

**CIVIL PROCEDURE:
THE UNFORTUNATE ELEVATION OF FINALITY OVER
VALIDITY — *BODE v. MINN. DEPT OF NATURAL RES.***

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“The more corrupt the republic,
the more numerous the law books.”

– Tacitus I

I. INTRODUCTION	1218
II. BACKGROUND.....	1219
A. <i>Void Judgments at Common Law</i>	1219
B. <i>Void Judgments in Minnesota</i>	1224
C. <i>District Court Appellate Jurisdiction of Agency Rulings</i>	1226
III. <i>BODE</i> : FACTS & PROCEDURAL HISTORY	1228
A. <i>Facts</i>	1228
B. <i>District Court</i>	1230
C. <i>District Court Revisited</i>	1231
D. <i>Court of Appeals</i>	1232
IV. THE <i>BODE</i> DECISION.....	1235
A. <i>Procedural Aspects</i>	1235
B. <i>Restatement Adoption</i>	1237
C. <i>Restatement Misapplication</i>	1241
D. <i>The Reasonable Time Requirement of Minnesota Rule of Civil Procedure 60.02</i>	1242
V. VALIDITY: THE ROAD NOT TAKEN	1244
VI. CONCLUSION.....	1244

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I. INTRODUCTION

The issue in *Bode v. Minnesota Department of Natural Resources*¹ was whether a judgment entered by a court lacking subject matter jurisdiction could be collaterally attacked as void when the issue of jurisdiction had not been litigated in the initial proceeding.² The facts of *Bode* are straightforward. The Nicollet County Hearings Unit determined that William Bode's farm did not contain a wetland.³ The Minnesota Department of Natural Resources (DNR) filed an untimely appeal with the district court,⁴ which nevertheless proceeded to enter a judgment on the merits.⁵ Mr. Bode did not participate in the district court proceeding nor did he contest the jurisdiction of the court.⁶ When Mr. Bode's successors in interest, his daughters Judy and Linda Bode,⁷ subsequently moved to set aside the original judgment as void, the district court granted their motion.⁸ The Minnesota Court of Appeals reversed,⁹ and with one justice dissenting,¹⁰ the Minnesota Supreme Court affirmed the decision of the court of appeals.¹¹

In *Bode*, the Minnesota Supreme Court was faced with deciding which was more important given this fact situation – the validity or the finality of the original judgment. The *Bode* court chose to adopt

1. 612 N.W.2d 862 (Minn. 2000).

2. *Bode*, 612 N.W.2d at 864-65.

3. Findings of Fact, Conclusions and Order (Nicollet County Hearings Unit Sept. 10, 1980); Comm'r of Natural Res. of the State of Minn. v. Nicollet County Pub. Water/Wetlands Unit, No. 19299 (Minn. Dist. Ct. 5th Dist. Dec. 17, 1986); *Bode*, 612 N.W.2d at 864.

4. Prior to August 1, 1983, appeals from agency decisions were made to the district court. MINN. STAT. § 15.0424, subd. 1 (1980). Since then, appeals are made to the court of appeals. MINN. STAT. § 14.63 (2000). The Minnesota Court of Appeals was established by the Court of Appeals Act, ch. 501, 1982 Minn. Laws 569 (codified at MINN. STAT. § 480A.01-.11 (2000)).

5. Comm'r of Natural Res. of the State of Minn. v. Nicollet County Pub. Water/Wetlands Unit, No. 19299 (Minn. Dist. Ct. 5th Dist. Dec. 17, 1986) (unpublished opinion, not separately paginated); *Bode*, 612 N.W.2d at 864.

6. *Bode*, 612 N.W.2d at 864-65.

7. *Id.* at 864 n.3.

8. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998); *Bode*, 612 N.W.2d at 865.

9. *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 258 (Minn. Ct. App. 1999); *Bode*, 612 N.W.2d at 865.

10. *Bode*, 612 N.W.2d at 871 (Page, J., dissenting).

11. *Id.* at 870.

section 12 of the Restatement (Second) of Judgments¹² and its preference for finality¹³ instead of adhering to its own precedent which held that validity was of paramount importance.¹⁴ In doing so, the court (1) implicitly condoned Minnesota courts acting beyond their express statutory authority, and (2) infringed upon the authority of the legislature to establish the applicable appeals period for agency rulings.

II. BACKGROUND

A. *Void Judgments at Common Law*

The competing notions of finality and validity have long provided a source of friction in the law.¹⁵ At English common law, a decision's validity was of much greater importance than its finality.¹⁶ This theory was universally accepted in the United States well into the twentieth century.¹⁷ In its famous 1877 decision of *Pennoyer v. Neff*,¹⁸ the U.S. Supreme Court declared that a judgment "if void when rendered, will always remain void"¹⁹ Subsequent Supreme Court cases, however, established that this strict requirement of validity does not apply when the issue of jurisdiction was previously litigated.²⁰ For example, in its 1931 decision, *Baldwin v. Iowa State Traveling Men's Ass'n*,²¹ the Court held that a party who had unsuccessfully contested and litigated the court's personal jurisdiction could not later collaterally attack the original court's judgment in another court.²² In its 1938 decision of

12. *Id.* at 868.

13. RESTATEMENT (SECOND) OF JUDGMENTS § 12 cmt. a (1980).

14. *See infra* Part IV.A-B.

15. RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1980). *See generally* Karen Nelson Moore, *Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments*, 66 CORNELL L. REV. 534 (1981).

16. *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (K.B. 1612); *Elliot v. Perisol's Lessee*, 26 U.S. (1 Pet.) 328, 340-41 (1828).

17. Moore, *supra* note 15, at 537-38.

18. 95 U.S. 714 (1877) (holding that presence within the state was the chief, if not the sole, basis for personal jurisdiction).

19. *Id.* at 728.

20. *Durfee v. Duke*, 375 U.S. 106 (1963); *Stoll v. Gottlieb*, 305 U.S. 165 (1938); *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522 (1931).

21. 283 U.S. 522 (1931).

22. *Baldwin*, 283 U.S. at 525.

Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and

Stoll v. Gottlieb,²³ the Supreme Court expanded the *Baldwin* doctrine, applying *res judicata* treatment to those situations where subject matter jurisdiction had been previously litigated.²⁴

The Supreme Court decided a trio of subject matter jurisdiction cases in 1940. Two of these decisions were handed down on January 2, 1940: *Kalb v. Feuerstein*²⁵ and *Chicot County Drainage District v. Baxter State Bank*.²⁶ In *Kalb*, the Court held that state courts are deprived of all jurisdiction once federal bankruptcy proceedings have been commenced.²⁷ Thus, the state court judgment that had granted foreclosure upon the Kalb's property could be collaterally attacked.²⁸ The Court noted that "[t]he Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit that jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law."²⁹ The issue of the state court's jurisdiction had not been litigated in the state action,³⁰ but the court stated that this was not a factor in their decision.³¹ The *Kalb* decision suggests that where an

that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

Id. at 525-26.

23. 305 U.S. 165, 172 (1938) (stating that "[a]fter a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of *res judicata* is made has not the power to inquire again into that jurisdictional fact.").

24. *Id.* at 172.

We see no reason why a court in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction.

Id.

25. 308 U.S. 433 (1940).

26. 308 U.S. 371 (1940).

27. *Kalb*, 308 U.S. at 443.

28. *Id.*

29. *Id.* at 439.

30. *Id.* at 436, 443; Benett Boskey & Robert Braucher, *Jurisdiction and Collateral Attack: October Term, 1939*, 40 COLUM. L. REV. 1006, 1019 (1940).

31. *Kalb*, 308 U.S. at 443-44. "Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer-debtor." *Id.* at 444.

act of the legislature has been transgressed, collateral estoppel should not apply.³²

In *Chicot*, however, the Court held that collateral estoppel should apply when the statute pursuant to which a judgment had been rendered was subsequently deemed unconstitutional.³³ At issue were bonds issued by the Chicot County Drainage District that had been effectively cancelled in a previous proceeding.³⁴ When the Supreme Court subsequently declared unconstitutional the statute under which the bonds had been cancelled,³⁵ two banks sued to recover on the bonds.³⁶ The Court deemed this action to be an impermissible collateral attack.³⁷

The Court quickly noted the limited nature of its holding in *Chicot* in another 1940 decision. Justice Reed wrote for the Court in *United States v. United States Fidelity & Guaranty Co.* that “[i]n the *Chicot County* case no inflexible rule as to collateral objection in general to judgments was declared . . . No examination was made of the susceptibility to such objection of numerous groups of judgments concerning status, extra-territorial action of courts, or strictly jurisdictional and quasi-jurisdictional facts.”³⁸

Some decisions and commentary, however, interpret *Chicot* much more broadly.³⁹ One source of this broadening was Justice White’s 1982 opinion in *Insurance Corp. of Ireland, Ltd. v.*

32. *Id.*; Boskey & Braucher, *supra* note 30, at 1018-19.

33. *Chicot*, 308 U.S. at 377-78.

34. *Id.* at 372-74.

35. *Ashton v. Cameron County Dist.*, 298 U.S. 513 (1936).

36. *Chicot County Drainage Dist. v. Baxter St. Bank*, 308 U.S. 371, 372-73 (1940).

