

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CASE NO. 09-1909

MICHAEL DAHLEN, et al,

Plaintiffs/Appellants,

vs.

SHELTER HOUSE, et al,

Defendants/Appellees.

Appeal from the United States District Court
for the Southern District of Iowa, Davenport Division
Honorable John A. Jarvey

BRIEF OF APPELLANTS

GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax

ATTORNEY FOR PLAINTIFFS/APPELLANTS

SUMMARY AND REQUEST FOR ORAL ARGUMENT

In this action Plaintiffs/Appellants seek injunctive and other relief under 42 U.S.C. §1983 based on the actions of Defendants/Appellees which appropriated a strip of property owned by Plaintiffs/Appellants Michael and Janet Dahlen and incorporated this strip into a development project owned by Defendant/Appellee Shelter House. The district court concluded that this case was not ripe for its consideration and granted the Defendants' Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(1). Plaintiffs/Appellants contend that this ruling is erroneous because Iowa Code §6A.22 prohibits condemnation under these circumstances and because there has been a final decision which takes the Dahlens' property.

Because this case involves detailed issues regarding local ordinances and a rather complex real estate development it is believed that oral argument would be helpful to the court and that the parties should each be granted fifteen minutes for this argument.

TABLE OF CONTENTS

SUMMARY AND REQUEST FOR ORAL ARGUMENT.....i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

JURISDICTIONAL STATEMENT.....1

STATEMENT OF ISSUES.....2

STATEMENT OF THE CASE.....4

STATEMENT OF FACTS.....5

SUMMARY OF ARGUMENT.....7

 BRIEF POINT I: BECAUSE THE IOWA STATUTE
 RESTRICTING EMINENT DOMAIN PROHIBITS
 CONDEMNATION UNDER THE CIRCUMSTANCES PRESENT
 IN THIS APPEAL, PLAINTIFFS/APPELLANTS ARE NOT
 REQUIRED TO RESORT TO INVERSE CONDEMNATION.....8

 BRIEF POINT II: BECAUSE THERE WAS A FINAL DECISION
 WHICH CONSTITUTED A TAKING OF PLAINTIFFS’
 PROPERTY, THIS CONTROVERSY IS RIPE FOR REVIEW.....15

CONCLUSION AND REQUEST FOR RELIEF.....17

CERTIFICATE OF COMPLIANCE.....18

CERTIFICATE OF SERVICE AND VIRUS SCAN.....18

ADDENDUM: DISTRICT COURT’S ORDER OF MARCH 25, 2009
 AND EXCERPT FROM LOCAL ORDINANCES.....20

TABLE OF AUTHORITIES

CASES

Clajon Production Corp. v. Petera, 70 F. 3d 1566 (10th Cir. 1995).....13

Cormack v. Settle-Beshears, 474 F.3d 528 (8th Cir. 2007).....14

Kelo v. City of New London, 545 U.S. 469 (2005).....10, 11

Littlefield v. City of Afton, 785 F.2d 596, 600 (8th Cir. 1986).....13

Loretto v Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).....9

Matter of Condemnation of Certain Rights in Land for the
Construction of a County Road in Allamakee County, 666
N.W.2d 137 (Iowa 2003).....12, 13

McKenzie v. City of White Hall, 112 F.3d 318 (8th Cir. 1997).....16, 17

Metzger v. Village of Cedar Creek, Nebraska, 370 F.3d 822
(8th Cir. 2004).....8, 15

U.S. v. Clarke, 445 U.S. 253 (1980).....13

STATUTES AND RULES

28 U.S.C. §1291.....1

28 U.S.C. §1331.....1

28 U.S.C. §1343.....1

42 U.S.C. §1983.....i, 1, 4, 8, 13, 14

Federal Rule of Civil Procedure 12(b)(1).....i, 1, 4

Iowa City Ordinance §17-1-1.....6, 16

Iowa City Ordinance §17-1-2.....6, 16

Iowa City Ordinance §17-1-3.....6, 16

Iowa City Ordinance §18-2-2.....6, 16

Iowa Code §6A.22.....i, 11, 12, 13, 14

Iowa Code §455.....12

OTHER AUTHORITIES

Nichols on Eminent Domain, §3.03(7)(c) (Third Edition, 2006).....10

JURISDICTIONAL STATEMENT

This is an appeal from a final order by the United States District Court for the Southern District of Iowa, the Honorable John A. Jarvey presiding, which granted the Pre-Answer Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(1) filed by Defendants.

