

App. 1

STATE OF MINNESOTA

IN SUPREME COURT

A18-0493

City of Apple Valley,  
Respondent,

vs.

William C. Thompson (deceased); et al.,  
Respondents Below,  
Gene Rechtzigel, individually,  
Petitioner.

ORDER

(Filed Jan. 29, 2019)

Based upon all the files, records, and proceedings  
herein,

IT IS HEREBY ORDERED that the petition of  
Gene Rechtzigel for further review be, and the same is,  
denied.

Dated: January 29, 2019 BY THE COURT:

/s/ Lorie S. Gildea  
Lorie S. Gildea  
Chief Justice

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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A18-0493**

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City of Apple Valley,  
petitioner,

Respondent,  
vs.

William C. Thompson  
(deceased); et al.,

Respondents Below, (Filed Nov. 13, 2018)  
Gene Rechtzigel, individually,

Appellant.

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**ORDER OPINION**

Dakota County  
District Court  
File No.  
19HA-CV-14-1763

Considered and decided by Rodenberg, Presiding  
Judge; Bjorkman, Judge; and Hooten, Judge.

**BASED ON THE FILE, RECORD, AND PRO-  
CEEDINGS, AND BECAUSE:**

1. This appeal arises from years of litigation concerning a parcel of land in Apple Valley. In this appeal, appellant challenges (1) the district court's dismissal of his appeal from the commissioners' condemnation award based on his failure to comply with the procedural requirements of Minn. Stat. § 117.145 (2016), and (2) the district court's denial of his motion to amend pleadings under Minn. R. Civ. P. 15.01 and 60.02.

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2. In 1860, William Thompson acquired real property in Apple Valley, most of which he later conveyed. *City of Apple Valley v. Thompson*, No. A15-0299, 2015 WL 7201552, at \*1 (Minn. App. Nov. 16, 2015), *review denied* (Minn. Feb. 16, 2016). For unknown reasons, a strip of land about one-half mile long and 15 to 20 feet wide (the gap) was never conveyed. *Id.* Despite years of litigation concerning ownership of the gap and related issues, ownership of the gap was not definitively resolved. *Id.* Eventually, the City of Apple Valley (city) realized that its water and utilities were located in the gap. It initiated a quick-take condemnation proceeding. *Id.* The city notified all affected landowners, including appellant, of its taking of the gap. *Id.* Ultimately, the district court granted the city's quick-take petition. The action proceeded, and the commissioners' award was filed on May 26, 2017.

3. Appellant appealed the condemnation award to the district court on behalf of himself, individually, and on behalf of the Evelyn I. Rechtzigel Trust, the Frank H. Rechtzigel Trust (the trusts), and the estate of Frank H. Rechtzigel. The city moved the district court to dismiss all of appellant's claims on the basis that he did not properly serve all respondents as required by Minn. Stat. § 117.145. The city requested that, in the alternative, the district court dismiss the claims brought by appellant on behalf of the trusts because appellant is not an attorney and cannot represent the trusts. Appellant moved the district court to

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deny the city's motion under Minnesota's anti-SLAPP statutes<sup>1</sup> and also moved for a change of venue.

4. On October 3, 2017, the district court dismissed appellant's appeal from the condemnation award. The district court determined that it did not have jurisdiction over the appeal because appellant had failed to properly serve all respondents as required by Minn. Stat. § 117.145 and that, as a non-attorney, appellant was not authorized to represent the trusts. The district court also concluded that we had previously determined in *Thompson* that the anti-SLAPP statutes were not applicable to the facts of this case and appellant could no longer bring claims under those statutes. Appellant appealed the district court's order dismissing his appeal from the condemnation award. We construed the appeal as taken from the district court's October 3, 2017 order, and we informed appellant that the appeal is limited to appellant's individual claims and does not include claims of the trusts because appellant is not a licensed attorney and cannot represent the trusts.

5. While the appeal to this court was pending, appellant moved the district court for leave to amend his pleadings. He asserted that he had given proper notice because he mailed the notice of appeal to all parties listed on the city's affidavit of mailing, and argued

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<sup>1</sup> "Minnesota's anti-SLAPP statutes, Minn. Stat. §§ 554.01-.05, were enacted in 1994 to protect[] citizens and organizations from civil lawsuits for exercising their rights of public participation in government." *Leiendecker v. Asian Women United of Minn.*, 848 N.W.2d 224, 228 (Minn. 2014) (quotation omitted).