37. *Id.* at 377-378.

38. *United States v. United States Fid. & Guar. Co.*, 309 U.S. 506, 514 (1940). The limited nature of *Chicot* was also recognized by Justice Marshall in 1973. *Gosa v. Mayden*, 413 U.S. 665, 709 n.15 (1973) (Marshall, J., dissenting).

More generally, *Chicot County* is probably most appropriately interpreted as an early decision concerning the nonretroactive application of a particular decision, namely, *Ashton*. Despite the Court’s resort at places to the rubric of *res judicata*, the presence of substantial reliance on pre-existing law clearly was an important consideration in the Court’s decision not to allow the intervening decision in *Ashton* to be used to collaterally attack the original plan of readjustment.

Id.

39. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982); *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (citing *Chicot* for the notion that “federal district court’s erroneous exercise of jurisdiction is not subject to collateral attack”); *Maesch v. Maesch*, 761 F. Supp. 584, 586 (S.D. Ind. 1989); Dan B. Dobbs, *Beyond Bootstrap: Foreclosing the Issue of Subject-Matter Jurisdiction Before Final Judgment*, 51 MINN. L. REV. 491, 493 (1967).

Compagnie.⁴⁰ This was a personal jurisdiction case, but, in *dicta*, the Court wrote in a footnote that “[a] party that has had an *opportunity* to litigate the question of subject matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of *res judicata* apply to jurisdictional determinations – both subject matter and personal.”⁴¹

This declaration by the Court is perplexing for two reasons. First, in addition to citing *Chicot*, the Court also cited *Stoll*, a case in which the issue of the court’s subject matter jurisdiction had been actually litigated in a prior proceeding.⁴² Secondly, this *dicta* failed to incorporate the doctrine of the Court’s 1963 decision of *Durfee v. Duke*.⁴³ The *Durfee* Court had determined that the relevant inquiry in a collateral attack action was whether “the jurisdictional issues had been fully and fairly litigated by the parties and finally determined.”⁴⁴

Durfee began as a Nebraska action for quiet title to land located on the Missouri River.⁴⁵ Duke appeared in the Nebraska court and explicitly contested the court’s subject matter jurisdiction, claiming that the land was not in Nebraska, but rather in Missouri.⁴⁶ The Nebraska court, however, found for Durfee as to both the land’s location and the merits of the underlying quiet title action.⁴⁷ The Nebraska Supreme Court affirmed.⁴⁸

Instead of petitioning the U.S. Supreme Court for certiorari, Duke instead instituted her own quiet title action in Missouri state court.⁴⁹ After removal to federal district court based on diversity of citizenship, the district court held that although it believed that the land was actually in Missouri, *res judicata* treatment should be afforded the earlier Nebraska proceedings.⁵⁰ The court of appeals reversed, holding that *res judicata* was not applicable if indeed the land was actually in Missouri.⁵¹ The U.S. Supreme Court reversed

40. 456 U.S. 694 (1982).

41. *Id.* at 702 n.9.

42. *Stoll v. Gottlieb*, 305 U.S. 165, 177 (1938).

43. 375 U.S. 106 (1963).

44. *Id.* at 116.

45. *Id.* at 107-08.

46. *Id.* at 108.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 108-09.

51. *Id.* at 109.

the court of appeals, holding that because the issue of subject matter jurisdiction had been previously litigated in Nebraska, issue preclusion applied.⁵²

The *Durfee* Court expressly distinguished its decision from the earlier *Chicot* decision.⁵³ The *Durfee* Court noted that there are numerous exceptions to the “general rule of finality.”⁵⁴ The Court determined that the collateral attack was impermissible based upon a balancing of the factors listed in the first Restatement of Judgments.⁵⁵ Importantly, actual litigation is one of the factors listed therein.⁵⁶ Numerous subsequent decisions of the Court have confirmed the requirement of actual litigation of the subject matter jurisdiction issue in order for collateral estoppel to apply.⁵⁷ The Restatement (Second) of Judgments does not include this important factor, however.⁵⁸ Section 12 of this Restatement replaced the useful balancing test provided by the first Restatement with a blanket general rule that subject matter jurisdiction cannot be litigated in a subsequent proceeding unless one of three narrowly defined exceptions exists.⁵⁹ This “modern” rule places

52. *Id.* at 116.

53. *Id.* at 108 n.4. “This is therefore, not a case in which a party, although afforded an opportunity to contest subject matter jurisdiction, did not litigate the issue.” *Id.*

54. *Id.* at 114-15.

55. *Id.* at 114 n.12. Among the factors appropriate to be considered in determining that collateral attack should be permitted are the following:

the lack of jurisdiction over the subject matter was clear; the determination as to jurisdiction depended upon a question of law rather than of fact; the court was one of limited and not of general jurisdiction; the question of jurisdiction was not actually litigated; the policy against the court’s acting beyond its jurisdiction is strong.

RESTATEMENT OF JUDGMENTS § 10 (1942). Because the issue in *Durfee* was one of full faith and credit, the Court’s actual citation was to the RESTATEMENT OF CONFLICT OF LAWS § 451(2) (Supp. 1948), with a secondary cite to RESTATEMENT OF JUDGMENTS § 10 (1942). *Durfee*, 375 U.S. at 114 n.12. This distinction is only technical, however, as the factors listed in both Restatements are identical. Compare RESTATEMENT OF CONFLICT OF LAWS § 451(2) with RESTATEMENT OF JUDGMENTS § 10.

56. RESTATEMENT OF JUDGMENTS § 10 (1942).

57. See *Underwriters Nat’l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass’n*, 455 U.S. 691, 705-06 (1982) (recalling *Durfee*’s actual litigation requirement). See also *Key v. Wise*, 454 U.S. 1103, 1108 (1981) (Brennan, J., dissenting from denial of certiorari). “*Durfee* is simply an application of the normal rules of collateral estoppel to jurisdictional determinations.” *Id.*

58. See RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1980).

59. *Id.* When a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court’s subject matter jurisdiction in subsequent litigation except if:

The subject matter of the action was so plainly beyond the court’s

greater weight on a decision's finality than on its validity.⁶⁰

It is clear from the Supreme Court's decisions that a court's subject matter jurisdiction cannot be collaterally attacked if the issue was previously litigated.⁶¹ This is due to the well-established principle that federal courts have the authority to determine their own jurisdiction.⁶² It is not clear, however, whether a collateral attack is permissible in federal court if the jurisdictional issue was not previously litigated.⁶³

B. *Void Judgments in Minnesota*

As in the federal court system,⁶⁴ subject matter jurisdiction cannot be conferred upon a Minnesota court by the consent of the parties.⁶⁵ In its 1973 decision of *Lange v. Johnson*,⁶⁶ the Minnesota

jurisdiction that its entertaining the action was a manifest abuse of authority; or allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or the judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

Id.

60. *Id.* § 12 cmt. a.

61. *Durfee v. Duke*, 375 U.S. 106, 116 (1963); *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938).

62. *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 377 (1940); *Stoll*, 305 U.S. at 171-72; *Kansas City S. Ry. Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir. 1980).

63. *Compare* *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 *and Chicot*, 308 U.S. at 378, *with Durfee*, 375 U.S. at 116 *and* *Kalb v. Feuerstein*, 308 U.S. 433, 443 (1940). *See* 18 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE: JURISDICTION § 4428, at 271 (1981) ("The res judicata effects of a judgment entered by a court that lacked subject matter jurisdiction have not been captured in any rule or clear statement of controlling policies."). Confusion in the federal courts notwithstanding, this author contends that a collateral attack should be permitted in the absence of previous litigation of the jurisdictional issue. Given that subject matter jurisdiction flows from Article III, Section 1 of the U.S. Constitution, subject matter jurisdiction cannot be conferred upon a federal court by consent of the parties. *Ins. Corp. of Ir.*, 456 U.S. at 702 n.9 (citing *California v. LaRue*, 409 U.S. 109 (1972)); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1130-31 (11th Cir. 1994) (citing *Ins. Corp. of Ir.*); *Latin Am. Prop. & Cas. Ins. Co. v. Hi-Lift Marina, Inc.*, 887 F.2d 1477, 1479 (11th Cir. 1989); FED. R. CIV. P. 12(h). Therefore, absent an express determination by the court that it does indeed have authority to hear the case or controversy, its decision should be open to subsequent challenge.

64. *See supra* note 63 and accompanying text.

65. *Hemmesch v. Molitor*, 328 N.W.2d 445, 447 (Minn. 1983).

66. 295 Minn. 320, 204 N.W.2d 205 (1973).

Supreme Court held that void judgments must be set aside and could be challenged at any time.⁶⁷ For the next quarter century, these twin principles were almost universally applied by Minnesota courts.⁶⁸

In *Hengel v. Hyatt*,⁶⁹ the Minnesota Supreme Court built upon its decision in *Lange* and its 1924 decision in *Pugsley v. Magerfleish*⁷⁰ by stating that discretion is not involved when setting aside a void judgment.⁷¹ The *Hengel* court went so far as to declare that even meritorious defenses could not be used to allow a void judgment to stand;⁷² if the judgment is void it must be set aside.⁷³ These

67. *Id.* at 323-24, 204 N.W.2d at 208. See also *Stadum v. Norman County*, 508 N.W.2d 217, 218 (Minn. Ct. App. 1993), *review denied*, (Minn. Jan. 7, 1994).

