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# BRIEFLY

Eric Magnuson

Luke Hasskamp

# In limine and beyond: Part 2

**By Eric J. Magnuson and Luke Hasskamp**
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About a year and a half ago, this column addressed a decision from the Minnesota Court of Appeals holding that an appellant was required to bring a motion for a new trial to preserve for appeal certain evidentiary issues raised in motions in limine even if the motions were heard and decided prior to trial. See Eric J. Magnuson & Ryan Marth, "In Limine and Beyond: More Procedural Cases," Minn. Lawyer (Jan. 16, 2018). In County of Hennepin v. Bhakta, 907 N.W.2d 908 (Minn. App. 2017), the Court of Appeals held that pretrial evidentiary rulings addressed to the discretion of the court must be assigned as error in a motion for a new trial in order to properly preserve those objections for appellate review. The ruling suggested that nearly all pretrial procedural issues, including discovery, would need to be included in a motion for a new trial, otherwise the issue would be waived for appeal.

In our previous column, we noted our concern about the potential uncertainty presented by such a ruling, which suggested that all pretrial procedural issues needed to be renewed in a motion for a new trial, no matter how long before trial they actually arose. The column concluded by wondering whether the Minnesota Supreme Court would review the decision to, at the very least, provide some clear guidance to trial attorneys on what specific pretrial issues should be included in a new trial motion.

Luckily, the Supreme Court granted review and ultimately reversed the Court of Appeals, holding that "a motion for a new trial is not required to preserve objections to pretrial orders that decide motions in limine for appellate review." (Opinion at 2.) The court made clear that evidentiary and other "procedural" issues raised pretrial did not need to be included in a motion for a new trial because raising the issues before trial allowed the District Court an opportunity to fully consider and reflect upon the parties' arguments, which differed from the evidentiary issues arising during trial.

## Before the District Court

A brief review of the procedural history is useful:

The Bhaktas brought suit to challenge the compensation award they had received through a quick-take condemnation proceeding relating to property they owned that had been condemned by Hennepin County as part of an upgrade to an adjacent county road. Two weeks before trial, the Bhaktas filed motions in limine, which sought to exclude Hennepin County's minimum-compensation analysis. The motions were thoroughly briefed, with oppositions, replies, and surreplies filed for each.

On the morning of trial, but before the jury was empaneled, the District Court heard argument, denied the motions, and admitted the challenged evidence. Following trial, the jury returned a verdict in favor of the Bhaktas, but the District Court ultimately entered judgment of $0. The Bhaktas did not move for a new trial but, instead, appealed the judgment on several grounds, including the denial of the motions in limine.

## The appeal

The Court of Appeals dismissed the portion of the Bhaktas' appeal challenging the District Court's denial of their motions in limine, holding that the Bhaktas had failed to preserve those rulings by not moving for a new trial.

The Court of Appeals relied extensively on the Minnesota Supreme Court's decision in Sauter v. Wasemiller, 389 N.W.2d 200 (Minn. 1986), which generally holds that parties must move for a new trial to preserve issues that arise during the course of trial. Bhakta, 907 N.W.2d at 910 (citing Sauter, 389 N.W.2d at 201). The Court of Appeals read Sauter to define issues "that arise during the course of trial" to include "pretrial evidentiary rulings." Id. Accordingly, the Court of Appeals concluded that, when no motion in limine has been raised, review of the judgment is limited to "substantive questions of law." Id. at 911 (citing Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn., 664 N.W.2d 303, 311 (Minn. 2003)). Because the Court of Appeals viewed the motions in limine as procedural, not substantive, it concluded that the Sauter rule precluded appellate review, even though those issues were raised – and decided – before trial. Id. at 912.

## The Supreme Court's opinion

The Supreme Court granted review and began its analysis by affirming the general rule set forth in Sauter that "[m]atters of trial procedure, evidentiary rulings, and jury instructions occurring at trial are subject to appellate review only if they are assigned as error in a motion for a new trial." Cty. of Hennepin v. Bhakta, No. A17-1539, 2019 Minn. LEXIS 30, at *6, 2019 WL 287476 (Jan. 23, 2019) (citing Sauter, 389 N.W.2d at 201). Thus, according to the court, the issue before it was "whether the Sauter rule applies in the context of a pretrial order on a motion to exclude evidence when that motion has been fully briefed, argued, and decided" before trial begins. Id.

The court acknowledged the Court of Appeals' consideration that "judicial efficiency" generally supports requiring motions for a new trial, as they provide "both trial court and counsel with a unique opportunity to eliminate the need for appellate review" as well as "to more fully develop critical aspects of the record in the event appellate review is sought." (Id. at *9) (citing Sauter, 389 N.W.2d at 201). "[I]n general, requiring litigants to move for a new trial gives the District Court the opportunity to consider the context of the objection and the effect that the alleged error may have had on the outcome of the case." (Id. at *10.)

However, these considerations were more compelling in the context of objections made during trial that require "quick, on-the-spot decisions" rather than for pretrial orders where the parties have provided the District Court with notice, written motions, and briefs in advance of trial, and the court has a meaningful opportunity consider the parties' respective positions. (Id.) "The animating goal of the Sauter rule--thoughtful, reflective decision-making by the District Court--is largely achieved in the context of orders on motions in limine that are fully briefed, argued, and decided before trial." (Id. at *11.) As the court recognized, "little additional benefit is gained from a second review" during a motion for a new trial "because motions in limine are fully briefed and argued, and because the District Court has time for reflection before making pretrial decisions." (Id. at *10-11.)

The court added that the "Sauter rule originated in the early twentieth century, when pretrial motions were far less common," but "are now encouraged and governed by specific rules that require notice and briefing, which provide the District Court more opportunity to reflectively consider them." (Id. at *11, fn. 4.) Thus, the court invited the Advisory Committee on the Rules of Civil Appellate Procedure to consider the question of whether Rule 103.04 – which governs the scope of review for appellate courts – "should be amended to supersede Sauter v. Wasemiller or otherwise clarified regarding when a motion for a new trial is required to preserve an issue for appellate review." (Id.)

## The upshot for the practicing bar?

Clarity. As we previously noted in this column, the rule proffered by the court of appeals offered limited guidance to trial attorneys on which pretrial issues needed to be included in a motion for a new trial and suggested that many pretrial issues, including requests for discovery, were fair game. This promised more confusion and the potential that litigants may inadvertently fail to preserve certain pretrial issues and would file otherwise extraneous new trial motions.

Now, attorneys need not worry about raising every issue that arose before trial in a new trial motion. And District Courts will not be inundated with voluminous and otherwise unnecessary new trial motions. Of course, cautious attorneys may still seek to include such rulings in a motion for a new trial. But with the rule provided the Bhakta court, and the invitation to the advisory committee to offer additional guidance, clarity is here for trial and appellate lawyers.

*Eric J. Magnuson is a partner at Robins Kaplan LLP and served as chief justice of the Minnesota Supreme Court from 2008 to 2010. He has more than 35 years of experience practicing law and he focuses his practices almost exclusively in appellate courts.*

*Luke Hasskamp is a member of Robins Kaplan LLP's Business Litigation and Appellate Advocacy and Guidance groups. He primarily focuses his practice on health care litigation, and he has particular experience working within the pharmaceutical industry.*