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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0828**

Victor G. Gardner, et al.,  
Respondents,

vs.

Gregory P. Lambert, et al.,  
Appellants.

**Filed May 12, 2009  
Reversed and remanded  
Poritsky, Judge\***

Winona County District Court  
File No. 85-CV-08-14

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Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and  
Poritsky, Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**PORITSKY**, Judge

The district court awarded various items of appellants' personal property to respondents after appellants were evicted from respondents' real property. Appellants challenge the award, arguing that because respondents failed to meet the requirements of Minn. Stat. § 504B.365 (2008), the district court's order exceeded the court's authority. We reverse and remand.

### FACTS

Through a contract for deed, appellants Gregory Lambert and Carol Burditt were in possession of real property owned by respondents Victor and Jane Gardner. Appellants made payments on the contract starting in April 2001. On January 30, 2007, Lambert filed for bankruptcy. Appellants made payments on the contract through April 2007, but ceased making payments thereafter. In October 2007, respondents served a notice of cancellation of the contract. After appellants waived their right to mediation, the redemption period ended on December 17, 2007. In a letter dated December 21, respondents offered appellants the opportunity to lease the premises for three months for \$1,000 per month, plus paying the arrearage on the contract, which amounted to more than \$11,000. The letter also informed appellants that respondents would move forward with eviction if the proposal was not accepted.

Appellants did not accept the proposal, and a hearing on the Gardners' eviction complaint was held on January 15, 2008. Appellants did not attend the hearing. The district court ordered that possession of the property be restored to respondents and that

respondents be entitled to seize and sell any of the personal property that appellants had left behind, applying the proceeds of the sale to the amount owed to them under the contract for deed. The district court issued a writ of recovery of premises and an order to vacate.

Appellants vacated the premises on January 17, 2008, leaving behind a number of items of personal property, primarily related to their farming activities. In early 2008, Lambert's bankruptcy trustee abandoned the estate's interest in the property in question. Appellants agreed, through their attorney, to remove all personal property from the premises by March 1, 2008, but failed to do so. On March 13, respondents served appellants' attorney (who was not licensed in Minnesota) with notice of their motion requesting, among other things, permission to remove the remaining personal property and to be given ownership of the property as compensation for the removal costs. The district court granted the motion, but permitted appellants seven days to file a motion for reconsideration, which they did, after retaining a Minnesota-licensed attorney.

A hearing on appellants' motion for reconsideration was held on April 3, 2008, and appellants argued that service was improper, they had not had a reasonable opportunity to remove the property because of respondents' actions and weather conditions, and the property had significant monetary value. Respondents countered that appellants had ample opportunity to remove the property, that the delay resulted in an unnecessary delay in the sale of the real property, and that the personal property in question had only salvage value. Because the hearing was on a motion, neither party offered any evidence. With a few exceptions, the district court reaffirmed its earlier

order, including finding that the personal property was “of salvage value only” and that appellants had a reasonable opportunity to remove the personal property. The district court made an additional finding that appellants “abandoned” the property and awarded title of the property to respondents. The court made an exception for a truck and trailer, which appellants had one week to remove. This appeal follows.

### **D E C I S I O N**

“An appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.” *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001). Questions concerning the authority of district courts are legal issues subject to de novo review. *Simmons v. Simmons*, 486 N.W.2d 788, 789 (Minn. App. 1992). “On appeal, a trial court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous. . . . If there is reasonable evidence to support the trial court’s findings of fact, a reviewing court should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). The application of the law to undisputed facts is subject to de novo review. *Boubelik v. Liberty State Bank*, 553 N.W.2d 393, 402 (Minn. 1996).

Personal property left behind by a vendee after eviction is governed by Minn. Stat. § 504B.365, subd. 3, which grants the vendor two options: (1) remove and store the property elsewhere, obtaining a lien on the property for reasonable costs and expenses incurred, or (2) store the property on the premises and pursue a claim against the vendee

for costs and expenses.<sup>1</sup> A reading of the statutory language points to the conclusion that these are the only remedies available to the vendor. Minn. Stat. § 504B.365, subd. 3(a), reads in part: “If the [vendee’s] personal property is to be stored in a place other than the premises . . . .” And Minn. Stat. § 504B.365, subd. 5(d), reads: “If the [vendees’] personal property is to be stored on the premises . . . .” These two subdivisions cover every case: The property will be stored either on the premises or off the premises. From this language, we conclude that the two options set out in section 504B.365 are the exclusive remedies available to the vendor who chooses to proceed with an eviction action under chapter 504B. *See Conseco Loan Fin. Co. v. Boswell*, 687 N.W.2d 646, 650 (Minn. App. 2004) (“The plain language of Minn. Stat. §504.365, subd. 3, and its related section, Minn. Stat § 504.271, subd. 1, furnishes two distinct remedies for the landlord if the tenant abandons personal property after an eviction.”).

In the case of property that is stored on the premises, which is what occurred here, the statute requires, among other things, that the vendor prepare an inventory of the vendee’s property. Specifically, the statute states that “[the vendor] must prepare an inventory and mail a copy of the inventory to the [vendee’s] last known address or, if the [vendee] has provided a different address, to the address provided. The inventory must be prepared, signed, and dated in the presence of the officer [who served the writ of

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<sup>1</sup> In eviction cases following the cancellation of a contract for deed, as happened here, the plaintiff will be the vendor and the defendant will be the vendee. Consequently, in this opinion, we use the words “vendor” and “vendee,” even though Section 504B.365 refers to “plaintiffs” and “defendants.”

eviction].” Minn. Stat. § 504B.365, subd. 3(d). The statute also requires the vendor to follow various procedural safeguards when making the inventory. *Id.* Because there is no evidence in the record that respondents prepared the required inventory, nor do respondents argue that they did so, we conclude that the district court’s order did not comply with the provisions of the exclusive remedy provided by statute.

But respondents argue that because the district court found that appellants had abandoned the personal property, a different statute controls. Specifically, they contend that under Minn. Stat. § 345.75 (2008), the district court properly awarded title of the property to them. This argument is not persuasive. Section 345.75 governs “abandoned tangible personal property *that is not subject to any other provision of statute . . .*” (Emphasis added). Because section 504B.365 specifically governs the removal and storage of personal property after eviction, precisely the circumstances here, section 345.75 does not apply.

Respondents also argue that appellants waived their statutory rights by agreeing to remove the personal property by March 1, 2008. But this argument fails because Minn. Stat. § 504B.365, subd. 5, states: “This section may not be waived or modified by lease or other agreement.”

Because section 504B.365, subdivision 3, provides the exclusive remedies available to vendors after eviction and because respondents failed to comply with the requirements of the statute, we conclude that the district court’s order exceeded the court’s authority, and we reverse and remand. We are aware that, at this late date, it may well be impossible for respondents to comply with the requirements of section 504B.365.

Accordingly, we remand for a hearing to determine the reasonable value, as of March 1, 2008, of those items of appellants' personal property that (1) were left on the premises and (2) appellants have been unable to recover by the exercise of reasonable diligence.

**Reversed and remanded.**

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**Judge Bertrand Poritsky**