

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA****Supreme Court No. 20180013
Grand Forks County Number: 18-2017-CV-00020**

David Knapp,

Petitioner and Appellant,

vs.

Commissioner of Minnesota
Department of Revenue, *et al.*,Respondent and Appellee.

**ON APPEAL FROM FINAL JUDGMENT DATED JUNE 6, 2017 AND
TWO ORDERS DATED MAY 25, 2017 AND DECEMBER 8, 2017
GRAND FORKS COUNTY DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
HONORABLE LOLITA HARTL ROMANICK**

**BRIEF OF APPELLEE COMMISSIONER OF
MINNESOTA DEPARTMENT OF REVENUE
IN OPPOSITION TO APPEAL**

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STATEMENT OF THE ISSUES

- I. Did the district court abuse its discretion in denying a writ of prohibition where Knapp had available adequate legal remedies and the Commissioner acted under the statutory authority provided by law?
- II. Did the district court err in determining that it lacked jurisdiction to grant the relief requested by Knapp's petition and refusing to consider Knapp's post-judgment arguments regarding in rem jurisdiction?
- III. Did the district court otherwise err in the proceedings below when Knapp was given multiple hearings to address the court's jurisdiction and otherwise argue in favor of his petition's legal sufficiency?

JURISDICTIONAL STATEMENT

[¶1] Appellant David Knapp (öKnappö) appeals from the Order of the Grand Forks County District Court that denied his motion to vacate its judgment and was entered on December 8, 2017. (App. 68-81, Order on Mot. to Vacate Judgment [Doc. No. 153].) Knapp's appeal is taken pursuant to Rules 3 and 4 of the North Dakota Rules of Appellate Procedure. There is jurisdiction over this appeal because the district court's order denying Knapp's post-judgment motion was a final order. See Alliance Pipeline L.P. v. Smith, 2013 ND 117, ¶ 10, 833 N.W.2d 464 (öOrders denying timely motions under N.D. R. Civ. P. 59(j) and 60(b)ö are subject to appellate review öif the order is clearly intended to be final.ö).

STATEMENT OF THE CASE

[¶2] This case is about the district court's discretionary denial of Knapp's request that it grant extraordinary relief and its determination that it did not have authority to assert jurisdiction over the tax collection authority of a foreign taxing

body. Here, Knapp was a partner in a sports bar located in Bemidji, Minnesota, and he was involved in the registration, initiation, and support of the business. As a result, Minnesota law was available to Knapp to contest the tax assessment he incurred from his involvement with a business in Minnesota and the collection efforts that have resulted from his failure to pay the tax debt.

[¶3] The district court did not abuse its discretion in determining that, on these facts, Knapp was not entitled to the extraordinary remedy of a writ of prohibition to challenge his Minnesota tax assessment and the resulting levy issued by Appellee Commissioner of the Minnesota Department of Revenue (the “Commissioner”) to the custodian of his individual retirement account (“IRA”) in Missouri. The district court also correctly determined that it could not exercise jurisdiction for the purpose of issuing a writ of prohibition against the Commissioner to dissolve or otherwise restrain the levy.

STATEMENT OF FACTS

[¶4] Knapp was a partner in a sports bar operating in Bemidji, Minnesota. (App. 9, Petition to Dissolve a Levy and for a Writ of Prohibition or Other Appropriate Writ (“Petition”) [Doc. No. 1] at 3; Appellant’s Br. ¶ 13.) The partnership involved Knapp’s son, and Knapp executed business documents detailing the support he would provide the bar. (App. 9, Petition at 3.) The bar was registered as a Minnesota business under the name of Modern Operations, LP. (Appellant’s Br. ¶ 12.) The Commissioner audited the bar and found it had collected sales tax from customers which it failed to remit to the Commissioner.

(App. 9, Petition at 3; App. 52, Am. Answer [Doc. No. 102] ¶ 5.) The Commissioner issued an order on August 1, 2016 assessing Knapp personally liable for the bar's Minnesota tax obligations pursuant to Minn. Stat. § 270C.56 (assessment order). (App. 52, Am. Answer ¶ 5.) The amount of Knapp's Minnesota tax assessment was \$65,357.86. (Id.)

