STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0393
A13-0394

Gale A. Rachuy, petitioner,
Appellant,

vs.

Jeanine Pauly, et al.,
Respondents,

Duluth Police Department Property Room,
Respondent,

Minnesota Financial Crimes Task Force,
Defendant (A13-0394).

Filed January 13, 2014
Affirmed
Larkin, Judge

St. Louis County District Court
File Nos. 69DU-CV-12-528, 69DU-CV-12-1508

Gale A. Rachuy, Oakdale, Louisiana (pro se appellant)

M. Alison Lutterman, Nathan N. LaCoursiere, Assistant City Attorneys, Duluth, Minnesota (for respondents Duluth Police Department Property Room and Jeanine Pauly)

Leslie E. Beiers, Assistant St. Louis County Attorney, Duluth, Minnesota (for respondent Mark Rubin)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's award of summary judgment to respondents on appellant's consolidated petition for return of seized property and civil complaint alleging common law theft, conversion, and illegal search. We affirm.

FACTS

The events giving rise to these consolidated actions arose out of two separate incidents and a series of ongoing investigations by Minnesota and Wisconsin police and the Federal Bureau of Investigation (FBI). On October 13, 2006, officers from the Duluth Police Department were dispatched to Woodruff Lumber. The police determined that a dispute existed between Woodruff Lumber and appellant Gale A. Rachuy regarding a shipment Rachuy allegedly promised to Woodruff but did not deliver. P.G., who was identified as an employee of Rachuy's, was on site to retrieve a separate load of lumber delivered some time previously by Rachuy. A fax purporting to be from the law office of Terry Duggins discussed both the shipment that was not delivered, as well as the lumber P.G. was attempting to retrieve. According to Officer Jeanine Pauly, the fax did not correctly identify the amount of lumber P.G. asserted he had been sent to retrieve.

Officer Pauly, who was investigating an alleged pattern of criminal behavior by Rachuy, arrived on the scene. Because Rachuy was being investigated for other scams involving lumber, and because the discrepancies on the fax made her suspicious that Rachuy was attempting to scam Woodruff, she determined that the lumber allegedly belonging to Rachuy should remain at Woodruff pending resolution of the dispute.

While at Woodruff, P.G. received a phone call from Rachuy, who spoke to Officer Pauly. Officer Pauly told Rachuy the lumber P.G. had been sent to retrieve would remain at Woodruff. Next, Officer Pauly received a phone call from an individual identifying himself as Terry Duggins. Duggins stated that he was Rachuy's attorney, but Officer Pauly was skeptical about his identity because Rachuy's criminal history involved impersonating an attorney. Officer Pauly reiterated that the lumber would remain at Woodruff until she was able to speak to Rachuy in person. Because P.G. did not have a valid driver's license, the truck he arrived in was towed.

On September 2, 2010, Duluth Police, including Officer Pauly, assisted the FBI in arresting Rachuy on a federal warrant for four counts of interstate trafficking of stolen property involving the purchase of vehicles with bad checks. Officer Pauly had prepared a search-warrant application based on information provided by the FBI and the ongoing investigations. The FBI observed Rachuy staying at a motel with a Dodge Durango that did not have license plates. The FBI then arrested Rachuy. Officer Pauly arrived on the scene and recorded the vehicle identification number (VIN) from the Durango. She added that information to the search-warrant application, which was subsequently approved by a judge. The officers on the scene then searched Rachuy's motel room and seized a number of items, including the Durango. Officer Pauly searched the Durango, which was being held in secure storage.

In February 2012, Rachuy filed a petition for return of seized property pursuant to Minn. Stat. § 626.04 (2012). Rachuy included an itemized list of property to be returned, described as follows: (1) "Lumber seized in 2006 [b]y Investigator Jeanine Pauly at

Woodruff," (2) "Items 1-102 in Duluth Police Dept. seized in Superior and transferred to Duluth Police Dept. (DPD) by [Officer] Pauly or others," and (3) "Items seized by [Officer] Pauly on Sept. 2, 2010 (83-102) for FBI." The petition names Jeanine Pauly and the Duluth Police Department Property Room as the custodians of the property.

