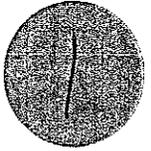


State of Minnesota
In Court of Appeals



2007 Pontiac G6, and
City of Mankato,

Appellant,

vs.

Crystal Rose Van Note,

Respondent.

APPELLANT'S LETTER BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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January 29, 2010,

Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King
St. Paul, MN 55155-6102

Re: Crystal Van Note vs. 2007 Pontiac G6: VIN: 1G2ZH58N574139187
Blue Earth County District Court File No: 07-CV-09-3131
Minnesota Court of Appeals Court File No.: A09-2311

Dear Honorable Judges:

The Appellant, State of Minnesota, requests this Court to review the decision of the District Court of the Fifth Judicial District, in the matter stated above.

The issues to be reviewed are:

1. **Whether the Respondent timely filed her petition for Judicial Determination.**
2. **Did the District Court err when it found that Notice of the Seizure was not Properly Served on the Respondent?**
3. **Is a police officer required to prove that the recipient of substituted service at Respondent' place of abode, resided there?**

The facts of the case are:

On May 16, 2009, Jason Messner was arrested for driving a 2007 Pontiac G6 while he was impaired. That vehicle was owned by Mr. Messner's then-girlfriend, Crystal Van Note, the Respondent. Because he had a prior DWI conviction and his evidentiary breath test was .21, Mr. Messner was charged with Driving While Impaired, second degree. Following Mr. Messner's arrest for the designated offense, the 2007 Pontiac was seized and held for forfeiture.

On August 10, 2009, Mr. Messner pled guilty to the designated offense. As no petition for judicial determination had been filed against the 2007 Pontiac as of that date, the Appellant

authorized the 2007 Pontiac's lien holder to collect the vehicle. On September 14, 2009, the Respondent filed for judicial determination. (A.1)¹ The Appellant motioned for summary judgment for lack of jurisdiction and the motion was denied at the scheduling conference on October 26, 2009. (A.4) The Honorable Norbert P. Smith advised Appellant's counsel that the Court wanted proof of service of the notice on Respondent and scheduled the matter for a court trial.

The Appellant filed its Motion for Reconsideration of denial of Summary Judgment on November 6, 2009.(A.12) In its memorandum of law, the Appellant provided a copy of the Notice of Seizure sent to the Respondent by certified mail (A.17); a copy of the certified letter returned from the U.S. Postal Service after three failed attempts to serve the letter (A.18); and the police officer's reports regarding his personal service on the Appellant by leaving it with her roommate at her residence. (A.20).

At the court trial on November 25, 2009, the District Court, after acknowledging that the Respondent's petition for judicial determination was "extraordinarily delinquent", denied the Appellant's renewed Motion for dismissal for lack of jurisdiction. (T-13)². The District Court allowed the court trial to proceed and took testimony from the Respondent. The Appellant called Officer Baukol, who testified that after receiving the certified letter back, after the failed service by the U.S. Postal Service, he personally delivered it to the Respondent's residence and left it with her roommate.(T.15-16). The Respondent did not cross examine the officer and the District Court did not ask any further questions of the officer.

On December 8, 2010, the Honorable Norbert P. Smith filed his Findings, Conclusions and Order, ordering that the vehicle be returned to the Respondent.(A.26) In its Order, the District Court found that after the certified letter to the Respondent was returned, the officer was required to personally serve the letter on the Respondent. The Court further found that although the burden of proving improper seizure rests with the Respondent, the Appellant did not prove that the Respondent's roommate was, in fact, her roommate. (A. 25-26). Therefore, the District Court ruled that the Respondent's filing was timely. Id. Finally, the District Court stated that the Respondent is "exceptionally deserving of having her vehicle returned to her" because she was "a single mother working hard to keep herself and her children housed and fed." (A. 24).

¹ "A" refers to the Appendix of this letter brief.

² "T" refers to the transcript of the November 25, 2009 Court Trial.

Argument 1: The Respondent's petition for judicial determination was untimely when it was filed 111 days after she was sent notice of seizure by certified mail.

The District Court erred when it found that the Respondent had timely filed her petition for judicial review.

