

## Briefly: What is precedent, and when does it arise?

By: Eric J. Magnuson ◉ March 5, 2021

I had my column for this month already written, and ready to submit for publication when the Minnesota Court of Appeals handed down its decision in *State v. Chauvin*, No. A21-0201. My planned column also dealt in part with an appeal in the Chauvin case, one in which the State was trying to appeal an order denying a continuance and severing Chauvin's trial from the trial of the other defendants. The topic was appellate jurisdiction, and the discussion largely focused on a recent 8th Circuit decision addressing jurisdiction (or the lack of thereof) *sua sponte*.



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On Friday, March 5, the Court of Appeals issued an opinion in a separate appeal by the State seeking review of an order of the District Court denying reinstatement of third-degree murder charges against Chauvin. In that opinion, the court held that its previously issued precedential opinion in *State v. Noor*, 2021 WL 317740 (filed Feb. 1, 2021) was binding authority and grounds for reversing the district court's decision. That news seemed like it warranted a more present discussion than appellate jurisdiction, a topic that can wait for a few weeks.

The merits of the third-degree murder issue in both Chauvin and Noor are beyond the scope of this column. Broadly stated, the dispute in both cases involves the question of whether third-degree murder charges can be based on death-causing acts directed at one person. The Court of Appeals affirmed Noor's conviction in a 2-1 opinion, holding in part that the third-degree murder conviction was supported by the evidence because "a conviction for third-degree murder ... may be sustained even if the death causing act was directed at a single person." *Id.* at \*7. On March 1, 2021, the Minnesota Supreme Court granted further review in Noor.

Immediately following the release of the Noor opinion, the state moved the District Court to reinstate the third-degree murder charges against Chauvin, arguing that Noor undercut the District Court's reason for dismissing the charge. The District Court denied the motion, reasoning that the Noor opinion had not become final because Minnesota Supreme Court review had been sought and granted. The issue, as the Minnesota Court of Appeals said, was whether its opinion in Noor was binding precedent in the District Court. Concluding that it was, the court reversed and remanded.

Without getting into the details of the authority of the District Court to permit the prosecution to amend the complaint prior to trial, it's clear that the justification relied upon by the Court of Appeals regarding the precedential effect of its prior decision has impact far beyond Chauvin.

Stare decisis is a bedrock principle of our judicial system. As the Court of Appeals noted in its opinion, stare decisis "promotes evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Slip Op. at 8, quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

But no one in Chauvin seriously challenged the notion that stare decisis is a controlling legal principle. The dispute was over timing — when is a decision of the Court of Appeals sufficiently final to justify stare decisis treatment?

The Court of Appeals acknowledged that Minn. R. Civ. App. P. 136.02 stays the entry of judgment in the Court of Appeals for at least 30 days, and that the service and filing of a petition for review in the Minnesota Supreme Court extends that time until the petition is ruled upon. Nonetheless, the court concluded that the stay does not limit the precedential effect of the underlying opinion, noting that "the supreme court could have easily promulgated a rule stating that the precedential effect of the precedential opinion of this court is stayed pending further review. But the supreme court has not done so." Slip Op. at 10. In other words, a decision of the Court of Appeals is final and binding despite the fact that final judgment has not been entered in that court.

While the Supreme Court may not have said so, the Court of Appeals itself has said things that come pretty close. In *Holmberg v. Holmberg*, 578 N.W.2d 817, 824 (Minn. Ct. App. 1998), the court said its decisions do not become final until the time for possible review by the Supreme Court has passed. The court also has said that its decisions "do not have precedential effect until the deadline for granting review has expired." *State v. Collins*, 580 N.W.2d 36, 43 (Minn. App. 1998). And the Court of Appeals has noted that when the Supreme Court grants further review of a decision of the Court of Appeals, that decision has only "minimal precedential value." *Fabio v. Bellomo*, 489 N.W.2d 241, 247 n.1 (Minn. Ct. App. 1992). Finally, generally, it is not possible to enforce a Court of Appeals' opinion until judgment is entered, absent some special action by the court. Normally Court of Appeals' judgments result in remand to the District Court where the decision is implemented and enforced.

While not discussing either *Holmberg* or *Fabio*, in *Chauvin*, the Court of Appeals dismissed reliance by the District Court on *State v. Collins* because that decision relied on another case, *State v. Loewen*, with a complicated history of further review, dismissal by the Supreme Court in light of its decision in yet another separate case, a statutory amendment, and ultimate further consideration by the Court of Appeals on remand. Slip Op. at 10-12. *Loewen* was not considered binding precedent in *Collins* because the original Court of Appeals decision as to which review was granted was not affirmed by the Supreme Court, and,

according to the Court of Appeals in Chauvin, the statement in Collins regarding the lack of precedential effect until further review is no longer in play was obiter dictum. *Id.* at 14. That roundabout reasoning seems like a doubtful ground for determining the precedential value of the case with a less complex history, and does not address the impact of the other Court of Appeals' statements on the subject.

In Chauvin, the Court of Appeals also noted that the Supreme Court routinely grants petitions for review without vacating or otherwise altering the precedential effect of those opinions. Once again, the Court of Appeals seemed to put the burden on the Minnesota Supreme Court. "If the Supreme Court does not intend for precedential opinions of this court to have precedential effect once a petition for review is filed or granted, the Supreme Court could clearly say so." That seems, with respect, to be putting the cart before the horse. It assumes that the opinions do have precedential effect despite the fact that they have not become final, and in the face of prior contrary statements by the Court of Appeals itself.

So where does this leave us? We now have a precedential opinion of the Minnesota Court of Appeals that unequivocally says that its precedential opinions are binding authority for its panels and District Courts immediately upon filing. This may not represent a sea change in practice, because the Court of Appeals typically follows the rule of law announced in a published (now precedential) opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law. See *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. Ct. App. 2010) (stating that "The district court, like this court, is bound by supreme court precedent and the published opinions of the court of appeals ...").

But there will be ripples in the fabric of appellate and trial law caused by the clear declaration that when the Court of Appeals designates its opinion to be precedent, it is as a result immediately binding on all courts in this state except for the Supreme Court. Whether that holding itself will be reviewed by the Minnesota Supreme Court, or will be the subject of some rule change in the future remains to be seen.

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