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that he did not have to give notice to other parties because he was the only interested party who had not settled the condemnation dispute with the city. He also requested that the district court allow the trusts' claims to go forward because he had obtained counsel.

6. On November 28, 2017, we dismissed appellant's appeal from the October 3, 2017 order as premature and denied appellant's petition for a writ of mandamus. We explained that appellant could timely appeal after the district court ruled on the pending postdecision motion. On January 19, 2018, the district court denied appellant's motion to amend on the grounds that (1) appellant has not proven service pursuant to Minn. Stat. § 117.145 and (2) appellant failed to satisfy the criteria to amend pleadings. Appellant appealed the district court's January 19, 2018 order. In our March 28, 2018 order, we determined that this appeal is limited to appellant's individual claims and that we construe the appeal as taken from the district court's October 3, 2017 and January 19, 2018 orders.

7. On appeal, appellant makes eight arguments. He argues that the district court (1) erred in dismissing his motion for relief under the anti-SLAPP statute; (2) abused its discretion by failing to allow a change of venue; (3) erred in stating that he could not bring claims on behalf of the trusts; (4) abused its discretion in dismissing for failure to properly serve all respondents under Minn. Stat. § 117.145; (5) erred in not granting relief under Minn. R. Civ. P. 60; (6) erred in not granting relief under Minn. R. Civ. P. 15; (7) abused its discretion in denying him protections under

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Amendments 1, 4, 5, 7 and 14 of the United States Constitution and Article I, sections 1, 2, 3, 4, 7 and 8 of the Minnesota Constitution; and (8) abused its discretion by failing to allow him a jury trial. He maintains his continuing claim and argument that he owns the land in question individually and jointly with the trusts.

8. “[A]s a general rule, an appellate court decision on a particular issue establishes the law of the case not subject to reexamination on a second appeal of the same case.” *Dobrin v. Dobrin*, 569 N.W.2d 199, 201 (Minn. 1997) (quotation omitted). This condemnation appeal arises from the same set of facts that we addressed in *Thompson*, where we determined that Minnesota’s anti-SLAPP statutes, Minn. Stat. §§ 554.01-05, do not apply to this case because “[a]ppellant has not shown that the city’s eminent-domain proceeding was materially related to his public participation in government.” 2015 WL 7201552, at \*4. Appellant’s petition for review was denied by the Minnesota Supreme Court on February 16, 2016. That holding is now the law over this case. *Dobrin*, 569 N.W.2d at 201. Therefore, we do not further consider appellant’s argument concerning the anti-SLAPP statutes.

9. We review de novo a district court’s determination concerning subject-matter jurisdiction. *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012). A party appealing from a commissioners’ award to the district court is required to give notice to all respondents and interested parties. Minn. Stat. § 117.145. The statute provides that any party to the proceedings may appeal

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a commissioners' award by (1) filing a notice of appeal with the court administrator and (2) serving, by mail, a copy of the notice on all respondents and other parties having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing. *Id.*

10. The statute "unambiguously requires service of an appeal on two separate groups: (1) all respondents, and (2) all other parties to the proceedings who are required by section 117.115, subdivision 2, to have been mailed notice of the commissioner's report." *Woodhall v. State*, 738 N.W.2d 357, 361 (Minn. 2007). Compliance with section 117.145 is a jurisdictional prerequisite to an appeal from a condemnation award. *Hous. & Redev. Auth. ex rel. City of Richfield v. Adelmann*, 590 N.W.2d 327, 331 (Minn. 1999). We view "fulfillment of section 117.145's service requirements as a prerequisite to a district court's acquisition of subject matter jurisdiction over an appeal from a condemnation award." *Id.* (collecting cases). Noncompliance with the statutory prerequisites for an appeal deprives the district court of jurisdiction over the appeal. *Condemnation by Hous. & Redev. Auth. v. Suh*, 553 N.W.2d 115, 117 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

11. The district court determined that, under Minn. Stat. § 117.145, "all of the claims are procedurally deficient in that [appellant] failed to serve 'all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of

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mailing.’’ The district court dismissed appellant’s claims because “[f]ailure to serve all parties as required by Minn. Stat. § 117.145 results in a lack of subject matter jurisdiction.”

