

NO. A10-1876

State of Minnesota
In Court of Appeals

LAURA STORMS,

Respondent,

vs.

CONNIE SCHNEIDER,

Appellant.

RESPONDENT'S 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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LEGAL ISSUE

Did the trial court abuse its discretion in denying Appellant's request for a jury trial?

No. This was a claim to recover a unique and irreplaceable statue for which no monetary damages would have adequately compensated Respondent, and therefore the trial court decided this case in equity. Because the trial court correctly decided this case in equity and imposed an equitable remedy (permanent return of the statue to its rightful owner, Respondent Laura Storms), the trial court did not abuse its discretion when it denied Appellant's request for a jury trial.

Legal Authority: *Morton Brick & Tile Co. v. Sodergren*, 153 N.W. 527 (Minn. 1915).

STATEMENT OF THE CASE

This case began over five years ago when Respondent Laura Storms ("Respondent") contracted with Appellant Connie Schneider ("Appellant") for Appellant to make a religious statue for use at a rare religious ceremony. Appellant made the statue according to Respondent's specifications and tendered it to Respondent. In exchange, Respondent tendered a check to Appellant with the agreed upon amount (plus a substantial tip), which Appellant accepted. After the statue was processed in the ceremony (and well after Respondent became the owner), Appellant stole the statue from Respondent and tried to keep it as her own, forcing Respondent to bring this lawsuit to recover the statue. After evaluating all of the evidence, including the testimony of several eyewitnesses, the trial court ordered that Respondent, who was the rightful owner, should have immediate and permanent ownership and possession of the statue so that she could begin the process of "gifting" it to the National Basilica in Washington, D.C. ("the Basilica").

The limited issue in the Complaint and at trial was --- who owns the statue and what, as a matter of equity, should be done with it? Appellant's appeal is based almost exclusively on the notion that because this case was initially "labeled" one of "replevin," it should have been tried to a jury as a replevin action because, at least according to Appellant, replevin actions are actions at law and not equity and should be tried to a jury. Appellant misses the point. This case was started as one labeled "replevin" because doing so was necessary for Respondent to immediately recover the statue until the court could decide the matter as one of equity at trial.

The trial court did not abuse its discretion when it made the decision to try this case as an equitable, as opposed to legal, action. The trial court was called upon to decide, *in equity*, what should be done with a statue that had become unique and invaluable. Because this was an action in equity, in which there was no adequate remedy at law, it was rightly tried to the court and not a jury. This decision was soundly within the trial court's discretion and should not be reversed on appeal for abuse of discretion.

FACTS

Nearly five years ago, in late 2005 and early 2006, Respondent, with help from her prayer group and others, began to plan a ceremony at the National Basilica entitled "the Consecration of the United States" (hereinafter, "the event" or "the ceremony"). (APP. 1, ¶¶ 1, 2) The event took place on November 11, 2006. (APP. 1; ¶ 1) Among other things, Respondent was in charge of purchasing a statue to be processed in the ceremony. (APP. 2; ¶ 5) Respondent contracted with Appellant, a statue maker in the Twin Cities,

for Appellant to make a very specific statue to be used in the ceremony. (APP. 2-3; ¶ 9) Respondent agreed to pay Appellant \$1,800 in exchange for the statue. (Id)

On November 10, 2006 (the day before the ceremony), Appellant tendered the statue to Respondent, and Respondent accepted it. (APP. 3; ¶ 10) The following morning, Respondent tendered payment to Appellant for the statue (which included the \$1,800 agreed-upon price plus a \$700 tip). (APP. 4; ¶ 12) Appellant accepted the payment, thanked Respondent for the extra amount, and put the check in her pocket. (APP 4; ¶ 13) Later that morning, the statue was processed in the ceremony.