[¶5] Knapp communicated with the Commissioner regarding his assessment order after it was issued. (App. 9, Petition at 3.) Knapp did not appeal the Commissioner's assessment order, however,¹ and his outstanding tax balance has never been paid. (App. 52, Am. Answer ¶ 5; see generally App. 7-12, Petition.)

[¶6] Because Knapp failed to pay the taxes, the Commissioner issued a levy upon his IRA account with Edward D. Jones & Co., L.P. (Edward Jones) on December 22, 2016 pursuant to her statutory authority to collect unpaid Minnesota tax debts.² (App. 28-29, Petition Ex. 5 [Doc. No. 8]; see also App. 10, Petition at 4.) Edward Jones is a resident of Missouri, and the Commissioner's levy was served upon its Security Registration Department in Maryland Heights, Missouri. (App. 28-29, Petition Ex. 5.) At the time of the levy's issuance, the account had a balance of approximately \$174,000.00. (App. 10, Petition at 4.)

¹ Knapp had a 60 day period to either seek administrative review of his assessment order with the Commissioner pursuant to Minn. Stat. § 270C.35, subd. 4 or to take an appeal to the Minnesota Tax Court pursuant to Minn. Stat. § 271.06, subs. 1 and 2.

² The Commissioner's statutorily authorized collection methods and remedies are generally described in Minn. Stat. §§ 270C.50-728.

Edward Jones subsequently sent a letter to Knapp notifying him of the Commissioner's levy and the next steps that Edward Jones would take to satisfy the levy. (App. 21-22, Petition Ex. 1 [Doc. No. 5].)

[¶7] On January 6, 2017, Knapp filed the Petition, subject of this appeal, with the district court in Grand Forks County. (App. 7-12, Petition.) The district court issued a preliminary writ of prohibition on January 10, 2017, pending the answer of the Commissioner and Edward Jones, and the hearing on the propriety of the writ. (App. 33-34, Notice of Preliminary Writ of Prohibition and Dissolution of Levy [Doc. No. 11].) The Commissioner timely filed an Answer asserting lack of personal jurisdiction amongst other defenses, (Answer ¶ 14 [Doc. No. 27]),³ and shortly thereafter moved for judgment on the pleadings. (Mot. for J. on the Pleadings [Doc. No. 36]; Br. in Supp. of Mot. for J. on the Pleadings [Doc. No. 37].)

[¶8] The district court held a hearing and dismissed the case from the bench on April 28, 2017. (App. 43-48, Order Granting Mot. for J. on the Pleadings [Doc. No. 98].) The district court concluded that it did not have personal jurisdiction over the matter, and in the alternative, that Knapp had not met the requirements for issuance of a writ of prohibition because adequate remedies were available under Minnesota law to challenge the Commissioner's

³ The Commissioner later filed an Amended Answer, containing no substantive changes. (App. 39-42, Order Granting Mot. for Leave to File Am. Answer [Doc. No. 97]; App. 51-55, Am. Answer.)

assessment. (App. 43-48, Order Granting Mot. for J. on the Pleadings.) A judgment of dismissal was entered upon the court's written order. (App. 56-57, June 6, 2017 Judgment [Doc. No. 106].)

[¶9] Upon the district court's dismissal of his Petition, Knapp moved to vacate or to otherwise alter or amend the judgment. (Mot. Pursuant to North Dakota Rules of Civil Procedure 52, 59, and 60 [Doc. No. 121]; Mem. in Supp. of Mot. Pursuant to North Dakota Rules of Civil Procedure 52, 59, and 60 for an Order Vacating the Judgment [Doc. No. 124].)

[¶10] After a hearing, the district court entered an order on December 8, 2017 denying Knapp's motion to vacate the judgment. (App. 68-81, Order on Mot. to Vacate Judgment [Doc. No. 153].) In its order, the district court reiterated that Knapp had chosen to not avail himself of remedies available under Minnesota law and that it did not have jurisdiction to grant the relief requested in the Petition. (Id. at ¶¶ 12-20.)

[¶11] Knapp filed this appeal following the district court's denial of his motion to vacate the judgment. (App. 82-86, Notice of Appeal [Doc. No. 159].)⁴

SCOPE OF REVIEW

[¶12] A motion to vacate or for other relief from a judgment is analyzed under the standards of Rule 60(b) of the North Dakota Rules of Civil Procedure.