68. See *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994) (holding that motion to vacate paternity judgment could be brought at any time); *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) (permitting collateral attack where jurisdictional issue was not previously litigated); *Zions First Nat'l Bank v. World of Fitness, Inc.*, 280 N.W.2d 22, 25 (Minn. 1979) (refusing to allow collateral attack where issue of jurisdiction had been previously litigated); *Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. Ct. App. 1999) ("Unlike the other time-restricted provisions of Rule 60.02, a motion to set aside a void judgment under rule 60.02(d) may be brought at any time."); *State v. Nodes*, 538 N.W.2d 158, 162 (Minn. Ct. App. 1995) (holding that guardian's lack of standing was not a jurisdictional defect); *Messenbourg v. Messenbourg*, 538 N.W.2d 489, 494 (Minn. Ct. App. 1995) (holding that default judgment cannot be construed as void if party previously consented to personal jurisdiction by his actions).

Although the language of the statute and the rule [60.02] indicate that motions to vacate void judgments must be made within a reasonable time, the supreme court has held that there is no time limit for commencing proceedings to set aside a judgment void for lack of jurisdiction over the subject matter or over the parties. A void judgment is legally ineffective; it may be vacated by the court which rendered it at any time, and a void judgment cannot become valid through the passage of time.

Id. (citing *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994)). See also *S.V. Mgmt. Co. v. Ellis*, 472 N.W.2d 674, 676 (Minn. Ct. App. 1991) ("since [sic] appellant never had an opportunity to fully and fairly contest jurisdiction in the California court, the California judgment may be vacated as void if we determine the California court never obtained personal jurisdiction"); *Bernick v. Caboose Enters., Inc.*, 395 N.W.2d 412, 414 (Minn. Ct. App. 1986) (declaring default judgment void because state lacked jurisdiction over appellant's property due to automatic stay feature of bankruptcy proceeding). *But cf.* *Kansas City S. Ry. Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir. 1980) (distinguishing between complete lack of jurisdiction and mere error in the exercise of jurisdiction).

69. 312 Minn. 317, 252 N.W.2d 105 (1977).

70. 161 Minn. 246, 201 N.W. 323 (1924).

71. *Hengel*, 312 Minn. at 318, 252 N.W.2d at 106; accord *Chambers v. Armontrout*, 16 F.3d 257, 260 (8th Cir. 1994) ("Relief from void judgments is not discretionary.").

72. *Hengel*, 312 Minn. at 318, 252 N.W.2d at 106.

statements indicate a binary approach to judgment validity – either the judgment is void or it is not. There is no middle ground. This straightforward approach was followed by the Minnesota Court of Appeals in its 1993 decision of *Midway National Bank of St. Paul v. Bollmeier*.⁷⁴

In its 1994 decision of *Peterson v. Eishen*,⁷⁵ the Minnesota Supreme Court reconfirmed two important principles. Citing *Lange's* application of Minnesota Rule of Civil Procedure 60.02 and its 1941 decision of *Beede v. Nides Finance Corp.*,⁷⁶ the court noted that “we have previously held that there is no time limit for commencing proceedings to set aside a judgment void for lack of jurisdiction over the subject matter or over the parties.”⁷⁷ Citing two U.S. Circuit Court of Appeals cases,⁷⁸ the court noted that void judgments are “legally ineffective”⁷⁹ and can “be vacated by the court which rendered it at any time.”⁸⁰

C. District Court Appellate Jurisdiction of Agency Rulings

Presently, persons in Minnesota aggrieved by a decision of a governmental agency have a right of appeal to the Minnesota Court of Appeals.⁸¹ But prior to August 1, 1983, the right of appeal was to the district court.⁸² The district court, however, acquired subject matter jurisdiction only if an appeal was filed within “30 days after the party receives the final decision and order of the agency.”⁸³ This

73. *Id.*

74. 504 N.W.2d 59, 63 (Minn. Ct. App. 1993) (“A motion to vacate a judgment for lack of jurisdiction under MINN. R. CIV. P. 60.02(d) involves no question of discretion.”).

75. 512 N.W.2d 338 (Minn. 1994).

76. 209 Minn. 354, 296 N.W. 413 (1941).

77. *Peterson*, 512 N.W.2d at 341.

78. *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990); *Misco Leasing, Inc. v. Vaughn*, 450 F.2d 257 (10th Cir. 1971). The federal courts’ interpretation of federal rules of civil procedure often provide guidance to state courts in their interpretation of parallel rules. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Minnesota Rule 60.02 is nearly identical to Federal Rule 60(b). Compare MINN. R. CIV. P. 60.02, with FED. R. CIV. P. 60(b).

79. *Peterson*, 512 N.W.2d at 341.

80. *Id.*

81. MINN. STAT. § 14.63 (2000).

82. MINN. STAT. § 15.0424, subd. 1 (1980). See MINN. CONST. art. VI, § 3 (“The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.”).

83. MINN. STAT. § 15.0424, subd. 1 (1980). This 30 day filing requirement was maintained by the present system of appealing to the court of appeals. MINN. STAT. § 14.63.

30-day statutory appeal period is lengthened to 33 days when the appeal period is initiated by a mailing.⁸⁴ In its 1973 decision of *Blixt v. Civil Service Board*,⁸⁵ the Minnesota Supreme Court applied the plain meaning of the appeals statute and declared that “[f]ailure to both serve and file the petition for review within the time provided by statute deprives the district court of jurisdiction.”⁸⁶ In 1976, three years after *Blixt*, the court decided *Kenzie v. Dalco Corporation*.⁸⁷ Here the court held that untimely appeals should not be reviewed⁸⁸ and that even mitigating circumstances do not give the court the power to extend the time for appeal.⁸⁹ In its 1980 decision of *Flame Bar, Inc. v. City of Minneapolis*,⁹⁰ the court once again held that the district courts do not have jurisdiction when an appeal is untimely.⁹¹ The Minnesota Supreme Court has consistently held (1) that time limits for appeals are jurisdictional and must be strictly construed,⁹² and (2) unlike personal jurisdiction, subject matter jurisdiction cannot be waived or

84. *Blixt v. Civil Serv. Bd.*, 297 Minn. 504, 505, 210 N.W.2d 230, 231 n.2 (1973). “Rules 6.05, 5.02, and 6.01, Minnesota Rules of Civil Procedure, give in effect 33 days after the date of mailing in which to serve and file the petition for review.” *Id.*

85. 297 Minn. 504, 210 N.W.2d 230 (1973).

86. *Id.* at 505, 210 N.W.2d at 231 (citing *Waters v. Putnam*, 289 Minn. 165, 183 N.W.2d 545 (1971); *State ex rel. Petschen v. Rigg*, 257 Minn. 25, 99 N.W.2d 669 (1959)). *See also* *Boutin v. LaFleur*, 591 N.W.2d 711, 715 (Minn. 1999) (court should look only to plain meaning where statutory language is clear and unambiguous). The Illinois Supreme Court has likewise noted that a statutory scheme conferring jurisdiction upon a court is a departure from common law and the procedures it establishes must be strictly adhered to. *See Fredman Bros. Furniture Co. v. Dep’t of Revenue*, 486 N.E.2d 893, 896 (Ill. 1985) (holding that when a state circuit court has special statutory jurisdiction, the prescribed procedures must be strictly adhered to for the court to have jurisdiction).

87. 309 Minn. 495, 245 N.W.2d 207 (1976).

88. *Kenzie*, 309 Minn. at 497, 245 N.W.2d at 208 (citing *Mocuiik v. Svoboda*, 253 Minn. 562, 93 N.W.2d 547 (1958)).

89. *Id.* at 497, 245 N.W.2d at 208 (citing *Ulman v. Lutz*, 238 Minn. 21, 24, 55 N.W.2d 57, 59 (1952)).

90. 295 N.W.2d 586 (Minn. 1980).

91. *Id.* at 587.

92. *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. Ct. App. 1986). *See also Flame Bar*, 295 N.W.2d at 587 (district court was without jurisdiction when appeal of liquor license suspension was filed after thirty-three day appeal period had run); *Jesmer Co. v. Wurdemahn-Hjelm Corp.*, 250 Minn. 485, 488-89, 85 N.W.2d 207, 209 (1957) (holding that state courts do not have power to extend the time for appeal when appeals period has been specifically established by the legislature); *State v. Scientific Computers, Inc.*, 384 N.W.2d 560, 561 (Minn. Ct. App. 1986) (stating that service on attorney general was not valid when statute specifically required that process be served on agency itself).

conferred upon a Minnesota court by the consent of the parties.⁹³

III. *BODE*: FACTS & PROCEDURAL HISTORY

A. *Facts*

William Bode owned a farm in Nicollet County, Minnesota that he used for both dairy and crop farming.⁹⁴ In any given year, he had 16-20 cows that he milked himself every morning.⁹⁵ Part of the land he used for grazing his dairy cattle was sloped in such a way that rainwater collected during the spring months. This annual collection of water was temporary in nature, naturally draining by the summer months.⁹⁶

In 1979, the Minnesota Department of Natural Resources (DNR) classified this lower-lying portion of William Bode's farm as a public wetland.⁹⁷ Mr. Bode filed a timely appeal with the Nicollet County Hearings Unit in August 1980⁹⁸ and a hearing was conducted during that same month.⁹⁹ The Hearings Unit determined in its Findings of Fact, Conclusions and Order dated

93. *Arndt v. Minn. Educ. Ass'n*, 270 Minn. 489, 490, 134 N.W.2d 136, 137 (1965). "We have held that the limitation of time is so far jurisdictional that the parties cannot waive the objection or by stipulation clothe this court with authority to determine a belated appeal." *Id.*; *see also* *Stadum v. Norman County*, 508 N.W.2d 217, 218 (Minn. Ct. App. 1993) (reversing dismissal when trial court erroneously determined that it did not have subject matter jurisdiction); *Gummow v. Gummow*, 356 N.W.2d 426, 428 (Minn. Ct. App. 1984) ("Further, parties may not waive lack of subject matter jurisdiction and may not consent to a court acting when it has no subject matter jurisdiction.").