The district court allowed Rachuy to bring a separate action pursuant to Minn. Stat. §§ 604.14, 626.21 (2012), alleging civil theft and conversion, and challenging the September 2, 2010 search. The complaint names as defendants Jeanine Pauly, the Duluth Police Department Property Room, Sergeants Wilson and Ceynowa,[1] the City of Duluth, Mark S. Rubin, and the Minnesota Financial Crimes Task Force. The district court heard the two actions together, and all defendants moved to dismiss the complaints.

The district court treated the motions to dismiss as motions for summary judgment and granted the motions as to all defendants except with regard to three items that the City of Duluth admitted were mistakenly sold while in its custody. The district court ordered the city to reimburse Rachuy for those items so long as Rachuy could establish that he was the owner of the property. Rachuy filed a motion to vacate summary judgment, which the district court denied. These consolidated appeals follow.

D E C I S I O N

I.

Rachuy alleges that the defendants committed civil theft and conversion of his property. The district court granted summary judgment in favor of all defendants on his

[1] Sergeants Wilson and Ceynowa are Duluth Police Department officers who inadvertently sold some of Rachuy's seized property. The record does not include their full names.

theft and conversion claims, except to the extent that it ordered the City of Duluth to reimburse Rachuy for property mistakenly sold by its agents, so long as Rachuy provides proof of the value and ownership of those items. Rachuy asserts that genuine issues of material fact preclude summary judgment.[2]

When reviewing an appeal from summary judgment, an appellate court asks two questions: "(1) whether there are any genuine issues of material fact and (2) whether the [district] court[ ] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

There is no genuine issue of material fact "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "[T]he party resisting summary judgment must do more than rest on mere averments." *Id.* Reviewing courts apply a de novo standard of review to a grant of summary judgment and view the evidence in the light most favorable to the

[2] Rachuy does not appeal the district court's grant of summary judgment to Sergeants Wilson and Ceynowa.

nonmoving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

Conversion occurs where one willfully interferes with the personal property of another "without lawful justification," depriving the lawful possessor of "use and possession." *DLH, Inc.*, 566 N.W.2d at 71 (quotation omitted). The elements of common law conversion are: (1) plaintiff holds a property interest and (2) defendant deprives plaintiff of that interest. *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 872 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). Minn. Stat. § 604.14 provides that "[a] person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either $50 or up to 100 percent of its value when stolen, whichever is greater."

Officer Jeanine Pauly

Rachuy alleges that Officer Pauly stole Rachuy's lumber from Woodruff and those items seized in Wisconsin by the Superior Police Department or the Douglas County Sheriff (numbered 1-82 in his petition).[3] The district court granted Officer Pauly summary judgment, concluding that there was no evidence that Officer Pauly seized or possessed the lumber, acted improperly with respect to the items transferred from Wisconsin, or improperly transported any of the items in question from Wisconsin to Minnesota.

[3] Rachuy's brief refers to items 1-83. But the petition for return of property indicates that item 83 was seized by the Duluth Police Department during the September 2, 2010 incident.

Regarding the Woodruff incident, Officer Pauly's affidavit and the police reports show that she responded to a property dispute and acted to maintain the status quo in an uncertain situation. The record is also clear that Officer Pauly never took possession of the lumber. She merely instructed P.G. that it would remain where it was until the dispute was resolved. The district court therefore did not err by concluding that there was no evidence that Officer Pauly seized or possessed the lumber.

Regarding items 1-46 seized by the Superior Police Department and allegedly transported to Minnesota, Rachuy presents bare accusations to support his claim that Officer Pauly acted without lawful justification. *See DLH, Inc.*, 566 N.W.2d at 71 (defining conversion to require that the act be done without lawful justification). This is insufficient. *See id*. ("[T]he party resisting summary judgment must do more than rest on mere averments."). Moreover, Rachuy did not challenge the theft or conversion of items 47-82 in his complaint. We therefore deem his argument regarding those items waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court generally will not consider matters not argued to and considered by the district court). In sum, the district court did not err by granting summary judgment for Officer Pauly.

