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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0591**

Bruce Vind, et al.,
Appellants,

vs.

Shane McGuire d/b/a The Gold Guys,
and Gold Guys MN, LLC, defendant and third party plaintiff,
Respondent,

vs.

Kevin Weiss, et al.,
Third Party Defendants.

**Filed November 25, 2013
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27CV1210652

Michael B. Lammers, Heimerl & Lammers, LLC, Minneapolis, Minnesota (for
appellants)

Richard A. Saliterman, Brett M. Larson, Saliterman & Siefferman, P.C., Minneapolis,
Minnesota (for respondents)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellants, victims of jewelry thefts, challenge summary judgment to respondents, precious-metal dealers, dismissing appellants' private-attorney-general claims for damages under Minn. Stat. § 8.31, subd. 3a (2012), and their negligence per se claims for violation of Minn. Stat. § 325F.736 (2012) (precious-metals-holding statute), which requires precious-metal dealers to retain secondhand items containing precious metal without alteration for a period of at least 14 days. Appellants argue that the district court erred by (1) concluding that respondents' compliance with a local ordinance, which provides an alternative to the holding period, precludes action under the precious-metals-holding statute and (2) holding, in the alternative, that appellants failed to meet the public-interest requirement to pursue a private-attorney-general action for violation of the statute. Because the legislature has not extended the right to bring a private-attorney-general action to claims for violation of the precious-metals-holding statute and has not provided a private cause of action for violations of the statute, the district court correctly concluded that appellants cannot pursue their private actions for violation of the statute. We affirm without deciding the validity of the ordinance challenged by appellants.

FACTS

The facts in this appeal are not in dispute. Respondents, The Gold Guys and Gold Guys MN, LLC (collectively, Gold Guys), are registered precious-metals dealers in Minnesota, operating a store in the Mall of America that is licensed by the City of

Bloomington under a local ordinance. At all times relevant, Gold Guys has complied with the ordinance under which it is licensed.

In 2011, four rings, valued at \$4,220 were stolen from the residence of appellants Bruce and Laura Vind and were sold to Gold Guys on the day they were stolen. In an unrelated transaction, jewelry stolen from appellant Alice Menchaca's residence, valued at \$5,000, was sold to Gold Guys within one to three days of the theft. Gold Guys melted down or altered the Vinds' rings within 24 hours of purchasing them and melted down or altered Menchaca's jewelry within a week of purchasing it.

In separate conciliation-court actions, based on allegations that Gold Guys violated the precious-metals-holding statute, the Vinds and Menchaca were granted damages against Gold Guys. Gold Guys appealed the conciliation-court judgments to the district court. In district court, the Vinds and Menchaca filed complaints for money damages, invoking the private-attorney-general statute to argue that the ordinance relied on by Gold Guys is void, and that Gold Guys violated the required 14-day holding requirement in Minn. Stat. § 325F.736. They also alleged negligence per se for violating the holding duty imposed by the statute. The district court consolidated the cases.

Gold Guys moved for dismissal of both complaints or, in the alternative, summary judgment, arguing, in relevant part, that (1) there is no private-attorney-general action or direct tort action for an alleged violation of the precious-metals-holding statute and (2) its business is governed by the Bloomington City Code (ordinance), precluding any action against them based on violation of the state statute. The Vinds and Menchaca argued that, because the ordinance's waiver scheme effectively eliminates the state's *required*

14-day holding period altogether, the ordinance is less restrictive than the statute, is void as a result, and Gold Guys violated the precious-metals-holding statute.

Because Gold Guys relied on material outside the pleadings, the district court treated the motion as a motion for summary judgment and granted summary judgment, concluding that: (1) the ordinance is more restrictive than the statute and is therefore valid, precluding any action against Gold Guys for violation of the precious-metals-holding statute and (2) because Gold Guys complied with the ordinance, as a matter of law, it did not violate any law and was not negligent. In the alternative, the district court concluded that the Vinds and Menchaca do not have standing to bring private-attorney-general actions because they failed demonstrate that their actions are in the public interest. This appeal followed.

D E C I S I O N

I. Standard of review

The district court properly grants summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. “When the material facts are not in dispute, we review the lower court’s application of the law de novo.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). “No deference is given to a lower court on questions of law.” *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). “Application of a statute to the undisputed facts of a case involves a question of law, and the district court’s decision is not binding on this court.” *Davies v.*

W. Publ'g Co., 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001).

II. There is no private-attorney-general action for violation of the precious-metals-holding statute.

Gold Guys' summary-judgment motion argued that there is no private-attorney-general action for an alleged violation of the precious-metals-holding statute. The district court did not address that argument, but concluded that, even if such an action is possible, the Vinds and Menchaca cannot pursue it because they failed to demonstrate that their lawsuits benefit the public at large. *See Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000) (holding that the private-attorney-general statute "applies only to those claimants who demonstrate that their cause of action benefits the public"). Because we conclude that the legislature has not authorized a private-attorney-general action for alleged violations of the precious-metals-holding statute, we affirm the district court's ruling that the Vinds and Menchaca cannot pursue such an action.

Minn. Stat. § 8.31, subd. 1 (2012), contains a nonexclusive list of statutes, violations of which the attorney general is mandated to investigate. The list includes several sections of Minn. Stat. §§. 325F.001 to .991 (2012) (titled Consumer Protection: Products and Sales), but the list does not include any portion of sections 325F.731-325F.744, governing precious metals.

