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RECENT DEVELOPMENTS IN MANDAMUS AND OTHER EXTRAORDINARY WRITS PRACTICE

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WebEx Webinar

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Mandamus: Common Law Origins

- Originated as a “high prerogative writ” of the king through which the king issued a command.
- Both created the legal duty at and commanded its performance.
- By the time of the American Revolution, the writ had lost its arbitrary character.
  - The Writ itself no longer created the legal duty.
  - Issued by the Court of the King’s Bench to command and compel the performance of clearly defined and already prescribed by law.
  - Could not command the performance of an act not already authorized or required in the absence of the writ.
- However, the writ maintained its original “form.”

In re Lauritsen, 99 Minn. 313, 109 N.W. 404 (1906).

Mandamus: Common Law Origins

- "Forms of law"
  - At common law, the Courts were restricted from creating new "writs" beginning as early as the Second Statute of Westminster (1285).
  - All claims had to be fit into the language of a writ that had been issued previously (or created by statute).
  - Each claim also had its own unique rules of procedure to follow.
  - This resulted in an overreliance on legal fictions in pleading.
    - Ex. *Case of the Thorns* (1466)—Trespass *by force and arms* alleged even if no violence shown.
    - Ex. *Slade's Case* (1602)—Developing modern contract law through the *writ of assumpsit*, which was originally addressed to fraud and deceit.

State of New-York, ss: The People of the State of New-York sent to the mayor, aldermen and commonalty of the city of their writ close in these words, to wit:—The People, &c. to the mayor, &c. Greeting: Whereas A. B. was duly elected one of the aldermen of the ward of the said city, to wit, on, &c. at, &c.; and by the said mayor or recorder of the said city, in presence of you the said aldermen and commonalty, ought to be admitted and sworn into the said office of alderman: Nevertheless you not being ignorant of the premises, but disregarding your duty therein, have not only refused (though thereto required by the said A. B.) to cause the said A. B. to be sworn and admitted into the said office of alderman in manner aforesaid, but yet do refuse so to do, in contempt of us, and to the great damage of the said A. B. as by his complaint we have understood: We therefore being willing that speedy justice be done in this behalf, do command and firmly enjoin you, that immediately after the receipt of this writ, you do cause the said A. B. to be duly sworn and admitted into the said office of alderman, or to signify the cause to us why you cannot or will not cause the said A. B. to be so sworn and admitted as aforesaid, lest in your default complaint should again come to us: and how you shall have executed this our writ, make known to our Justices of our Supreme Court of Judicature, on, &c. at, &c. and have you then there this writ. Witness, &c. [the usual *teste*.] PAIGE, *Clerk*.

L. H. PALMER, *Attn*.

JOHN V.N. YATES, A COLLECTION OF PLEADINGS AND PRACTICAL PRECEDENTS 759–60 (1837)

Mandamus: Code Pleading (New York)

- In 1847, New York established a Commission on Practice and Pleading to recommend reforms to legal procedure. Commissioners Arphaxed Loomis, David Graham, David Dudley Field.
- Published five reports between February 29, 1848 and December 31, 1849.
- On April 12, 1848, New York legislature enacted most of the First Report, which came to be known as the "Field Code." 1848 NY Laws ch. 379; amended 1849 NY Laws ch. 439.

David Dudley Field
Brady-Handy Collection, Library of Congress

Mildred V. Coe, Lewis W. Morse, *Chronology of the Development of the David Dudley Field Code*, 27 CORNELL L. REV. 238, 241–42 (1942).