Minnesota Statute §169A.63, subd.8(c)(3) is very clear on the process required for a claimant to petition a court for judicial determination of the seizure and forfeiture of a motor vehicle. It states that the process prescribed in Minn.Stat. §169A.63, subd.8, must be followed "exactly" or the right to a judicial determination is lost. Minn. Stat. §169A.63, subd.8 requires filing after service on both the prosecutor and law enforcement within 30 days of receiving the notice of seizure. The respondent filed her petition 111 days after the notice was sent to her by certified mail. (See Appellant's argument in A. 7-9 and 15-16). At trial, the Respondent admitted that she knew she had 30 days in which to file for review. (T.6). She also admitted that she received the seizure notice in the middle of June (2009) and had attempted to timely respond. (T. 9). However, she found that the filing fees were too costly and decided to try to save money for the filing fees first. Id. Finally, she admitted that she filed the petition 95 days after she finally received the seizure notice.

In her defense, the respondent also testified that she was told by Deputy Miller that she had 90 days in which to file, instead of 30. Even if this statement was accurate and was a defense to her untimely filing, a police report by Deputy Miller was filed with the District Court, which states that the deputy advised the Respondent to read the back of the seizure notice for the filing requirements.(A.28-29)

The court erred when it overlooked this evidence and found that the Respondent timely filed her petition for judicial review.

Argument 2: Notice of seizure by certified mail is sufficient and the officer was not required to personally serve undelivered certified mail.

The District Court also erred when it ruled that the officer was required to personally serve the Respondent after certified mail service failed. (A.26) The District Court stated in its Conclusions that, "In this case, the certified letter was returned, not delivered despite three attempts. Pursuant to the statute [Minn.Stat §169A.63, Subd.8(d)] the government must then follow the rules of civil practice for service of process." The District Court misreads the forfeiture statute. For vehicles that are required to be registered under Minn.Stat. §168, " Notice

mailed by certified mail to the address shown in Department of Public Safety records is sufficient notice to the registered owner of the vehicle” Minn.Stat. §169A.63, subd.8(b)(2009). On May 16, 2009, Officer Baukol sent the notice of seizure by certified mail to the address listed in Department of Public Safety records, that was and still is, the Respondent’s residence. (A.18). The subject vehicle in this matter is required to be registered under Minn.Stat. §168, therefore, notice by certified mail was sufficient and the officer was not required to follow up with personal service.

The District Court erred when it ruled that the officer was required to serve the Respondent personally.

Argument 3: The Appellant was not required to prove that service was on a person residing in the Respondent’s place of residence.

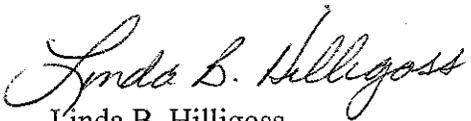
Although Argument 2, above, makes moot the fact that the officer also made personal service on the Respondent, the District Court erroneously ruled that the Respondent timely filed her petition because the officer did not prove the person he served the notice on, resided at that address. The Respondent did not challenge service of the notice and acknowledged that she was served.

Under the rules of civil procedure, service of process can be effected on an individual “by delivering a copy to him personally or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein.” Minn.R.Civ.P. 4.03(a). However, rules governing service are liberally construed when the intended recipient had actual notice of the lawsuit. *Larson v. Hendrickson*, 394 N.W.2d 524, 526 (Minn.App.1986). The Respondent stated at trial, “I got served sometime in the middle of June”.(T. 9) In that context, Respondent’s actual notice of the vehicle seizure contributed to the finding that service was effective under Rule 4.03. *Larson*. This “actual notice” exception has been recognized only in cases involving substitute service at defendant’s residence. *See, e.g., Minnesota Mining & Manufacturing Co. v. Kirkevold*, 87 F.R.D. 317 (D.Minn.1980). “It is the service of process and not the proof thereof that confers jurisdiction upon a court. “Thus it has often happened that proof of service may be defective or even lacking, but if the fact of service is established jurisdiction cannot be questioned.” *Goodman v. Ancient Order of United Workmen*, 211 Minn. 181, 183-84, 300 N.W. 624, 625 (1941).

The District Court erred when it found the Respondent had not been served because the officer testified that he left the notice with her roommate, but did not prove that the woman resided there.

The District Court erred when it found that the Respondent had timely filed her petition; that the Respondent had not been properly served; and that the officer, without challenge to the service, was required to prove that the woman accepting substituted service at the Respondent's address, resided there. Appellant, the State of Minnesota respectfully requests that the District Court's Order be reversed.

Sincerely,



Linda B. Hilligoss
Assistant Mankato City Attorney

Enclosure

Cc: Ms. Crystal Van Note
Blue Earth County Clerk of District Court