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State of Minnesota  
In Court of Appeals

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2004 FORD CROWN VICTORIA VIN #2FAHP74WX4X158445,

*Appellant,*

vs.

SCOTT J. PETERSON,

*Respondent.*

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RESPONDENT'S BRIEF & APPENDIX

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RAMSEY COUNTY ATTORNEY'S  
OFFICE

Melinda S. Elledge (#26402)  
Asst. Ramsey County Attorney

John Edison  
Certified Student Attorney  
50 West Kellogg Boulevard  
Suite 560

St. Paul, Minnesota 55102

Phone: (651) 266-3112

Phone: (651) 266-3033

*Attorneys for Appellant*

McGARRY LAW OFFICE

Daniel L. McGarry (#341150)

1076 West County Road B

Suite 101

Roseville, Minnesota 55113

(651) 488-6788

THOMAS L. DONOHUE (#219083)

101 East Fifth Street

Suite 1800

St. Paul, Minnesota 55101

(651) 265-9506

*Attorneys for Respondent*

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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## STATEMENT OF THE ISSUES

1. WHETHER THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION TO AMEND A COMPLAINT UNDER THE MINNESOTA RULES OF CIVIL PROCEDURE WHEN THE CAPTION OF THE SUMMONS AND COMPLAINT CONTAINS A MISNOMER?

a. This issue was raised at District Court by Summary Judgment.

(Appellant's App. 22-40, and 41-53)

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~~b. District Court held that Summons and Complaint was timely served,~~

which invoked Minnesota Rules of Civil Procedure, and allowed

Respondent to amend Complaint to correct misnomer. (Appellant's

App. 15-21)

c. Apposite authority:

i. *Strange v. 1997 Jeep Cherokee*, 597 N.W. 355, 358 (Minn. Ct.

App. 1999)

ii. Minn. Stat. § 609.5314, subd. 3(a-b) (2009)

iii. Minn. R. Civ. P. § 3.01, § 8.06, §§ 15.01-.03, & § 81.01(c)

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iv. *Haugland v. Maplewood Lounge & Bottleshop, Inc.*, 666 N.W.2d

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v. *Hovelson v. U.S. Swim and Fitness, Inc.*, 450 N.W.2d 137 Minn.

Ct. App. 1990)

2. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT AWARDED SANCTIONS AFTER DETERMINING THAT THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION AND ALLOWING RESPONDENT TO AMEND HIS COMPLAINT?

a. The District Court never considered whether this action took on the characteristics of an *in personam* action. App. Br. 21-23. In fact, Appellant conceded the action was *in rem* at District Court. App. 42; App. 43; App. 48.

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b. This argument was never preserved for appeal.

c. Apposite authority:

i. Minn. Stat. § 609.5314, subd. 3(d) (2009)

ii. Minn. Stat. § 609.5314, subd. 5 (2009)

iii. *Thiele v. Stich*, 425 N.W.2d 580, 582-583 (Minn. 1988)

3. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY SANCTIONING A PARTY THAT IMPROPERLY REQUIRED PAYMENT OF STORAGE AND TOWING FEES TO THE REGISTERED OWNER AND SUBSEQUENTLY RELEASED THE VEHICLE TO THE LIEN HOLDER AFTER IMPROPERLY SECURING PAYMENT OF STORAGE AND TOWING FEES FROM THE LIEN HOLDER?

a. This issue was raised by the District Court by Summary Judgment. App. 36-40; App. Add. 13-14; App. Add. 20-21.

- b. The District Court held that the Appellant acted unreasonably when it decided to abandon forfeiture and gave Respondent two days in which to pay towing and storage fees that he did not owe. (App. Add. 20-21)
- c. Apposite authority:
- i. Minn. Stat. § 549.211, subd. 2
  - ii. Minn. Stat. § 609.5314, subd. 3(d)
  - iii. *Wolf Motor Company, Inc. v One 2000 Ford F-350, VIN IFTSX31F1YEC59488*, 658 N.W.2d 900, 903-904 (Minn. Ct. App. 2003).
  - iv. *Strange v. 1997 Jeep Cherokee*, 597 N.W. 355, 358 (Minn. Ct. App. 1999)
  - v. *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114 (Minn. 2001)

### STATEMENT OF THE CASE

This case arises from claims of the parties to a judicial determination of a forfeiture of a motor vehicle pursuant to Minn. Stat. § 609.5314 that was filed by Respondent, as a pro se party, on October 1, 2008 in the Second Judicial District. The Respondent timely filed and served Summons and Complaint and properly served the Ramsey County Attorney's Office as required by Minn. Stat. § 609.5314. But his Summons and Complaint contained a misnomer, to-wit: "Ramsey County Attorney Forfeiture Department" rather than "2004 Ford Crown Victoria VIN # 2FAHP74WX4X158445." The Ramsey County Attorney's Office subsequently declined to prosecute and notified the Roseville Police Department. Nearly five months after

filing the request for judicial determination of forfeiture, on February 24, 2009, Respondent was notified via a telephone call from Julie Griffin “the forfeiture coordinator” of the Roseville Police Department, reporting the County Attorney’s decision to decline to charge him with any crimes and that he could only retrieve his 2004 Ford Crown Victoria if he paid the tow and storage fees of approximately \$2,145.00 within two (2) days, otherwise his car would be turned over the lien holder, Ford Motor Credit. Mr. Peterson was unable to raise \$2,145.00 on such short notice. After the ~~Roseville Police Department secured payment of \$2,515.00 from the lien holder for the~~ cost of towing and storage, the vehicle was released to the lien holder, and the lien holder subsequently issued a Letter of Deficiency against Respondent.