Mark Rubin

Rachuy's amended complaint alleges that Mark Rubin, the St. Louis County Attorney, aided Officer Pauly in stealing Rachuy's property and improperly sold his seized property. It also alludes to a conspiracy related to Rubin's decision to charge Rachuy with various crimes. On appeal, Rachuy does not pursue the last claim and only passingly refers to Rubin's involvement in giving Officer Pauly legal advice. In his reply

brief, Rachuy argues that the allegations in his amended complaint "are that [Rubin] did conspire with [Officer] Pauly to steal his lumber from Woodruff Millwork, and advised [Officer] Pauly how to steal Rachuy's property from the State of Wisconsin." He argues that there is no evidence that Rubin did not provide this legal advice.

Rachuy's general assertions are insufficient to create a genuine issue of material fact. *See id*. There is simply no evidence in the record to support the allegation that Rubin interfered with Rachuy's property interest in any of the items in question.

City of Duluth

Rachuy's assignments of error with respect to the district court's decision to grant summary judgment in favor of the city are identical to those against Officer Pauly. For the reasons articulated above, we reject these arguments.

II.

Rachuy argues that the district court erred when it denied his petition for the return of property under Minn. Stat. § 626.04. Section 626.04 provides a procedure for an individual whose property has been seized to file a petition for the return of the property. The district court may not order the property returned if it finds that "(1) the property is being held in good faith as potential evidence in any matter, charged or uncharged; (2) the property may be subject to forfeiture proceedings; (3) the property is contraband or may contain contraband; or (4) the property is subject to other lawful retention." Minn. Stat. § 626.04.

Rachuy argues that the district court did not have subject matter jurisdiction over the items seized in Wisconsin by the Superior Police Department or the Douglas County

Sheriff. A subject-matter-jurisdiction challenge can be raised at any time. *See Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995) ("Because subject matter jurisdiction goes to the authority of the court to hear a particular class of actions, lack of subject matter jurisdiction may be raised at any time, including for the first time on appeal."), *review denied* (Minn. May 31, 1995). Rachuy argues that the district court lacks jurisdiction by virtue of Minn. Stat. § 626.04. He also argues that the district court did not have jurisdiction because the Wisconsin Circuit Court ordered the return of items 1-82. For the reasons that follow, we are not persuaded.

Minn. Stat. § 626.04 states that "the person whose property has been seized may file a petition for the return of the property in the district court in the district in which the property was seized." Rachuy argues that this provision divests the district court of jurisdiction over items seized in Wisconsin. The city argues that this interpretation would create an absurd result, as a Wisconsin court would not have jurisdiction to hear a claim under Minnesota law or to order the City of Duluth to turn over property in its possession.

Because the plain language of the statute is subject to two reasonable interpretations, we may look beyond the plain language to ascertain the intent of the legislature. *See Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) ("Our goal when interpreting statutory provisions is to ascertain and effectuate the intention of the legislature. If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language. If a statute is ambiguous, we apply other cannons of construction to discern the legislature's intent.") (quotation and citations

omitted). In doing so, "the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; [and] (2) the legislature intends the entire statute to be effective and certain." Minn. Stat. § 645.17 (2012).

The city proposes that the statutory language should be read to mean "the district with jurisdiction and venue over the agency in possession of the property." The city notes that Rachuy's interpretation "would lead to the absurd result that any agency having custody of the property could deprive the court of jurisdiction by simply removing the property to a different jurisdiction." Ironically, this is exactly the motivation Rachuy ascribes to Officer Pauly and the city in removing the items from Wisconsin to Minnesota in the first place.

If Rachuy's interpretation were correct, he would be without legal remedy to recover property seized in Wisconsin and transferred to Minnesota for related investigations. He does not challenge the process by which police in one state take custody of items seized in a neighboring state except to make bare assertions that the parties in this instance acted improperly. His interpretation of Minn. Stat. § 626.04 is absurd and contrary to the clear intention of the legislature to provide a means whereby an individual can retrieve his or her property.