12. The record supports the district court’s determination that appellant failed to comply with Minn. Stat. § 117.145. On appeal, appellant asserts that a notice of appeal with an attached list of respondents’ names satisfied the jurisdictional requirements of section 117.145. This was not adequate proof of service. Appellant’s argument that he did not need to serve respondents because he was the only remaining interested party also fails. *See Woodhall*, 738 N.W.2d at 361 (rejecting appellant’s argument that Minn. Stat. § 117.145 only required service on respondents who had a property interests in the parcels). We therefore affirm the district court’s order dismissing appellant’s appeal from the condemnation award for lack of subject matter jurisdiction.

13. We do not consider appellant’s other arguments concerning a change of venue and jury trial, relief under Minn. R. Civ. P. 15 and 60, and relief under the United States and Minnesota Constitutions. Because appellant never effectively invoked the district court’s jurisdiction, we decline to address those issues further.

**IT IS HEREBY ORDERED:**

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(b), this order opinion will not be published and shall not be cited as precedent except as law of the case, res judicata, or collateral estoppel.

Dated: 11/13/2018      **BY THE COURT:**

/s/ John R. Rodenberg  
Judge John R. Rodenberg

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<b>STATE OF MINNESOTA</b>	<b>DISTRICT COURT</b>
<b>COUNTY OF DAKOTA</b>	<b>FIRST JUDICIAL DISTRICT</b>
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City of Apple Valley, a Minnesota Municipal Corporation,	File No. <b>19HA-CV-14-1763</b>
Petitioner,	<b>FINDINGS OF FACT, ORDER AND MEMORANDUM</b>
v.	(Filed Oct. 3, 2017)
William C. Thompson (deceased); the unknown heirs of William C. Thompson; Dakota County; Magellan Pipeline Company, L.P.; Gene Rechtzigel, individually and as trustee of Evelyn I. Rechtzigel Trust and Frank H. Rechtzigel Charitable Remainder Unitrust; Srinivasa Rajulapati; Madhavi Rajulapati; Jason Jelinski; Michelle Jelinski; Daniel Gasteazoro; Kristin Gasteazoro; Shelly L. Larson; Darrin A. Larson; Larry J. Russell; Jonathan E. Burkart; Kelly A. Burkart; Francine Lemonie; Daniel Lemonie; Terry Holtzworth; Cheri Holtzworth; Rory L. Swenson; Elizabeth A. Swenson; Yan A. Jiang; Jia X. Jiang; Thomas Thell; Mee-Ling Louie-Thell; Steven A. Hanoski; Deoksoon K. Hanoski; Aurelie Yen	

Hoang Ly; and John Doe and Mary Roe who many claim an interest in the real estate described in the Petition as proprietors, tenants, life estate holders, encumbrancers, or otherwise,

Respondents.

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The above-entitled matter came on for a motion hearing before the Honorable Karen J. Asphaug, Judge of District Court, on September 28, 2017, at Dakota County Judicial Center, Hastings, Minnesota.

Robert Bauer, Esq., appeared on behalf of the Petitioner. Gene Rechtzigel appeared pro se.

Based upon the proceedings, this Court makes the following:

**FINDINGS OF FACT:**

1. The City of Apple Valley petitioned the court for a "quick take" of a parcel known as the "gap strip."
2. There is no record owner or adjudicated owner of the "gap strip."
3. Respondent Gene Rechtzigel has asserted an ownership interest in the "gap strip," however, he has not taken appropriate legal action to assert his claims.
4. A determination was made that the taking was necessary and for a public purpose. Therefore, the

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petition was granted and Commissioners were appointed to determine the amount of damages.

5. Respondent Rechtzigel previously filed several motions including a motion challenging this court's jurisdiction, a motion to dismiss for failure to join an indispensable party, and a motion for summary judgment. Respondent Rechtzigel also sought attorney's fees under the anti-SLAPP statute. This court determined that the anti-SLAPP statute was inapplicable.
6. Those motions were ultimately denied. Respondent Rechtzigel appealed that order to the Court Appeals. The order was affirmed on November 16, 2015.
7. Subsequently, Respondent Rechtzigel brought a rule 60.02 motion, which was denied.
8. The "Award of Commissioners" was filed on May 26, 2017. They found the value of the property taken was \$47,000. The City of Apple Valley deposited additional funds to satisfy the "Award of Commissioners."
9. On July 5, 2017, Respondent Rechtzigel filed a notice of appeal of the "Award of Commissioners" pursuant to Minn. Stat. §117.145. Respondent Rechtzigel filed the notice of behalf individually and on behalf of the Evelyn I. Rechtzigel Trust, the Frank H. Rechtzigel Trust (hereinafter, "the trusts"), and the estate of Frank H. Rechtzigel.
10. In his notice of appeal, Respondent Rechtzigel sought damages for several additional items, including attorney's fees; damages for other parcels; and emotional, mental and physical damage.