On July 1, 2009 the Appellant moved for dismissal and summary judgment, pursuant to Rules 12 and 56 of the Minnesota Civil Rules of Procedure alleging the District Court lacked subject matter jurisdiction. The Respondent’s motions were to amend the Complaint; for summary judgment; and also for sanctions and attorney fees pursuant to Minn. Stat. § 549.211 and the District Court’s inherent judicial power. Appellant asserted during judicial hearings that the case was being handled in the “normal course.” Appellant also failed to articulate any prejudice due to the misnomer. The District Court granted all the Respondent’s Motions to Amend the Complaint, Motion for Summary Judgment, and Motion for Sanctions. Respondent was awarded \$2,932.50 in towing and storage. Respondent was also awarded attorney fees in the amount of \$3,480.00; transcript fees in the amount of \$60.00; and filing fees in the

amount \$650.00 for a total of \$4,550.00. The District Court denied Appellant's Motion to Dismiss, and Motion for Summary Judgment.

### STATEMENT OF THE FACTS

On September 19, 2008, Respondent was arrested by Roseville police officer Aaron Craven on suspicion of violation of Minnesota's controlled substance laws. (Resp. App. 1, Affidavit of Peterson, ¶ 2) Respondent's vehicle, a 2004 Ford Crown Victoria, was towed and Officer Craven served upon him a Notice of Seizure and Intent to Forfeit ~~Property for that vehicle. *Id.* at ¶ 3. The Notice contains the following discretionary~~

language:

**IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS  
PRESCRIBED IN MINNESOTA STATUTES, SECTION 609.5314  
SUBDIVISION 3, YOU MAY LOSE THE RIGHT TO A  
JUDICIAL DETERMINATION OF THIS FORFEITURE AND  
YOU LOSE ANY RIGHTS YOU MAY HAVE TO THE ABOVE  
DESCRIBED PROPERTY**

(Appellant's Add. 2) (Emphasis added).

On or around October 1, 2008, Respondent, as a pro se plaintiff, timely served Appellant the Summons and Complaint demanding judicial determination of the seizure and filed same together with his affidavit of service with the court. (Resp. App. 1, Affidavit of Peterson, ¶ 4; Appellant's Add. 3; Resp. App. 16, Register of Actions) That same day the court administrator issued and served the parties with a notice of judicial assignment. (Resp. App. 1, Affidavit of Peterson, ¶ 4; Resp. App. 16, Register of Actions) Soon after filing his demand for judicial determination of the seizure and forfeiture of his 2004 Ford Crown Victoria, Respondent spoke to Sara Lewis, a legal

assistant who handles forfeiture matters in the civil division of the Ramsey County attorney's office. (Resp. App. 1, Affidavit of Peterson, ¶ 6; Resp. App. 18-19, Admissions #8-14) Ms. Lewis informed Respondent that an attorney had not yet been assigned to his case and that his questions about the case had to wait until that attorney was assigned. *Id.* On January 27, 2009 the Court Administrator sent the parties notice of a hearing for April 7, 2009. *Id.* at ¶ 5; Resp. App. 16, Register of Actions.

On February 24, 2009, Respondent was informed via a telephone call from Julie Griffin, the Roseville Police Department "forfeiture coordinator" who informed him that the Ramsey County Attorney's Office declined to charge him with any crimes. (Resp. App. 1, Affidavit of Peterson, ¶ 7; Resp. App. 18-19, Admissions #8-14) Ms. Griffin also informed Respondent that he could not retrieve his 2004 Ford Crown Victoria unless he paid the tow and storage fees of approximately \$2,145.00 within two (2) days. *Id.* Otherwise, Respondent's vehicle would be turned over the lien holder, Ford Motor Credit. (Resp. App. Affidavit of Peterson, ¶ 7; Appellant's Add. 7 ¶¶ 2-5) Respondent was unable to raise \$2,145.00 on such short notice. (Resp. App. 2, Affidavit of Peterson, ¶ 9) The vehicle was released to the lien holder on February 26, 2009, only after securing payment from the lien holder for the tow and storage fees. (Resp. App. 23, Roseville Release of Property form dated 2/27/2009; Resp. App. 24, Letter of Deficiency; App. Add. 7 ¶ 5) The lien holder subsequently issued Mr. Peterson a deficiency notice for the vehicle that included the tow and storage costs of \$2,932.50 to retrieve the vehicle. (Resp. App. 2, Affidavit of Peterson, ¶ 10; Resp. App. 24)

On April 7, 2009 the Respondent, still appearing pro se, and assistant Ramsey County attorney Karen Kugler appeared before The Hon. Dale B. Lindman where discussions were had on the record regarding the respective positions of the parties on the case. (Resp. App. 2, Affidavit of Peterson, at ¶ 11; Resp. App. 3-15, April 2009 Transcript). At that time, counsel for the Appellant stated that the case was being handled “[i]n the ordinary course, this case has been handled in the ordinary course.” (Resp. App. 8, Transcript at page 5, line 4-6) Subsequently the plaintiff retained counsel. ~~(Resp. App. 2, Affidavit of Peterson, at ¶ 11)~~ On July 17, 2009 the court issued a scheduling order. (Resp. App. 16) The parties filed their respective motions.