94. Interview with Judy and Linda Bode, in Nicollet County, Minn. (July 7, 2001) [hereinafter *Bode Interview*].

95. *Id.*

96. *Id.*

97. *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 258 (Minn. Ct. App. 1999). In both 1976 and 1979 the Minnesota Legislature mandated an inventory of the State's public waters and wetlands and delegated responsibility for the identification of these bodies to the Department of Natural Resources. MINN. STAT. § 105.39 (1979) and related statutes (subsequently recodified at MINN. STAT. § 103G.201 (2000)). The definition of wetland was codified at MINN. STAT. § 105.37, subd. 15 (1979) (subsequently recodified at MINN. STAT. § 103G.005, subd 18 (2000)).

98. *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862, 864 (Minn. 2000). The Hearings Unit was created by the Minnesota Legislature to resolve wetland classification disputes. MINN. STAT. § 105.391, subd. 1 (Supp. 1979).

99. *Comm'r of Natural Res. of the State of Minn. v. Nicollet County Pub. Water/Wetlands Unit*, No. 19299 (Minn. Dist. Ct. 5th Dist. Dec. 17, 1986) (unpublished opinion, not separately paginated).

September 10, 1980, that classification of the disputed portion of Mr. Bode's farm as wetland had been improper.¹⁰⁰ Specifically, the Hearings Unit found that there were actually two individual water basins, one on Mr. Bode's farm and one on the farm of his neighbor, Gerhard Mertesdorf.¹⁰¹ Since neither water basin was greater than ten acres in size, the Hearings Unit declared that the DNR did not have jurisdiction of the land.¹⁰²

The Hearings Unit order was mailed to the DNR on October 1, 1980.¹⁰³ The DNR filed its Petition for Judicial Review with the Clerk of the Fifth District Court (Nicollet County) on November 4, 1980.¹⁰⁴ The DNR's appeal was therefore untimely, having been filed 34 days after the DNR had been served.¹⁰⁵ Neither party was aware that the appeal was untimely and Mr. Bode did not contest the district court's subject matter jurisdiction.¹⁰⁶ Although the DNR filed its notice of appeal with the District Court on November 4, 1980, the case did not come before the District Court until nearly six years later, on June 2, 1986.¹⁰⁷

In 1981, Mr. Bode, approaching retirement, decided to sell his dairy cattle.¹⁰⁸ His intention was to convert the grazing land to crop land and rent it to another local farmer.¹⁰⁹ Relying on the order of the Hearings Unit and other local officials,¹¹⁰ Mr. Bode installed a

100. Findings of Fact, Conclusions and Order (Nicollet County Hearings Unit Sept. 10, 1980); *Bode*, 612 N.W.2d at 864. The Hearings Unit was composed of three members: one appointed by the Commissioner of the Minnesota Department of Natural Resources (DNR), one appointed by the County Commissioners and one board member of the local soil and water conservation district. Brief for Respondent at 1, *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 258 (Minn. Ct. App. 1999) (No. C1-98-2200). The Commissioner of the DNR appointed Paul Hansen, a DNR employee, to the Hearings Unit. *Id.*

101. Findings of Fact, Conclusions and Order (Nicollet County Hearings Unit Sept. 10, 1980); *Comm'r of Natural Res. of the State of Minn.*, No. 19299 (unpublished opinion, not separately paginated).

102. MINN. STAT. § 105.37, subd. 15 (1979); *Comm'r of Natural Res. of the State of Minn.*, No. 19299 (unpublished opinion, not separately paginated).

103. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998); *Bode*, 594 N.W.2d at 258.

104. *Bode*, 594 N.W.2d at 258.

105. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

106. *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862, 864-865 (Minn. 2000).

107. *Comm'r of Natural Res. of the State of Minn.*, No. 19299 (unpublished opinion, not separately paginated).

108. *Bode* Interview, *supra* note 94.

109. *Id.*

110. *Id.*

drainage tile system that would drain the water which collected in small amounts during the spring rainy season.¹¹¹

B. *District Court*

Mr. Bode was not represented by counsel at the 1986 hearing, nor did he personally appear.¹¹² In an order dated December 17, 1986, District Court Judge Rosenbloom overruled the Hearing Unit's finding.¹¹³ Judge Rosenbloom found that the land met the statutory definition of "wetland," but determined that the testimony as to wetland's size was inconclusive.¹¹⁴ He determined that the Mertesdorf wetland was greater than ten acres, but held that if the Bode wetland was (1) separate from the Mertesdorf wetland and (2) less than ten acres, then it should not be inventoried. Judge Rosenbloom ordered a "more precise adjustment of actual geographic boundaries by further appropriate proceedings according to law or agreement between Petitioner (the DNR) and the objecting landowners affected hereby."¹¹⁵

The matter was not remanded to the Hearings Unit. Thus, Judge Rosenbloom's order was basically a directive to the parties to go work out their own dispute. Unfortunately, no such agreement came about. Instead of approaching Mr. Bode in an attempt to resolve the matter, the DNR issued an administrative order declaring the "wetland" to be within their jurisdiction and ordering Mr. Bode to restore it.¹¹⁶ After issuing its order, the DNR returned

111. *Bode*, 612 N.W.2d at 867; Bode Interview, *supra* note 94.

112. *Comm'r of Natural Res. of the State of Minn. v. Nicollet County Pub. Water/Wetlands Unit*, No. 19299 (Minn. Dist. Ct. 5th Dist. Dec. 17, 1986) (unpublished opinion, not separately paginated). The author is grateful to Mr. Brain Bates, the Bodes' current attorney, for supplying copies of the district court opinions and the attorneys' briefs from the subsequent appeals.

113. *Id.*

114. *Id.*

It is necessary that the area of wetland 52-26 be more precisely and accurately determined. Conceivably the most southerly "pothole" within the thirty-six acres which has been designated (the pasture described by objector Bode as muddy) is not itself 10 acres or more in size. If wholly separated from the wetland area to the north by lands on which the dominant vegetation is not aquatic in character, then the southerly pothole and its contiguous area should not be included in the wetland designation.

Id.

115. *Id.*

116. Brief for Appellant at 4, *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862 (Minn. 2000) (No. C1-98-2200).

to court, moving for and receiving an Order to enforce restoration of the wetland in October 1991. On May 7, 1992, and November 22, 1993, the DNR went onto the Bode farm and smashed the drain tile Mr. Bode had installed in 1981.¹¹⁷

C. District Court Revisited

Subsequent separate litigation ensued and in July 1998, Judy and Linda Bode brought a Rule 60.02(d) motion in district court to vacate the 1986 judgment.¹¹⁸ This motion was brought in the same court – the fifth judicial district – where the 1986 judgment had been entered.¹¹⁹ The Bodes' Rule 60.02(d) motion was straightforward: because the DNR's appeal was untimely, the court never had subject matter jurisdiction and its judgment was void.¹²⁰ A hearing was held on August 11, 1998.¹²¹ District Court Judge Smith found the December 17, 1986 order to be void for want of subject matter jurisdiction and vacated the order.¹²²

In his opinion, Judge Smith noted that Mr. Bode did not appear at the hearing and that neither the parties that were present, nor the court, had raised the jurisdictional defect.¹²³ Judge Smith applied the plain meaning of Minnesota Statutes section 15.0424 and the Minnesota Rules of Civil Procedure, holding that the district court was without jurisdiction because the DNR had not appealed the Hearing Unit's ruling within thirty-three days after the ruling had been mailed to the DNR.¹²⁴ Judge Smith's straightforward jurisdictional analysis expressly relied¹²⁵ on numerous previous decisions of the Minnesota Supreme Court which had strictly construed the applicable appeals periods.¹²⁶

117. *Bode*, 612 N.W.2d at 865.

118. *Id.* The Bode sisters had received title to the Bode farm in 1986, subject to a life estate in their parents. *Id.* at 864 n.3. Mr. Bode passed away on September 1, 1993. *Id.*

119. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

120. *Bode*, 612 N.W.2d at 865.

121. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Flame Bar, Inc. v. City of Minneapolis*, 295 N.W.2d 586, 587 (Minn. 1980); *Kenzie v. Dalco Corp.*, 309 Minn. 495, 245 N.W.2d 207 (1976); *Blixt v. Civil Serv. Bd.*, 297 Minn. 504, 505, 210 N.W.2d 230, 231 (1973) (citing *Waters v. Putnam*, 289 Minn. 165, 183 N.W.2d 545 (1971); *State ex rel. Petschen v. Rigg*, 257 Minn. 25,

Noting that “[t]he language in Minnesota cases seems to leave very little if no discretion on this issue,” Judge Smith held that because the Rosenbloom court had lacked subject matter jurisdiction, its judgment was void.¹²⁷ Judge Smith correctly noted that *Peterson v. Eishen*¹²⁸ established that there is no time limit for moving to have a judgment set-aside based on lack of subject matter discretion.¹²⁹ But importantly, Judge Smith denied the Bodes the relief they were seeking for the damage the DNR did to their drain tile.¹³⁰ He reasoned that the DNR should not be held liable because they had in good faith relied upon a valid court order.¹³¹

D. Court of Appeals

Unfortunately, Judge Smith’s straightforward and well-researched decision was not upheld by the Minnesota Court of Appeals.¹³² In an opinion authored by Judge Lansing, the court of appeals reversed Judge Smith’s order and reinstated Judge Rosenbloom’s order.¹³³ The court of appeals concurred with the district court’s conclusion that the DNR’s appeal was untimely.¹³⁴ But the court then applied a “quasi-jurisdictional approach,” attempting to distinguish between the “procedural exercise of jurisdiction” and “subject-matter jurisdiction in its strict application.”¹³⁵ The Minnesota Supreme Court, however, had rejected this type of quasi-jurisdictional approach in its 1965 decision of *Arndt v. Minnesota Education Association*.¹³⁶ Furthermore, a plain reading of Minnesota Statutes section 15.0424, subdivision

99 N.W.2d 669 (1959)).

127. *Bode v. Minn. Dep’t of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

128. 512 N.W.2d 338 (Minn. 1994).

129. *Bode v. Minn. Dep’t of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

130. *Id.*

131. *Id.*

132. *Bode v. Minn. Dep’t of Natural Res.*, 594 N.W.2d 257 (Minn. Ct. App. 1999).

133. *Id.*

134. *Id.* at 261.

135. *Bode*, 594 N.W.2d at 260.

136. 270 Minn. 489, 490, 134 N.W.2d 136, 137 (1965). “It is well established by the decisions of this court that the statutory limitation of time within which an appeal may be taken from an appealable order or from a judgment is jurisdictional.” *Id.*

1, establishes that *it is the procedural exercise of a timely appeal that confers subject matter jurisdiction on the district court.*¹³⁷ In the absence of a timely appeal—a procedure—the district court never had subject matter jurisdiction of the appeal.¹³⁸

The court of appeals cited three cases to support its proposition that the Minnesota Supreme Court had previously recognized “exceptions to the voidness doctrine.”¹³⁹ None of the cases cited, however, involved a subsequent challenge based on an alleged lack of subject matter jurisdiction.¹⁴⁰ The first case cited was *Zions First National Bank v. World of Fitness, Inc.*¹⁴¹ The issue in that case was an alleged lack of *personal* jurisdiction due to faulty service of process.¹⁴² The party that sought to set aside the default judgment which had been entered against him had previously moved to quash the return of service and his motion had been denied.¹⁴³ Therefore, the issue of personal jurisdiction had been placed squarely in front of the court and the court determined that it did in fact have personal jurisdiction of the party.¹⁴⁴

The other two cases cited by the Court of Appeals did not involve a jurisdictional dispute, either subject matter or personal, and thus cannot be characterized as attempts to set aside void judgments.¹⁴⁵ The second case cited in support of the voidness doctrine was *Dorso Trailer Sales, Inc. v. American Body & Trailer, Inc.*¹⁴⁶ The issue there was whether Dorso Trailer (hereinafter Dorso) could be released from a judgment when opposing counsel did not disclose the existence of a statute which, barring a constitutional challenge, would have governed the suit and led to a judgment in favor of Dorso.¹⁴⁷ The motion to vacate was based upon Minnesota Rules of Civil Procedure 60.02(a)(c) and (f), not (d).¹⁴⁸ Therefore,

137. MINN. STAT. § 15.0424, subd. 1 (1980).

138. Blixt v. Civil Serv. Bd., 297 Minn. 504, 505, 210 N.W.2d 230, 231 (1973) (citing *Waters v. Putnam*, 289 Minn. 165, 183 N.W.2d 545 (1971); *State ex rel. Petschen v. Rigg*, 257 Minn. 25, 99 N.W.2d 669 (1959)).

139. *Bode*, 594 N.W.2d at 262.

140. See *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 482 N.W.2d 771 (Minn. 1992); *Zions First Nat'l Bank v. World of Fitness, Inc.*, 280 N.W.2d 22 (Minn. 1979); *Murray v. Walter*, 269 N.W.2d 47 (Minn. 1978).

141. 280 N.W.2d 22 (Minn. 1979).

142. *Id.* at 23.

143. *Id.*

144. *Id.*

145. See generally *Dorso*, 482 N.W.2d 771; *Murray*, 269 N.W.2d 47.

146. 482 N.W.2d 771 (Minn. 1992).

147. *Id.* at 772-73.

148. *Id.* at 772.

the *Bode* Court of Appeals misstated the rule of *Dorso* when it wrote in a parenthetical that a “court’s failure to consider provision in statute that prevented recovery did not void action when appellant had a full and fair opportunity to raise the statute but did not.”¹⁴⁹ The *Dorso* court never alleged that the initial judgment was void, but instead held that the judgment was based on either mistake or fraud upon the court.¹⁵⁰ *Dorso* is further distinguished from *Bode* in that although *Dorso* had not discovered the existence of the governing statute itself, it actively participated in the initial proceeding and therefore had a “full and fair opportunity” to introduce the statute.¹⁵¹

Applying the rule of the third case cited, *Murray v. Walter*,¹⁵² to the facts of *Bode* was rather strained. Unlike in *Bode*, the statutory provisions at issue in *Murray* were not limitations on the court’s subject matter jurisdiction, but rather were expressly held to be threshold requirements which were required to be pled and proved in order to recover under Minnesota’s No-Fault Automobile Insurance Act.¹⁵³

The court of appeals based its decision in part upon the notion that Mr. Bode “had a full and fair opportunity to raise the procedural deficiency of the notice of appeal before or during the hearing on the merits . . . In the 1986 appeal [by the DNR] that resulted in the challenged judgment, Bode was a named party and an attorney entered an appearance on his behalf.”¹⁵⁴

However, this assertion while factually correct, is grossly misleading. It is undisputed that Mr. Bode himself did not appear. What actually transpired is the following. The law firm of Kunard and Kakeldey represented William Bode at the Nicollet County Hearings Unit hearing in 1980.¹⁵⁵ After the DNR filed its Notice of Appeal on November 4, 1980, that law firm filed a notice of appearance dated November 4, 1980.¹⁵⁶ The law firm’s representation was withdrawn six months later on May 13, 1981.¹⁵⁷

149. *Bode*, 594 N.W.2d at 262.

150. *Dorso*, 482 N.W.2d at 772.

151. *Id.* at 772, 774.

152. 269 N.W.2d 47, 48 (Minn. 1978).

153. *Id.* at 48. See MINN. STAT. §§ 65B.41-65B.71 (2000).

154. *Bode v. Minn. Dep’t of Natural Res.*, 594 N.W.2d 257, 263 (Minn. Ct. App. 1999).

155. Bode Interview, *supra* note 94.

156. *Id.*

157. *Id.*

After May 13, 1981, Mr. Bode was never again represented by counsel nor did he participate in any way in the subsequent proceedings.¹⁵⁸

This accurate version of events calls into serious question the Court of Appeals perception that “William Bode had ample opportunity to challenge the lateness of DNR’s appeal at that time.”¹⁵⁹ Mr. Bode was in poor health in 1986 and suffered a stroke shortly after he was made aware of Judge Rosenbloom’s order.¹⁶⁰ Since Mr. Bode did not appear either personally or via counsel at the 1986 hearing, Judge Rosenbloom’s 1986 order could be likened to a default judgment. Some would argue that the district court proceeding was in effect a continuation of the Hearings Unit proceedings that Mr. Bode had participated in. But such a simplistic approach would ignore the fact that the district court had not acquired jurisdiction because the appeal was not timely filed.¹⁶¹ The overriding fact remains, however, that the court of appeals ignored the district court’s right to vacate its own void judgment at any time.¹⁶²

IV. THE *BODE* DECISION

A. *Procedural Aspects*

The Minnesota Supreme Court affirmed the court of appeals decision.¹⁶³ At the outset of its opinion, the court concluded that the Bodes’ Rule 60.02(d) motion was procedurally deficient.¹⁶⁴ The court reasoned that because the Bodes’ challenge of the 1986 decision was made in a different proceeding, their attack was technically collateral in nature.¹⁶⁵ The supreme court then stated that Rule 60.02(d) may only be used for direct attacks.¹⁶⁶ The court of appeals, however, had not allowed itself to get hung up on this

158. *Id.*

159. *Bode*, 594 N.W.2d at 263.