After the ceremony, Appellant and her friend caused a scene when they tried to forcibly remove the statue's arms and take possession of the statue from Respondent. (APP. 4; ¶ 15) Appellant's actions forced Respondent to leave the statue in the hands of the director of another religious organization who had also participated in the event, Michael LaCorte, until the conflict with Appellant could be resolved. (APP. 5; ¶ 17)

Later, and unbeknownst to Respondent, Appellant falsely told LaCorte that she needed to take the statue back to Minnesota for repairs and would return it. (APP. 5; ¶ 17) When Respondent discovered that Appellant had removed the statue and taken it with her to the Twin Cities, Respondent tried to get it back, but Appellant did not return the statue to Respondent. Thus, Respondent was forced to bring this lawsuit so that she could begin the process of gifting the statue to the Basilica without the cloud of litigation. (APP. 5; ¶¶ 17-20)

To this end, Respondent initiated a replevin action in Ramsey County District Court for the temporary return of the statue. (APP. 14-17) On August 22, 2007, Ramsey

County District Court Judge David Higgs issued an order for recovery of the statue, ordering that “Plaintiff, or her authorized representative, is hereby granted possession of the Property *pending further hearing on this matter and order from this Court.*” (APP. 19; ¶ 5) (emphasis added).

The matter was then set on for trial. Using his wide discretion, the trial court judge, The Honorable Dale B. Lindman, denied Appellant’s request for a jury trial on grounds that this was an action in equity that should be tried to the court. After a two-day court trial, the trial court determined that a contract was formed under Minnesota’s Uniform Commercial Code (“UCC”) and that Respondent owned, and should have permanent possession of, the statue. The trial court exercised its discretion for an equitable remedy:

This Court also had the authority to grant equitable relief in this case. The granting of equitable relief is within the sound discretion of the district court, and its decision will not be reversed absent a clear abuse of that discretion. [citation omitted] The most equitable remedy in this case is for Plaintiff to be given possession of the statue so that she may begin the process of donating it to the National Basilica under the terms that she will work out with the National Basilica.

(APP. 7; ¶ H) The trial court also found that Appellant ’s “unclean hands” in stealing the statue from Respondent after the ceremony barred her from an equitable remedy. (APP. 8; ¶ K) Since this was an equitable action in which monetary damages would have been inappropriate, the trial court did not award any damages.

SUMMARY OF ARGUMENT

It has long been the law in Minnesota that in equitable actions neither party can demand a jury trial as of right as to any issue. *Morton Brick & Tile Co. v. Sodergren*, 153

N.W. 527, 527 (Minn. 1915). This was a case in equity, and therefore, Appellant was not entitled to a jury trial. In this case, the property in dispute was a very unique statue that had been used in a special religious ceremony. Due to the uniqueness of the statue, there was no adequate legal remedy to compensate Respondent for the loss of her property. The only way that either party would be satisfied would be by an order stating that *that* party owned the statue and could have permanent ownership and possession. Because the trial court could not have imposed an adequate legal remedy, this case was tried in equity. Therefore, Appellant was not entitled to a jury trial, and the trial court did not abuse its discretion in denying Appellant's request for one.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN TRYING THIS CASE AS AN EQUITABLE ACTION WITHOUT A JURY.

A. *This Decision Was in The Sound Discretion of The Trial Court.*

“Granting equitable relief is within the sound discretion of the trial court. Only a clear abuse of that discretion will result in reversal.” *Nadeau v. Ramsey County*, 277 N.W.2d 520, 524 (Minn. 1979). “In cases involving both legal and equitable issues, the trial court has wide discretion to allow a jury on some, none, or all issues presented.” *Brown v. Safeway Stores, Inc.*, 94 Wash.2d 359, 367, 617 P.2d 704 (Wash. 1980) (quoting *Scavenius v. Manchester Port Dist.*, 2 Wash. App. 126, 129, 467 P.2d 372 (Wash. 1970)). “In determining whether a case is primarily equitable in nature or is an action at law, the trial court is accorded wide discretion, the exercise of which will not be disturbed except for clear abuse.” *Id.* at 368, 617 P.2d 704.