#### **SUMMARY OF THE ARGUMENT**

The Court acquired jurisdiction upon service of the Summons and Complaint and Respondent’s failure to precisely follow Minn. Stat. § 609.5314 subd. 3(b) does not relieve the court of jurisdiction. It is undisputed that Appellant was properly and timely served.

The District Court allowed Respondent to amend the caption of a Summons and Complaint pursuant to Rules 8.06, 15.01, and 15.03 of the Minnesota Rules of Civil Procedure to correct a misnomer. Minnesota is a notice pleading state and Appellant had notice from the time of service of the theory upon which Respondent’s claim for relief was based.

The Appellant’s new argument that it was prejudiced by the misnomer was not fully articulated or defined to the District Court. In fact, Appellant affirmatively asserted during the April 7, 2009 court hearing that the case was being handled in the ordinary

course. (Resp. App. 8, Transcript, line 2-6) Appellant also failed to articulate any prejudice during the October 1, 2010 hearing despite being questioned by Hon. Dale B. Lindman. (October Transcript at page 8, line 18-25; page 9, line 1 - 13; page 10, line 18-25; page 11, line 1 - 11; page 13, line 20; Page 14, line 8) Appellant did assert that it was prejudiced if the Court allowed Respondent to Amend the Complaint in the September 22, 2009 brief; however, such prejudice was not clearly defined and is clearly different from the prejudice being asserted in this Appeal. (Appellant's App. 48-50). The Court ~~of Appeals may not consider matters outside the record. This includes the alleged~~ prejudice that Appellant now asserts that this matter was not afforded proper treatment as an *in rem* proceeding such that the Ramsey County Attorney's Office was held solely responsible for any money judgments.

Appellant has not addressed the fact that it repeatedly referred to this matter as an *in rem* action throughout its memorandums to the District Court. (Appellant's App. 42; App. 43; App. 48) Further, Appellant has provided no authoritative support for its position that sanctions were awarded solely to the Ramsey County Attorney's Office, and never made this argument in District Court.

The District Court exercised its authority in sanctioning Appellant for acting unreasonably when it decided to abandon forfeiture and then gave Respondent two days in which to raise and pay towing and storage fees that he did not owe.

## ARGUMENT

### I. THIS MATTER BECAME SUBJECT TO THE COURT'S JURISDICTION WHEN THE COMPLAINT WAS TIMELY AND PROPERLY SERVED UPON THE CORRECT PARTY.

Standard of Review: Subject matter jurisdiction is “a court’s power to hear and determine cases,” and is reviewed de novo. *Real Estate Equity Strategies, LLC. v. Jones*, 720 N.W.2d 352, 355 (Minn. Ct. App. 2006)(citations omitted). “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) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

Appellant asserts that the District Court lacked jurisdiction because Respondent captioned the Defendant in the Summons and Complaint as “Ramsey County Attorney Forfeiture Department” rather than “2004 Ford Crown Victoria, VIN #2FAHP74WX4X158445.” Defendant bases its argument that the misnomer of the Appellant in the caption of the complaint violates the statutory requirements of Minn. Stat. § 609.5314, deprives the court of subject matter jurisdiction to consider the case and that the Rules of Civil Procedure do not apply to the case. The cases Appellant cites in support of its position all concern late service and the statutory requirements for the complaint. Minn. Stat. 609.5314, Subd. 3(b) states the following:

Complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff’s interest in the property seized. Notwithstanding any law to the contrary,

an action for the return of property seized under this section **may** not be maintained by or on behalf of any person who has been served with a proper notice of seizure and forfeiture unless the person has complied with this subdivision. Minn. Stat. 609.5314, Subd. 3(b). (Emphasis added).

There is no question that Appellant was properly and timely served with the Summons and Complaint as required by Minn. Stat. § 609.5314, and while the caption on the Complaint was less than perfect in form, it indisputably contained all the information in its form to give the Notice of his challenge to the forfeiture mandated in the statute.

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**I.A. THE PLEADING REQUIREMENTS.**

Appellant cites *Bolanos v. 1992 Acura*, No.A05-172, 2005 WL 2208093, *Sing v. 1997 Cadillac*, 2006 WL 2474071 (Minn. Ct. App. 2006), *Garde v. One 1992 Ford Explorer XLT*, 662 N.W.2d 165 (Minn. Ct. App. 2003) and *Qualley v. Commissioner of Public Safety*, 349 N.W.2d 305, 309 (Minn. Ct. App. 1984), which all involve jurisdictional claims stemming from untimely service. Based upon these and many other cases, it is clear that Minnesota courts have consistently ruled that service must be timely and that the matter is strictly construed against the petitioner when service is not timely. The requirement of timely service is consistent with the Minnesota Rules of Civil Procedure requirement that “a civil action is commenced against each defendant (a) when the summons is served upon that defendant.” Minn. R. Civ. P. § 3.01(a). However, the issue of timely service is not an issue in this case.