⁴ On January 25, 2018, the district court entered an amended order to address a clerical mistake in the caption of its original order denying Knapp's motion to vacate the judgment. (App. 87, Am. Order on Mot. to Vacate Judgment [Doc. No. 162].)

Dvorak v. Dvorak, 2001 ND 178, ¶ 9, 635 N.W.2d 135. “A district court’s denial of a motion . . . under N.D. R. Civ. P. 60(b) is reviewed under the abuse-of-discretion standard.” Alliance Pipeline L.P., 2013 ND 117, ¶ 13, 833 N.W.2d 464.

[¶13] A district court’s denial of a writ of prohibition is reviewed for an abuse of discretion. Old Broadway Corp. v. Backes, 450 N.W.2d 734, 736 (N.D. 1990). A party asserting an abuse of discretion “must show more than the district court made a “poor” decision” but instead that “it positively abused the discretion it has[.]” Martin v. Trinity Hospital, 2008 ND 176, ¶ 17, 755 N.W.2d 900 (internal quotation omitted). An appellant is required to affirmatively establish that the lower court “acted in an arbitrary, unreasonable, or unconscionable manner” to meet this standard. Schneider v. Seaworth, 376 N.W.2d 49, 51 (N.D. 1985). A district court’s denial of a writ of prohibition “restraining enforcement of a statute or ordinance” only amounts to an abuse of discretion if “the statute or ordinance is flagrantly and patently violative of express constitutional prohibitions” and the petitioner held no adequate alternative to raise the constitutional challenge. Id. (internal quotation omitted).

[¶14] Whether a court maintains jurisdiction is a question of law, and the district court’s jurisdictional determination is reviewed “by employing the de novo standard for legal conclusions and the clear-error standard for factual findings.” Ensign v. Bank of Baker, 2004 ND 56, ¶ 11, 676 N.W.2d 786. “Once a defendant has challenged a court’s jurisdiction, the plaintiff bears the burden of proving that jurisdiction exists.” Id. “The plaintiff must make a prima facie showing of

jurisdiction . . . and if the court relies only on pleadings and affidavits, the court must look at the facts in the light most favorable to the plaintiff.ö Lund v. Lund, 2012 ND 255, ¶ 7, 825 N.W.2d 852.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING KNAPP’S REQUEST FOR A WRIT OF PROHIBITION.

[¶15] A writ of prohibition may be issued to an inferior court, tribunal, or body in a case where there does not exist òa plain, speedy, and adequate remedy in the ordinary course of law.ö N.D.C.C. § 32-35-02; (Appellant’s Br. ¶ 5.) On this basis, a writ of prohibition arrests a proceeding where the petitioner does not otherwise have the ability to address an inferior body which is acting outside of its legal authority or is otherwise without jurisdiction. N.D.C.C. § 32-35-01. òThe writ of prohibition is the counterpart of the writ of mandamus.ö Id. A writ of prohibition òis an extraordinary writ, to be issued with caution, in case of extreme necessity.ö Mor-Gran-Sou Elec. Coop., Inc. v. Montana-Dakota Utilities Co., 160 N.W.2d 521, 523 (N.D. 1968).

A. THE DISTRICT COURT APPROPRIATELY DETERMINED THAT ADEQUATE LEGAL REMEDIES WERE AVAILABLE TO KNAPP IN LIEU OF A WRIT OF PROHIBITION.

[¶16] The district court correctly held that a party must establish the lack of an adequate legal remedy as an initial requirement for invoking the writ of prohibition under long-standing North Dakota law. (App. 73, Order on Mot. to Vacate Judgment ¶ 12); Selzler v. Bagley, 19 N.D. 697, 698, 124 N.W. 426, 426

(N.D. 1910) (ð[T]he writ of prohibition may be issued only when there is not a plain, speedy, and adequate remedy in the ordinary course of law.ö) In this case, Knapp seeks relief from a tax assessment incurred as a result of his involvement with a sports bar business operating in Minnesota. (App. 9, Petition at 3.) On appeal, Knapp failed to establish that the ordinary legal remedies available to him are inadequate. (See generally Appellantø Br.)

