

No. A-10-0232

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State of Minnesota
In Court of Appeals

Ramsey County Attorney Forfeiture Department,
Appellant,

vs.

Scott J. Peterson,
Respondent.

APPELLANT'S BRIEF & ADDENDUM

SUSAN GAERTNER
RAMSEY COUNTY ATTORNEY

Melinda S. Elledge (#26402)
Assistant Ramsey County Attorney
John Edison

Certified Student Attorney
50 West Kellogg Blvd., Suite 560
St. Paul, MN 55102
(651) 266-3121

Attorneys for Appellant

Daniel L. McGarry (#341150)
McGarry Law Office
1076 W. County Road B, Suite 101
Roseville, MN 55113
(651) 488-6788

Thomas Donohue (#2190983)
101 E. Fifth St., #1800
St. Paul, MN 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

Whether the District Court erred in determining that it had subject matter jurisdiction over the instant dispute when the Respondent failed to properly name his 2004 Ford Crown Victoria as the Defendant in his request for a judicial determination of forfeiture pursuant to Minn. Stat. § 609.5314, subd. 3.

Ramsey County moved the District Court to dismiss this action on the ground that it lacked subject matter jurisdiction. App. 3. The Court denied the motion and granted summary judgment in favor of the Respondent. Add. 15.

Apposite authority: Minn. Stat. § 609.5314, subd. 3 (2009)

Bolanos v. 1992 Acura, No.A05-172, 2005 WL 2208093,
(Minn. Ct. App. Sept. 13, 2005)

Sing v. 1997 Cadillac, No. A05-2320, 2006 WL 2474071,
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Garde v. One 1992 Ford Explorer XLT, 662 N.W.2d 165
(Minn. Ct. App. 2003)

Whether the District Court's determination that the Ramsey County Attorney's Office should be held exclusively liable for costs and sanctions awarded pursuant to Minn. Stat. § 609.5314, subd. 3(d) was an error of law.

Ramsey County objected to both the Respondent's motion for sanctions and the Respondent's Motion for Relief from Order in reply memoranda submitted to the District Court. App. 41, 56. The Court ordered \$4,550 in sanctions. Add. 15.

Apposite authority: Minn. Stat. § 609.5314, subd. 3(d) (2009)

Minn. Stat. § 609.5315, subd. 5 (2009)

Whether the District Court abused its discretion in awarding sanctions to the respondent when there is no clear statutory guidance related to who is responsible for paying storage and towing fees when an administrative forfeiture under Minn. Stat. § 609.5314 is abandoned.

Ramsey County objected to both the Respondent's motion for sanctions and the Respondent's Motion for Relief from Order in reply memoranda submitted to the District Court. App. 41, 56. The Court ordered \$4,550 in sanctions. Add. 15.

Apposite authority: Genin v. 1996 Mercury Marquis, 622 N.W.2d 114 (Minn. 2001)

Strange v. 1997 Jeep Cherokee, 597 N.W. 2d 355 (Minn. Ct. App. 1999)

Minn. Stat. § 609.531, subd. 1(e) (2009)

Minn. Stat. § 609.531, subd. 5 (2009)

STATEMENT OF THE CASE

This case arises out of the Respondent's request for a judicial determination of forfeiture, which was filed on October 1, 2008 in the Second Judicial District and named the "Ramsey County Attorney Forfeiture Department" as the Defendant. The Respondent requested the return of a black 2004 Ford Crown Victoria, reimbursement of a court filing fee, and towing and impound costs under Minn. Stat. § 549.211. The Respondent's vehicle was seized after a drug-related arrest on September 19, 2008; the Respondent was not prosecuted and alleged he was entitled to the return of his vehicle because a controlled substance was not found on his person or in the vehicle. While the

Respondent's request for a judicial determination of forfeiture was pending, the Ramsey County Attorney's Office informed the Roseville Police Department the Respondent would not be prosecuted and that his vehicle should be released. After attempting to contact the Respondent, the Roseville Police Department released the vehicle to a lien holder, Ford Motor Credit.

The Ramsey County Attorney's Office brought a motion for dismissal, or in the alternative, summary judgment in this matter on July 1, 2009 alleging the District Court lacked subject matter jurisdiction on the Respondent's request for a judicial determination of forfeiture because he failed to comply with mandatory pleading requirements outlined in Minn. Stat. § 609.5314, subd. 3 by naming the non-existent Ramsey County Attorney Forfeiture Department as the Defendant instead of the seized vehicle. The Respondent also brought a motion for summary judgment, a motion to amend the Complaint, and a motion for sanctions and attorney's fees. The District Court, with the Hon. Dale B. Lindman presiding, allowed the Respondent to amend his complaint based on the Minnesota Rules of Civil Procedure, granted summary judgment in favor of the Respondent, and awarded the Respondent \$2,932.50 in towing and storage expenses as well as \$4,550 in attorney's fees and other fees as sanctions.