While *Sing* is apparently cited by the Appellant for an issue unrelated to this case (timely service), it does reference the main issue in this case, which is whether this Court has jurisdiction over this action under Minn. Stat. § 609.5314. The service of a complaint

in a civil action confers jurisdiction on the district court. *Sing* at 1 (citing *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 358 (Minn. Ct. App. 1999)<sup>1</sup>; see Minn. R. Civ. P. 3.01 (providing that service of summons and complaint commences civil action)). The District Court has subject matter jurisdiction over a matter that is properly served with process upon the correct party under the Minnesota Rules of Civil Procedure when the caption of the summons and complaint contains a misnomer. *Sing* at 1 (Appellant’s App. 29-33)

**I.B. THE RULES OF CIVIL PROCEDURE WERE IMPLICATED  
BECAUSE THE COURT HAD SUBJECT MATTER JURISDICTION.**

Minn. Stat. § 609.5314, Subd. 3 (a) provides that “[t]he forfeiture proceedings are governed by the Minnesota Rules of Civil Procedure.” Minn. Stat. § 609.5314, Subd. 3 (a). Furthermore, Minn. R. Civ. P. § 81.01(c) provides that “. . . statutes inconsistent or in conflict with these rules *are superseded* insofar as they apply to pleading, practice, and procedure in the district court.” (emphasis added) Minn. R. Civ. P. § 81.01(c). Here, the District Court properly allowed a party to amend his complaint. Notice and service of the complaint were perfected, so the court had subject matter jurisdiction and the Minnesota Rules of Civil Procedure apply to pleading, practice, and procedure in the district court. Hence, the District Court properly allowed a party to amend his complaint.

The District Court applied Rules 8.06, 15.01 and 15.03 to allow Respondent to amend his complaint. (Appellant’s Add. 17-18) Rules 15.01 and 15.03 of the Minnesota Rules of Civil Procedure provide, in pertinent part, that

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<sup>1</sup> *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 358 (Minn. Ct. App. 1999) involves subject matter jurisdiction and is discussed more in Section III.

". . . a party may amend a pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires (MRCP 15.01)." and "whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." (MRCP 15.03) (Emphasis supplied).

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The district court held that "[m]any cases support the proposition that an error in the caption does not remove jurisdiction from the court where the party has been timely served with the Summons and Complaint." (App. Add. 18)(sic) The District Court cited *Haugland v. Maplewood Lounge & Bottleshop, Inc.*, 666 N.W.2d 689 (Minn. 2003); and *Hovelson v. U.S. Swim & Fitness, Inc.*, 450 N.W.2d 137, 141 (Minn. Ct. App. 1990). In *Hovelson*, this court upheld a district court's order allowing a party to amend a complaint where the Defendant was named "U.S. Swim and Fitness, Inc." rather than "Scandinavian U.S. Swim & Fitness, Inc." *Hovelson*, 450 N.W.2d at 141. This court stated that "[i]n the case of a misnomer, if service of summons and complaint results in an intended defendant being fully informed of the action, the court has acquired jurisdiction over that misnamed defendant." *Id.* at 143.

Minn. R. Civ. P. § 8.06 provides that Courts must construe pleadings in a manner that promotes "substantial justice". *Basich v. Board of Pensions of the Evangelical*

*Lutheran Church in America*, 493 N.W.2d 293, 295 (Minn. Ct. App. 1992). Courts should review pleadings as a whole, rather focusing on a “detached sentence or paragraph.” *Id.* (citing omitted). The pleading should be reviewed liberally in favor of the pleader and judged based upon its substance and not form. *Id.* The primary purpose of the pleading is to “give fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader’s theory upon which his claim for relief is based.” *Id.*

~~Similarly, a misnomer (misnaming the next of kin on the caption) on the original~~ complaint of a case arising from the Minnesota’s Civil Damages Act, (The Act), Minn. Stat. § 340A.801 (2002), which also contains mandatory, strictly construed statutory language requiring identification of the proper plaintiff, did not deprive the court of subject matter jurisdiction to allow amendment of the original complaint. *Haugland*, 666 N.W.2d at 693. The defendants brought a motion for failure to state a claim after the statute of limitations period expired asserting that the plaintiff did not bring the action in the name of the injured party, which the statute required. *Id.* at 691. The Act provided the following mandatory language:

A spouse, child, parent, guardian, or employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, ***has a right of action in the person’s own name*** for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. All damages recovered by a minor under this section must be paid either to the minor or to the minor’s parent, guardian, or next friend as the court directs. (emphasis added)

*Minn. Stat.* 340A.801 (2002)

The original complaint was brought in the name of Haugland, as trustee for the next of kin of Robert John Donovan Sr. *Haugland* at 692. The Defendant in *Haugland* argued that there was no valid complaint to amend because the original complaint did not follow the mandatory language of the statute by naming a party as plaintiff who could bring a civil damages claim. *Id.* at 691. The Minnesota Supreme Court reviewed whether the complaint itself set out a valid claim and whether Haugland, as trustee, had the capacity to bring a claim on behalf of the next of kin. *Id.* at 693. After review, the Court first ~~determined that the original complaint set out a valid claim because it put the defendant~~ on notice of the claim. *Id.* Then, the Court determined that Haugland, as trustee, had the capacity bring a claim. *Id.* at 696. Consequently, the Court held that Haugland's original complaint could be amended after the statute of limitations period had expired and that the amended complaint would relate back to the original complaint under Minn. R. Civ. P. § 15.03. In this case, like *Haugland*, the Appellant had notice of the claim, and despite the misnomer in the caption the Respondent was the correct party to bring the claim and the Appellant was the correct party pursuant to statute to be served the complaint. Consequently, the district court allowed the amended complaint to relate back to the original complaint.

