

**In the Supreme Court**  
**State Of North Dakota**

October 30, 2018

**Supreme Court No. 20180013**

**Grand Forks County Number: 18-2017-CV-00020**

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David Knapp,

Petitioner/ Appellant,

v.

Minnesota Department of Revenue, et al,

Respondent/ Appellant.

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APPEAL FROM FINAL JUDGMENT OF  
THE DISTRICT COURT OF GRAND FORKS COUNTY,  
NORTH DAKOTA, NORTHEAST CENTRAL JUDICIAL DISTRICT  
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING

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**AMENDED PETITION FOR REHEARING**

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**DEWAYNE JOHNSTON (ND ID # 05763)**  
ATTORNEY FOR APPELLANT  
JOHNSTON LAW OFFICE  
221 SOUTH 4<sup>TH</sup> STREET  
GRAND FORKS, ND 58201  
Ph. (701) 775-0082  
[DEWAYNE@WEDEFENDYOU.NET](mailto:DEWAYNE@WEDEFENDYOU.NET)

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may assert in the future. This Court explains the traps surrounding the “with prejudice” language:

The effect of dismissing a case with prejudice is to bar any future claim, as that action amounts to a final disposition of the controversy. *Williams v. State*, 405 N.W.2d 615, 622 (N.D. 1987); see also 46 Am. Jur. 2d Judgments § 609 (1994) ("The term 'with prejudice,' expressed in a judgment of dismissal, has a well-recognized legal import; and it indicates an adjudication of the merits, operating as res judicata, concluding the rights of the parties, terminating the right of action, and precluding subsequent litigation of the same cause of action . . . ."). . . .

*Trottier v. Bird*, 2001 ND 177, ¶ 8, 635 N.W.2d 157, 160.

[¶9] The District Court based its decision to dismiss upon a lack of jurisdiction in this matter and as such may not dismiss the action “with prejudice”:

Absent personal jurisdiction, "the court is powerless to do anything beyond dismissing without prejudice." *Western Life Trust v. State*, 536 N.W.2d 709, 712 (N.D. 1995) (emphasis added). We held above that service upon both defendants was defective, and the district court did not have jurisdiction to adjudicate Riemers' claims against the State or Judge Herman. From this it must follow that the district court could not, under circumstances then present, consider the merits of Judge Herman's judicial immunity defense and dismiss Riemers' claim on the merits and with prejudice. Therefore, while the district court correctly dismissed the action, it erred doing so with prejudice.

*Riemers v. State*, 2006 ND 162, ¶ 10, 718 N.W.2d 566, 568. (emphasis added).

[¶10] The Petitioner/Appellant, David Knapp, respectfully requests that this Court modify the District Court Order to one of “without prejudice”.

[¶11] CONCLUSION

[¶12] For those reasons set forth herein, it is respectfully submitted that the this Supreme Court should grant Petitioner/Appellant, David Knapp's Petition for Rehearing and modify the Order of Dismissal to be "without Prejudice".

Respectfully submitted and dated this 28<sup>th</sup> day of October, 2018.

**JOHNSTON LAW OFFICE**

*/s/ DeWayne Johnston*

DeWayne Johnston (ND Bar ID # 05763)

221 S 4th St.

Grand Forks, ND 58201

Tel.: (701) 775-0082

Fax: (701) 775-2230

dewayne@wedefendyou.net

**Attorney for Appellant**

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**CERTIFICATE OF SERVICE**

I, **DeWayne Johnston**, attorney for Defendants and officer of the court, hereby certify that a true and correct copy of the foregoing:

**1. Amended Petition for Rehearing;**

**1. Motion for Leave to File an Amended Petition for Rehearing.**

were served via Electronic Mail on the 30<sup>th</sup> day of October 2018 with both documents being served to the following:

Monte L. Rogneby - mrogneby@vogellaw.com; and

J.R. Strom - jstrom@onstadlaw.com

Thomas S. Madison - thomas.madison@ag.state.mn.us

Dated this 30<sup>th</sup> day of October, 2018.

**Johnston Law Office**

/s/DeWayne Johnston

DeWayne Johnston