

STATE OF MINNESOTA
IN COURT OF APPEALS

10-1876

LAURA STORMS,

Respondent,

vs.

CONNIE SCHNEIDER,

Appellant.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

The Appellant Connie Schneider is impelled to reply to Laura Storms' responsive brief. The Respondent Laura Storms does well to avoid the history of the replevin statute and the accompanying right to a jury trial as it existed in 1857. Her avoidance is a tacit admission that Appellant Ms. Schneider's argument is unrebuttable. Ms. Storms solely relies on the Minnesota Practice Series to define replevin — citing no history to or mention of its practice in equity or as an action at law — as her “trump” card to the Minnesota Constitution and Minnesota Supreme Court precedent preserving the right to a jury in replevin actions. The factual dispute here — the nature of the action — is “to determine the right of possession of personal property or title thereto.”¹

Ms. Storms' disregard for the stream of legal history of the inviolative right to a jury trial in a replevin action for personal property threatens the fundamental policies Minnesota's constitution sought to preserve under Art. I, § 4 and applicable court rules including Rules of Civil Procedure 38. If that fundamental right, regardless of the litigious nature of a case, or expense involved, is set aside for the convenience of the parties or even for the sake of

¹ 20A2 Minn. Prac. § 39:61.

judicial economy, it is a loss of a fundamental right and a rejection of 154 years of replevin law.

The Marian statue at issue is personal property. Unique, yes, but the nature of relief sought is not determinative of whether the action is one at law or one at equity. It is an error to stop an analysis at the inquiry — does the plaintiff seek something other than monetary relief — and then conclude it is an action in equity. Likewise, certain claims seeking monetary relief are in fact equitable proceedings. Here, it is a question of fact, this belongs not to the court, but to the jury. At least in this context, where the plaintiff decided the path of the law to choose, she must follow that course without impeding the defendant’s constitutional right to a jury. In Minnesota, replevin is an action at law. Thus, Ms. Schneider, as a defendant in a replevin action, has the state constitutional right to a jury trial as a matter of law.

Respondent’s failed analysis disregards the nature of the underlying action as replevin, an action at law, constitutionally demanding a jury trial.

Ms. Storms argues that a replevin action is “a temporary fix until trial.”² Yet, to use her primary reference, the Minnesota Practice Series, on replevin to refute Ms. Schneider’s historical argument, Ms. Storms’ “temporary fix” is only the beginning: “Replevin ...seeks to obtain possession

² Resp. Br. 10.

of the property prior to final judgment ...It is a means of *trying title to personal property, as the judgment ...determines title to personal property.*"³

This is consistent with the historic development and roots of replevin as an action at law having issues of fact tried by a jury:

An issue of fact, in an action for the recovery of money only, or of specific real or personal property... shall be tried by a jury, unless a jury trial is waived....⁴

Ms. Storms promotes an argument based on one important fallacy, that if true, only a plaintiff would ever be entitled to a jury in a replevin action when her first motion for claim and delivery fails. In turn, the defendant would never enjoy the right to a jury trial if the plaintiff's motion prevails, as

Ms. Storms did here:

That plaintiff was entitled to a jury trial and to a general verdict is beyond doubt. It was an action at law, in replevin, and it is immaterial that questions of law, as well as questions of fact, were involved. It was the duty of the court to decide the law question and to instruct the jury accordingly.⁵

³ *Id.* quoting 20A2 Minn. Prac. § 39:61 (emphasis added). *See also*, Minn. Rev. Stat. (Terr.), c.70, § 122 (1851), Reply Supp. App. 1 ("Sec. 122. The plaintiff in an action to recover the possession of personal property, may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.").

⁴ Minn. Gen. Stat., c. 66, § 216 (1878). Reply Supp. App. 4.

⁵ *Blied v. Barnard*, 133 N.W. 759, 796 (Minn. 1911).

The cases cited by Ms. Storms are inapposite. There, she seeks to define this case solely as to the relief sought, not the nature of the claim. It is a false analysis that Ms. Schneider's counsel warned against in the lower court. Appellant's counsel noted in the lower court that the "confusion that arises in analyzing this issue is the default interpretation of attorneys from their education in law school that you get a jury trial in cases for damages and not for equitable relief ...Most lawyers conclude, without analyzing the issue, that any case seeking something other than monetary damages is an equitable action. This is not true."⁶

There are certain equitable claims that seek monetary relief, such as claims for breaches of fiduciary duty, which are equitable proceedings despite the fact the actions seek monetary relief.⁷ None of the cases cited by Ms. Storms to prove the nature of the instant matter as "equitable," without the right to a jury trial, involve a replevin action.

⁶ App. 39.

⁷ *Iowa Ctr. Assocs. v. Watson*, 456 F.Supp. 1108, 1111 (N.D.Ill. 1978) (Applying Minnesota law and finding actions for breach of fiduciary duty are equitable in nature where plaintiff sought monetary relief); *Uselman v. Uselman*, 464 N.W.2d 130, 137 (Minn. 1990) (Actions for breach of trust lie in equity, and since issues at law were dismissed, jury trial is not guaranteed when plaintiffs seek only monetary damages); *See*, App.39 (written argument to lower court).

As a possessory action, the fundamental issue here is to re-establish the right of property in Ms. Storms, the re-establishment Ms. Schneider contested.⁸ Hence, under a replevin action as the main action, if Ms. Storms as plaintiff had a right to a jury trial, so did Ms. Schneider as defendant have a right to a jury trial.