Plaintiffs' complaint included a claim under 42 U.S.C. §1983. Because Plaintiffs'/Appellants' complaint presented questions involving the United States Constitution and federal civil rights, subject matter jurisdiction in the district court was proper under 28 U.S.C. §1331 and §1343. After the District Court entered its Order of March 25, 2009 which granted Defendants'/Appellees' Motion to Dismiss, Plaintiffs'/Appellants timely filed their Notice of Appeal on April 20, 2009. This order was a final order, and there is therefore jurisdiction in this court under 28 U.S.C. §1291.

STATEMENT OF ISSUES

I. BECAUSE THE IOWA STATUTE RESTRICTING EMINENT DOMAIN PROHIBITS CONDEMNATION UNDER THE CIRCUMSTANCES PRESENT IN THIS APPEAL, PLAINTIFFS/APPELLANTS ARE NOT REQUIRED TO RESORT TO INVERSE CONDEMNATION.

Metzger v. Village of Cedar Creek, Nebraska, 370 F.3d 822 (8th Cir. 2004).

Loretto v Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)

Kelo v. City of New London, 545 U.S. 469 (2005).

Nichols on Eminent Domain, §3.03(7)(c) (Third Edition, 2006)

Iowa Code §455

Matter of Condemnation of Certain Rights in Land for the Construction of a County Road in Allamakee County, 666 N.W.2d 137 (Iowa 2003)

U.S. v. Clarke, 445 U.S. 253 (1980)

Littlefield v. City of Afton, 785 F.2d 596 (8th Cir. 1986).

Clajon Production Corp. v. Petera, 70 F. 3d 1566 (10th Cir. 1995)

Cormack v. Settle-Beshears, 474 F.3d 528 (8th Cir. 2007)

II. BECAUSE THERE WAS A FINAL DECISION WHICH CONSTITUTED A TAKING OF PLAINTIFFS' PROPERTY, THIS CONTROVERSY IS RIPE FOR REVIEW.

Metzger v. Village of Cedar Creek, Nebraska, 370 F.3d 822 (8th Cir. 2004).

McKenzie v. City of White Hall, 112 F.3d 318 (8th Cir. 1997)

Iowa City Ordinance §17-1-1

Iowa City Ordinance §17-1-2

Iowa City Ordinance §17-1-3

Iowa City Ordinance §18-2-2

STATEMENT OF THE CASE

Nature of the Case

In this case Plaintiffs/Appellants asserted a claim under 42 U.S.C. §1983 for the alleged taking of real property owned by Janet and Michael Dahlen. This taking occurred when Defendants/Appellees appropriated from the Dahlens a strip of property approximately 15 feet wide and 198 feet long and incorporated this strip into a private real estate development project owned by Defendant/Appellee Shelter House. Because Iowa statutory law prohibits the condemnation of property under these circumstances, Plaintiffs seek injunctive relief and damages under 42 U.S.C. §1983.

Course of Proceedings

Plaintiffs' First Amended Complaint was filed with court approval on November 25, 2008. (App. P. 41) Defendants Iowa City Planning and Zoning Commission, Iowa City Board of Adjustment, and the City of Iowa City filed their Pre-Answer Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) on December 1, 2008. (App. P. 3, 49). Defendant Shelter

House filed a similar motion on December 18, 2008. (App. P. 3, 64). Both motions were resisted by Plaintiffs. (App. P. 86, 88, 58, 60). On March 25, 2009 the district court, Honorable John A. Jarvey presiding, granted these motions. (App. P. 90). Plaintiffs timely filed their Notice of Appeal on April 17, 2009. (App. P. 2, 100).

