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JLO Newsletter Winter 2022

Minnesota Supreme Court Rules Federal Law Preempts Minnesota Workers' Compensation Medical Marijuana Coverage

By: Mollie Buelow

In *Musta v. Mendota Heights Dental Center & Hartford Insurance Group*., the Minnesota Supreme Court released a noteworthy decision regarding whether the Minnesota Worker's Compensation statute, Minn. Stat. § 176.135 subd. 1, requiring an employer to pay for an injured employee's cost of treatment, is preempted when an employee seeks cannabis treatment. The question comes before the court as the Federal Controlled Substances Act (CSA), 21 U.S.C. §§ 801–971, makes the possession of cannabis a federal crime. A20-1551, 1,3 (Minn. 2021).

This matter was brought to the Minnesota Supreme Court as respondent, Susan Musta, was employed by Mendota Heights as a dental hygienist when she suffered a work-related neck injury. After multiple rounds of unsuccessful medical intervention, she was certified for participation in Minnesota's cannabis program. When Susan Musta sought reimbursement from Mendota Heights Dental Center (Mendota), they refused to pay stating the requirement conflicted with the CSA.

More specifically stated, the question presented here required the court to determine whether the statutory requirement for an employer to "furnish any medical . . . treatment," reasonably necessary to treat a work-related injury, Minn. Stat. § 176.135, subd. 1 (2020), conflicts with federal law, (CSA), 21 U.S.C. §§ 801–971, that prohibits the possession of cannabis when the employer would be required to pay for medical marijuana? *Id.*

Preemption of a state law by federal law is based on the Supremacy Clause of the United States Constitution. *See, Gonzales v. Raich*, 545 U.S. 1, 29 (2005) (stating that when "there is any conflict between federal and state law, federal law shall prevail"). If federal law preempts state law, in this specific instance, then an employer cannot be ordered to reimburse an injured employee for the cost of medical cannabis used to treat the effects of a work-related injury.

Mendota asserted that the CSA makes possession of marijuana a federal crime, and therefore, preempts the requirement under Minnesota's Workers' Compensation laws for an employer to pay for an injured employee's medical treatment when that treatment is medical cannabis.

Musta contends that Congress has demonstrated an intent to not obstruct state medical cannabis programs by annually prohibiting the United States Department of Justice from spending funds to prosecute persons who use medical cannabis consistent with their state's laws. Finally, Musta asserts that Mendota cannot be deemed to aid and abet her possession of cannabis because the crime of possession has already occurred, and a completed crime cannot be aided and abetted. Additionally, Musta claims that Mendota does not possess the specific intent required for aiding and abetting.

The Workers' Compensation Court of Appeals agreed with Susan Musta in finding that there is no risk that Mendota would be criminally prosecuted under federal law for reimbursing Musta for her participation in Minnesota's medical marijuana program and consequently found no preemptive conflict between Federal law and Minnesota law. *Id* at 5. Therefore, Mendota was required to reimburse Musta for her medical cannabis expenses. *Id* at 5. The matter was then appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court stated that the CSA explicitly defines the scope of its preemptive reach in finding a state law is preempted by the CSA only when "there is a positive conflict between" a provision of the CSA and that state law "so that the two cannot consistently stand together." 21 U.S.C. § 903. Therefore, to find

preemption, meaning the federal law controls over the state law, the court must conclude that the two laws cannot stand together and there is a positive conflict.

To determine if the two laws conflict the Court addressed what is stated in the CSA regarding cannabis and what role aiding and abetting has in terms of Mendota reimbursing Susan Musta for her participating in Minnesota's cannabis program. Under the CSA "cannabis is a Schedule I controlled substance—the most restrictive level—and therefore cannot be lawfully prescribed." 21 U.S.C. § 812(c)(c)(10). The significance of a drug being placed in the category of a Schedule I drug means that it has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use of the substance under medical supervision. 21 U.S.C. § 812(b)(1). Therefore, the CSA is directly in conflict with Musta's use of cannabis for medical treatment, but what the court is focused on is 18 U.S.C. § 2(a), which states that "anyone who aids and abets a federal crime is liable to the same extent as the principal." Therefore, not only could Musta be federally charged but arguably so could Mendota.

The Minnesota Supreme Court analyzed similar matters heard before the Maine Supreme Court and the New Hampshire Supreme Court where justices reached differing conclusions. In *Bourgoin v. Twin Rivers Paper Co., LLC*, the Maine Supreme Court held that the CSA preempts an order to reimburse an employee for medical cannabis under the Maine Workers' Compensation laws because that order required the employer to "engage in conduct that would violate the CSA." 187 A.3d 10, 20 (Me. 2018). In contrast, the New Hampshire Supreme Court held that federal law does not criminalize the act of insurance reimbursement for an employee's purchase of medical marijuana, because the employer's participation was required by law, rather than voluntary. Therefore, the employer lacked the requisite *mens rea* for aiding and abetting. *Appeal of Panaggio*, A.3d, 1,16, 2021 WL 787021 (N.H. 2021). Thus, the New Hampshire Supreme Court concluded, it was possible to comply with both state and federal law. *Id* at 6.

