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Star Decisis - Sovereign Immunity - Prospective Over-ruling

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probable theory as to the cause of death before the presumption is rebutted.[13]

No less authority than the Supreme Court of the United States, by implication in one case[14] and by adopting the contra view in at least one other,[15] has shown opposition to North Dakota's approach to this presumption.

Self-destruction is not uncommon.[16] It is submitted that, by holding insurance companies to a standard of proof higher than other litigants, the courts are working a hardship on the insurer. Iowa's change of attitude seems desirable. North Dakota should follow the example.

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STAR DECISIS—SOVEREIGN IMMUNITY—PROSPECTIVE OVERRULING—The plaintiff brought an action against the defendant school district, its principal, and a teacher for injuries sustained through the alleged negligence of the defendants. The action against the school district was dismissed by the District Court on the basis of sovereign immunity. The Minnesota Supreme Court upheld the District Court but prospectively ruled that after the adjournment of the 1963 Minnesota Legislature the doctrine of sovereign tort immunity would not be available to school districts, municipal corporations or other government subdivisions which had previously been granted immunity by the court. Recognizing that the prospective ruling was dictum the court said that equity required that those who had depended on the prior law be given time to protect themselves. *Spanel v. Mound View School Dist. No.* 621, 118 N.W.2d 795 (Minn. 1962).

Sovereign immunity from tort liability has been a well established principle of law.[1] This doctrine has been criticized

13. Svihovec v. Woodmen Acc. Co., 69 N.D. 259, 285 N.W. 447 (1939); see Clemens v. Royal Neighbors, 14 N.D. 116, 103 N.W. 402 (1905).
14. See Dick v. New York Life Ins. Co., 359 U.S. 437 (1959) (dictum).
15. New York Life Ins. Co. v. Gamer, 303 U.S. 161 (1938).
16. In 1961 there were 19,170 suicides reported in the United States which is more than half as many deaths as were caused by motor vehicle accidents. WORLD ALMANAC 304 (Hansen ed. 1963).

1. Mower v. The Inhabitants of Lecester, 9 Mass. 247 (1812); Rogers v. Holmes, 214 Ore. 687, 332 P.2d 608, 611 (1958) "That a sovereign state cannot be sued without its consent is a cardinal principle of law so well established as to require no citation."

by the courts[2] and legal scholars[3] and held inapplicable in the proprietary functions of government.[4] Recently several jurisdictions have judicially abolished the doctrine as to school districts and other governmental functions.[6] It is apparent from the instant case that the Minnesota Supreme Court intends to do the same unless restrained by the legislature.

The judicial abolishment of a well established rule of law appears to be in conflict with *stare decisis*.[7] Succinctly, the doctrine of *stare decisis* requires precedent to be followed so that rights are protected and the law is given stability.[8]

Courts closely following *statre decisis* have refused to reexamine rules of law on the ground that they have become too well established for the courts to change.[9] These holdings recognize that *stare decisis* cannot be used to perpetuate error, but they state that judicial change in the law should be gradual, leaving abrubt change to the legislature.[10] They also contend that the change of well established law is a policy decision for the legislature to make.[11]

Courts extinguishing sovereign tort immunity contend that the doctrine is unjust and that *stare decisis* does not require the perpetuation of error.[12] They also state that the courts closed the door and thus they can open it.[13] Textwriters argue that only social need for certainty and not *satre decisis* should be considered by the courts.[14] They contend that legislative inertia is eliminated by an abrupt judicial change

2. Colo. Racing Comm'n v. Brush Racing Ass'n, 136 Colo. 205, 316 P.2d 582 (1957); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961).
3. Borchard, **Government Liability in Tort,** 34 Yale L.J. 1 (1924); Green, **Municipal Liability for Torts,** 38 Ill. L. Rev. 355 (1944).
4. Bank of the U.S. v. Planters' Bank of Ga., 9 Wheat. 904 (1824); Sargent Co. v. State, 47 N.D. 561, 182 N.W. 270 (1921).
5. Molitor v. Kaneland Community Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), **cert. denied,** 362 U.S. 968 (1960).
6. Muskopf v. Corning Hospital Dist., 359 P.2d 457 (Cal. 1961); Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961).
7. See, **e.g.,** Prall v. Burckhartt, 299 Ill. 19, 132 N.E. 280 (1921).
8. White v. Bateman, 89 Ariz. 110, 358 P.2d 712 (1961); State v. Cox, 43 Ariz. 174, 30 P.2d 825 (1934).
9. Rockafellor v. Gray, 194 Iowa 1280, 191 N.W. 107 (1922).
10. Layne v. Tribune Co., 108 Fla. 177, 146 So. 234 (1933).
11. Buck v. McLean, 115 So. 2d 764 (Fla. 1959); Nelson v. Maine Turnpike Authority, 170 A.2d 687 (Me. 1961).
12. Hargrove v. Town of Cocoa Beach, 96 So. 2d 13 (Fla. 1957); Molitor v. Kaneland Community Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), **cert. denied,** 362 U.S. 968 (1960); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1, 17 (1961).
13. Muskopf v. Corning Hospital Dist., 359 P.2d 457 (Cal. 1961).
14. Kocourek, **Retrospective Decisions and Stare Decisis and a Proposal,** 17 A.B.A.J. 180, 182 (1931).

of the law.[15] This contention has merit. In Illinois, where sovereign immunity was judicially abolished,[16] the legislature promptly modified the decision by statute.[17]

Prospective overruling of well established law is not without precedent,[18] and it has been approved by legal writers.[19] The United States Supreme Court has held that prospective ruling to be within the province of the courts.[20] Michigan has used the prospective opinion to remove tort immunity from municipalities.[21] Such decisions follow *stare decisis* to the extent that the law remains the same.[22] At the same time, future intentions are stated and affected parties may protect themselves. Furthermore, legislative interest may be attracted.[23]

It is submitted that by employing a prospective opinion the Minnesota Supreme Court has substantially followed the doctrine of *stare decisis* while attracting the attention of the Minnesota Legislature to the court's opinion of sovereign tort immunity.

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15. Keeton, **Creative Continuity in the Law of Torts,** 75 Harv. L. Rev. 463, 475 (1962).
16. Molitor v. Kaneland Community Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), **cert. denied,** 362 U.S. 968 (1960).
17. Ill. Rev. Stat. ch. 122, § 825 (1959).
18. Jones v. Woodstock Iron Co., 95 Ala. 551, 10 So. 635 (1892); State v. Bell, 136 N.C. 674, 49 S.E. 163 (1904); see Levy, **Realist Jurisprudence and Prospective Overruling,** 109 U. Pa. L. Rev. 1 (1960).
19. Freeman, **The Protection Afforded Against Retroactive Operation of an Overruling Decision,** 18 Colum. L. Rev. 230, 251 (1918); Kocourek, **Retrosepective Decisions and Stare Decisis and a Proposal,** 17 A.B.A.J. 180, 192 (1931); Levy, **Realist Jurisprudence and Prospective Overruling,** 109 U. Pa. L. Rev. 1 (1960).
20. G.N.R.R. v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932).
21. Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961).
22. **Ibid.**
23. Such is the case in Minnesota where since the decision several bills have been introduced in the legislature which either reverse or modify the instant case.