STATEMENT OF THE FACTS

Defendant/Appellee Shelter House is a private corporation which provides housing and other services to homeless people. Shelter House desires to construct a new homeless shelter in Iowa City, Iowa. (App. P. 62).

Appellants Michael and Janet Dahlen and their predecessors in title have for many years operated a mobile home park. Two of the mobile homes in this park and the property which surrounds these homes are located on the property on which Shelter House plans to build its new shelter. A diagram depicting the property in question is attached to the amended complaint. These mobile homes and the property on which they sit have for more than ten years been exclusively used by the Dahlens, their tenants, and their predecessors in title. This use has been open, notorious, exclusive and otherwise sufficient under Iowa law to constitute ownership by adverse

possession. (App. P. 28, 33). Under local ordinances, Shelter House is required to submit a site plan showing parking, landscaping, fencing, and other improvements which it planned to install on the grounds surrounding its proposed building. (Iowa City Ordinance 18-2-2)¹ Additionally, a building permit is necessary prior to construction of the building which is to be located on the site. The building permit process ensures that the exterior and interior of the main building comply with building code requirements. (Iowa City Ordinance 17-1-1 to 17-1-3). Conversely, the site plan governs improvements to the grounds, such as parking, landscaping, fencing, setbacks, etc. In the present case both a building permit and a site permit are required.

Shelter House sought approval from the Iowa City Planning and Zoning Commission for a site plan. (App. P. 27). This site plan included the property on which the above-described mobile homes are located, and designated this area for fencing, set back, ground space, and other purposes. The plan also authorized the removal of trees owned by the Dahlens. (App. P. 27-28). The Dahlens resisted the proposed site plan and pointed out that they were the owners of some of the property included in the site plan. Despite these protests, the site plan was approved in November of 2008.

¹ Copies of cited Iowa City ordinances are included in the addendum to this brief. The complete code of the City of Iowa City can be accessed at http://www.sterlingcodifiers.com/codebook/index.php?book_id=320

(App. P. 2008). Shelter House then acted to implement the site plan by cutting down trees and taking other steps. (App. P. 28).

The city of Iowa City later issued a building permit to construct the new shelter. (App. P. 80). The issuance of this building permit is the subject of separate litigation. (App. P. 84). The building to be constructed pursuant to the building permit is not located on the Dahlen's property. Instead, the encroachment onto the Dahlens' property occurs through the fencing, setback, tree removal, and other provisions of the site plan. (App. P. 32-33).

SUMMARY OF ARGUMENT

A substantial portion of the Dahlens' property has been taken from them and incorporated into a development owned by Shelter House, a private entity. As a private entity, Shelter House's ability to obtain property through eminent domain is sharply limited by the Iowa Code. None of the statutory provisions which allow a private entity to obtain property through eminent domain are applicable to in this case. Therefore, an inverse condemnation proceeding would not provide adequate relief to the Dahlens because they by statute have the right to be free from condemnation under the facts now present. Accordingly, Defendants/Appellees are not permitted

to circumvent their lack of statutory authority for the taking now at issue by forcing the Dahlens to submit to the loss of their property and pursue an inverse condemnation action. Instead, injunctive relief under 42 U.S.C. §1983 is appropriate. Because there has been a final decision at the local level and a physical invasion of the Dahlens' property this case is ripe for determination.

BRIEF POINT I

BECAUSE THE IOWA STATUTE RESTRICTING EMINENT DOMAIN PROHIBITS CONDEMNATION UNDER THE CIRCUMSTANCES PRESENT IN THIS APPEAL, PLAINTIFFS/APPELLANTS ARE NOT REQUIRED TO RESORT TO INVERSE CONDEMNATION.

Standard of Review:

The District Court concluded that it did not have subject matter jurisdiction to decide this issue. A district court's determination that it does not have subject matter jurisdiction is reviewed de novo by this appellate court. Metzger v. Village of Cedar Creek, Nebraska, 370 F.3d 822, 823 (8th Cir. 2004).