After discussing the various holdings, the Minnesota Supreme Court concluded that that the CSA preempts an order made under Minn. Stat. § 176.135, subd. 1, that obligates an employer to reimburse an employee for the cost of medical cannabis because compliance with that order would expose the employer to criminal liability under federal law for aiding and abetting Musta's unlawful possession. The Supreme Court states that it cannot rest on the Minnesota Worker's Compensation Court of Appeals theory that Mendota is unlikely to be prosecuted and the notion by New Hampshire Supreme Court that compelling a person to act negates *mens rea* as it is not necessarily accurate. The Court found that the Minnesota Worker's Compensation statue requiring Mendota to reimburse Susan Musta for her medical marijuana would result in Mendota providing financial support to Musta's unlawful possession and effectively facilitate her future possession resulting in Mendota actively participating in the criminal act. The Minnesota Supreme Court, therefore, reversed the decision of the Workers' Compensation Court of Appeals.

The dissenting opinion of Justice Chutich states that Mendota cannot be found to have aided and abetted Musta by reimbursing her for her prior purchase of medical cannabis. Justice Chutich argues that Musta purchased the medical cannabis on her own without knowing whether she would ultimately be reimbursed, therefore, her purchase was not impacted by any reimbursement. Accordingly, Justice Chutich dissented in finding that Mendota can comply with the reimbursement order without violating federal law because reimbursement would not contribute to any element of a crime before or at the time the crime was committed.

Based on the Minnesota Supreme Court's opinion in *Musta v. Mendota Heights Dental Center & Hartford Insurance Group.,* employers do not need to reimburse employees for medical marijuana programs as it is preempted by the federal Controlled Substances Act (CSA), 21 U.S.C. §§ 801–971. However, Musta has applied for writ to the United States Supreme Court. The United States Supreme Court has yet to determine if they will grant the writ and hear the matter, but there is good reason for them to do so due to the split among state court interpretations of the issue. If the United States Supreme Court does hear the matter, under the current conservative makeup of the Court, there might be a good chance the Court will agree with the Minnesota Supreme Court and find that the federal statute preempts the state workers compensation laws, and therefore, rule that employers are not required to reimburse employees for medical marijuana treatments. •

The Enforceability of "Resident-Relative" Exclusions in Homeowner's Insurance Policies And its Impact on the Dog Bite Statute

By: Jake W. Peden

POITRA V. SHORT DECISION

In *Poitra v. Short*, 966 N.W.2d 819 (Minn. 2021), the Minnesota Supreme Court held a resident-relative exclusion in a homeowner's insurance policy is enforceable because it does not violate public policy. A resident-relative exclusion is a contractual term in an insurance policy which provides that coverage for personal liability does not apply to injuries to relatives of the insured who are residing at the insured's property. It had not yet been decided in Minnesota that resident-relative exclusion clauses are valid, although the court did note that it has "been unable to find a decision by any state court that has judicially invalidated resident-relative exclusions in homeowner's insurance policies."

Poitra v. Short arose after the insured homeowners' dog attacked their 2-year-old grandson that was living with them at their house. The 2-year old boy suffered injuries, and his father and other grandmother (the "Poitras") filed a claim on the boy's behalf against the grandparents' homeowner's policy. North Star Mutual Insurance then denied the claim for insurance benefits, because its policy contained a resident-relative exclusion clause.

In the lawsuit, the Poitras did not dispute that the resident-relative exclusion applies to bar coverage as it is written, but rather wanted the resident-relative exclusion to be declared void as violating public policy.

Dating back to the 1960s, the Minnesota Supreme Court began abolishing common law intrafamilial tort immunities, such as: immunity for a child being sued by a parent (1966), immunity between spouses (1969), immunity for a parent being sued by their child (1980), and sibling immunity (2010). In 2010, the court held: "In light of our abrogation of immunity in all other familial contexts, we will not now extend immunity to emancipated siblings where no other court has done so." *Lickteig v. Kolar*, 782 N.W.2d 810, 818 (Minn. 2010).

The Poitras argued that public policies which support the abolishment of intrafamilial tort immunities apply to resident-relative exclusions in homeowner's insurance policies, but the Minnesota Supreme Court was not persuaded. The court made a key distinction that "abolishing judicially created immunities is fundamentally different than requiring insurers to provide coverage for resident-relatives that their insureds injure." Intrafamilial immunities were common law barriers of judicial creation that prevented suit for damages between family members. Whereas a resident -relative exclusion in an insurance policy is a bargained for and agreed upon contractual term.