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11. The City of Apple Valley filed a motion to dismiss all of Respondent Rechtzigers claims on the basis that he did not properly serve all respondents as required by Minn. Stat. § 117.145, or in the alternative, dismiss claims brought by Respondent Rechtzigel on behalf of the trusts and the estate as he is not an attorney.
12. Respondent then filed a motion to dismiss the city's motions pursuant to the anti-SLAPP statute. He also filed a motion for change of venue.

**ORDER:**

1. The City of Apple Valley's motion to dismiss is **GRANTED**.
2. Defendant's "notice of appeal" is hereby **DISMISSED** for failure to properly serve all respondents as required by Minn. Stat. § 117.145.
3. Because Defendant's claims are dismissed, his motion for change of venue is **MOOT**.
4. Defendant's motion to dismiss is **DENIED**.
5. The attached memorandum shall constitute the court's rationale.

Dated: 10/3/17

**BY THE COURT:**

/s/ Karen Asphaug  
Karen J. Asphaug  
Judge of District Court

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**MEMORANDUM**

The Award of the Commissioners was filed on May 26, 2017. Respondent Rechtzigel filed a notice of appeal on July 5, 2017. His appeal was filed on behalf of himself individually, as well as the trusts and estate. Respondent Rechtzigel's appeal is deficient for several reasons. First, Respondent Rechtzigel cannot bring claims on behalf of the trusts and the estate. Respondent Rechtzigel has repeatedly been informed of this throughout this case by the District Court and Court of Appeals. Therefore, the claims filed on behalf of the trusts and the estate will be dismissed. Moreover, all of the claims are procedurally deficient in that Respondent Rechtzigel failed to serve "all respondents and all other parties to the proceedings having an interested in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing." Minn. Stat. § 117.145. Failure to properly serve all parties as required by Minn. Stat. § 117.145 results in a lack of subject matter jurisdiction. As a result, Respondent's claims filed individually and on behalf of the trusts and estate must also be dismissed on procedural grounds. *Woodhall v. State*, 738 N.W.2d 357, 363 (Minn. 2007).

This court previously found that the anti-SLAPP statutes were inapplicable to the facts of this case and that Respondent Rechtzigel failed to make a threshold showing that this condemnation action materially relates to an act of Respondent that involves public participation. This decision was affirmed by the Court of Appeals.

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<b>STATE OF MINNESOTA</b>	<b>DISTRICT COURT</b>
<b>COUNTY OF DAKOTA</b>	<b>FIRST JUDICIAL DISTRICT</b>
<hr/>	
City of Apple Valley, a Minnesota Municipal Corporation,	File No. <b>19HA-CV-14-1763</b>
Petitioner,	<b>ORDER AND MEMORANDUM</b>
v.	(Filed Jan. 19, 2018)
William C. Thompson (deceased); the unknown heirs of William C. Thompson; Dakota County; Magellan Pipeline Company, L.P.; Gene Rechtzigel, individually and as trustee of Evelyn I. Rechtzigel Trust and Frank H. Rechtzigel Charitable Remainder Unitrust; Srinivasa Rajulapati; Madhavi Rajulapati; Jason Jelinski; Michelle Jelinski; Daniel Gasteazoro; Kristin Gasteazoro; Shelly L. Larson; Darrin A. Larson; Larry J. Russell; Jonathan E. Burkart; Kelly A. Burkart; Francine Lemonie; Daniel Lemonie; Terry Holtzworth; Cheri Holtzworth; Rory L. Swenson; Elizabeth A. Swenson; Yan A. Jiang; Jia X. Jiang; Thomas Thell; Mee-Ling Louie-Thell; Steven A. Hanoski; Deoksoon K. Hanoski; Aurelie Yen	

Hoang Ly; and John Doe and Mary Roe who many claim an interest in the real estate described in the Petition as proprietors, tenants, life estate holders, encumbrancers, or otherwise,

Respondents.

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The above-entitled matter came on for a motion hearing before the Honorable Karen J. Asphaug, Judge of District Court, on December 11, 2017, at Dakota County Judicial Center, Hastings, Minnesota.

