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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2107**

MWH Properties, LLC as Assignees of Thomas Fallon and Tara Fallon,  
Appellant,

vs.

Art Hogenson, individually and d/b/a Diversified Water Diversion, Inc.,  
Respondent.

**Filed August 22, 2011  
Affirmed  
Collins, Judge\***

Hennepin County District Court  
File No. 27-CV-07-3348

Kelly V. Griffiths, Griffiths Law Offices, PLLC, Bloomington, Minnesota (for appellant)

Edward F. Rooney, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and  
Collins, Judge.

**UNPUBLISHED OPINION**

**COLLINS**, Judge

Appellant MWH Properties LLC contends that the district court violated its due-  
process rights to a personal-injury judgment that it acquired by way of assignment and

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

that it should have been permitted to intervene in the underlying civil action as a matter of right. We affirm.

## FACTS

This is the second appeal from an action stemming from a workplace injury suffered by Thomas Fallon when he fell off a ladder at a construction site while working for respondent Art Hogenson. *See Fallon v. Hogenson*, No. A08-2142, 2009 WL 2498699, at \*1 (Minn. App. Aug. 19, 2009). Following the injury, Fallon and his wife, Tara, decided against filing a workers' compensation claim; instead, the Fallons elected to sue respondent individually and in his capacity as co-owner of Diversified Water Diversion, Inc. (DWD) for negligently providing him with a defective ladder to work with. *Id.* After respondent failed to appear for arbitration, the arbitrator issued a default order, concluding that respondent was liable for negligently providing Fallon with a defective ladder and awarding the Fallons \$737,675.39 in damages. *Id.* The district court affirmed the arbitration award and entered judgment. *Id.*

Respondent moved the district court to vacate the judgment as a matter of law because Fallon's claim was exclusively governed by the Minnesota Workers' Compensation Act (WCA), which deprived the district court of subject-matter jurisdiction. *Id.* While respondent's motion was pending, the Fallons assigned the arbitration judgment to appellant MWH Properties, LLC. *Id.* The district court eventually denied respondent's motion without directly addressing the subject-matter-jurisdiction argument. *Id.* at \*2. Shortly thereafter, respondent requested reconsideration and brought a second motion to vacate the judgment as a matter of law and a motion to

stay the judgment. The district court issued a temporary stay of the judgment pending decision on the second motion to vacate the judgment. The district court ultimately denied the second motion to vacate the judgment, again neglecting to address the jurisdiction challenge. *Id.* This court reversed the district court's decision in part, noting that the subject-matter-jurisdiction question was unclear. *Id.* We remanded the factual issue of whether Fallon was employed by DWD or by respondent in his personal capacity, concluding that the district court would have subject-matter jurisdiction only if Fallon was actually hired by respondent individually and respondent did not maintain a separate insurance policy; otherwise, the arbitration judgment should be vacated and the Fallons must pursue their claims under the WCA. *Id.*

Following remand, the district court issued an order in March 2010 concluding that Fallon never fully pursued his claim under the WCA, that respondent did not maintain separate workers' compensation insurance apart from the insurance carried by DWD, and that there remained a valid dispute as to whether Fallon was working for respondent or DWD at the time of the accident. Accordingly, the district court scheduled an evidentiary hearing to address the singular issue of who employed Fallon at the time of the injury.

Respondent then sought clarification of the district court's reference to appellant within the order as follows: "Plaintiff, now [MWH] by way of assignment of Fallon's claims, states...." The district court issued a subsequent memorandum of clarification. The district court noted that because this court remanded the arbitration judgment on the jurisdictional issue, the question of whether the judgment was proper remained

unresolved. Because the judgment could still be vacated on remand, the district court ordered suspension of the judgment, effectively reinstating the prior stay of the judgment pending the issuance of an order on the question remanded by this court. Accordingly, the district court precluded appellant from participating at the evidentiary hearing, concluding that: “The parties in interest at this time are the original Plaintiffs, Thomas and Tara Fallon, and Defendants Art Hogenson and [DWD]. MWH only has an interest in the proceeds of any judgment which flow to the Fallons after a judgment is entered and not the underlying action.”

Following the evidentiary hearing, the district court determined that Fallon was employed by DWD at the time of the accident and concluded that the district court did not have subject-matter jurisdiction over the claim. The district court vacated the arbitration judgment to allow the claim to be pursued under the WCA. Appellant now challenges the district court’s refusal to allow it to participate in the evidentiary hearing that effectively vacated the judgment that was assigned to it by the Fallons.

## **D E C I S I O N**

### **1. Due-Process Protection**

Appellant argues that the district court deprived it of due-process protection by precluding appellant from participating in the evidentiary hearing. The Fourteenth Amendment provides that “[n]o state shall . . . deprive any person of life, liberty or property without due process of law.” U.S. Const. amend. XIV § 1; Minn. Const. art. I, § 7. In order for a due-process violation to occur, a person must suffer a loss of liberty or property interest. *State v. Mitchell*, 577 N.W.2d 448, 453 (Minn. 1998). We review

alleged constitutional violations de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Appellant asserts that it was a valid assignee of the Fallons' arbitration award and, thus, it possessed a true property interest warranting standing and opportunity to argue at the evidentiary hearing. We disagree. Under longstanding Minnesota law, a right to recover damages for a personal tort is a personal right that is not assignable before judgment. *Regie de L'Assurance Auto. du Quebec v. Jensen*, 399 N.W.2d 85, 89 (Minn. 1987); *Travelers Indem. Co. v. Vaccari*, 310 Minn. 97, 100-01, 245 N.W.2d 844, 846 (1976); *Boogren v. St. Paul City Ry.*, 97 Minn. 51, 54, 106 N.W. 104, 106 (1906); *Hammons v. Great N. Ry.*, 53 Minn. 249, 251-52, 54 N.W. 1108, 1109 (1893). There is no question that the judgment was validly assigned in this case. But appellant's ability to collect upon it was precluded by the district court's effective reinstatement of the temporary stay of the judgment within the memorandum of clarification. *See* Minn. R. Civ. P. 62.01 (stating that the district court has the discretion to "stay the execution of [] any proceeding[] to enforce a judgment pending the disposition of a motion for relief from a judgment . . . made pursuant to Rule 60"); *cf.* Minn. R. Civ. P. 60.02 (noting that a motion to vacate a judgment alone "does not affect the finality of the judgment or suspend its operation"). Because the district court suspended the judgment on remand until making the insurance-coverage and employer determinations directed by this court, appellant possessed a mere anticipatory interest in the judgment when it was seeking to participate in the evidentiary hearing. Accordingly, appellant cannot demonstrate a loss

of a property interest prerequisite to asserting a due-process violation in this case, and the district court did not err in this regard.

## **2. Right of Intervention**

Appellant also argues that it should have been allowed to intervene in this case as a matter of right. We disagree. Minn. R. Civ. P. 24.01 provides: “*Upon timely application* anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action.” (Emphasis added.) Appellant concedes that it failed to move to intervene. Therefore, appellant’s argument that the district court should have permitted intervention, despite the fact that intervention was never formally sought, is unavailing.

**Affirmed.**