

No. _____

STATE OF MINNESOTA
IN COURT OF APPEALS

PETER HUXMANN, individually)
and on behalf of all those similarly)
situated,)

Plaintiff,)

v.)

MINNEAPOLIS PARK AND)
RECREATION BOARD,)

Defendant.)

**STATEMENT OF THE CASE OF
APPELLANT**

TRIAL COURT CASE NO. 27-CV-07-7807

DATE OF ORDER: May 25, 2007

1. Court or agency of case origination and name of presiding judge or hearing officer:

Hennepin County District Court, the Honorable Francis Connolly.

2. Jurisdictional statement:

a. Statute, rule or other authority authorizing appeal:

This is an appeal as a matter of right pursuant to Rule 103.03(b). A certified copy of the order is enclosed herewith.

b. Date of entry of order: May 25, 2007.

c. Authority fixing time limit for filing notice of appeal: Rule 104.01, subd.

1.

3. Type of litigation and statutes at issue:

Nuisance, denial of temporary injunction. Statutes at issue include Minn. Stat. §§ 561.01 and 466.03.

4. Brief description of claims, defenses, issues litigated, and result below

To prevent the ill-considered creation of a dangerous nuisance, plaintiff seeks to enjoin the Park Board's intended conversion of a standard 6' sidewalk into an inherently unsafe 10' *bicycle-only* path right in front of the homes on the northerly side

of the scenic St. Anthony Parkway between Ulysses Street and Stinson Boulevard. Defendant claims that it can construct whatever it wishes on what it claims is a narrow strip of Park Board land between the Parkway curb and the front property lines of the affected Parkway residents. The action was commenced on April 23, 2007. Prior to the trial court's denial of plaintiff's motion for a temporary injunction--the decision from which this appeal is taken--the Park Board falsely represented to the Parkway residents and the trial court that it intended to convert the existing 6' sidewalk to an objectionable 10' combination bike/pedestrian path. When apprised by plaintiff of, *inter alia*, the Park Board's actual intention to convert the sidewalk to a demonstrably different "bicycle-only" path, the trial judge cared not a bit that he and the Parkway residents had been hoodwinked and refused to reconsider his decision. There is nothing in the trial judge's May 25, 2007 Order Memorandum that so much as suggests that he read plaintiff's verified complaint, his two memoranda of law, his two affidavits, and his attorney's two affidavits. The Order Memorandum is a veritable photocopy of the Park Board's memorandum, and the replication is not even subtle. In short, plaintiff's motion was not judged with the diligence and in the unbiased way required by Canon 3B(1) of the Code of Judicial Conduct. In ruling prospectively that the doctrine of discretionary immunity "will" apply in this case, the trial judge has granted the Park Board's scheduled summary judgment motion in advance, an affirmative showing of cause for his disqualification. As a result of that blatantly predispositional ruling, the hearing of the Park Board's motion and the proceedings that would have led up to it would have been, in the absence of this appeal, a charade of the trial judge's making.

5. Issues proposed to be raised on appeal:

The issues proposed to be raised on appeal will include, *without limitation*, the following:

- Did the trial court err when it denied plaintiff's motion for a temporary injunction?

- Did the trial judge abuse his discretion when he refused to disqualify himself from presiding over the action in the future despite his expressly revealed predisposition?

6. Related appeals:

None.

7. Contents of record:

Is a transcript necessary to review the issues on appeal? Yes.

If yes, is a full or partial transcript required? Full.

Has the transcript already been delivered to the parties and filed with the trial court administrator? No.

8. Is oral argument requested? Yes.

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 1? No.

9. Type of brief to be filed:

Formal brief under Rule 128.02.

10. Identities of counsel:

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Dated: July 24, 2007.

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