

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 07-1731

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Terry Borchardt,

Appellant,

v.

State of Minnesota; Minnesota  
Department of Revenue; Acting  
through agents James Lee and Jerry  
McClure,

Appellees.

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Appeal from the United States  
District Court for the  
District of Minnesota.

[UNPUBLISHED]

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Submitted: February 13, 2008

Filed: February 19, 2008

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Before WOLLMAN, RILEY, and GRUENDER, Circuit Judges.

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PER CURIAM.

Terry Borchardt appeals the district court's<sup>1</sup> Federal Rule of Civil Procedure 12(b)(1) dismissal with prejudice of his complaint challenging the garnishment of his wages pursuant to a Notice of Levy issued by the Minnesota Department of Revenue. Upon de novo review, see Cedar Rapids Cellular Tel., L.P. v. Miller, 280 F.3d 874,

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<sup>1</sup>The Honorable Janie S. Mayeron, United States Magistrate Judge for the District of Minnesota, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).

878 (8th Cir. 2002), we conclude that dismissal was proper for the reasons stated by the district court. However, we modify the judgment to be without prejudice, see Hernandez v. Conriv Realty Assocs., 182 F.3d 121, 123 (2d Cir. 1999) (Article III prevents federal courts from dismissing case with prejudice where subject matter jurisdiction is lacking), and we affirm the judgment as modified, see 8th Cir. R. 47B.

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