Appellant argues that *Hovelson* and *Haugland* are distinguishable because they are *in personam* actions, and not *in rem* actions.<sup>2</sup> (Appellant's Br. 18). Appellant offers no authoritative legal support for this argument. An *in rem* action involves a "court's jurisdiction over property, it's *in rem* jurisdiction, is its power over a thing so that its

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<sup>2</sup> This argument was never made to District Court nor preserved for appeal.

judgment is valid as against the rights of every person in the thing.” *In re Trusteeship Created by City of Sheridan*, 593 N.W.2d 702, 705 (Minn. Ct. App. 1999). In this case, the original complaint requested the “[r]eturn of seized property and reimbursement of court filing fee, towing and impound costs under Minn. Stat. §549.211.” (Appellant’s Add. 3) Respondent’s request for return of the vehicle is an *in rem* action regardless of how the matter is captioned. Appellant’s argument rests upon a misunderstanding of Minnesota *in rem* law, which essentially is that an *in rem* action always needs to be captioned in the name of the property sought. However, Minnesota courts do not always require an *in rem* action to be captioned in the name of the item being sought. *See e.g. Wells Fargo Bank of Minnesota v. Stephens*, 2002 WL 31057105 at 3 (Minn. Ct. App. 2002) (upholding the district court’s order allowing Wells Fargo to amend its complaint because it had subject matter jurisdiction over the *in rem* proceeding)

Appellant also argues that the “practical impact of the Respondent’s failure to name the proper Defendant resulted in a gross misapplication of how costs and sanctions are intended to be apportioned in forfeiture cases involving Section 609.5314.”<sup>3</sup> (Appellant’s Br. 20, 22) Appellant, once again, offers no authoritative legal support for its argument, failed to articulate to the District Court any prejudice it would sustain from an amended complaint, and did not preserve this issue for appeal. Appellant’s brief also does not distinguish between arguments in the district court’s record when arguing for reversal. (*See. e.g.*, Appellant’s Br. 18, 20, 21 (relating to alleged prejudice due to apportionment of costs and sanctions); 21 - 23 (relating to alleged prejudice due to action

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<sup>3</sup> This argument was never made to District Court nor preserved for appeal.

taking on characteristics of a civil action rather than an *in rem* action)). Appellant affirmatively asserted during the April 7, 2009 court hearing that the case was being handled in the ordinary course. (Resp. App. 8, Transcript at page 5, line 2 -6).

Furthermore, Appellant failed to articulate any prejudice during the October 1, 2010 hearing despite being questioned by Hon. Dale B. Lindman. (October Transcript at page 8, line 18-25; page 9, line 1 - 13; page 10, line 18 – 25; page 11, line 1 – 11; page 13, line 20; page 14, line 8). Appellant claimed prejudice if the Court allowed Respondent to Amend the Complaint in the September 22, 2009 brief; however, such prejudice was not clearly defined. (Appellant's App. 48-50). It is well established that the Court of Appeals may not consider matters outside the record. *Thiele v. Stich*, 425 N.W.2d 580, 582-583 (Minn. 1988).

**II. THE APPELLANT NEVER ARTICULATED NOR DEFINED ANY PREJUDICE IT WOULD SUFFER IF THE DISTRICT COURT ALLOWED RESPONDENT TO AMEND THE SUMMONS AND COMPLAINT.**

Standard of Review: Respondent argued for an award of sanctions pursuant to Minn. Stat. § 549.211 and 609.5314, subd 3(d) and the court's inherent power. (Appellant's App. 36-40) Award of attorney's fees and costs rests within discretion of trial courts and will not be reversed on appeal absent abuse of discretion. *Radloff v. First American National Bank of Saint Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. Ct. App. 1991)(citings omitted). Standard of Review for the district court using its inherent power

to sanction is abuse of discretion. *Olson v. Babler*, 2006 WL 851798 at 7-8 (Minn. Ct. App.)(Resp. App. 34-35); *see also Wadja v. Kingsbury*, 652 N.W.2d 856, 860 (Minn. Ct. App. 2002)(holding abuse of discretion standard for district court using its inherent power to sanction for spoliation).

As stated above in Section I, Appellant never raised the apportionment argument in the proceedings of the District Court nor did it raise the argument that the proceedings took on the characteristics of an *in personam* action rather than an *in rem* action. These issues involve matters outside the record on appeal and are not to be considered as an alternative theory on appeal. *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Notwithstanding Respondent's objection to these arguments being raised for the first time on appeal, Respondent addresses some of the merits of these arguments in Section I, above. (Resp. Br. 16-17)

The District Court held that "after a review of the record, the Court finds nothing in the record to support Defendant's claim that it will be unfairly prejudiced if the Plaintiff is allowed to amend his Complaint." App. Add. 19. There is no evidence in the record to support Appellant's argument that the "Ramsey County Attorney's Office bore 100 percent responsibility for the costs and sanction awarded to Respondent." App. Br. 23. Appellant was the correct party to be served pursuant to Minn. Stat. 609.5314, and the statute does not require any other parties to be served with process (unlike Minn. Stat. § 169A.63, which requires service on multiple agencies, which include "the prosecuting authority having jurisdiction over the forfeiture and the appropriate agency that initiated the forfeiture.") Furthermore, the original complaint contested forfeiture "pursuant to