Rachuy also argues that the district court was without authority to decide the disposition of the items seized in Wisconsin because the Wisconsin Circuit Court ordered the return of his property. Although the record is not entirely clear as to when the various items were transferred from the custody of either the Superior Police Department or

Douglas County, it is clear that the Wisconsin Circuit Court only ordered the return of items in the possession of the Superior Police or Douglas County and that the Wisconsin court was aware that certain items had been transferred to the custody of the FBI or Minnesota authorities.

III.

Rachuy argues that the district court erred when it concluded that the September 2, 2010 search did not violate his Fourth Amendment rights. He requests that the evidence seized be returned and suppressed. Minn. Stat. § 626.21 provides that

> [a] person aggrieved by an unlawful search and seizure may move the district court . . . for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant, or (3) the warrant is insufficient on its face, or (4) the property seized is not that described in the warrant, or (5) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (6) the warrant was illegally executed, or (7) the warrant was improvidently issued.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Warrantless searches are per se unreasonable unless an exception applies." *State v. Bauman*, 586 N.W.2d 416, 419 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). "An individual may invoke the protection of the Fourth Amendment by showing that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable . . . ." *In re Welfare of B.R.K.*, 658 N.W.2d 565, 571 (Minn. 2003) (quotation omitted).

Rachuy asserts that his property was illegally seized because Officer Pauly entered the Durango to record the VIN and used this information in her affidavit in support of the search warrant. The district court concluded that there was no basis for Rachuy's claim that the search of the Durango was illegal. The district court found that there was no evidence that the VIN was hidden from plain sight. And it concluded that even if Officer Pauly opened the door of the vehicle, this was not a search because an individual does not have a reasonable expectation of privacy in the area of their vehicle's door frame. *See New York v. Class*, 475 U.S. 106, 118, 106 S. Ct. 960, 968 (1986) ("The VIN, which was the clear initial objective of the officer, is by law present in one of two locations-either inside the doorjamb, or atop the dashboard and thus ordinarily in plain view of someone outside the automobile. Neither of those locations is subject to a reasonable expectation of privacy.").

The record is unclear whether Officer Pauly opened the door of the vehicle to record the VIN or where in the vehicle the VIN was located. Officer Pauly's report states that she "took down the vehicle identification information from the sticker on the driver[']s door." The warrant application states that Officer Pauly "noted [that] paperwork in the name of Gale Rachuy was in the center console." Rachuy asserts that Officer Pauly must have "open[ed] the door, [got] into the driver's seat and open[ed] the center console of the Durango to enable her to see documents with Rachuy's name."

In *Class*, the United States Supreme Court held that an individual has no reasonable expectation of privacy in a VIN. 475 U.S. at 114, 106 S. Ct. at 966. The Supreme Court noted that the VIN "plays an important part in the pervasive regulation by

the government of the automobile" and therefore a "motorist must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle." *Id.* at 113, 106 S. Ct. at 965. The Supreme Court concluded that "it makes no difference that the papers in respondent's car obscured the VIN from the plain view of the officer" because "efforts to restrict access to an area do not generate a reasonable expectation of privacy where none would otherwise exist." *Id.* at 114, 106 S. Ct. at 966.

Rachuy relies on *State v. Robb*, 605 N.W.2d 96 (Minn. 2000) for the proposition that "one cannot enter the cab compartment of a vehicle without a warrant or the Fourth Amendment is violated." He argues that the facts of *Robb* are more applicable than *Class*, "especially where the report of [Officer] Pauly is clearly different from her search warrant affidavit and those facts were in[]fact withheld from her search warrant affidavit and illuminated the fact[] that [Officer] Pauly knew of the FBI and Superior Police having already searched the said vehicle *without* a warrant."

But *Robb* held that none of the exceptions to the rule barring warrantless searches applied in that instance, not that a warrantless search of a cab compartment is illegal in all instances. 605 N.W.2d at 104. The only difference between Officer Pauly's affidavit and her report is that the affidavit mentioned the documents in the center console and the report mentioned recording the VIN from the door. Even if she entered the vehicle to record the VIN, this slight intrusion does not violate the Fourth Amendment because Rachuy does not possess a reasonable expectation of privacy in a VIN. *See Class*, 475 U.S. at 114, 106 S. Ct. at 966.

Affirmed.