Argument

Janet and Michael Dahlen are the owners of real estate in Iowa City, Iowa on which they operate a mobile home park. (App. P. 42). A site plan was approved by the Iowa City Planning and Zoning Commission which authorizes and requires Shelter House to remove trees from, use, and construct fencing on an approximate 15 foot by 198 foot strip of the Dahlens' property and to otherwise use this property. Under Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982) this governmental authorization for Shelter House to enter upon and use the Dahlens' property constitutes a taking of the Dahlens' property. The District Court assumed the same, but determined as a matter of law that this taking was for a public purpose and therefore could not be enjoined or challenged. Instead, the District Court ruled that the Dahlens are limited to and must pursue an inverse condemnation claim. (App. P. 98). Appellants respectfully contend that this conclusion is erroneous.

First, Appellants concede that the power of eminent domain under the United States Constitution can without question be used to advance a public purpose. Appellants further concede that at the constitutional level the concept of public purpose is very broad and that condemnation is therefore

constitutionally authorized under most scenarios. If this proposition was ever in serious question, any lingering doubt was apparently removed by the United States Supreme Court in Kelo v. City of New London, 545 U.S. 469, 485-487 (2005).

This case, however, does not involve the issue of what takings are or are not authorized by the constitution. Instead, the issue here is whether the taking at issue was authorized by statute. It is clear that a state or other government body may make the policy decision to limit the amount of condemnation authority that may be exercised. “Since the delegation of eminent domain power is entirely within the discretion of the legislature, it may impose conditions upon the exercise of the delegated power over and above the constitutional requirements. In such cases the additional burdens or obligations cannot be ignored by the municipality.” Nichols on Eminent Domain, §3.03(7)(c) (Third Edition, 2006). In other words, although the constitution provides broad authority to enact laws which enable eminent domain proceedings, it is up to the legislature to determine how much of this authority to exercise. Notably, while the Kelo court clearly confirmed government’s broad authority under the constitution to condemn, it just as clearly recognized the power, and even the desirability, of placing limits on

this constitutional authority by statute. Kelo v. City of New London, 545 U.S. 469, 489 (2005).

In the present case, the Iowa legislature has made the decision by statute to curtail the use of eminent domain. It did so through Iowa Code §6A.22 which states:

6A.22 ADDITIONAL LIMITATIONS ON EXERCISE OF POWER --DEFINITIONS.

1. In addition to the limitations in section 6A.21, the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement...
2. *a. "Public use", "public purpose", or "public improvement" means one or more of the following:*
 - (1) The possession, occupation, and enjoyment of property by the general public or governmental entities.
 - (2) The acquisition of any interest in property necessary to the function of a public or private utility, common carrier, or airport or airport system.
 - (3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.
 - (4) The acquisition of property pursuant to chapter 455H.
 - (5) (a) The acquisition of property for redevelopment purposes and to eliminate slum or blighted conditions in that portion of an urban renewal area designated as a slum or blighted area if each parcel, or any improvements thereon, for which condemnation is sought is determined by the governing body of the municipality to be in a slum or blighted condition...

It is clear that this statute prohibits the use of eminent domain to obtain land for the Shelter House project. First, Shelter House is a private

enterprise, and the proposed new Shelter House building will not be possessed, occupied and enjoyed by the general public or a governmental entity. Accordingly, it fails to qualify as a public use or purpose under §2(1). Secondly, Shelter House is not a utility, common carrier or airport, and therefore cannot qualify under §2(2). (App. P. 80, 62). Third, since Shelter House does not meet the statutory definition of a “public use” there can be no private use which is incidental to the public use. Accordingly, Shelter House fails to qualify under §2(3). Further, Iowa Code §455(H) pertains to the acquisition of environmentally contaminated real estate, and the subject property therefore does not qualify under §2(4). Lastly, the project to be built is not in an “urban residential area which is designated as a slum or blighted area” and condemnation therefore could not proceed under §2(5). For these reasons, Appellants argued to the District Court that there is no statutory authority for the present taking. (App. P. 62). Notably, none of the Appellees have ever contended otherwise

Under Iowa law a property owner who has suffered a taking which is not permitted by Iowa Code §6A.22 has the right to enjoin this taking rather than submit to the same and accept financial compensation, as land is unique and money does not make up for the loss of a unique asset. Matter of Condemnation of Certain Rights in Land for the Construction of a County

Road in Allamakee County, 666 N.W.2d 137, 139 (Iowa 2003). Indeed, were this not the rule statutory limitations on condemnation authority would be meaningless because a condemning authority would simply illegally take the property and pay the same compensation that it would be required to pay if it had authority to take the property in the first place. This rule was also recognized in U.S. v. Clarke, 445 U.S. 253, 259 (1980) in which the United States Supreme Court refused to permit a taking by physical occupation to occur until the applicable statutory procedure for condemnation was complied with.