The private-attorney-general statute provides in relevant part:

In addition to the remedies otherwise provided by law, any person injured by a violation of *any of the laws referred to in subdivision 1* may bring a civil action and recover damages, together with costs and disbursements, including costs of

investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

Minn. Stat. § 8.31, subd. 3a (emphasis added).

In *Morris v. Am. Family Mut. Ins. Co.*, 386 N.W.2d 233, 236 (Minn. 1986), the supreme court considered whether a private-attorney-general action applies to a statute that is not specifically referenced in Minn. Stat. § 8.31, subd. 1, if the non-referenced statute deals with an unlawful business practice. The statute involved in *Morris* was the Unfair Claims Practices Act, Minn. Stat. § 72A.17 (1984), relating to practices in the insurance business. The supreme court addressed the issue by analyzing whether the legislature contemplated that a statute not referenced in section 8.31, subdivision 1, was subject to the private-civil-action provision of Minn. Stat. § 8.31, subd. 3a. *Id.* The supreme court concluded that, because there was no “legislative intention to create a new cause of action in derogation of our common law[,] . . . a private person does not have a cause of action for violation of the Unfair Claims Practices Act.” *Id.* at 238.

A person who violates provisions of the precious-metals statute is guilty of a felony, punishable by up to three years in prison and/or a fine of not more than \$40,000. Minn. Stat. § 325F.743. The Vinds and Menchaca nonetheless rely on Minn. Stat. § 325.744 , to assert that the legislature also contemplated that the precious-metals statute is subject to civil action by the attorney general and, therefore, is subject to a private-attorney-general action for damages. But Minn. Stat. § 325.744 provides:

The attorney general or any county attorney may institute a civil action in the name of the state in the district court to revoke, deny or suspend for a period of time the license [of a precious-metals dealer] on the ground that the licensee has

violated a provision of [Minn. Stat. §§ 325F.731 to 325F.744]. *For this purpose*, the attorney general or county attorney shall be invested with the additional powers contained in section 8.31. It is no defense to the action that the state has adequate remedies at law.

(Emphasis added.) Because the legislature plainly limited the attorney general’s authority to bring a civil action to licensing issues and invoked section 8.31 powers only for the purpose of pursuing such licensing actions, we find no merit in the Vinds and Menchaca’s argument that this provision demonstrates that the legislature contemplated a private-attorney-general action for an alleged violation of any of the provisions of sections 325F.731-325F.744. *See Ly*, 615 N.W.2d at 313 (stating that “the sweep of the [private-attorney-general] statute can be no broader than the source of its authority- that of the attorney general.”).

III. Claims for negligence-per-se action were properly dismissed.

“Negligence per se substitutes a statutory standard of care for that of an ordinarily prudent person, so that violation of the statute is conclusive evidence of duty and breach.” *Renswick v. Wenzel*, 819 N.W.2d 198, 206 (Minn. App. 2012), *review denied* (Oct. 16, 2012). Whether a violation of a statute or ordinance constitutes negligence per se is generally determined by a two-part test:

It is well settled that breach of a statute gives rise to negligence per se if [1] *the persons harmed by that violation are within the intended protection of the statute* and [2] *the harm suffered is of the type the legislation was intended to prevent*. The statute or ordinance imposes a fixed duty of care, so its breach constitutes conclusive evidence of negligence.

Alderman's Inc. v. Shanks, 536 N.W.2d 4, 8 (Minn. 1995) (quoting *Pac. Indemnity Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548, 588-59 (Minn. 1977)). But a statute that provides a criminal penalty “does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication.” *Valtakis v. Putnam*, 504 N.W.2d 264, 266 (Minn. App. 1993) (citing *Larson v. Dunn*, 460 N.W.2d 39, 47 n.4 (Minn. 1990)). And where no common-law duty existed before the statute was enacted, we are limited “to the explicit language and clear implication of the statute. *Id.* (citing *Bruegger v. Faribault Cnty. Sheriff's Dep't*, 497 N.W.2d 260, 262 (Minn. 1993). “The principles of judicial restraint forbid us from creating new causes of action which the legislature has not expressed or implied.” *Id.*

In this case, the legislature provided a criminal penalty for violation of the precious-metals statute and did not explicitly or implicitly create a private cause of action. Even if the Vinds and Menchaca are within the intended protection of the precious-metals-holding statute and the harm suffered is of the type the statute was intended to prevent, because the legislature did not provide a private cause of action for violation of the statute, the Vinds and Menchaca cannot pursue an action in negligence per se. The district court did not err in granting summary judgment to Gold Guys on claims asserting negligence per se.

IV. The validity of the Bloomington ordinance, providing for waiver of the precious-metals-holding statute's required 14-day holding period, is not determined in this appeal.

Minn. Stat. § 325F.742 provides, in relevant part, that government subdivisions are not prohibited from regulating or licensing precious-metals dealers within their

jurisdictions “in a manner more restrictive than [sections 325F.731-325F.744].” Both parties extensively briefed whether the provision in the Bloomington ordinance, which eliminates *any* holding period for secondhand items containing precious metals, provided that a dealer posts a specified bond and complies with recording and reporting requirements designed to aid law enforcement, is valid as more restrictive than the required 14-day holding period mandated by the precious-metals-holding statute. But because the unavailability of private causes of action for alleged damages is dispositive of the challenge by the Vinds and Menchaca to the district court’s grant of summary judgment to Gold Guys, we do not reach the issue of the validity of the ordinance.

Affirmed.