[¶17] As discussed by the district court, statutory appeal rights are the type of legal remedy which serve to foreclose a writ of prohibition. (App. 73-74, Order on Mot. to Vacate Judgment ¶¶ 13-14). Knapp admits that he did not pursue statutory appeal rights available to him under Minnesota law regarding his tax assessment. (Id.; cf. Appellantø Br. ¶¶ 30-38.) Here, Knapp could have pursued an administrative review conducted by the Commissioner, see Minn. Stat. § 270C.35, and he could have initiated a case with the Minnesota Tax Court to challenge the administratively final assessment order made by the Commissioner. Minn. Stat. § 271.06, subd. 1. A decision issued by the Minnesota Tax Court, in turn, provides for a statutory right of appeal to the Minnesota Supreme Court. Minn. Stat. § 271.10. The failure to pursue appeal rights has been found to bar a subsequent suit against public officials for injunctive relief which in effect was a substitute for an appeal. Olson v. Cass County, 253 N.W.2d 179, 182 (N.D. 1977) (holding statutory appeal rights were ðan adequate legal remedyö which the party ðfailed to pursueö). Similarly, the denial of a writ of prohibition should be upheld in this case where Knapp failed to pursue statutory appeal rights. See Mor-Gran-

Sou Elec. Coop., Inc., 160 N.W.2d at 523 (A writ of prohibition is not an appropriate writ to revoke an order already made, for its proper use is to prohibit the doing of something, not the undoing of something already done.ö).

[¶18] As to the legal remedies available under Minnesota law, Knapp makes the unsupported assertion that he should not be required to submit to the jurisdiction of a foreign state[.]ö (Appellant's Br. ¶ 31.) Knapp cites to no authority, however, to suggest such legal remedies are inadequate in a case like this where he was formally involved in the registration, initiation, and support of a business in Minnesota and was assessed taxes as a result. Although Knapp resides in North Dakota and clearly prefers to challenge the tax assessment at issue in a North Dakota forum, those facts alone do not lead to the conclusion that Minnesota law fails to provide Knapp an adequate remedy.

B. THE DISTRICT COURT DID NOT ERR IN CONCLUDING THE COMMISSIONER ACTED WITHIN THE STATUTORY AUTHORITY PROVIDED BY MINNESOTA LAW.

[¶19] Knapp's argument that this case involves an action to which Minnesota has no jurisdictionö is also plainly incorrect. (Appellant's Br. ¶ 31.) Knapp chose to become a partner in a business operating in Minnesota. The business was subject to taxation in Minnesota, and in assessing Knapp, the Commissioner acted under the authority of Minnesota's statute which holds specifically enumerated individuals personally liable for business taxes, including sales and use taxes, in certain situations. See Minn. Stat. § 270C.56, subd. 1 (öA person who, either singly or jointly with others, has the control of, supervision of,

or responsibility for filing returns or reports, paying taxes, or collecting or withholding and remitting taxes and who fails to do so is liable for the payment of taxes owing). Most importantly, as discussed above, Minnesota law provides clear and sufficient means to challenge a state tax assessment such as the one against Knapp. See Minn. Stat. § 270C.35; Minn. Stat. Ch. 271.

[¶20] Minnesota law continues to provide Knapp with adequate remedies to address the collection efforts undertaken upon his failure to pay the tax assessment, further supporting the district court's decision to deny a writ of prohibition.⁵ In addition to ordinary civil remedies under Minnesota law to challenge the Commissioner's collection activities, a specific statutory cause of action is available to Knapp if the Commissioner takes unauthorized actions in the collection of his delinquent taxes. See Minn. Stat. § 270C.275. Further, as noted by the district court, Minnesota Statutes Chapter 550 provides general remedies for debtors as well as the ability to make claims for exemptions. (App. 74, Order on Mot. to Vacate Judgment ¶ 15.) Indeed, Knapp has not identified any effort to claim exemptions in either the State of Minnesota, the state from which the levy at issue originated, or the State of Missouri, the state in which the Edward Jones

⁵ The Commissioner acted within her statutory authority in pursuing a levy against Knapp after he failed to pay the taxes assessed against him by the administratively final assessment order. See Minn. Stat. § 270C.67, subd. 1 (permitting the Commissioner to collect an unpaid tax "by a levy upon all property and rights to property . . . of the person liable for the payment"); Minn. Stat. § 270C.50 (authorizing the Commissioner to "use any remedy available to nongovernmental creditors to collect taxes" in addition to those expressly provided by statute).

accounts were levied upon. (Id.) Knapp's ongoing failure to avail himself of remedies under Minnesota law reinforces the conclusion that the district court did not abuse its discretion in declining to issue a writ of prohibition.