Minn. Stat. § 609.5314 subd. 3 that property seized was not used in the commission of a designated offense.” App. Add. 3. Despite the misnomer in the original complaint, the original complaint was brought under Minn. Stat. § 609.5314, and any sanctions would be paid pursuant to Minn. Stat. § 609.5314, subd. 3(d) and Minn. Stat. § 609.5315, subd. 5. Minn. Stat. § 609.5314, subd. 3(d) provides that “[i]n addition, the court may order sanctions under section 549.211 if the court orders payment of these costs, they must be paid from forfeited money or proceeds from the sale of forfeited property from the ~~appropriate law enforcement and prosecuting agencies in the same proportion as they~~ would be distributed under section 609.5315, subdivision 5”. Minn. Stat. § 609.5314, subd. 3(d)(emphasis added) The District Court’s order to amend the complaint resulted in the caption being changed to 2004 Ford Crown Victoria VIN: 2FAHP74WX4X158445, placed the parties in the same position they would have been in without the misnomer in the original complaint and was a change of form, not substance. “Any property seized under sections 609.531 to 609.5318 is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.” *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 359 (Minn. Ct. App. 1999). (citing Minn. Stat. § 609.531, subd. 5 (1996)). (Emphasis added). The Appellant was the appropriate agency and was subject the orders and decrees of the court. The Appellant acted unreasonably and the Respondent is entitled to sanctions to cover part of his losses incurred by the unlawful requirement to pay storage and towing charges within two business days or lose the car.

**III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY SANCTIONING A PARTY THAT IMPROPERLY REQUIRED PAYMENT OF STORAGE AND TOWING FEES TO THE REGISTERED OWNER AND SUBSEQUENTLY RELEASED THE VEHICLE TO THE LIEN HOLDER AFTER IMPROPERLY SECURING PAYMENT OF STORAGE AND TOWING FEES FROM THE LIEN HOLDER.**

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Standard of Review: Respondent argued for an award of sanctions pursuant to Minn. Stat. § 549.211 and 609.5314, subd 3(d) and the court’s inherent power. Award of attorneys’ fees and costs rests within discretion of trial courts and will not be reversed on appeal absent abuse of discretion. *Radloff v. First American National Bank of Saint Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. Ct. App. 1991)(citings omitted). Standard of Review for the district court using its inherent power to sanction is abuse of discretion. *Olson v. Babler*, 2006 WL 851798 at 7-8 (Minn. Ct. App.)(Resp. App. 34-35); *see also Wadja v. Kingsbury*, 652 N.W.2d 856, 860 (Minn. Ct. App. 2002)(holding abuse of discretion standard for district court using its inherent power to sanction for spoliation).

Appellant incorrectly states that the “[t]he applicable statute authorizes sanctions only when there is a judicial determination of forfeiture and the court orders return of the

seized property.”<sup>4</sup> (App. Br. 24) Minn. Stat. 609.5314, subd. 3(d) actually provides the following:

If a demand for judicial determination of an administrative forfeiture is filed under this subdivision and the court orders the return of the seized property, the court shall order that filing fees be reimbursed to the person who filed the demand. ***In addition, the court may order sanctions under section 549.211.*** If the court orders payment of these costs, they must be paid from forfeited money or proceeds from the sale of forfeited property from the appropriate law enforcement and prosecuting agencies in the same proportion as they would be distributed under section 609.5315, subdivision 5. (emphasis added)

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Minn. Stat. § 609.5314, subd. 3(d)

There is nothing in Minn. Stat. § 609.5314, Subd. 3(d) to preclude the District Court from ordering sanctions and towing and storage fees where a party acts unreasonably. In fact, that is precisely the reason the legislature addressed the matter of sanctions. The District Court has two methods to order sanctions: 1.) pursuant to Minn. Stat. 549.211; and 2.) the court’s inherent authority.<sup>5</sup>

Appellant cites *Strange v. 1997 Jeep Cherokee* (App. Br. 24-25), where the plaintiff’s son was served with a Notice of Seizure and Intent to Forfeit Property pursuant to Minn. Stat. §§ 609.531-.5318 in jail on June 2, 1998, and plaintiff (the vehicle owner) received a copy on June 4, 2008. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 358 (Minn. Ct. App. 1999). On June 15, 1998, the State abandoned its claim to forfeiture of

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<sup>4</sup> There is no citation to the District Court record where or when this was argued. Respondent asserts this was never argued at District Court nor preserved for appeal.

<sup>5</sup> Respondent argued to the District Court for sanctions pursuant to both Minn. Stat. 549.211 and the court’s inherent authority. Appellant’s App. 36-40.

the vehicle when the plaintiff's son pleaded guilty to a misdemeanor but held the vehicle to facilitate the Federal Drug Enforcement Administration Agency's ("Fed. DEA") initiation of forfeiture proceedings. *Id.* at 357. The plaintiff served the county attorney with a Summons and Complaint and filed the same with the Court on July 14, 1998. *Id.* at 358. Plaintiff was served by the Fed. DEA with Notice of Intent to Forfeit the vehicle under federal law on August 5, 1998. *Id.* at 357. Plaintiff and the State each filed motions for summary judgment, and the State moved to dismiss the action asserting that ~~the Court lacked jurisdiction because there was "no action pending against the vehicle in~~ the State of Minnesota." *Id.* This Court rejected the State's jurisdictional argument in *Strange*. *Id.* at 358. The Court's jurisdiction commences upon service of the complaint upon the county attorney and the forfeiture statute requires that the case advance into district court for judicial determination. *Id.* The court referenced as authority the statutory language "[a]ny property seized under sections 609.531 to 609.5318 is not subject to replevin, but is *deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.*" *Strange* at 359 (citing Minn. Stat. § 609.531, subd. 5 (1996)). (Emphasis added). Here, service of the summons and complaint was proper and timely, the property was the subject of a forfeiture proceeding which was clearly in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceeding.<sup>6</sup>

