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## **IMMUNITY - MINNESOTA**

### [Ariola v. City of Stillwater](#)

**Court of Appeals of Minnesota - January 23, 2017 - N.W.2d - 2017 WL 279573**

Father, as next of kin and trustee of son's estate, brought wrongful death action against city after son died from primary amoebic meningoencephalitis (PAM) following exposure to *naegleria fowleri* while swimming in lake located in city.

The District Court, Washington County, dismissed action. Father appealed, and the Court of Appeals reversed and remanded. On remand, the District Court granted summary judgment to city. Father appealed.

The Court of Appeals held that:

- Notary public's certification that appointment petition and consent, for father as trustee, were "sworn to and subscribed" did not satisfy requirement of wrongful death statute that a person appointed as trustee file an oath before commencing duties;
- As a matter of first impression, statute's requirement that a person appointed as trustee file an oath before commencing duties is not jurisdictional;
- A municipality's actual, rather than constructive, knowledge of an artificial condition likely to cause death or serious bodily harm is required to establish the adult trespasser exception to recreational use immunity; overruling *Noland v. Soo Line R.R.*, 474 N.W.2d 4;
- Fact that county was aware that lake located in city had tested positive for *naegleria fowleri* amoeba did not establish that city had actual knowledge of a condition that was likely to cause death or serious bodily injury, as required under adult trespasser standard to establish exception to city's recreational use immunity from; and
- Father could not be taxed individually with costs of action.