STATEMENT OF THE FACTS

The Respondent's vehicle, a 2004 Ford Crown Victoria, was seized on September 19, 2008 following the discovery of narcotics at [REDACTED] Avenue, Roseville, Minnesota. The Roseville Police Department dispatched officers to the residence to

assist the owner in removing illegal items from the residence after a tenant had vacated the premises. Add. 4, ¶ 4. Officers found 632.70 grams of marijuana and materials used in growing marijuana, such as grow lights and several transformers. Add. 5, ¶ 18. They also found a receipt containing the Respondent's name and the address of the residence. Add. 5, ¶ 16.

While the Officers were at [REDACTED] Avenue, the Respondent drove past the house in his vehicle. Add. 4, ¶ 7. He was recognized and identified by the owners of the residence and from his Driver and Vehicle Services photo. Add. 4-5, ¶¶ 8-9. Officers followed the Respondent's vehicle and stopped him. Add. 5, ¶ 10. The Respondent was then arrested because his vehicle had been observed at [REDACTED] Avenue on a regular basis over the previous week, he was identified by the owner of [REDACTED] Avenue as one of the tenants, and there was a felony amount of marijuana discovered in the house. Add. 5, ¶ 11. Along with the arrest, the Respondent's vehicle was seized and transported to the Roseville Off-Site Vehicle Storage facility to be held for forfeiture. Add. 5, ¶ 12. Later that day, Officer Aaron Craven met with the Respondent at the Ramsey County Law Enforcement Center and personally served him with a Notice of Seizure and Intent to Forfeit for his 2004 Ford Crown Victoria. Add. 5, ¶ 20.

The notice given to the Respondent read "[t]he procedure for obtaining a judicial determination is set out in Minnesota Statutes, Section 609.5314 Subd. 3 ..." Add. 1, ¶ 2; Add. 2. It also contained the following sentence:

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
RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY.

Id. (emphasis in original). The Respondent then filed a Complaint seeking judicial determination of forfeiture on October 1, 2008, naming the non-existent Ramsey County Attorney Forfeiture Department as Defendant instead of his 2004 Ford Crown Victoria. Add. 1, ¶ 2; Add. 3. The Ramsey County Attorney's Office advised Roseville Police Department forfeiture coordinator Julie Griffin that it declined to prosecute the Respondent on February 24, 2009. Add. 7, ¶ 2. That same day, Ms. Griffin contacted the Respondent to inform him that his vehicle was being released. Add. 7, ¶ 3. She also told him the tow and storage fees totaled \$2,145 and instructed him to pick up his vehicle no later than 12:00 p.m. on February 26, 2009. *Id.* Finally, she told the Respondent that if he did not pick up his vehicle by the deadline, the vehicle would be released to Ford Motor Credit, which had a lien on the car. *Id.* The Respondent did not retrieve his vehicle or contact Ms. Griffin by the deadline and his vehicle was released to Ford Motor Credit. Add. 7, ¶¶ 4-5.

SUMMARY OF THE ARGUMENT

This case involves a situation where the District Court's decision to proceed with a request for judicial determination of forfeiture in the absence of subject matter jurisdiction resulted in a substantial deviation from the relevant statutes. The District Court's decision to exercise subject matter jurisdiction over this dispute was improper because the Respondent failed to comply with mandatory pleading requirements when he

named the non-existent “Ramsey County Attorney Forfeiture Department” as the Defendant in his request for a judicial determination of forfeiture. The applicable law clearly states that the property subject to forfeiture must be named as the defendant.

Because the District Court allowed this matter to proceed with an improper party named as the Defendant, this matter was not afforded proper treatment as an *in rem* proceeding and the Ramsey County Attorney’s Office was held solely responsible for a money judgment awarded to the Respondent. This result directly conflicts with relevant statutory authority, which would require the Ramsey County Attorney’s Office to pay only 20 percent of this judgment in the event that it was properly awarded to the Respondent. Finally, the District Court abused its discretion in sanctioning the Ramsey County Attorney’s Office because the Office complied with its obligation to order the return of the Respondent’s vehicle. The basis for the District Court’s sanctions lies solely within the independent conduct of the Roseville Police Department.