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<sup>6</sup> Appellate conceded to the District Court that it was the appropriate agency: "Certainly, the appropriate agency – which is the County here – is subject to any court orders and

The State's argument in *Strange*, like the Appellant's argument at District Court, was that the State had abandoned its claim to administrative forfeiture and released the vehicle to the Fed. DEA for forfeiture (even though vehicle was still in physical possession of State) such that there was no forfeiture.

Appellant argues that *Strange* is authority for the proposition that the only obligation placed on a County Attorney's Office after choosing to abandon an administrative forfeiture is that it must order the return of the vehicle.<sup>7</sup> (App. Br. 24)

~~However, Appellant's argument implies that the court lacks jurisdiction immediately~~  
after forfeiture is abandoned. Appellant's argument does not address the dismissal of a case subject to the court's jurisdiction and the requirements for dismissal under Minn. R. Civ. P. § 41, which provides that “. . . an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.” Minn. R. Civ. P. § 41.01 (a). Otherwise, the court maintains jurisdiction and “an action shall not be dismissed . . . except upon order of the court and upon such terms and conditions as the court deems proper.” Minn. R. Civ. P. § 41.01 (b). Until a case involving Minn. Stat. § 609.5314 is so dismissed, the court has jurisdiction to order sanctions.

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decrees concerning seized property.” App. 51

<sup>7</sup> Appellant never made argument to the District Court and failed to preserve this argument for Appeal.

Appellant cites the concurring opinion in *Strange* for the proposition that the different law enforcement agencies have competing interests.<sup>8</sup> However, it's important to note that those competing interests did not relieve the County Attorney's Office in *Strange* from being subject to the judicial forfeiture proceedings even though it claimed to have abandoned forfeiture. *Strange* at 358-359.

Appellant also fails to state the concurring opinions central point, which is ~~“[t]hose who undertake legal forfeiture must understand that our laws apply both to what~~ is done and how it is done. The maneuvering displayed here is troubling.” *Strange* at 360 (Harten concurring). Respondent argued to the District Court that Appellant's conduct in this case is troubling. (Appellant's App. 22-40) The District Court agreed stating “[h]ere the Defendant acted unreasonably when it decided to abandon forfeiture and then gave Plaintiff two days in which to raise and pay towing and storage fees that he did not owe.” (App. Add. 21) This case illustrates that Appellant has learned nothing since *Strange* was decided, thus further justifying the District Court's award of sanctions.

Minnesota courts have granted plaintiff's attorneys fees and pre-judgment interest in forfeiture cases involving the government's misbehavior in cases remarkably similar to this matter. See e.g. *Wolf Motor Company, Inc. v One 2000 Ford F-350, VIN IFTSX31F1YEC59488*, 658 N.W.2d 900, 903-904 (Minn. Ct. App. 2003). In *Wolf Motor Company, Inc.*, the Minnesota Supreme Court upheld an award of sanctions against a

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<sup>8</sup> Appellant never made argument to the District Court and failed to preserve this argument for Appeal.

party that acted unreasonably in holding onto a vehicle that was not subject to forfeiture. *Id.* at 904. Like *Wolf Motor Company, Inc.*, the facts of this case justify sanctions.

Appellant argues that the District Court “erroneously treats the Ramsey County Attorney’s Office and the Roseville Police Department as one entity.”<sup>9</sup> (App. Br. 21) However, Minn. Stat. § 609.5314, subd. 3(a) states that the Summons and Complaint must be served on the County Attorney. Furthermore, Minn. Stat. § 609.5314 (d) states that if the court orders sanctions under Minn. Stat. § 549.211 then the sanctions “must be ~~paid from forfeited money or proceeds from the sale of forfeited property from the~~ appropriate law enforcement and prosecuting agencies in the same proportion as they would be distributed under section 609.5315, subdivision 5.” Minn. Stat. § 609.5315, subd. 5 provides how funds are divided after the sale of forfeited property with such division being split as follows: 40 percent to appropriate agency for use in law enforcement (in this case it would be Roseville Police Department); 20 percent to county attorney or agency that prosecuted case; 40 percent to commissioner of public safety. Minn. Stat. § 609.5315, subd. 5(b). This leads to the conclusion that the legislature intended for the County Attorney to represent not only itself in forfeiture actions but the law enforcement agency involved in the arrest (Roseville Police Department) and the Commissioner of Public Safety.

Appellant next argues (incorrectly) that the issue of who pays towing and storage fees when an administrative forfeiture is abandoned is a case of first impression.

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<sup>9</sup> There is no citation to the District Court record where or when this was argued. Respondent asserts this was never argued at District Court nor preserved for appeal.