Mandamus: Code Pleading (New York)

Field Code Reforms:

- Merger of law and equity jurisdiction for the redress of private wrongs into a single "civil action."
- Abolishes common law "forms," separating the substance of actions from the procedure for such actions.
- Field Code preserves certain types of action as "Special Proceedings," but the First Report did not address these.
- Third Report (1849) and the Final Report (1850) address special proceedings, **but neither report's Special Proceedings provisions were adopted by the New York Legislature**. Those Special Proceedings include former prerogative writs including:
  - Certiorari (renamed a "Writ of Review")
  - Mandamus (renamed a "Writ of Mandate")
  - Ad quod damnum (renamed a "Writ of Assessment of Damages")
  - Habeas Corpus (renamed a "Writ of Deliverance from Imprisonment")

> The chief object of this title is to declare the leading principles which lie at the foundation of the whole proposed system of legal procedure, and without which, in our judgment, very few, if any essential reforms can be effected in remedial law. We refer to the abolition of the distinction between actions at law and suits in equity, and of the forms of such actions and suits. This principle it is proposed to declare by section 62, which provides that "the distinction between actions at law and suits in equity, and the forms of all such actions and suits heretofore existing, are abolished; and there shall be, in this state hereafter, but one form of action for the enforcement or protection of private rights, and the redress of private wrongs, which shall be denominated a civil action."

First Report of the Commissioners on Pleading and Practice 67–68 (1848)

Mandamus: Code Pleading (Minnesota)

The Problem? Wisconsin.

- Minnesota Territory was created by Congress in 1849 in an organic act.
- Organic act provided Minnesota inherited the laws of the former Wisconsin Territory.
- But no one could figure out what that law was!
- The First Territorial Legislature appointed two commissioners to prepare and arrange a codification of laws for Minnesota Territory, which was done over the course of the last 60 days of the 90-day legislative session.
- The Revisors substantially adopted the mandamus language of the Final Report (1850) of the New York Commissioners, which had not been adopted by the New York Legislature.
  - (Minnesota declined to rename the writ, however).
  - The mandamus provisions were in Minn. Terr. Stat. ch. 83 (1851).
- The original statute, with some grammatical revisions and amendments, remains largely unchanged at Minn. Stat. §§ 586.01–.12 (2024).

The laws of the late territory of Wisconsin, thus extended over this territory, consisted of enactments of a period of ten years, commencing with the statutes of Wisconsin, passed by the legislative assembly in the year A. D., one thousand eight hundred and thirty-nine, and each subsequent session of the legislative assembly passed its usual quota of acts, and in some cases without any seeming regard to former enactments.