Robert Bauer, Esq., appeared on behalf of the Petitioner. Attorneys Patrick Mahlberg and Danny Deveny appeared on behalf of Gene Rechtzigel and the Evelyn I. Rechtzigel Trust and Frank H. Rechtzigel Charitable Remainder Unitrust.

Based upon the proceedings, this Court makes the following:

**ORDER:**

1. Respondent Rechtzigel's motions are hereby **DENIED** in their entirety.
2. The attached memorandum shall constitute the court's rationale.

**BY THE COURT:**

/s/ Karen Asphaug Asphaug, Karen  
2018.01.18 16:25:30  
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Karen J. Asphaug  
Judge of District Court

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**MEMORANDUM**

**I. Procedural History**

By Order dated October 3, 2017, the undersigned dismissed Respondent Rechtzigel's appeal of the Award of the Commissioners for two reasons: (1) Respondent Rechtzigel cannot bring claims on behalf of the trust and (2) the claims were procedurally deficient because Respondent Rechtzigel failed to properly serve all parties served in the Petitioner's affidavit of mailing. Failure to properly serve all parties is a jurisdictional defect for which the proper remedy is dismissal.

On November 3, 2017, Respondent Rechtzigel filed a pro se motion seeking amended findings, amended pleadings, relief from judgment, and stay of enforcement of judgment. An order was issued extending the deadline for such hearing to December 11, the undersigned's first available motion hearing date. Prior to the hearing date, Respondent Rechtzigel obtained counsel on his behalf and on behalf of the trust. Respondent Rechtzigel now argues that he, in fact, properly served all parties as required prior to the last motion hearing. In addition, he asks that we allow the

trusts claims to go forward since he currently has counsel. Respondent Rechtzigel seeks relief pursuant to Minnesota Rules of Civil Procedure 60 and 15.

**II. Respondent Rechtzigel is Not Entitled to Relief From Judgment.**

Minnesota Rules of Civil Procedure allow for relief from a final judgment based upon mistake, inadvertence, surprise, or excusable neglect, newly discovered evidence, fraud, and any other reason justifying relief from the operation of judgment. Minn. R. Civ. P 60.02. When determining whether to grant relief pursuant to Rule 60.02, courts evaluate several factors, including whether there is a reasonable defense on the merits, whether there is a reasonable excuse for the failure or neglect, whether the party acted with due diligence after notice of entry of judgment, and whether substantial prejudice will result to the other party. Respondent Rechtzigel seeks relief based upon excusable neglect.

**a. Respondent Rechtzigel Has Not Proven Service Pursuant to Minn. Stat. § 117.145.**

Respondent Rechtzigel asserts that he completed service pursuant to Minn. Stat. § 117.145 within 40 days as required. He claims he merely failed to properly submit proof of service at the time of the prior motion hearing. Therefore, Respondent Rechtzigel asserts that he should be granted relief pursuant to Rule 60.02 because Respondent Rechtzigel and the trusts have meritorious claims, there is excusable neglect, he

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acted with diligence after judgment was entered, and there is no substantial prejudice to the City of Apple Valley. Despite Respondent Rechtzigel's assertions, the evidence presented in the affidavits does not show that Respondent Rechtzigel properly served the notice of appeal in a timely fashion.

According to the Affidavit of Patrick D.J. Mahlberg, Respondent Rechtzigel brought several unopened envelopes that were returned to him following his attempted serve postmarked July 5, 2017. He asserts that these envelopes contained the Notice of Appeal in connection with this matter. Mr. Mahlberg opened one of the envelopes, which contained a Notice of Appeal to District Court of Report of the Commissioners, Civil Cover Sheet, and Certificate of Service by Mail with Attached List of parties. These documents were attached as Exhibit A to the Affidavit of Zachary Stadem. Exhibit A to the Affidavit of Patrick D.J. Mahlberg contains a photocopy of the front of the envelope that he opened. The envelope shows the handwritten address of Respondent Rechtzigel, a postmark of July 5, and an expected delivery date of July 6. In the corner of the copy, a partial address is visible that also appears to be Respondent Rechtzigel's. Nowhere does the envelope show that the documents were mailed to an individual listed on the list of parties served by Petitioner, as required. This is not adequate proof of service. According to the Affidavit of Zachary Stadem, he purports to have served copies of the Notice of Appeal by U.S. Mail on all parties shown in Petitioner's affidavit of service. Evidence of service was attached as Exhibit B to his

affidavit. Exhibit B, however, only contains the Petitioner's Affidavit of Service filed June 2, 2017. The Court cannot say based upon this information that Respondent Rechtzigel complied with the service requirements of Minn. Stat. § 117.145. The Court is left with in sufficient information to determine the veracity of the claims that service was properly made and the evidence presented does not demonstrate such. Therefore, Respondent Rechtzigel is not entitled to Rule 60.02 relief.