The state law statutory right of a property owner under Iowa Code §6A.22 to be free from condemnation in cases such as this is a property right and the deprivation of this right gives rise to for an action under 42 U.S.C. §1983. Littlefield v. City of Afton, 785 F.2d 596, 600 (8th Cir. 1986). Furthermore, a takings dispute in which it is alleged that the taking should be enjoined because it lacks statutory authority is ripe for review without prior resort to inverse condemnation. Clajon Production Corp. v. Petera, 70 F. 3d 1566, 1575 (10th Cir. 1995).

Additionally, limiting the Dahlens to the recovery of financial compensation through inverse condemnation would not be adequate, as it would deprive them of their state law statutory right to avoid condemnation

as established in the Matter of Condemnation case cited above. Since the remedy of inverse condemnation is not adequate, the Dahlens are not required to pursue it. Cormack v. Settle-Beshears, 474 F.3d 528, 531 (8th Cir. 2007).

The District Court limited its analysis to whether there was constitutional support for the taking which occurred and concluded that because a homeless shelter would provide a public benefit there was no private taking and the Dahlens were limited to the remedy of inverse condemnation. (App. P. 97-98). In reaching this conclusion, however, the District Court failed to consider the statutory limitation on condemnation set forth in Iowa Code §6A.22. Again, Defendants should not be permitted to circumvent the statutory limitations on eminent domain contained in Iowa Code §6A.22 by simply ignoring this law and proceeding with the taking.

Appellants respectfully contend that they should be entitled to the protection of their property which the Iowa legislature intended them to have under Iowa Code §6A.22. Because the present taking was done contrary to this Code section, they are entitled to pursue their claim for injunctive relief under 42 USC §1983.

BRIEF POINT II

BECAUSE THERE WAS A FINAL DECISION WHICH CONSTITUTED A TAKING OF PLAINTIFFS' PROPERTY, THIS CONTROVERSY IS RIPE FOR REVIEW.

Standard of Review:

The District Court concluded that it did not have subject matter jurisdiction to hear this issue. A district court's determination that it does not have subject matter jurisdiction is reviewed de novo by this appellate court. Metzger v. Village of Cedar Creek, Nebraska, 370 F.3d 822, 823 (8th Cir. 2004).

Argument

The vast majority of the District Court's decision involved its analysis of whether the taking now at issue was for a "public purpose" and on the related issue of whether Plaintiffs should be required to pursue an inverse condemnation claim. However, on the top of page 4 of the District Court's decision there is reference made to the perceived necessity of challenging the building permit which has been issued to Shelter House. Although it is somewhat unclear whether the District Court intended merely to restate

Defendants' position on this issue or to actually decide it, Appellants nevertheless will address this issue.

A successful challenge to the building permit issued Shelter House would have no bearing on the site plan or on the taking at issue. This is true because under the local ordinances in question, the grounds surrounding the building to be constructed are regulated by the site plan. See, Iowa City Ordinance §18-2-2. A building permit, however, regulates the principle building. See, Iowa City Ordinances §17-1-1 to §17-1-3. The actual building to be built by Shelter House is not going to be built on the strip of property owned by the Dahlens-instead this strip will be used for fencing, setback, yard space, and other Shelter House purposes as shown on its site plan. (App. P. 48). Accordingly, a challenge to the building permit, even if successful, would be futile because it would not alter the site plan. Accordingly, final action which authorizes the taking has occurred.