Ms. Storms' argument that the transaction between them is governed under the U.C.C. came to fruition — for the first time — *after* Ms. Schneider filed and served her memorandum in opposition to Ms. Storms' motion for recovery or possession.⁹ The later legal theory did not change the underlying nature of the case as a replevin action. Did Ms. Storms have rightful possession of the personal property or did Ms. Schneider? Respondent Ms. Storms *admitted* in her initial filing that further hearings were required on the merits of the action under Minn. Stat. § 565.26:

⁸ Hence, under a replevin action as the main action, if Ms. Storms as plaintiff had a right to a jury trial, so did the defendant Ms. Schneider.

⁹ Ms. Storms Memorandum in Support for Recovery of Possession Prior to Notice and Hearing Pursuant to Minn. Stat. § 565.24, Aug. 3, 2007 (no mention of UCC argument), Reply Supp. App. 19; Ms. Schneider's Memorandum in Opposition to Plaintiff's Motion for Recovery or Possession, Aug. 17, 2007, (arguments purely on elements of Minn. Stat. § 565.24), Reply Supp. App. 25; Ms. Storms Reply Brief in Support of Plaintiff's Motion for Possession, Aug. 19, 2009 (asserts for first time UCC controls the transaction), Reply Supp. App. 43.

For the foregoing reasons, Plaintiff Laura Storms respectfully requests that the Court grant the instant motion and issue an order for seizure of property as provided in Minnesota Statutes § 565.24 granting possession of the Statue to Plaintiff...*pending final hearing on the merits* as provided in Minnesota Stat. § 565.26.¹⁰

The lower court did issue such an order, “[t]hat Plaintiff, or her authorized representative, is hereby GRANTED POSSESSION of the Property [the statue] *pending further hearing on this matter* and order of this Court.”¹¹

Here, regardless of Ms. Storms’ legal theories as they evolved after the commencement of the action at law, the nature of the proceeding to determine the right of possession to the personal property solidified Ms. Schneider’s right to a jury trial. And, certainly there were genuine issues of fact since the lower court denied Ms. Storms’ motion for summary judgment.¹²

Respondent’s arguments that somehow the replevin action changed into an action for equity lacks a firm foundation in the law. In one instance, Ms. Storms asserts, that it was “not” a replevin action: “Appellant’s appeal hinges on the argument that this was a replevin action. It was not.”¹³ This

¹⁰ Reply Supp. App. 24 (emphasis added).

¹¹ App. 19 (italicized emphasis added).

¹² Or. Apr. 28, 2009, Reply Supp. App. 48.

¹³ Resp. Br. 9.

statement, by itself, contradicts the initial filing under Minn. Stat. § 565.24.¹⁴

Ms. Storms then admits she recovered the statue through a replevin action: “It is true that, initially, Respondent was able to recover the statue through a replevin action.”¹⁵ But, Ms. Storms then asserts the replevin action was merely a “temporary fix until the trial court could determine once and for all, as a matter of equity, [what] should be done with the statue,” meaning to whom did the personal property belong.¹⁶

Accordingly, Respondent’s logic fails and legal argument must fail.

Determining “the right of possession or title thereto”¹⁷ is an action at law called replevin. The evolution or change in Plaintiffs’ legal theories while the underlying replevin action remains does not deprive the parties to a jury trial unless waived or if that replevin claim is dismissed. As the Minnesota Supreme Court recognized in *Geo. A. Hormel Co. v. First Nat. Bank*,¹⁸ where

¹⁴ App. 10. Replevin is now statutorily referred to as an action for claim and delivery. Appellant’s Br. 14.

¹⁵ Resp. Br. 10.

¹⁶ Resp. Br. 10.

¹⁷ Resp. Br. 10 quoting 20A2 Minn. Prac. § 39:61.

¹⁸ *Geo. A. Hormel Co. v. First Nat. Bank*, 212 N.W. 738, 740 (Minn. 1927).

a replevin action as a cause of action at law was dismissed with no jury question remaining:

Defendant ... contends that permitting this reply to be interposed changed the action from one at law to one in equity and thereby wrongfully deprived defendant of the right to a jury trial. But the cause of action at law had been dismissed and no jury question remained.

Consistently, since the Respondent never dismissed her replevin claim, nor did the parties waive the right to a jury trial, Appellant Ms. Schneider never lost her right to a jury trial.

Regardless, even if this Court were to accept the arguments of Respondent's evolution from a replevin action to another type of action, what actually went to trial in the lower court was a contract dispute. Factual issues of basic contract law, whether a contract existed, and even if a contract existed was there a breach of contract. These factual issues are matters at law. The equitable relief is of no consequence.

CONCLUSION

Appellant Ms. Schneider has a right to a jury trial. The Respondent's action started as a replevin action and although her legal theories evolved later on, the underlying nature of the action at law sought to determine ownership of personal property – replevin. The lower court failed to recognize this Minnesota constitutional right. Therefore, reversing the lower

court's decision and remanding the action for trial before a jury is appropriate, legal and just.

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Dated: January 18, 2011



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**LR 7.1(c) WORD COUNT
COMPLIANCE CERTIFICATE**

CONNIE SCHNEIDER,

Appellant.

I, Erick G. Kaardal, certify that the Appellant's Principal Brief complies with Local Rule 7.1(c) with a word count of 1,891.

I further certify that, in preparation of this motion, I used Microsoft Word 2003, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

Dated: January 18, 2011.

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