The trial court had the discretion to determine that this case was equitable, and accordingly that Appellant was not entitled to a jury trial. The trial court did not abuse its discretion in making this determination. Therefore, Respondent respectfully requests that this Court affirm the trial court's order.

B. *This Was a Case in Equity For Which There Was No Adequate Remedy at Law.*

The constitutional right to a civil jury trial applies only to claims at law. *Onvoy, Inc. v. Allete, Inc.*, 736 N.W.2d 611, 614 (Minn. 2007); *State v. Guilford*, 219 N.W. 770 (Minn. 1928). "Cases at law" securing jury trial, refers to common-law actions as distinguished from causes in equity and certain other proceedings. *Swanson v. Alworth*, 168 Minn. 84, 209 N.W. 907, 909 (Minn. 1926). "The action...for equitable relief on the alleged ground that plaintiffs had no adequate remedy at law, the submission of issues to a jury was discretionary." *Doyle v. Babcock*, 235 N.W. 18 (Minn. 1931).

In equitable actions neither party can demand a jury trial as of right as to any issue. *Morton Brick & Tile Co. v. Sodergren*, 153 N.W. 527, 527 (Minn. 1915). "The rule in cases of this kind is that in an action not of a strictly legal nature, where the plaintiff seeks both equitable and legal relief, neither party is entitled to a jury trial as a matter of right." *Indianhead Truck Line, Inc. v. Hvidsten Transport, Inc.*, 128 N.W.2d 334 (Minn. 1964) (citing *Koeper v. Town of Louisville*, 124 N.W. 218 (Minn. 1910)). Allegations in a complaint tending to show a reason for the interposition of equity include: that a plaintiff has no remedy at law, that he will suffer the loss of his property,

or other irreparable injury; and that defendant is insolvent, or unable to respond in damages. *Barkey v. Johnson*, 95 N.W. 583 (Minn. 1903).

“An adequate legal remedy does not generally exist when plaintiff has been deprived of a unique thing or special entitlement.” *Florida Vacation Store, Inc., v. Mall of America Company*, 2000 WL 224869 at *2 (Minn. Ct. App. Feb. 29, 2000) (unpublished at RA. 1); “Every piece of property is unique and thus damages are an insufficient remedy to the denial of property rights.” Am. Jur., 2nd, Equity (Nov. 2010).

Under the UCC, specific performance (an equitable remedy) may be decreed where the goods are unique. For example, suits in equity may be brought to remedy disputes under sales contracts¹ or over real property.² A buyer is entitled to specific performance of a contract to buy real property because real property is unique. *Schumacher v. Ihrke*, 469 N.W.2d 329, 335 (Minn. Ct. App. 1991). “It is elementary that

¹ “It is well established in this state that the seller of goods under a conditional sales contract, in case of default by the buyer...may...bring suit in equity to have a lien decreed and enforced for the unpaid purchased price. This suit in equity is...a remedy under the common law, and now under the Uniform Sales Act.” *C.I.T. Corporation v. Cords, Sheriff*, 269 N.W. 825, 829 (Minn. 1936)

² “This was an action in equity to restrain the unlawful taking of plaintiff's property by the public authorities...and for damages for acts of trespass theretofore committed in furtherance of such taking and the contemplated improvements in the street. Defendant was not entitled to a jury trial.” *Morgan v. City of Albert Lea*, 151 N.W. 532 (Minn. 1915). While the lower Court in this case determined this case not to be an action for legal replevin, actions for replevin are analogous to the action for trespass. 66 Am.Jur.2nd, Replevin, Section 1 (2010). “The action being to enjoin a trespass and for equitable relief on the alleged ground that plaintiffs had no adequate remedy at law, the submission of issues to a jury was discretionary.” *Doyle v. Babcock*, 235 N.W. 18, 18 (Minn. 1931). *See also Swanson v. Alworth*, 168 Minn. 84, 209 N.W. 907 (1926) (in action to recover on contract, by which plaintiff was to receive, for exploring for minerals, stated weekly compensation and percentage of net profits, was one in equity, in which plaintiff was not entitled to jury trial); *Falk v. Dirigold Corp.*, 174 Minn. 219, 219 N.W. 82 (Minn. 1928) (where complaint set forth equitable cause to compel issuance of certificates for stock, defendant was not entitled to jury trial).