The court held that the public policies behind abolishing tort immunities could not be employed by the court to invalidate express contractual terms, and that the Minnesota Legislature was better suited for considering the public policy arguments. North Star Mutual Insurance's public policy argument was that invalidating resident-relative exclusions could increase insurance rates, price out people who need coverage, and encourage collusive insurance claims between relatives.

DOG ATTACKS AND MINNESOTA LAW GENERALLY

In Minnesota, the law involving dog bites and civil claims for damages is codified in Minn. Stat. § 347.22:

> If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term "owner" includes any person harboring or keeping a dog but the owner shall be primarily liable.

Minnesota, Wisconsin, Iowa, and about half of the states have enacted dog bite statutes, while others (including North Dakota & South Dakota) still follow the common law. The purpose of Minn. Stat. § 347.22 was to depart from the common law, which generally requires the owner's knowledge that a dog is dangerous, before the owner can be held liable for the conduct of their dog. This colloquially is referred to as the "One-Bite Rule," meaning a dog could bite one person (or otherwise act violently on one occasion), before an owner can be presumed to have knowledge their domestic animal is dangerous and be held liable.

Dog attack claims are considered "strict liability" torts, which do not require proving negligence or intent on behalf of the owner. In Minnesota, most common law affirmative defenses and statutory

comparative fault are not available to a defendant dog owner. However, even though the owner's intent is irrelevant, a dog attack victim still needs to prove the dog attack was the proximate cause of their damages. Common causation defenses are that the dog was provoked, or that the injured person was not conducting themselves peacefully in a lawful place (*i.e.* trespassing). If a person intervenes in a fight between two dogs, it can present a fact issue for a jury to consider about whether the dog or their decision to intervene caused their damages.

Another issue to consider when dealing with a dog bite claim is who is the owner. In Minnesota the "owner" is described as "a person who either with or without the owner's permission undertakes to manage, control or care for it as dog owners in general are accustomed to," however it is the registered dog owner who is primarily liable. *See Anderson v. Christopherson*, 816 N.W.2d 626, 632 (Minn. 2012). Someone who merely lets a dog outside is not considered an owner, and it has also been held that the owner/manager of an apartment complex or trailer park is not considered an "owner" under Minnesota's dog bite statute.

While the dog bite statute can apply to municipal owners, attacks involving the police use of a dog are analyzed under a different standard for liability. The Minnesota Supreme Court has ruled that reasonable force statute, and not the dog bite statute applies to bites by police dogs, and that police officers or the municipality employing them are entitled to official immunity or vicarious official immunity (respectively). Under this analysis, if the police officer is using the dog in a manner which requires their exercise of discretion (such as to seize a suspect or search for contraband), the alleged victim must prove the officer acted maliciously, or intentionally committed an act that the official has reason to believe is legally prohibited or against department policy.

While the *Poitra v. Short* decision did not change dog bite law in Minnesota, its holding reinforces the need to investigate whether the victim is a resident or relative of the insured homeowner, before determining whether or not coverage applies to the claim. •

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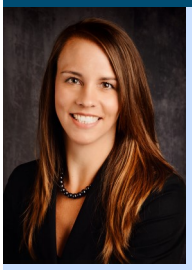
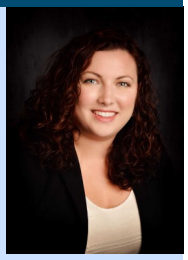


Elisa M. Hatlevig received summary judgment on behalf of The City of Hibbing and the Hibbing Public Utilities Commission relative to a water loss due to a broken municipal water main that flooded the Hibbing Chrysler property. The Court determined that the decision of the Hibbing Public Utilities Commission to not call an emergency dig and not fix the broken pipe immediately was protected by official immunity and vicarious official immunity and dismissed Plaintiff's Complaint in its entirety.



Elisa M. Hatlevig and **Tessa M. McEllistrem** obtained summary judgment dismissal for the City of Richfield and the Richfield Housing and Redevelopment Authority (HRA) relative to a citizen's claim that the city was liable for property damage, diminution of value of her home and inverse condemnation for allowing a private apartment building to be built. In granting the City and HRA's motion, the Court determined that none of the actions of the City or HRA rose to state action and the City and HRA were further entitled to statutory discretionary immunity for allowing the private development.

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Mollie Buelow is a Law Clerk at Jardine, Logan & O'Brien, P.L.L.P. She is in her last semester of law school at the University of St. Thomas School of Law, Minneapolis, Minnesota. Her focus areas are employment law, health law, and government liability.

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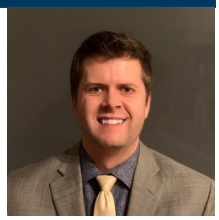

Jake Peden is an Associate Attorney at Jardine, Logan & O'Brien, P.L.L.P. He received his J.D. from the University of St. Thomas School of Law, Minneapolis, Minnesota. Jake has a background in debtor-creditor law, and practices in the areas of Civil Litigation and Workers' Compensation.

About the Firm

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