160. Bode Interview, *supra* note 94.

161. If the use of quasi-judicial agency proceedings is ever to achieve the presumed goal of relieving congestion in the district courts, their decisions must be respected and regarded as final when an appeal is not taken within the prescribed period.

162. *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994).

163. *Bode v. Minn. Dep’t of Natural Res.*, 612 N.W.2d 862, 870 (Minn. 2000).

164. *Id.* at 866.

165. *Id.*

166. *Id.*

technicality¹⁶⁷ and the supreme court itself had previously stated that Rule 60(b) nomenclature is unimportant.¹⁶⁸ In fact, the distinction between direct and collateral attacks is one of the most obscure areas of procedural law.¹⁶⁹ It is ironic that the supreme court strictly construed the function of Rule 60.02, but as discussed below, the court did not feel compelled to strictly construe the language of the appeals period statute.

Regardless of the court's Rule 60.02(d) interpretation, the fact remained that the DNR's appeal was not timely filed,¹⁷⁰ and therefore the district court's 1986 decision was void.¹⁷¹ It is irrelevant how the existence of the void judgment came before the district court in 1998.¹⁷² Instead of focusing on perceived technical

167. *Bode*, 594 N.W.2d at 261-62 ("Although the Bodes' rule 60.02 motion did not have the same name or file number as the original action, specific nomenclature is not essential because relief from a judgment is available either by motion or through filing a separate action.").

168. *Eliseuson v. Frayseth*, 290 Minn. 282, 287, 187 N.W.2d 685, 688 (1971). The court noted:

It remains clear, as it has from the beginning, that Rule 60(b) does not limit the power of a court to entertain an independent action. And since nomenclature is unimportant a proceeding for relief under 60(b) may in an appropriate case be treated as an independent action; and similarly an independent action may be treated as a proceeding under 60(b).

Id. (quoting 7 MOORE'S FEDERAL PRACTICE § 60.31 (2d ed. 1948)).

169. Note, *The Value of the Distinction Between Direct and Collateral Attacks on Judgments*, 66 YALE L.J. 526, 526 (1957).

170. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998) ("The evidence is convincing that DNR's petition was untimely. The petition was filed more than 33 days after the mailing which determined the starting date for the appeal period."); *Bode*, 594 N.W.2d at 261 ("Applying [the rules of civil procedure], the district court found that DNR's filing on November 4, 1980, 34 days after October 1, 1980, was one day late. The record supports the district court's finding that the appeal was improperly taken after the expiration of the appeal period."); *Bode*, 612 N.W.2d at 864 ("The Bodes now contend that this appeal was filed one day late and the DNR does not contest this point.").

171. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998); *Lange v. Johnson*, 295 Minn. 320, 324, 204 N.W.2d 205, 208 (1973).

172. See *Freeland v. Pfeiffer*, 621 N.E.2d 857, 860 (Ohio Ct. App. 1993). "[T]he authority to vacate a void judgment is not derived from Civ. R. 60(B), but rather constitutes an inherent power possessed by Ohio courts." *Id.* (citing *Patton v. Diemer*, 518 N.E.2d 941, 944 (Ohio 1988)). "It was neither incumbent upon appellee to establish a basis for relief under Civ.R. 60(B) nor was it necessary for the common pleas court to derive its authority therefrom. Rather, the 'judgment' sought to be vacated constituted a nullity." *Id.* (citing *Patton*, 518 N.E.2d at 944). Compare Ohio Civ. R. 60(B) with Minn. R. 60.02.

requirements,¹⁷³ the court should have recognized the lack of subject matter jurisdiction *sua sponte*.¹⁷⁴

The court further concluded that the Bodes' action also failed on the merits.¹⁷⁵ First, the court chose to apply the "modern" validity of judgments rule, as articulated in section 12 of the Restatement (Second) of Judgments, instead of the traditional rule.¹⁷⁶ Second, the court concluded that the Bodes' collateral attack was not brought within a reasonable time.¹⁷⁷

B. Restatement Adoption

The adoption of section 12 by the Minnesota Supreme Court

173. *Bode*, 612 N.W.2d at 866.

174. *Sua sponte* is a Latin term meaning "of one's own accord; voluntarily, [w]ithout prompting or suggestion." BLACK'S LAW DICTIONARY 1437 (7th ed. 1999). The federal courts have a strong tradition of ensuring they have jurisdiction of a case before proceeding to the merits. See *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (subject matter jurisdiction is of such importance that at each level of appellate review, the court should inquire on its own as to whether it has the authority to hear the case); *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 740 (1976) ("Though neither party has questioned the jurisdiction of the Court of Appeals to entertain the appeal, we are obligated to do so on our own motion if a question thereto exists.") (citing *Mansfield, Coldwater & Lake Mich. R. Co. v. Swan*, 111 U.S. 379 (1884)). The *Mansfield* Court's words prove very instructive:

[T]he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction On every writ of error or appeal the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes.

Mansfield, 111 U.S. at 382. See also *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) ("[I]t is the duty of this court to see to it that the jurisdiction of the circuit court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion.") (citing *Mansfield*, 111 U.S. at 382); *United States v. County of Cook, Ill.*, 167 F.3d 381 (7th Cir. 1999). "No court may decide a case without subject-matter jurisdiction, and neither the parties nor their lawyers may stipulate to jurisdiction or waive arguments that the court lacks jurisdiction. If the parties neglect the subject, a court must raise jurisdictional questions itself." *Id.* at 387 (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988); *Indiana Gas. Co. v. Home Ins. Co.*, 141 F.3d 314 (7th Cir. 1998)).

The Eighth Circuit Court of Appeals has on several occasions recognized *sua sponte* its lack of appellate jurisdiction because of the untimely filing of appeals. See, e.g., *Fox v. Brewer*, 620 F.2d 177, 179 (8th Cir. 1980); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Kurtenbach*, 525 F.2d 1179, 1181-82 (8th Cir. 1975); *United States v. June*, 503 F.2d 442, 444-45 (8th Cir. 1974).

175. *Bode*, 612 N.W.2d at 866.

176. *Id.* at 868.

177. *Id.* at 870.

was both unnecessary and unwise. The court did not need to look beyond its own precedent when determining the treatment that should be afforded a void judgment.¹⁷⁸ Even if the court determined its own precedent was not applicable, the balancing test provided by section 10 of the original Restatement of Judgments would have adequately resolved the issue presented in *Bode*.¹⁷⁹ First, the district court, while normally a court of general jurisdiction, was a court of limited jurisdiction when acting in an appellate capacity.¹⁸⁰ Second, the facts conclusively indicated that Mr. Bode never litigated the issue of the district court's jurisdiction.¹⁸¹ Third, the policy against the court's acting beyond its jurisdiction could not have been much stronger.¹⁸² The Rosenbloom court had effectively deprived Mr. Bode of the use of a portion of his farm based on a hearing (1) that took place more than six years after the Hearings Unit had ruled in his favor¹⁸³ and (2) that he did not participate in.

The court, however, reasoned that because the DNR had relied on the 1986 judgment, application of the modern rule

178. See *Lange v. Johnson*, 295 Minn. 320, 323-24, 204 N.W.2d 205, 208 (1973). The *Bode* court cited *Lange* in its decision but chose not to follow it. *Bode*, 612 N.W.2d at 866-68; see also *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994). The *Restatements* and the rules contained therein do not represent primary authority in Minnesota. *Williamson v. Guentzel*, 584 N.W.2d 20, 24-25 (Minn. Ct. App. 1998) (citing *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 860 (Minn. 1984)).

179. RESTATEMENT OF JUDGMENTS § 10 (1942). It must be noted here that the first Restatements restated the then existing law and thus lived up to their name and billing. The second Restatements, however, reflect the view of what the reporters thought the law should be rather than what the law really was. W. Noel Keyes, *The Restatement (Second): Its Misleading Quality and a Proposal for its Amelioration*, 13 PEPP. L. REV. 23, 24 (1985); Herbert Wechsler, *The Course of the Restatements*, 55 A.B.A. J. 147 (1969) (suggesting that the American Law Institute should continue to declare rules as to how courts should decide as opposed to merely stating what existing law is); *Memorandum of the Defense Research Institute's American Law Institute Committee Regarding the Restatements of the Law*, 9 FOR THE DEFENSE NO. 5 (May, 1968) (pointing out that the Restatements (Second) contain what the members of the American Law Institute think the law should be rather than what the established law is).

180. MINN. CONST. art. VI, § 3; RESTATEMENT OF JUDGMENTS § 10 (c).

181. *Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998); *Bode*, 612 N.W.2d at 864-65; RESTATEMENT OF JUDGMENTS § 10 (d).

182. RESTATEMENT OF JUDGMENTS § 10 (e).

183. Findings of Fact, Conclusions and Order (Nicollet County Hearings Unit Sept. 10, 1980).

favoring judgment finality was preferable.¹⁸⁴ In support of its adoption of section 12, the court did not cite to a single Minnesota case.¹⁸⁵ Rather, the court cited to eleven decisions from other jurisdictions.¹⁸⁶ Only five of these decisions expressly adopted section 12.¹⁸⁷ In the other six cases the decisions either stopped short of adopting section 12¹⁸⁸ or were significantly different from *Bode* in that the question of jurisdiction had been previously litigated.¹⁸⁹

184. *Bode*, 612 N.W.2d at 867-68.

