintiffs' Claims?

SDCL 3-21-2

17. Rulings: Judge Fuller granted summary judgment for Plaintiffs and denied summary judgment for Defendants. Upon reconsideration, upon the same facts, authorities, and arguments Judge Kern reversed the Judgment granted by Judge Fuller to Plaintiffs, and granted summary judgment for Defendants.