land contracts in particular are specifically enforced, inter alia, because one who has contracted to purchase a particular tract of land cannot get its exact counterpart anywhere. * * * It is a unique thing, not capable of being duplicated. It is in consequence...a matter of course for a court of equity to decree specific performance..." *Mellin v. Woolley*, 115 N.W. 654, 655 (Minn. 1908). "A cause of action for specific performance of a contract to convey land has long been regarded as entirely equitable and therefore defendants were not entitled to a jury trial of right on any of the fact issues involved in the cause of action for specific performance." *Rognrud v. Zubert*, 165 N.W.2d 244, 247-248 (Minn. 1969).

It was apparent from the very first pleading that this was a case in equity, which, after a temporary replevin action, would be tried to the court. Respondent's Complaint clearly states that this case necessitated the interposition of equity:

Plaintiff will suffer irreparable harm if she is not granted immediate possession of the Statue. The Statue is of a unique character due to its use in the service on November 11, 200[6], and Plaintiff does not have an adequate remedy at law.

(ADD. 12 ¶ 9) Indeed, from the beginning, Respondent has alleged that she would suffer irreparable harm from the loss of her property and that there was no adequate remedy at law.

Like specific tracts of land for which a party cannot be adequately compensated or other unique goods, such as those at issue in *Florida Vacation Store, supra*, monetary damages would not have compensated Respondent for the loss of the statue. The only way she would have been made whole was through permanent possession and ownership

of the statue so that she could begin the process of gifting it to the Basilica without the cloud of litigation standing in the way. Thus, the trial court correctly determined that this was a case in equity, explaining:

This Court is aware that both sides to this dispute view the statue that is in question and here in the courtroom as very unique. And neither side is willing or at least appeared willing to settle this case on the basis of an exchange of dollars. It's something I believe the parties will only be satisfied with a finding of possession, a finding of entitlement to possession. And under those circumstances, this is clearly a case in equity and not a case for legal replevin, which involves a claim of dollars and cents rather than possession of chattel. As such, I believe that this is then a case to be tried to the Court not to a jury and that is how we will proceed.

(APP. 52)

The trial court rightfully noted that equitable relief is within the sound discretion of the trial court. In addition, the trial court correctly found that due to the unique nature of the "product" or "good" at issue, there was no adequate legal remedy, making this a textbook case for an equitable remedy. Here, the only satisfactory remedy would have been permanent ownership and possession by one party or the other --- that is, an equitable, as opposed to legal, remedy. Essentially, specific performance of the contract was the relief that was decreed in this case because of the unique nature of the property in dispute. Since the trial court was correct in its finding that this case was equitable, Respondent respectfully requests that this Court affirm the trial court's order.

C. This Was an Equitable Action, Not Replevin.

Appellant's appeal hinges on the argument that this was a replevin action. It was not. The Minnesota Practice Series defines replevin actions as claims for delivery of personal property *prior to a final judgment*:

The action of replevin has been replaced with the statutory action for claim and delivery of personal property, the purpose of which is to determine the right of possession of personal property or title thereto.

Replevin, or claim and delivery, is a possessory action in which the plaintiff, being entitled to immediate possession of personal property, *seeks to obtain possession of the property prior to final judgment*. The claimant in the action is primarily interested in obtaining such possession rather than a judgment for money damages. It is a means of trying title to personal property, as the judgment, in effect if not in form, determines title to personal property.