Prior to the 1986 judgment, William Bode installed a tile drainage system within the tract designated by the DNR as wetlands. Relying on the judgment, the DNR issued a restoration order in 1989 requiring the Bodes to remove that drainage system. When the Bodes did not comply, the DNR obtained a default judgment to enforce the order. When the Bodes still did not comply, the court held them in contempt and issued an order authorizing the DNR to restore the wetlands. In 1992 and 1993, the DNR forcibly went onto the Bode farm to destroy the tile drainage system.

Id.

185. *Id.* at 866-68.

186. *Id.* at 867 n.5.

187. *See* Meinket v. Levinson, 474 A.2d 454, 456 (Conn. 1984) (holding that trial court had competence to entertain a foreclosure action and thus did not lack subject matter jurisdiction); Ervey v. Northeastern Log Homes, Inc., 638 A.2d 709, 711 (Me. 1994) (overturning decision by Worker's Compensation Board which had nullified decree of Worker's Compensation Commission, holding that Commission's decision was valid and thus beyond attack). *See also* *In re B.C.*, 726 A.2d 45, 51 (Vt. 1999); *In re* Marriage of Brown, 653 P.2d 602, 603-04 (Wash. 1982); *In re* H.N.T., 371 N.W.2d 395, 397-98 (Wis. Ct. App. 1985).

188. *See* O'Leary v. Liberty Mut. Ins. Co., 923 F.2d 1062, 1066 (3d Cir. 1991) (holding that since issue of whether section 303(a) of the Workmen's Compensation Act exempted insurer from an underinsured motorist claim had been previously litigated in suit to compel arbitration, relitigation of that same issue was precluded by collateral estoppel in subsequent suit based on underlying claim); Simmons v. Diamond Shamrock Corp., 844 F.2d 517, 520 (8th Cir. 1988) (holding that court's assumption of jurisdiction in *Gerson v. Diamond Shamrock Corp.*, 710 S.W.2d 368 (Mo. Ct. App. 1986) was not a manifest abuse of authority and thus not subject to collateral attack); McDougald v. Jenson, 786 F.2d 1465, 1487 (11th Cir. 1986) (holding that the second exception to section 12 applied to the assertion of jurisdiction by the Washington court); *In re* Marriage of Mitchell, 692 N.E.2d 281, 285 (Ill. 1998) (holding that erroneous child support judgment was voidable, not void, and therefore not subject to collateral attack).

189. *See* Crossroads Cogeneration Corp. v. Orange & Rockland Utilities, Inc., 969 F. Supp. 907, 918 (D.N.J. 1997), *rev'd on other grounds*, Crossroads Cogeneration Corp. v. Orange & Rockland Utilities, Inc., 159 F.3d 129 (3d Cir. 1998) (holding that New York Public Service Commission's declaratory ruling in prior proceeding barred producer from relitigating issue of Commission's subject matter jurisdiction when issue had been fully and fairly litigated before the NYPSC, and when the NYPSC expressly determined that it did have jurisdiction); Wall v. Stinson, 983 P.2d 736, 743 (Alaska 1999) (holding that determination by

Four of the decisions cited by the Minnesota Supreme Court did not formally adopt section 12. In its decision, *In re Marriage of Mitchell*,¹⁹⁰ the Illinois Supreme Court *expressly* stopped short of adopting section 12 of the Restatement.¹⁹¹ That court wrote “[t]he parties do not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step.”¹⁹² Additionally, the issue in *Mitchell* was not subject matter jurisdiction, but statutory interpretation.¹⁹³ In *McDougald v. Jenson*,¹⁹⁴ the Court of Appeals for the Eleventh Circuit did not expressly adopt section 12¹⁹⁵ but merely noted that the Washington Supreme Court had “approved [that] test for determining when such a collateral attack may be entertained.”¹⁹⁶ In both *O’Leary v. Liberty Mutual Insurance Co.*¹⁹⁷ and *Simmons v. Diamond Shamrock Corp.*,¹⁹⁸ the courts’ discussions of section 12 were *obiter dictum* and not central to the decisions.¹⁹⁹ In the last two cases, *Crossroads Cogeneration Corp. v. Orange & Rockland Utilities*²⁰⁰ and *Wall v. Stinson*,²⁰¹ the respective courts adopted section 12,²⁰² but in both cases the question of jurisdiction had been previously fully and fairly litigated.²⁰³

Oregon that it had personal jurisdiction was entitled to full faith and credit).

190. 692 N.E.2d 281 (Ill. 1998).

191. *Id.* at 285.

192. *Id.*

193. *Id.* at 284. “The judge had jurisdiction of the parties and the subject matter, and, although the judgment was erroneous, the judge had the authority to enter the child support order.” *Id.*

194. 786 F.2d 1465 (11th Cir. 1986).

195. *Id.* at 1487.

196. *Id.* at n.12.

197. 923 F.2d 1062 (3d Cir. 1991).

198. 844 F.2d 517 (8th Cir. 1988).

199. *O’Leary*, 923 F.2d at 1066 n.5; *Simmons*, 844 F.2d at 520 n.4.

200. 969 F. Supp. 907 (D.N.J. 1997).

201. 983 P.2d 736 (Alaska 1999).

202. *Crossroads*, 969 F. Supp. at 918-19; *Wall*, 983 P.2d at 742.

203. *Crossroads*, 969 F. Supp. at 918; *Wall*, 983 P.2d at 741. “In the instant case, plaintiff fully and fairly litigated the issue of the NYPSC’s jurisdiction over the dispute between the parties in the proceedings before the NYPSC, and the NYPSC expressly determined that it did, in fact, have jurisdiction to render a decision.” *Crossroads*, 969 F. Supp. at 918. “Wall vigorously litigated personal jurisdiction in the Oregon Court, and the Oregon Court decided against him.” *Wall*, 983 P.2d at 741. The *Wall* Court noted that section 97 of Second Restatement of Conflict of Laws states that collateral attack for want of personal or subject matter jurisdiction is limited to situations in which the issue was not actually litigated in the first tribunal. *Id.* at 742 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 97, 105-06 (1971)).

C. *Restatement Misapplication*

After adopting the modern rule, the supreme court failed in three respects to apply it properly. First, the very first sentence of section 12 of the Restatement (Second) of Judgments requires a *contested* action.²⁰⁴ As previously discussed, Mr. Bode neither personally appeared nor was represented by counsel during the 1986 hearing. These facts were omitted from the court's decision even though they were included in two different locations in the Bodes' appellants brief.²⁰⁵ Assuming that the supreme court did not ignore the facts, the court was misled by the court of appeals' recitation of Mr. Bode's participation and/or failed to recognize the significance of Mr. Bode's non-participation when reviewing the brief.

Secondly, even if the court implicitly assumed that the 1986 hearing was a contested action, two of the exceptions to section 12 applied. First, as Justice Page pointed out in his dissent,²⁰⁶ the first exception of section 12 of the Restatement (Second) of Judgments applied because "[a]n untimely appeal is 'so plainly beyond the [district] court's jurisdiction that its entertaining the action was a manifest abuse of authority.'"²⁰⁷ Secondly, the second exception to section 12 was also met. Allowing the decision to stand "substantially infringe[d] the authority of another . . . agency of government."²⁰⁸ In Minnesota, a district court's jurisdiction to act in an appellate capacity flows from the Legislature.²⁰⁹ Only that body has the power to determine the length of an appeals period.²¹⁰

204. RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1980). "When a court has rendered judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction . . ." *Id.*

205. Brief for Appellants at 4, 21, *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862 (Minn. 2000) (No. C1-98-2200).

206. *Bode*, 612 N.W.2d at 871 (Page, J., dissenting).

207. *Id.* (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 12).

208. RESTATEMENT (SECOND) OF JUDGMENTS § 12(2). *See generally* MINN. CONST. art. III, § 1. "The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." *Id.* *See also* *Arndt v. Minn. Educ. Ass'n*, 270 Minn. 489, 491, 134 N.W.2d 136, 138 (1965); *McDougald v. Jenson*, 786 F.2d 1465, 1487 n.12 (11th Cir. 1986) (holding that the second exception to section 12 applied as the assertion of jurisdiction by the Washington court infringed the authority of the Florida court).