Defendant inappropriately required payment of towing and storage fees after the County Attorney refused to prosecute Mr. Peterson. The Minnesota Supreme Court addressed the issue of towing and storage fees under Minn. Stat. § 169.1217, the DWI forfeiture statute, in *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 119 (Minn. 2001). Like Minn. Stat. §§ 609.531 to 609.5318, Minn. Stat. § 169.1217 does not address storage fees, but the owner of an unsuccessful vehicle forfeiture is not liable for towing and storage. The Court focused on the language in Minn. Stat. § 169.1217, subd. 3 that states in relevant part:

**All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency** upon commission of the conduct resulting in the designated offense of designated license revocation giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.

Minn. Stat. § 169.1217, subd. 3 (1998)(emphasis added)

The Court determined that by giving the appropriate agency the right, title, and interest in a seized vehicle, the statute makes the agency responsible for the vehicle during seizure. *Genin* at 119. Holding the appropriate agency liable for those fees is consistent with the statutory scheme. *Id.* While *Genin* involved the DWI forfeiture statute, Minn. Stat. § 609.531, subd. 5 has similar language to Minn. Stat. § 169.1217, subd. 3 (1998), which states that “[a]ll right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency upon commission of the act or omission giving rise to the forfeiture.” Minn. Stat. § 609.531, subd. 5. The fact that

Genin was a fully litigated case is immaterial given the statutory language that makes the Appellant responsible for towing and storage fees during seizure. When Mr. Peterson was unable to pay the towing and storage fees, Defendant turned the Vehicle over to the Ford Motor Credit after receiving payment totaling \$2,515.00. (Resp. App. 23-24) While Appellant asserts in its handwritten statement on the Release form “no profit to city all fees to tow & MAA for storage,” (Resp. App. 23) Appellant profited by not having to pay the tow and storage fees itself from other forfeited funds. *Id.* Appellant also argues that it is not the appropriate agency. (App. Br. 27) However, Appellate conceded to the District Court that it was the appropriate agency: “Certainly, the appropriate agency – which is the County here – is subject to any court orders and decrees concerning seized property.” (Appellant’s App. 51)

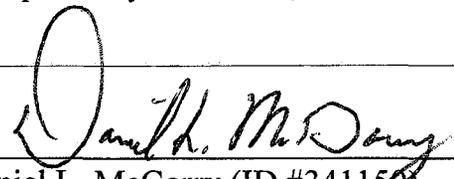
Sanctions are appropriate in this case. On February 24, 2009, Roseville Police Department “forfeiture coordinator” Julie Griffin informed the plaintiff, that the prosecuting authority, the criminal division of the office of the Ramsey County Attorney, declined to prosecute Respondent and orally informed him by telephone that he had two days to pay the towing and storage fees, which had accrued to \$2,145.00 or the vehicle would be released to the lien holder. The plaintiff could not obtain \$2,145.00 to pay tow and storage fees (the plaintiff in this case should not be responsible for paying any costs associated with the seizure or storage of the vehicle in the first place) on such short notice. Without so much as a follow up phone call to the plaintiff, the vehicle was released to the lien holder, but only after securing \$2,415 from the lien holder.

## CONCLUSION

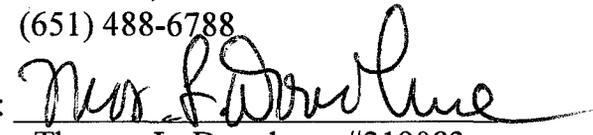
The District Court had subject matter jurisdiction over this matter to lawfully allow the Respondent to amend his complaint when the Summons and Complaint because service of process was timely filed and served. The District Court's award to Respondent of sanctions was warranted under Minn. Stat. § 549.211 and the forfeiture statute Minn. Stat. § 609.5314, subd 3(d), and the court's inherent authority.

Respectfully submitted,

Dated: *May 27, 2010*

By:   
Daniel L. McGarry (ID #341150)  
Attorneys for Plaintiffs  
1076 W. County Road B Suite 101  
Roseville, MN 55113  
(651) 488-6788

Dated: *May 27, 2010*

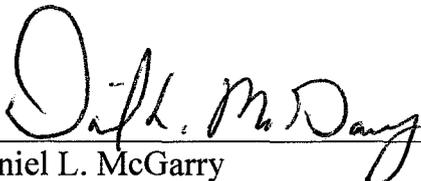
By:   
Thomas L. Donohue #219083  
Co-counsel for the Plaintiff  
101 East Fifth St., Suite 1800  
St. Paul, MN 55101  
651-265-9506

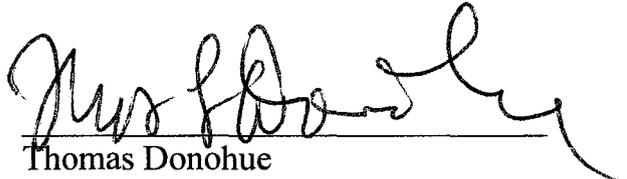
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**CERTIFICATION OF BRIEF LENGTH**

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I hereby certify that this brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01 subdivision 3 and 3(a) for a brief produced with proportional font, Times New Roman font size 13. The length of this brief is 28 pages. It has 7,058 words, inclusive of foot notes, headings, statement of the legal issues, and the signature block, according to the word count tool in Microsoft Office Word. This brief was prepared using Microsoft Office Word 2003.

  
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Daniel L. McGarry

  
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Thomas Donohue