ARGUMENT

This is a case that should have failed on the pleadings because the Respondent named the wrong defendant. Throughout the course of the proceedings below, the District Court repeatedly ignored mandatory statutory language in an apparent effort to create some kind of an equitable solution to this dispute. These actions were improper because the plain language of the law requires the conclusion advanced by Ramsey County.

Because this case involves questions of subject matter jurisdiction and statutory interpretation, the standard of review is de novo. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. Ct. App. 1999); *Nelson v. Commissioner of Public Safety*, 779 N.W.2d 571, 575 (Minn. Ct. App. 2010).

I. THE DISTRICT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER THE INSTANT DISPUTE BECAUSE THE RESPONDENT FAILED TO PROPERLY NAME HIS 2004 FORD CROWN VICTORIA AS THE DEFENDANT.

Ramsey County assigns error to the District Court's decision to grant the Respondent's motion for summary judgment and to deny Ramsey County's motion for dismissal, or in the alternative, summary judgment because it lacked subject matter jurisdiction over this dispute. Appeal from a final judgment is authorized by Minn. R. Civ. App. P. 103.03(a) and an order denying summary judgment is appealable when a motion is based on a District Court's lack of subject matter jurisdiction. *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995).

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Minn. R. Civ. P. 12.03. Judgment on the pleadings is proper only if the pleadings of the parties do not create any issues of fact. *Ryan v. Lodermeier*, 387 N.W.2d 652 (Minn. Ct. App. 1986). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03.

In the instant case, the Respondent's claim fails as a matter of law and Ramsey County should have been entitled to judgment on the pleadings. The Respondent's failure to properly name his 2004 Ford Crown Victoria as the Defendant in this action deprived the District Court of subject matter jurisdiction for two reasons. First, failure to properly comply with pleading requirements in Minn. Stat. § 609.5314, subd. 3 deprives one of the ability to request a judicial determination of forfeiture because Minnesota courts have strictly construed the statute. Second, the District Court improperly allowed the Respondent to amend his complaint to include the seized vehicle as the Defendant.

A. Failure to properly comply with the pleading requirements outlined in Minn. Stat. § 609.5314, subd. 3 deprives a Claimant of the ability to request a judicial determination of forfeiture because the statute is strictly construed.

In the instant case involving a demand for judicial determination of forfeiture, the Respondent must be required to comply with the Legislature's clear directive in the administrative forfeiture statute related to property seized in connection with controlled substances. The mandatory language in the relevant statute requires that a request for a judicial determination of forfeiture name seized property as the Defendant in the action.

When property connected with a controlled substance offense is seized, all persons known to have an ownership, possessory, or security interest in the property are required to be notified of the seizure and the intent to forfeit the property. Minn. Stat. § 609.5314, subd. 2(a) (2009).¹ The notification must contain a description of the property seized, the

¹ No changes were made to Section 609.5314 between the time the Respondent filed his request for a judicial determination of forfeiture and the District Court's December 22, 2009 order.

date of the seizure, and notice of the right to obtain judicial review and the procedures associated therewith. *Id.* at subd. 2(b). It must also conspicuously state language substantially similar to the following:

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

Id. at subd. 2(b)(3) (capitalization in original, bold added). A claimant may file for a judicial determination of forfeiture within 60 days of service of notice of seizure and forfeiture. *Id.* at subd. 3(a).

A demand for judicial determination of forfeiture must be in the form of a civil complaint, must be filed with the court administrator in the county where the seizure occurred, and must be served upon the county attorney for that county. *Id.* The administrative forfeiture statute is unequivocal regarding the mandatory pleading requirements necessary to perfect a demand for a judicial determination of forfeiture.

The statute provides:

The complaint *must* be captioned in the name of the claimant as plaintiff and the seized property as defendant . . . *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 notice of seizure and forfeiture unless the person has complied with this subdivision.

Minn. Stat. § 609.5314, subd. 3(b) (2009) (emphasis added). This is a jurisdictional statute that outlines mandatory prerequisites to a District Court's ability to exercise subject matter jurisdiction over a demand for judicial determination of forfeiture.

Previous decisions from this Court support Ramsey County's position that the procedural requirements articulated in Section 609.5314, subd. 3(b) must be strictly followed. For example, the responsibility for meeting the statutory pleading requirements is on the claimant. *Bolanos v. 1992 Acura*, No.A05-172, 2005 WL 2208093, *3 (Minn. Ct. App. Sept. 13, 2005). In *Bolanos*, a District Court improperly exercised jurisdiction over a matter that was not properly filed within the 60 day time period outlined in the administrative forfeiture statute. A *pro se* claimant seeking a judicial determination of forfeiture filed a summons and complaint without proof of service upon the Hennepin County Attorney's Office. The paperwork was accepted by the Clerk of District Court and directed to the Minneapolis City Attorney's Office, which after some time notified the claimant it was not an interested party in the dispute. *Id.* at *1. More than six months after the original summons and complaint were filed, the claimant then filed a new demand for return of property along with proof of service upon the Hennepin County Attorney's Office. *Id.* Although this Court expressed sympathy for the harsh result for the claimant, it nonetheless held that District Court improperly exercised subject matter jurisdiction because "the law is unambiguous" and the claimant failed to comply with Section 609.5314, subd. 3(b). *Id.* at *3.