209. MINN. CONST. art. VI, § 3.

210. *Id.* *Arndt*, 270 Minn. at 491, 134 N.W.2d at 138. The court stated:

D. The Reasonable Time Requirement of Minnesota Rule of Civil Procedure 60.02

The court noted that Rule 60.02 “provides that a motion to vacate a void judgment ‘shall be made within a reasonable time.’”²¹¹ The court then noted that despite the language of Rule 60.02, it had not previously applied any time limits to motions to vacate a judgment for lack of subject matter jurisdiction.²¹² But the court nonetheless decided to apply the reasonable time limit requirement of Rule 60.02 to the Bodes’ attack on the district court’s subject matter jurisdiction of the DNR’s 1980 appeal.²¹³ Having decided to apply a “reasonable time” limit, the court then adopted the definition of “reasonable time” from its previous decisions²¹⁴ of *Sommers v. Thomas*²¹⁵ and *Newman v. Fjelstad*²¹⁶ - two

In cases of this nature this court is subservient to the legislative power. The legislature fixes the time in which an appeal must be perfected. Unless the prescribed statutory period is complied with, this court loses jurisdiction and nothing is left to the exercise of its discretion after time for appeal has expired. We have no choice but to dismiss the present appeal

Id. The Minnesota Constitution expressly provides for the separation of powers between branches of government. MINN. CONST. art. III, § 1. “No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” *Id.* The bedrock principle of our democracy is that we are a self-governing people - those who make the laws we live under are directly accountable to us via free and fair elections. The function of a state court is to interpret its state’s constitution and statutes. Courts do not “make” law, legislatures do. *See* ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 4 (1990) (“The intended function of the federal courts is to apply the law as it comes to them from the hands of others.”). Judge Bork was discussing the federal judiciary, but the same principle applies to state courts as well. When the legislature’s intent is unambiguous, the statutory language is authoritative and binding on the court. *THE FEDERALIST* NO. 78 (Alexander Hamilton). “It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature.” *Id.*

211. *Bode*, 612 N.W.2d at 869 (quoting MINN. R. CIV. P. 60.02).

212. *Id.* *See* *Lange v. Johnson*, 295 Minn. 320, 323-24, 204 N.W.2d 205, 208 (1973); *see also* *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn 1994) (stating motion to vacate paternity judgment could be brought at any time).

213. *Bode*, 612 N.W.2d at 870.

214. *Id.*

215. 251 Minn. 461, 467, 88 N.W.2d 191, 195-96 (1958). “What constitutes a reasonable time varies from case to case and must be determined in each instance from the facts before the court because the very nature of the exercise of discretionary power in cases of this kind is such as to prevent any absolute rule being laid down.” *Id.* But note that *Sommers* dealt with a default judgment, a

cases where subject matter jurisdiction was not at issue.²¹⁷ In choosing to apply a reasonable time limit, the court ignored the body of persuasive authority that suggests that there is no time limit for challenging a void judgment.²¹⁸

Once the court decided to apply a reasonable time requirement, the court focused exclusively on reliance by the DNR.²¹⁹ In doing so the court ignored two important facts. First, the court ignored the fact that Judge Smith held the DNR harmless for destroying Mr. Bode's drain tile, as they were relying on what was then perceived to be a valid court order.²²⁰ Second, the court ignored the fact that in the six years between the Hearings Unit's ruling in their favor, and the district court's judgment in favor of the DNR, Mr. Bode significantly relied on the ruling of the Hearings Unit.²²¹ Specifically, Mr. Bode installed a drainage system on his land to make the land farmable.²²² The combination of Mr. Bode's ownership of the land, a Hearings Unit ruling in his favor, and a six-year duration between the Hearings Unit ruling in 1980 and Judge Rosenbloom's order in 1986, result in a stronger reliance argument for Mr. Bode than for the DNR. Tragically, the

personal jurisdiction issue, and not a subject matter jurisdiction issue. *Id.* at 462, 88 N.W.2d at 192.

216. 271 Minn. 514, 522, 137 N.W.2d 181, 186 (1965). "Since what is a reasonable time must be determined in light of all attendant circumstances, intervening rights, loss of proof by or prejudice to the adverse party, the commanding equities of the case, the general desirability that judgments be final and other relevant factors bear upon the problem." *Id.* (quoting 7 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 60.27 (2d ed. 1948)).

217. *Sommers*, 251 Minn. 461, 88 N.W.2d 191; *Newman*, 271 Minn. 514, 137 N.W.2d 181. "This is an appeal from an order of the municipal court of St. Paul denying defendant's motion to set aside a default judgment in favor of plaintiff and to dismiss the action without prejudice . . ." *Sommers*, 251 Minn. at 462, 88 N.W.2d at 192-93.

218. *See, e.g.*, 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 60.44 (3d ed. 1997).

Despite the express language of the Rule, there is no real time limit of any kind on a motion for relief from a void judgment. A motion under Rule 60(b)(4) challenging a judgment as void is subject neither to the 'reasonable' time requirement of Rule 60(b) nor subject to the equitable doctrine of laches, but rather may be made at any time.

Id. With the exception of the numbering scheme, Minnesota Rule 60.02 is identical to the Federal Rule 60(b). *See generally* MINN. R. CIV. P. 60.02; FED. R. CIV. P. 60(b).

219. *Bode*, 612 N.W.2d at 867-68.

220. *See Bode v. Minn. Dep't of Natural Res.*, No. C3-96-100071 (Minn. Dist. Ct. 5th Dist. Aug. 31, 1998).

221. *Bode*, 612 N.W.2d at 867-68.

222. *Id.*

Bodes continue to be prohibited from utilizing a portion of their farm.²²³

V. VALIDITY: THE ROAD NOT TAKEN

Admittedly, the favoring of validity over finality would initially result in judicial inefficiency, as some judgments that had been reached after a trial on the merits would be vacated. But this burden would be worth it when balanced against the benefit of not allowing courts to exceed their express authority. An oft-cited maxim of the criminal law system provides a useful analogy: It is better to allow 100 guilty men to go free than to imprison one innocent man.

This inefficiency would likely be confined to a limited initial period, as judges at all levels of the system would quickly recognize the need to carefully scrutinize their jurisdictional bases. No judge would want to hear an entire case on the merits, only to later vacate its judgment for lack of subject matter jurisdiction. The tradition of jurisdictional self-inquiry is strong in the federal court system,²²⁴ and should be adopted by the Minnesota state courts when acting in an appellate capacity.

VI. CONCLUSION

The Minnesota Constitution grants the legislature express authority to establish under what circumstances Minnesota courts can hear appeals from agency decisions.²²⁵ In general, the district courts have general jurisdiction,²²⁶ but their jurisdiction was

223. Bode Interview, *supra* note 94. The author visited the Bode farm on July 7, 2001, and after walking the farm for over an hour, detected no difference between the alleged "wetland" and the surrounding farmland. There was no standing water visible, nor were there any muddy or moist areas. Apparently, water collects only during the spring rainy season and drains without the aid of any man-made drainage system. Mr. Bode had installed the tile drainage system in 1981 only to accelerate the drainage so that crops could be planted during the critical spring planting season. *Id.*

224. *See supra* note 174 and accompanying text. When arguing before the U.S. Supreme Court in the case of *Bush v. Gore* on December 11, 2000, then President-elect Bush's attorney Theodore Olson had completed only three sentences of his argument when Justice Stevens interrupted him by asking "Mr. Olson, can you begin by telling us our federal jurisdiction, where is the federal question here?" *Bush v. Gore*, Oral Argument, *available at* 2000 WL 1804429 (U.S. Oral Arg.).

225. MINN. CONST. art. VI, § 3.

226. *Id.*

expressly limited by Minnesota Statute section 15.0424 when they acted in an appellate capacity. This statute deprived the district court the power to hear an appeal not filed within 30 days,²²⁷ or within 33 days²²⁸ if the appeal was filed by mailing.

Through its decision in *Bode*, the Minnesota Supreme Court effectively permitted the Rosenbloom district court to abuse its authority²²⁹ and substantially infringe upon the authority of the legislature to define and enact the applicable appeals period.²³⁰ As the court continues to permit the lower courts to act without subject matter jurisdiction,²³¹ it is necessary for the State Legislature to reassert its authority in this area. On February 15, 2001 Minnesota State Senator Stevens introduced S.F. No. 806²³² which would amend Minnesota Statute 484.01 by adding the following clause at the end of the current statute: "No district court shall have appellate jurisdiction where an appeal is taken past the statutory appeal period and any action of a district court without appellate jurisdiction is void and may be vacated at any time."²³³ In order for this amendment to have broad prospective effect, this language should also be made applicable to the Minnesota Court of Appeals.²³⁴

The Minnesota Legislature should pass and the Governor should sign this legislation. It is unfortunate that such action is necessary, but the Minnesota Supreme Court's decision of *Bode v. Minnesota Department of Natural Resources* has left the legislature with no choice but to expressly reassert its authority to establish the appellate jurisdiction of Minnesota courts.

227. MINN. STAT. § 15.0424, subd. 1 (1980) (currently codified at MINN. STAT. § 14.63 (2000)).

228. *See supra* note 84.

229. *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862, 871 (Minn. 2000) (Page, J., dissenting).

230. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 12(2) (1942).

231. *See Burkstrand v. Burkstrand*, 632 N.W.2d 206, 213 (Minn. 2001) (holding that the expiration of the time limits imposed by the Domestic Abuse Act, MINN. STAT. § 518B.01, subd. 7(c) (2000), does not divest the district court of subject matter jurisdiction to hold a hearing on a petition for an order for protection). Justice Gilbert dissented from the Court's opinion in *Burkstrand*, noting that the use of the word "shall" in an unambiguous statute imposes a mandatory timing requirement that should not be ignored, even on public policy grounds. *Burkstrand*, 632 N.W.2d at 214 (Gilbert, J., dissenting).

232. S.F. 806, 2001-2002 Leg., 82nd Sess. (Minn. 2001).

233. *Id.*

234. *See supra* note 4 and statutes cited.