Additionally, this case falls under the rule of McKenzie v. City of White Hall, 112 F.3d 313, 316-317 (8th Cir. 1997) which holds that if a physical intrusion onto property occurs a final decision to take is deemed to have been made. A physical invasion of the Dahlens property has occurred and has been specifically alleged in the complaint. (App. P. 28). Accordingly, there is no need to pursue other remedies or relief. Finally,

appellants recognize that the McKenzie decision required the property owners involved in that case to first pursue an inverse condemnation claim. McKenzie, 112 F3d 313, 317 (8th Cir. 1997). However, McKenzie and the other cases cited by the District Court do not involve a claim that the condemnation at issue was contrary to statute. As explained in brief point I, Iowa law provides that a taking obtained contrary to statute may be enjoined without resort to inverse condemnation.

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff/Appellants are entitled to injunctive relief prohibiting the taking of their property because an inverse condemnation proceeding would not provide them with their statutory right to be free from condemnation under the facts of the present case. Additionally, because the building permit issued Shelter House did not effectuate the taking now at issue and because a physical invasion of their property has occurred, the Dahlens are not required to pursue state court remedies. For these reasons, the decision of the District Court should be reversed.

Respectfully Submitted

By: _____

GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax

ATTORNEY FOR
PLAINTIFFS/APPELLANTS

CERTIFICATE OF COMPLIANCE

I hereby certify that the above brief was prepared using Microsoft Word and that it complies with the type-volume limitation under Fed. R. Civ. P. 32(a)(7)(B). According to the program, this brief contains 524 lines.

GREGG GEERDES

CERTIFICATE OF SERVICE AND VIRUS SCAN

I, Gregg Geerdes, hereby certify that two true and correct copies of the above brief, along with one CD-Rom diskette containing the full text of the brief, have been mailed to Timothy Krumm, Meardon, Sueppel & Downer PLC, 2431 Coral Court, No. 5, Coralville, Iowa 52241, and to Sara

E. Holecek, Assistant City Attorney, 410 E Washington, Iowa City, IA 52240, via the United States Postal Service, United States mail, on this _____ day of _____, 2009. I further certify that all diskettes provided to the clerk and parties have been scanned for viruses and are virus free.

GREGG GEERDES

ADDENDUM

	Page
District Court's Order on Motion to Dismiss dated March 25, 2009.....	i
Excerpts from the Iowa City Code of Ordinances.....	x

GREGG GEERDES
Attorney at Law
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax

May 22, 2009

Clerk of Court
Eighth Circuit Court of Appeals
Thomas Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 63102

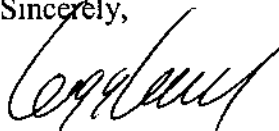
Re: Dahlen v. Shelter House, et. al.

Dear Sir/Madam:

Enclosed please find 3 copies and a copy of the cover page of a Joint Appendix and 10 copies and a copy of the cover page of a Brief of Appellants in this matter. Please file these and return the file stamped copies of the cover pages in the enclosed self addressed stamped envelope. I am also enclosing a disc with a pdf version of the brief. Please call if you have any questions.

Thank you for your assistance.

Sincerely,



Gregg Geerdes

GG/se
Enc.

RECEIVED

MAY 26 2009

**U.S. COURT OF APPEALS
EIGHTH CIRCUIT**

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

TO: Mr. Gregg Geerdes
FROM: Ms. Yvette M. Lisenby
DATE: May 27, 2009
RE: 09-1909 Michael Dahlen, et al v. Shelter House, et al

Your brief in the above-case has been received and filed. However, we noted the deficiencies shown below. Please correct these immediately by submitting the corrections in paper format. You must also submit a corrected version of the ENTIRE brief on a diskette or CD so that we can post a corrected version of the brief on PACER.

 X STATEMENT OF ISSUES IS MISSING OR INCOMPLETE. See 8th Cir. R. 28A(f)(2).

 most apposite cases not listed;

 X exceeds maximum of four cases per issue.

The appropriate number of copies of the items checked above should be forwarded to this office within 7 days for insertion in the briefs, together with a CD or diskette containing the entire corrected brief. Thank you for your prompt attention to this matter. If you have any questions, please feel free to contact us.