

ORIGINAL

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA
Supreme Court No. _____

20070297

Pembina County Water Resource District,

Petitioner,

RECEIVED BY CLERK
SUPREME COURT
OCT 5 2007

vs.

The Honorable Laurie A. Fontaine,
Judge of the District Court,
Northeast Judicial District

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT 5 2007

and

Johnson Farms,

STATE OF NORTH DAKOTA

Respondents.

PETITION FOR A SUPERVISORY WRIT

The Pembina County Water Resource board of managers hereby petitions this honorable court for a supervisory writ asking this court to direct the District Court of Pembina County to vacate its order of September 10, 2007 allowing Johnson Farms to take the deposition of Chairman Ron Falk of the Pembina County Water Resource board. This writ is pursuant to Article VI, Section 2 of the North Dakota Constitution and North Dakota Century Code §27-02-04 as well as Rule 21 of the North Dakota Rules of Appellate Procedure.

RELIEF SOUGHT

The relief sought is the vacation of the order issued by Honorable Laurie A. Fontaine dated September 10, 2007.

ISSUES

1. Whether the District Court had the authority to enter an order allowing a

party to take the deposition of the chairman of the water board who acted as the finders of fact in the determination of a water dispute when the deposition is to be used during the appeal of that decision to the district court and

2. Whether a motion in limine was the proper procedural vehicle in this case.

FACTS

The Pembina County Water Resource Board received a complaint dated December 10, 2005 alleging that an illegal dike had been constructed on the South Half (S $\frac{1}{2}$) of Section 25 and the Northeast Quarter (NE $\frac{1}{4}$) of Section 36, Township 164, Range 54 by Johnson Farms. The land in question is located in Pembina County, North Dakota. The board investigated the complaint and found that there was a dike constructed on the location in violation of Title 61 of the North Dakota Century Code. A notice was sent to Johnson Farms on April 12, 2006 directing Johnson Farms to remove the offending structure and also advising Johnson Farms of its right to demand a hearing.

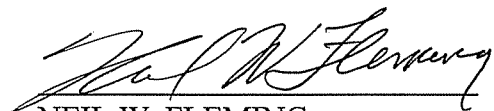
On June 13, 2006 a hearing was held at the Pembina County Water Resource District Offices. At that hearing testimony was received from both Johnson Farms and the complainant. In addition testimony was received from Dan Fischer, a registered surveyor. The hearing was continued until further information could be received from an engineer. The hearing was reconvened on September 19, 2006. Testimony was taken from Carey Backstrand, P.E. of Engineering Consultant Services who had filed a report and testified. Based upon the testimony and evidence presented at the hearing, the Pembina County Water Resource District Board issued its findings and Johnson Farms was ordered to remove the obstruction to level of 830.45 MSL by June 1, 2007.

Johnson Farms filed a notice of appeal dated January 18, 2007. A record of the proceedings was prepared by the Pembina County Water Resource board and filed with the Clerk of the District Court.

Duane Schurman, of behalf of Johnson Farms, then served a motion in limine requesting permission to take the depositions of the chairman of the Pembina County Water Resource board and the secretary of the Pembina County Water Resource board. The Pembina County Water Resource board is a local governing body charged with the duty to investigate complaints of illegal dikes. The board must then take testimony, determine the facts, and issue findings of fact. The water resource district board is then required to issue an appropriate order. The request by Johnson Farms to take these depositions was objected to by the Pembina County Water Resource District board of managers. Various proceedings were held which resulted in the issuance of the district court order of September 10, 2007.

This writ should be issued because it is necessary to prevent an injustice where there is no adequate alternate remedy.

Dated at Cavalier, North Dakota this 4th day of October, 2007.



NEIL W. FLEMING

Attorney ID # 02887

For: Fleming, DuBois & Fleming, PLLP

Attorneys at Law

PO Box 633

Cavalier, North Dakota 58220

Telephone No. (701) 265-8446

Facsimile No. (701) 265-8947

Attorney for the Pembina County

Water Resource District

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA

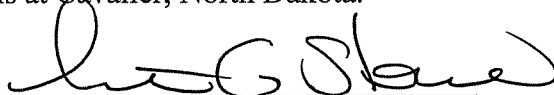
COUNTY OF PEMBINA, ss

Anita G. Storie, being first duly sworn, deposes and says that on the 4th day of October, 2007, she served the attached **Petition for Supervisory Writ, Brief, and Appendix** upon Honorable Laurie A. Fontaine and upon Duane H. Schurman, the attorney for the above named Respondent, by placing a true and correct copy thereof in an envelope addressed as follows:

Honorable Laurie A. Fontaine
District Court Judge
301 Dakota St W #3
Cavalier, ND 58220

Duane H. Schurman
Attorney at Law
PO Box 678
Walhalla, ND 58282-0678

and depositing the same with postage prepaid, by first class mail or certified or registered mail, if applicable, in the United States Mails at Cavalier, North Dakota.


Anita G. Storie

Subscribed and sworn to before me this 4th day of October, 2007.

NEIL W. FLEMING
Notary Public
State of North Dakota
My Commission Expires Feb. 5, 2013
(SEAL)