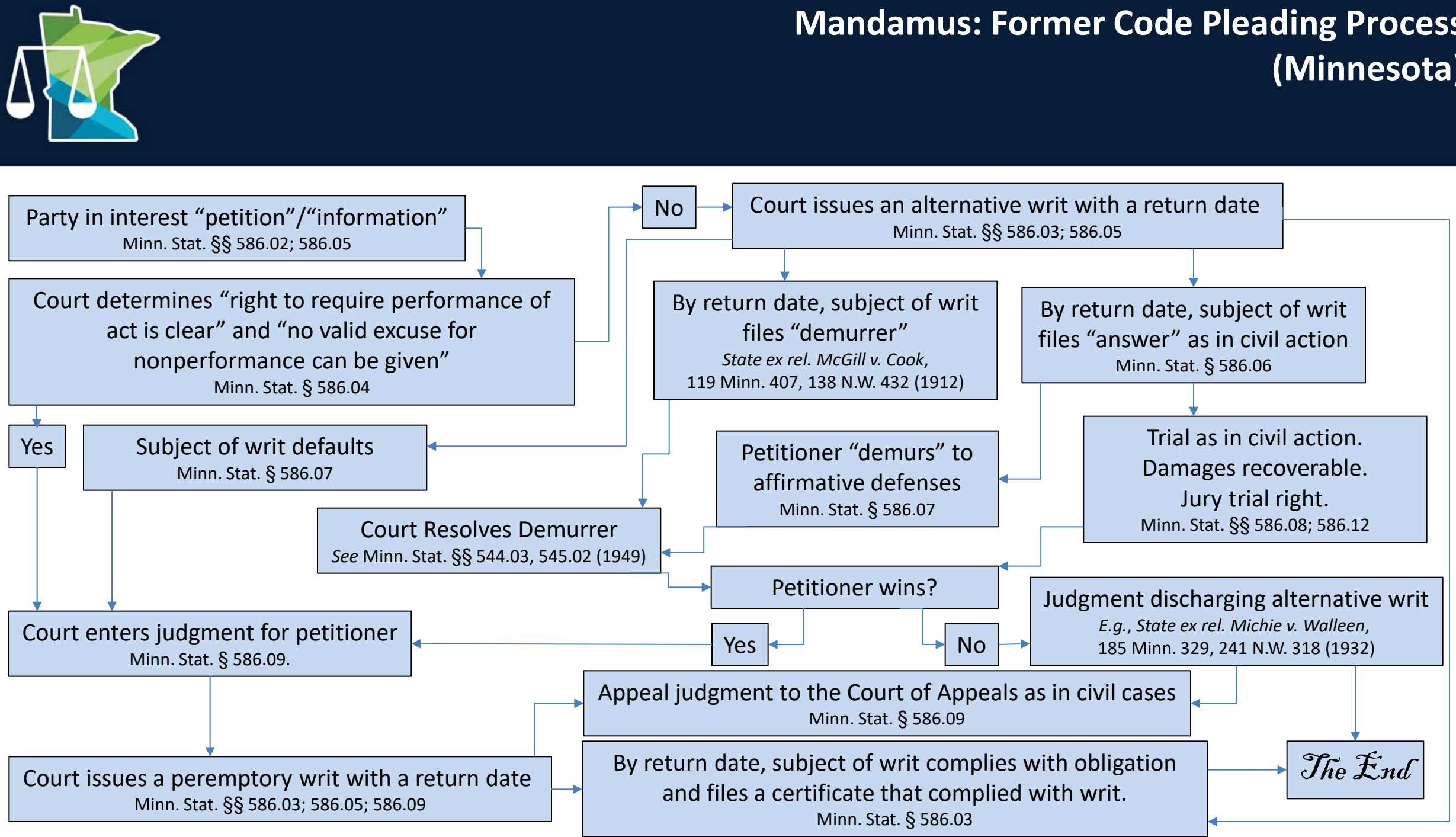
In many instances repealing acts have been passed, without sufficiently designating the acts to be repealed, and in several instances legalizing and explanatory acts, all of which tended to confuse rather than to explain.

These various acts were scattered through some nine or ten different publications, which from their great scarcity, it was almost impossible to procure a full set of these several publications, leaving magistrates and the people, without any adequate means of knowing what the law was.

In addition to these difficulties it was found that the laws of Wisconsin, framed for a people following different pursuits, and surrounded by different circumstances from our own, seemed illy suited to the wants of the people of Minnesota, and to the administration of their territorial government.

MINN. TERR. STAT., *advertisement* (1851)

Mandamus: Former Code Pleading Process (Minnesota)



175 Years of Changes

1853:	R.I.P. Chancery Court
1858:	Statehood
1947:	Legislature grants MN Supreme Court authority to establish rules for practice and procedure
1952:	Minnesota Rules of Civil Procedure
1956:	Minnesota constitution amended to remove legislative control over court procedure
1967:	Minnesota Rules of Civil Appellate Procedure
c. 1956–1973:	R.I.P. Justices of the Peace & Municipal Courts
1977:	Minnesota Rules of Evidence
1982:	R.I.P. Probate Courts
1983:	Minnesota Court of Appeals
1992:	Minnesota General Rules of Practice

Minn. R. Civ. P. 81.01 & Appendix A

- The Minnesota Rules of Civil Procedure have a carve out for certain special proceedings.
  - Minn. R. Civ. P. 81.01(a): "These rules do not govern pleadings, practice, and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent with these rules.
  - Compare Fed. R. Civ. P. 81(b) (abolishing writs of mandamus, but allowing mandamus relief "by appropriate action or motion under these rules").
  - Appendix A exempts specific statutory procedures and the following writs:
    - Writ of Certiorari
    - Writ of Habeas Corpus
    - Writ of Ne Exeat
    - Writ of Mandamus

Rule 81.01(a) & Appendix A restored the statutory process for Mandamus, which had been briefly abolished by the Rules between 1952 & 1967!