[¶21] Knapp has made no demonstration that the remedies under Minnesota law to challenge a tax assessment and subsequent collection efforts are defective. Because it remains a good reason for denying the writ that the complaining party has a complete remedy in some other or more ordinary form, Selzler, 19 N.D. at 699, 124 N.W. at 427, the district court appropriately denied Knapp's request for a writ of prohibition.

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT IT DID NOT HAVE JURISDICTION.

A. KNAPP DOES NOT CHALLENGE THE DISTRICT COURT'S DETERMINATION OF A LACK OF PERSONAL JURISDICTION ON APPEAL, AND IN ANY EVENT, THAT DECISION WAS CORRECT.

[¶22] "Issues not briefed or argued are deemed abandoned" on appeal. Osterman-Levitt v. MedQuest, Inc., 513 N.W.2d 70, 75 (N.D. 1994); accord Matter of Estate of Nohle, 2017 ND 100, ¶ 16, 893 N.W.2d 755. Knapp's brief on appeal does not identify or otherwise discuss any error in the district court's determination that it lacked personal jurisdiction over the Commissioner. (See generally Appellant's Br.)⁶ Knapp's brief instead argues that the district court should be found capable of exercising *in rem* jurisdiction upon the facts of this

⁶ In fact, Knapp now explicitly states on appeal that "a judgment is not being sought against the Commissioner[.]" (Appellant's Br. ¶ 52.)

case. (Id. at ¶¶ 35-36, 42-55.) As a result, Knapp has abandoned any argument that the district court wrongly determined it could not exercise personal jurisdiction over the Commissioner based upon the facts presented by Knapp's Petition. Olmstead v. First Interstate Bank of Fargo, N.A., 449 N.W.2d 804, 807 (N.D. 1989).

[¶23] Regardless, the district court's conclusion that it lacked personal jurisdiction over the Commissioner with regard to the Petition was correct and is dispositive. (App. 43-48, Order Granting Mot. for J. on the Pleadings.) "Questions of personal jurisdiction must be decided on a case-by-case basis, depending on the particular facts and circumstances." Lund, 2012 ND 255, ¶ 7, 825 N.W.2d 852. The district court did not err in requiring Knapp to meet his burden of proving that it could exercise personal jurisdiction over the Commissioner. (App. 45, Order Granting Mot. for J. on the Pleadings at ¶ 8.) The district court also properly concluded that it could not exercise personal jurisdiction over the Commissioner as a nonresident defendant, regarding the relief requested by Knapp, given that North Dakota's long-arm provision was not satisfied and that the exercise of personal jurisdiction would not comport with due process. (Id. at ¶¶ 8-14.)

B. THE DISTRICT COURT DID NOT ERR IN REFUSING TO ALLOW KNAPP'S REQUEST TO CONSIDER *IN REM* JURISDICTION AFTER THE COURT'S JUDGMENT WAS ENTERED.

[¶24] The district court appropriately denied Knapp's motion to vacate the judgment on the basis that it should exercise *in rem* jurisdiction to grant a writ of

prohibition. See Alliance Pipeline L.P., 2013 ND 117, ¶¶ 10-13, 833 N.W.2d 464 (holding that denial of a motion for relief from a final judgment is reviewed for an abuse of discretion). The district court did not abuse its discretion by declining to entertain a new interpretation of the evidence raised for the first time after entry of judgment. Ellingson v. Knudson, 498 N.W.2d 814, 818 (N.D. 1993). “This kind of afterthought, or shifting of ground, is not one of the circumstances in which a motion for [relief from the judgment] is appropriate.” Id.