### **III. Respondent Rechtzigel Cannot Satisfy Criteria to Amend Pleadings.**

Respondent Rechtzigel seeks to amend his notice of appeal of the commissioner's award pursuant to Minn. R. Civ. P. 15. Rule 15.01 allows for the amendment of pleadings if more than 20 days have passed since serve with court approval or written consent of the adverse party. The rule provides that "leave shall be freely given when justice so requires." Rule 15.03 states, "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." Therefore, Respondent Rechtzigel asserts that amendment would cure the defect in his original pleadings. He relies upon *Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307 (Minn. 2005). In *Save Our Creeks*, the Minnesota Supreme Court held that a complaint signed by a nonattorney has a curable defect, amendment should

be allowed when four elements are met, and amendment related back to the date of the original complaint. 699 N.W.2d 307. The four elements are: (1) the corporation acts without knowledge that its action was improper; (2) upon notice, the corporation diligently corrects its mistake by obtaining counsel, but in no event may it appear in court without an attorney; (3) the nonattorney's participation in the action is minimal; and (4) the nonattorney's participation results in no prejudice to the opposing party. *Id.* at 311.

**a. Respondent Rechtzigel Had Knowledge That His Action Was Improper.**

In *Save Our Creeks*, the Minnesota Supreme Court was clear that “if a corporation knows or should know that its action is improper, amendment will not be allowed.” *Id.* Respondent Rechtzigel has been informed in several orders and several court cases that he cannot appear on behalf of the trusts. For example, in A13-2004, Respondent Rechtzigel was informed by the Court of Appeals in a lawsuit on behalf of the Evelyn I. Rechtzigel Trust against the City of Apple Valley that a non-attorney trustee is not authorized to practice law. The Court noted the while a trust may prosecute or defend actions for the protection of trust assets, the trustee is not authorized to practice law. In a related case involving a land dispute involving property along the eastern border of the “gap strip,” the issue of Respondent Rechtzigel’s ability to represent the trust was raised at an evidentiary hearing in 2013 (See 19HA-CV-09-5476, Order dated November 7, 2013).

Finally, in *Rechtzigel v. City of Apple Valley*, No. 13-2423 (Minn. May 30, 2014), the Minnesota Supreme Court ruled that as a non-lawyer, Respondent Rechtzigel is not authorized to represent a trust. The City of Apple Valley also raised this issue in its memorandum of law, prior to the September 28 hearing on his notice of appeal. Therefore, Respondent Rechtzigel knew that his action was improper. He cannot satisfy the first element.

**b. Respondent Rechtzigel Did Not Act With Due Diligence and His Participation Was Not Minimal.**

Given the repeated warnings that he cannot appear on behalf of the trusts, Respondent Rechtzigel did not act with due diligence to correct his mistake by obtaining counsel. He only obtained counsel after the court dismissed his appeal, three days prior to the December 11, 2017, motion hearing. Moreover, Respondent Rechtzigel's participation in these proceedings has not been minimal. He has filed several motions throughout the pendency of these proceedings, in addition to initiating several appeals.

**c. The City of Apple Valley is Prejudiced.**

The City of Apple Valley would suffer some prejudice if this amendment were allowed. This condemnation action was initiated in May 2014. Over three and a half years later, this matter is not yet finalized. The City is entitled to some finality in these proceedings.

**d. Because Amendment is Not Appropriate,  
The Defect is Not Curable.**

Respondent Rechtzigel has not satisfied the four elements set forth by the Minnesota Supreme Court in *Save Our Creeks* to permit amendment to add an attorney's signature to the pleadings. Therefore, amendment is not appropriate. Because amendment is not appropriate, the defect cannot be cured. Respondent Rechtzigel's motion to amend the pleadings is denied.