See Minn. R. Civ. P. 81.01, 1968 cmte. cmt.; *Scoles v. Hurd*, 275 Minn. 569 (1967).

Recent Developments in Mandamus Procedure

Three Recent Cases

14 Cherrywood, LLC v. City of North Oaks, 993 N.W.2d 287 (Minn. App. 2023)

Ly v. Harpstead, 7 N.W.3d 560 (Minn. 2024) [*Ly I*]

Ly v. Harpstead, 16 N.W.3d 788 (Minn. App. 2025) [*Ly II*]

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Brief Detour:
General Life of a Mandamus Action

- Mandamus begins with a Petition (§§ 586.02, .05)
- Court has three options:
  - (1) issue peremptory writ;
  - (2) issue alternative writ;
  - (3) dismiss petition
- Peremptory v. Alternative Writ
  - Both order defendant to do the requested act
  - Peremptory: No opportunity to present defense
    - Case ends
  - Alternative: Defendant shows cause for nonperformance
    - Defendant files Answer
    - Case proceeds like a traditional civil action
    - Case ends with either peremptory writ or dismissal

Ly v. Harpstead, 7 N.W.3d 560 (Minn. 2024) [*Ly I*] 16 N.W.3d 788 (Minn. Ct. App. 2025) [*Ly II*]

- Priority Admission Law
- Ly sought immediate admission to state treatment facility
- District court issued alternative writ, DHS filed motion to dismiss in lieu of an answer
- District court denied MTD, immediately decided merits, and issued peremptory writ
  - Held: by filing MTD, Commissioner waived right to Answer and admitted allegations against her
  - Reserved damages issue for later trial
- DHS appealed, Court of Appeals dismissed because order was not final
- Supreme Court agreed with COA but nevertheless exercised jurisdiction over appeal
  - Overruled 150 years of precedent that previously held a party could appeal from writ

14 Cherrywood, LLC v. City of North Oaks, 993 N.W.2d 287 (Minn. Ct. App. 2023)

- Petitioner applied for conditional use permit; city did not take any action
- Filed petition for writ of mandamus for city to grant permit and for damages
- District court issued alternative writ; city filed Answer and then approved permit
- District court dismissed petition as moot
- Petitioner appealed arguing it was entitled to damages because the alternative writ issued

Minn. Stat. § 586.03

"The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause before the court out of which the writ issued, at a specified time and place, why the defendant has not done so . . . ."

Responding to Alternative Writ

Two statutory options

Two statutory options

01

Do required act and file certificate of having done as commanded (§ 586.03)

Responding to Alternative Writ

Two statutory options

01

Do required act and file certificate of having done as commanded (§ 586.03)

02

File Answer by the return date (§ 586.06)

Responding to Alternative Writ

Two statutory options

01

Do required act and file certificate of having done as commanded (§ 586.03)

02

File Answer by the return date (§ 586.06)

Ly // confirms third option available

Responding to Alternative Writ

Two statutory options

01

Do required act and file certificate of having done as commanded (§ 586.03)

02

File Answer by the return date (§ 586.06)

Ly // confirms third option available

03

File Motion to Dismiss Alternative Writ

03

File Motion to Dismiss Alternative Writ

"We therefore hold that upon issuance of an alternative writ of mandamus, the defendant in a mandamus proceeding may elect to move to dismiss or answer the petition. If the defendant moves to dismiss and that motion is denied, the defendant may then file an answer in accordance with the Minnesota Rules of Civil Procedure to the extent those rules do not conflict with Minn. Stat. §§ 586.01–.12."

Ly II, 16 N.W.3d at 802.

Responding to Alternative Writ

Statute says:	*Ly II* says:
Alternative Writ	Also consider allegations in Petition
"No pleading or written allegation, other than the writ, answer, and demurrer, shall be allowed." Minn. Stat. § 586.08.	"[I]n evaluating a motion to dismiss in a mandamus proceeding, a court may properly consider whether the petition and alternative writ, taken together, state a claim for relief."