Secured creditors most commonly utilize a claim and delivery proceeding in order to gain possession of personal property in which they have a security interest.

20A2 Minn. Prac. § 39:61³ (emphasis added).

It is true that, initially, Respondent was able to recover the statue through a replevin action. But, that was just the beginning and was a temporary fix until the trial court could determine once and for all what, as a matter of equity, should be done with the statue. Once that initial matter was determined, the trial court's role became to determine an equitable remedy.

Rule 38.01 of the Minnesota Rules of Civil Procedure, upon which Appellant greatly relies, provides that "In actions for the recovery of money only, or of specific real

³ Citing *A & A Credit Co. v. Berquist*, 230 Minn. 303, 41 N.W.2d 582 (Minn. 1950) (noting that technically, replevin refers to the common law action for possession of property, and claim and delivery refers to the statutory procedure for possession. However, the statutory procedure is still referred to as replevin.); *Warren v. Driscoll*, 178 Minn. 344, 227 N.W. 199 (Minn. 1929) (holding that in a replevin action, a plaintiff must demonstrate an existing and immediate right to possession of the property).

or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.” What Appellant fails to point out is that this case was, and has always been, an action in equity, not just for the temporary recovery of personal property. And, *in an equitable action*, it is within the discretion of the trial court to submit some questions of fact to the jury, but neither party has a right to trial by jury on equitable matters. *Georgopolis v. George*, 237 Minn. 176, 54 N.W.2d 137 (Minn. 1952). Where a plaintiff seeks both equitable and legal relief, neither party is entitled to a jury trial as a matter of right. *Indianhead Truck Line, Inc., supra*.

Appellant also relies on *Blied v. Barnard*, 116 Minn. 307, 313, 133 N.W. 795, 797 (Minn. 1911), for the position that replevin actions are actions at law that require a jury trial. That rule, however, does not enlarge the historical right to a jury trial, and the law regarding equitable actions still applies. (citing *State by Humphrey v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 895 (Minn. Ct. App. 1992), *aff'd*, 500 N.W.2d 788 (Minn. 1993)). The Rule serves only as an attempt to list those actions that are “legal” in nature. (citing *Rognrud v. Zubert*, 165 N.W.2d 244, 247 (Minn. 1969)). Moreover, the Minnesota Supreme Court has recognized that the right does not apply to every action involving title to property. (citing *Peters v. City of Duluth*, 137 N.W. 390, 394 (Minn. 1912)).

What Appellant overlooks is that this was not simply a replevin action --- it was an action for the permanent recovery of a unique good for which monetary damages would not have adequately compensated Respondent for the loss, and the only adequate remedy

was an equitable one. The determination of this issue was in the sound discretion of the trial court, and it did not abuse its discretion in making this decision.

The instant case was clearly one in equity, where entitlement to ownership and possession was the only issue. Because this action was fundamentally to quiet title or to determine an adverse claim, the action is one that would traditionally be considered equitable. Accordingly, Appellant was not entitled to a jury trial as a matter of right. If the nature of an action is such that no right to a jury trial exists, the decision to submit the case to a jury is within the district court's discretion. *Alpine Air Prods.*, 490 N.W.2d at 895. Given the absence of a bright-line rule and the clear rules regarding court trials for equitable actions, the trial court did not abuse its discretion in denying a jury trial. *Denman v. Gans*, 607 N.W.2d 788, 793-94 (Minn. 2000).

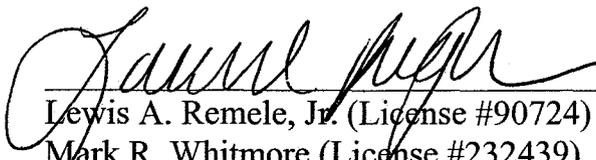
CONCLUSION

Based on the foregoing, Respondent Laura Storms respectfully asks the Court to affirm the order of the trial court.

Dated: January 7, 2011

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