[¶25] The district court’s decision declining to address *in rem* jurisdiction by way of Knapp’s motion for relief from the judgment should not be disturbed on appeal. (App. 75-77, Order on Mot. to Vacate Judgment ¶¶ 16-18.) The Commissioner raised the issue of jurisdiction in her Answer. (Answer ¶ 14.) As noted by the district court, Knapp could have brought responsive arguments regarding *in rem* jurisdiction in the multiple briefs he filed ahead of the hearing on April 28, 2017 which was clearly held to address the court’s jurisdiction. (App. 75-77, Order on Mot. to Vacate Judgment ¶¶ 16-18.) Knapp failed to do so. (Id.) In addition, Knapp did not undertake any efforts prior to the hearing to establish sufficient facts to support the district court’s exercise of jurisdiction even though he was on notice that the Commissioner was making a jurisdictional challenge. (Id. at ¶ 24.) The district court did not abuse its discretion by refusing to consider Knapp’s new argument regarding *in rem* jurisdiction which was raised for the first time in a motion seeking relief from judgment.

C. KNAPP HAS FAILED TO PROVE THAT THE EXISTENCE OF *IN REM* JURISDICTION ALONE WOULD SUPPORT A WRIT OF PROHIBITION.

[¶26] If jurisdiction is based on the court's power over property within its territory, the action is called "in rem" or "quasi in rem." Shaffer v. Heitner, 433 U.S. 186, 199 (1977). "A proceeding in rem is essentially a proceeding to determine rights in a specific thing or in specific property, against all the world, equally binding on everyone." Cass County Joint Water Resource Dist. v. 1.43 Acres of Land in Highland Tp., 2002 ND 83, ¶ 9, 643 N.W.2d 685 (internal quotation omitted). "It is a proceeding that takes no cognizance of an owner or person with a beneficial interest, but is against the thing or property itself directly, and has for its object the disposition of the property, without reference to the title of individual claimants." Id.

[¶27] The district court correctly concluded that, because the writ of prohibition is requested to stop actions by the Commissioner (i.e. eliminate a tax debt or dissolve a levy) or to adjudicate rights vis a vis the Commissioner (i.e. whether an exemption to the levy applies), the specific relief requested would require personal jurisdiction over the Commissioner. (App. 76-77, Order on Mot. to Vacate Judgment ¶¶ 19-20.) Indeed, the plain language of the statute makes clear that a writ of prohibition is directed toward an "inferior tribunal, or to a corporation, board, or person." N.D.C.C. § 32-35-02. In this case, Knapp has requested that the writ be directed to the Commissioner. Knapp has not pointed to legal authority which would support the issuance of a writ of prohibition directed

at property. Moreover, on the facts of this case, Knapp has not demonstrated that *in rem* jurisdiction alone would support issuance of a writ of prohibition against the Commissioner.

III. THE DISTRICT COURT DID NOT OTHERWISE ERR IN THE PROCEEDINGS BELOW.

A. THE DISTRICT COURT WAS NOT REQUIRED TO HOLD ANY ADDITIONAL HEARINGS REGARDING KNAPP’S PETITION.

[¶28] The district court considered whether to grant any further hearings in the proceeding below in connection with Knapp’s motion to vacate the judgment, and it correctly determined that no more hearings were required. (App. 77-78, Order on Mot. to Vacate Judgment ¶ 21.) On appeal, Knapp continues to claim that the district court erred by failing to provide him with an additional hearing on his Petition prior to the court’s entry of judgment dismissing it. (Appellant’s Br. ¶¶ 39-41.) Knapp cites to N.D.C.C. § 32-34-10 for this proposition. (*Id.* at ¶ 40.) The record makes clear, however, that the statute was complied with because a hearing was held after the Commissioner answered the Petition, raised questions of law as to its legal sufficiency, and moved to have those issues addressed by the district court. See N.D.C.C. § 32-34-10 (“If the answer raises . . . questions of law . . . the court must proceed to hear . . . argument of the case.”); N.D.C.C. § 32-35-04 (stating that certain procedural requirements under a writ of mandamus apply to proceedings related to a writ of prohibition). Knapp fails to point to any legal authority to suggest that something more than the hearing which was held to

address the legal sufficiency of his Petition was required. (See Appellant's Br. ¶¶ 39-41.)⁷

B. THE DISTRICT COURT DID NOT ERR IN HEARING THE COMMISSIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS TO ADDRESS THE LEGAL SUFFICIENCY OF KNAPP'S PETITION.