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No. A18-0493

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**State of Minnesota**  
**In Supreme Court**

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Gene A. Rechtzigel, individually, And as trustee of  
Evelyn I. Rechtzigel Trust, as trustee of the Frank H.  
Rechtzigel Trust, and as P.R. of the Estate of  
Frank H. Rechtzigel,

*Petitioner,*

*v.*

City of Apple Valley, a Minnesota Municipal Corporation

*Respondent,*

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**PETITION FOR REVIEW**  
**OF DECISION OF COURT OF APPEALS**

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Appellant:

Gene Rechtzigel Pro Se  
6533 160th Street West,  
Apple Valley, MN 55124  
Telephone: 612-618-0780  
Fax: 651-454-5607  
Dated: December 13, 2018

Respondent:

Dougherty, Molenda, Solfest  
Hills, & Bauer  
14985 Glazier Avenue,  
Suite 525,  
Apple Valley, MN 55124  
Tel: 952-232-1636  
Facsimile: 952-941-7968

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**Prayer of Appeal**

On November 13, 2018, a branch justice broke off of the tree of Constitutional Rights containing the United States Constitution and Minnesota Constitution that for one grants a Trial by Jury with the sole role of finality in determining what is “Just Compensation” of one’s land taken by condemnation, when the Court of Appeals of Minnesota denied Petitioner that Constitutional Right on November 13, 2018. Petitioner prays the Supreme Court of Minnesota to grant Petitioner the Constitutional Right of having “just Compensation,” of one’s land taken by condemnation, decided by Trial by Jury.

**Legal Issues:**

Did the Court of Appeals of Minnesota Err in cutting off Petitioner’s Constitutional Right of having a Trial by Jury to decide the “Just Compensation” of the price of land in a condemnation action?

Is it Constitutional and Statutory to deny Petitioner a Trial by Jury review of the Commissioners Award when Petitioner did in fact serve all interested parties and Petitioner did in fact satisfy Minn. Stat. 117.145?

Is it Constitutional and Statutory to deny Petitioner the right to use Minnesota’s anti-SLAPP statutes when Petitioner is being denied his Minnesota Statutes Right to “participation in government” by Trial by Jury in the separate appeal of the Commissioners Award?

Is it Constitutional and Statutory to deny Petitioner's trust of sole self-representation?

**Criteria and reasons for Review**

1. THE TRIAL COURT ERRED IN DISMISSING PETITIONER'S MOTION FOR RELIEF PURSUANT TO THE ANTI-SLAPP STATUTE. Petitioner's motion of Minn. Stat. 554.01-554.06 brought the court under the legislative authority of the anti-SLAPP statute to grant immunity to Petitioner and thereby putting the burden of proof on Respondent to produce "clear and convincing" evidence that Appellant should not be granted a Trial by Jury in this condemnation compensation action.
2. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ALLOW PETITIONER A CHANGE OF VENUE TO RESOLVE ISSUES OF BIAS, PERSONAL INTEREST, AND CONFLICT OF INTEREST. The trial court abused its discretion by refusing to allow Petitioner an immediate change of venue and an appeal to the Minnesota Court of Appeals from the denial, before wanting to hear and rule on the merits of jurisdiction.
3. THE TRIAL COURT ERRED IN STATING THAT "RECHTZIGEL CANNOT BRING CLAIMS ON BEHALF OF TRUST" BUT AS SOLE TRUSTEE-BENEFICIARY RECHTZIGEL CAN. The trial court erred in not granting the propria persona, pro per, pro persona constitutional right to only one, representing only self, as the sole trustee and sole beneficiary are one and the same, no second person.

4. THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING FOR FAILURE TO PROPERLY SERVE ALL RESPONDENTS (MINN. STAT. 117.145) BY ENTERING FACT FINDINGS THAT ARE UNSUPPORTED BY THE RECORD. The trial court should leave the decision of deciding the issue of Appellant properly serving all parties served in the Petitioner's affidavit of mailing to the trial by jury.
5. THE TRIAL COURT ERRED IN NOT GRANTING MINN. R. CIV. P. RULE 60 RELIEF TO PETITIONER. The trial court erred in stating, "He claims he merely failed to properly submit proof of service at the time of the prior motion hearing," as the statement is unsupported by the record.
6. THE TRIAL COURT ABUSED ITS DISCRETION IN NOT GRANTING MINN. R. CIV. P. RULE 15 RELIEF TO APPELLANT. The trial court made specious and conclusory reasoning's of misrepresentation without an evidentiary hearing of evidence having a factual foundation.
7. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER THE PROTECTIONS OF ARTICLE I, SECTIONS 1, 2, 3, 4, 7, AND 8 OF THE MINNESOTA CONSTITUTION, AND AMENDMENTS 1, 4, 5, 7, AND 14 OF THE UNITED STATES CONSTITUTION. The trial court abused its discretion in denying petitioner of the right to: impartial Condemnation Commissioners, impartial court hearings, and to a impartial trial by jury; failing to provide petitioner an impartial commissioner's hearing, and trial by

jury of the merits and of all the facts in determining "Just Compensation" for taking private property is unconstitutional.