Operative Pleading for MTD

Unanswered question following *Ly II*:

What does an Answer respond to?

Notice pleading applies!

Responding to Alternative Writ

Prior Supreme Court precedent required the Alternative Writ to demonstrate on its face that there was adequate funding to accomplish the relief sought

Powell v. Carlos Twp., 255 N.W. 296 (Minn. 1929) ("[T]he nature of the writ of mandamus justifies a holding that it must appear by the writ that there are funds, and we so hold. There is no allegation to that effect in the writ, and it fails to state a cause of action.").

Notice pleading applies!

***Ly II* found prior Supreme Court precedent "inapposite" due to modern Rules of Civil Procedure**

"[W]e . . . hold that Minnesota law does not require that a petitioner seeking a writ of mandamus specifically plead the existence of adequate funding to state a claim for relief."

Notice pleading applies!

14 Cherrywood, LLC
v.
City of North Oaks,
993 N.W.2d 287
(Minn. App. 2023)

No peremptory writ or damages awarded until final judgment

- "A plaintiff who is given judgment, shall recover the damage sustained, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay." Minn. Stat. § 586.09.
- "The statute establishes that a successful plaintiff will receive a peremptory writ, damages, and costs and disbursements. But it requires that the plaintiff must first obtain a judgment." *14 Cherrywood*, 993 N.W.2d at 292.

14 Cherrywood, LLC
v.
City of North Oaks,
993 N.W.2d 287
(Minn. App. 2023)

If defendant does requested action before final judgment, case is moot and no peremptory writ or damages awarded

- "[B]y the time of the district court's decision, the city had already officially ratified the automatically approved CUP application and issued Cherrywood's requested building permit to begin construction. Cherrywood's mandamus petition had asked the district court to order the city to ratify the automatically approved CUP application and award damages as a result. . . . No controversy remained, and Cherrywood received no judgment. Because it received no judgment, it could not be awarded damages." *14 Cherrywood*, 993 N.W.2d at 292–93.

Years of Supreme Court precedent permitted an appeal from order granting peremptory writ

- Appealable as a final order in a special proceeding or an "irregular" judgment

- *E.g.*, *State ex rel. Matthews v. Webber*, 17 N.W. 339 (Minn. 1883); *State ex rel. Mortenson v. Copeland*, 77 N.W. 221 (Minn. 1898); *State ex rel. Bd. Of Comm'rs v. McKellar*, 99 N.W. 807 (Minn. 1904); *State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n*, 273 N.W. 603 (Minn. 1937); *Indep. Sch. Dist. Of White Bear Lake v. City of White Bear Lake*, 292 N.W. 777 (Minn. 1940).

Ly I: Holds appeal must be from final judgment

- Supreme Court observed:
  - 1963 – statute permitting appeal was amended to state that a final order in a special proceeding was appealable "except as otherwise provided by statute"
  - Mandamus statute permits appeals "as in other civil cases" – i.e., from final judgment
- Citing 1966 law review note, Supreme Court held "as in other civil cases" language repudiates any appeal from a final order in special proceeding
- Also overruled prior precedent permitting appeal as irregular judgment
- Not appealable as an injunction

Lingering question: Can district court make peremptory writ unappealable by reserving damages?

Likely no, in light of Minn. Stat. § 586.09, *14 Cherrywood*, and *Ly II*

- *14 Cherrywood*: a peremptory writ can only be awarded after a plaintiff is "given judgment"
- *Ly II*: held district court erred by granting peremptory writ before entering judgment

Takeaways

Ly II

- Motion to dismiss in lieu of immediately filing an answer is permitted
- Operative pleading for MTD is both the petition and alternative writ
- Notice pleading applies to MTD
- A defendant is entitled to file an answer if MTD is unsuccessful
- Peremptory writ cannot order any relief that is not required by law

14 Cherrywood

- To award a peremptory writ and/or damages, final judgment must be entered
- If mandamus action is mooted before peremptory writ, damages are not recoverable

Ly I

- Appeal must be from final judgment, not from peremptory writ

Mandamus: Present Process (Minnesota)