[¶29] Knapp vaguely alleges on appeal that the district court committed error by considering the Commissioner's motion for judgment on the pleadings. (Appellant's Br. ¶¶ 49-55.) Again, the Commissioner brought the motion to challenge the legal sufficiency of the Petition on various grounds. The district court held a hearing to consider those legal challenges, and that hearing on April 28, 2017 was in conformity with the procedural requirements of N.D.C.C. § 32-34-10. Knapp does not reference any provision of Chapters 32-34 or 32-35 of the North Dakota Century Code, the North Dakota Rules of Civil Procedure, or any other legal authority which would stand to prohibit the district court from

⁷ Knapp also incorrectly asserts that the Commissioner has not contested the question of whether any exemption from the levy is applicable to the IRA at issue, and if so, the amount subject to exemption. (Appellant's Br. ¶¶ 44, 48.) The Commissioner contested Knapp's exemption claim in her Answer. (Answer ¶¶ 9, 10, 12, 16-19 [Doc. No. 27]; App. 52-53, Am. Answer ¶¶ 9, 10, 12, 16-19.) In moving for judgment on the pleadings, the Commissioner again made clear that she contested Knapp's exemption claim. (Br. in Supp. of Mot. for J. on the Pleadings at 8-11 [Doc. No. 37].) In addition, the district court correctly determined that a writ of prohibition should not issue to address an exemption claim because other legal remedies available to Knapp are adequate for him to raise such a claim. (App. 74-75, 77-78, Order on Mot. to Vacate Judgment ¶¶ 15, 21.) Although she does not view the issue as appropriate for resolution on this appeal, the Commissioner does continue to contest Knapp's exemption claim.

considering the legal sufficiency of the Petition upon the Commissioner's Answer and duly noticed motion for judgment on the pleadings.⁸

CONCLUSION

[¶30] For the reasons set forth above, Appellee Commissioner of the Minnesota Department of Revenue respectfully requests that this Court affirm the district court's order to dismiss the Petition of Appellant David Knapp, with prejudice.

⁸ Knapp makes a passing reference in his brief to the Court's original jurisdiction over a writ of prohibition. (Appellant's Br. ¶ 57 ("Invoking this Court's original jurisdiction . . . would be appropriate to enter . . . a final Writ of Prohibition and to Dissolve a Levy.")) Knapp has not, however, provided any legal authority to suggest the Court could now exercise original jurisdiction where he brought his Petition before the district court in the first instance and challenges the district court's judgment of dismissal on appeal. In any event, the doctrine of res judicata bars Knapp from now bringing his Petition before the Court based upon its ability to exercise original jurisdiction over a writ of prohibition. See Ohio Casualty Insurance Co. v. Clark, 1998 ND 153, ¶ 23, 583 N.W.2d 377 ("Res judicata means that a valid, existing final judgment from a court of competent jurisdiction is conclusive, with regard to the issues raised, or those that could have been raised, and determined therein, as to the parties and their privies in all other actions.").

Dated: June 14th, 2018

Respectfully submitted,

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Dated: June 14th, 2018

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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

**Supreme Court No. 20180013
Grand Forks County Number: 18-2017-CV-00020**

David Knapp,

Petitioner and Appellant,

vs.

Commissioner of Minnesota
Department of Revenue, *et al.*,

Respondent and Appellee.

CERTIFICATE OF COMPLIANCE

The undersigned attorney for the Appellee in the above-entitled matter hereby certifies, in compliance with Rule 32(a)(8)(A), N.D.R.App.P. that the above brief contains 4,669 words, excluding words contained in the table of contents, the table of authorities, certificate of service, and this certificate of compliance, which is within the limit of 8,000 words.

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CERTIFICATE OF SERVICE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF TRAILL)

I hereby certify that on June 14th, 2018, I caused to be electronically filed the Brief of Appellee Commissioner of Minnesota Department of Revenue in Opposition to Appeal with the Clerk of the North Dakota Supreme Court (at supclerkofcourt@ndcourts.gov) and served the same electronically as follows:

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