8. **THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ALLOW PETITIONER THEIR CONSTITUTION RIGHT TO TRIAL BY JURY OF ALL THE FACTS RELATING TO "JUST COMPENSATION"; TO PROVIDE APPELLANT AN IMPARTIAL COMMISSIONER'S HEARING; AND RIGHT TO TRIAL BY JURY OF THE MERITS OF ALL THE FACTS IN DETERMINING "JUST COMPENSATION" FOR THE TAKING OF PRIVATE PROPERTY IN THE CONDEMNATION ACTION.** The Trial Court failed to provide impartial condemnation commissioners (commissioners were not present on court ordered day of swearing in, to take their oath of office from court administrator, as Petitioner witnessed), most of taking not for public purpose, Petitioner **not** being allowed "just compensation" by trial court because of the dismissal of a trial by jury of the merits.

**The case, disposition in Trial Court, and facts**

The alleged facts stated in the, Court of Appeal of Minnesota, decision is false as stated without evidentiary proof of facts and without supporting witnesses, and in conflict with the previous underlining court decision of the Honorable Robert R. King Jr. dated November 12, 2013, which states in Court File No. 19HA-CV-09-5476 that, "*Despite all of the issues surrounding ownership of the gap, the Court is convinced that Rechtzigel owns the gap.*

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*The Court reaches this conclusion because Rechtzigel's predecessors farmed the gap for over 15 consecutive years up until the time of the sale to Pulte. The Court is convinced of that due to the testimony of Dorene Nepsund, who testified consistent with that claim and was credible . . . Thus, after the sale, Rechtzigel still owned the gap.*" (Rechtzigel is the sole owner of the property in question as stated by the District Court [Point 39, Page 14, Nov. 12, 2013 Judgment by Judge Robert R. King Jr., Court File No. 19HA-CV-09-5476])

The alleged facts stated in the, Court of Appeals of Minnesota, decision is grossly in err for there are no other interested parties, only Petitioner is the sole owner of the remainder strip "the gap" as there are no other interested parties as stated by the Honorable Robert R. King Jr. in Court File No. Court File No. 19HA-CV-09-5476 that, "*Despite all of the issues surrounding ownership of the gap, the Court is convinced that Rechtzigel owns the gap. The Court reaches this conclusion because Rechtzigel's predecessors farmed the gap for over 15 consecutive years up until the time of the sale to Pulte. The Court is convinced of that due to the testimony of Dorene Nepsund, who testified consistent with that claim and was credible . . . Thus, after the sale, Rechtzigel still owned the gap.*"

The alleged facts stated in the, Court of Appeals of Minnesota, decision is grossly in err, because Judge Robert R. King Jr.'s Judgment of Nov 12, 2013 is controlling and final, "*To the extent there are any inconsistencies between these orders, the following Findings, Conclusions, and Order controls*" ("Filed Dakota County, Carolyn M. Remm,

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Court Administrator NOV. 12, 2013 . . . Findings of fact, conclusions of law and order for judgment and judgment . . . Court File No. 19HA-CV-09-5476"), which clearly states that Rechtzigel owns the entire property in question in this File No. 19HA-CV-14-1763 condemnation action and " . . . Mr. Rechtzigel can still proceed with his separate registration action filed on February 22, 2012."

**Relief:**

1. A prayer of relief that a change of venue be granted to Washington County.
2. A prayer of relief that the October 3, 2017 Order and the January 19, 2018 Order be reversed.
3. A prayer of relief that a trial by jury be granted to Petitioner.
4. A prayer of relief, in the alternative, that all issues of merit and fact be saved for a Trial by Jury.
5. A prayer of relief that in the alternative this case be sent back to the trial court for anti-SLAPP Hearings.

Dated: December 13, 2018

I certify under penalty of perjury that everything I have stated in this document is true and correct.

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Respectfully submitted before the Honorable Su-  
preme Court of Minnesota, Gene A. Rechtzigel et al,

s/ Gene A. Rechtzigel  
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