The Court again supported a strict construction of Section 609.5314 in *Sing v. 1997 Cadillac* when it affirmed a District Court's determination that subject matter was lacking because a claimant failed to comply with the statute's service and filing requirements. No. A05-2320, 2006 WL 2474071, *3 (Minn. Ct. App. Aug. 29, 2006). In that case, the claimant attempted to serve the Stearns County Attorney's Office with his demand for a judicial determination of forfeiture by mail. *Id.* at *2. Although the Office had actual notice of the demand, it did not return a signed acknowledgement of service to the claimant. *Id.* This Court determined the fact that the Stearns County Attorney's Office had actual notice of the demand for judicial determination of forfeiture was irrelevant and the District Court properly declined to exercise jurisdiction over the matter because "[n]o action for the return of property seized under section 609.5314 may be maintained by any person who has not complied with subdivision 3." *Id.* at *2.

Both the *Sing* and *Bolanos* cases cited *Garde v. One 1992 Ford Explorer XLT*, another case decided by this Court involving forfeiture under DWI laws. 662 N.W.2d 165 (Minn. Ct. App. 2003). Because the same language is used to articulate requirements for a demand of judicial determination of forfeiture under the DWI laws and in cases involving controlled substances, *Garde* provides useful guidance in addressing the issue presented in the instant case. *See* Minn. Stat. § 169A.63, subd. 8(e) (2009); Minn. Stat. § 609.5314, subd. 3(b) (2009). The sole issue addressed by this Court in *Garde* was whether a failure to follow the strict pleading requirements in the DWI forfeiture statute deprived a District Court of jurisdiction to hear a demand for judicial determination of

forfeiture. *Id.* at 166. The Court answered that question in the affirmative. *Id.* at 167. It was undisputed in the case that the claimant filed a demand for judicial determination of forfeiture in the District Court, but never served the demand on the prosecuting authority. *Id.* at 166. This Court observed:

The plain language of the statute provides that a claimant “may not” maintain an action for judicial determination of forfeiture without complying with the statutory requirements ... One requirement is that a claimant's demand for judicial review be filed with proof of service on the prosecuting authority ... Because respondent failed to comply with the statute, he may not maintain his action for judicial determination of forfeiture ... Accordingly, the district court did not have jurisdiction over the forfeiture proceeding and should have dismissed the action.

Id. at 166-67 (emphasis in original, citations omitted). Based on the case law outlined above, it is clear that this Court has consistently ruled in favor of a strict construction of procedural requirements necessary to make a demand for judicial determination of forfeiture.

The District Court erred in determining that *Bolanos* and other similar cases were distinguishable from the instant case. Add. 18. Although the principal issue in *Bolanos* related to notice, this Court also stated that Minn. Stat. § 609.5314, subd. 3 as a whole is unambiguous and that the responsibility for complying with the statute’s requirements is on a party seeking a judicial determination of forfeiture. *Bolanos*, 2005 WL 2208093, at *2-3. The notice requirement is one of many mandatory steps a party must take in order to properly request a judicial determination of forfeiture pursuant to the statute at issue in this dispute. In *Garde*, this Court acknowledged this when it wrote “[o]ne requirement is that a claimant’s demand for judicial review must be filed with proof of service on the

prosecuting authority.” *Garde*, 662 N.W.2d at 166-67 (emphasis added) (discussing a nearly identical statute). Thus, the fact that the Respondent served the Ramsey County Attorney with his demand does not change the fact that the demand itself was fatally defective because it failed to properly identify his vehicle as the defendant in this case.

Although limited, the factual record in this case establishes that the Respondent was properly served with a notice of seizure and intent to forfeit his 2004 Ford Crown Victoria. Officer Aaron Craven of the Roseville Police Department met with the Respondent at the Ramsey County Law Enforcement Center and personally served him with the notice. Add. 5, ¶ 20. In compliance with Section 609.5314, subd. 2, the notice read:

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
RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY.

Add 1, ¶ 2; Add. 2 (emphasis in original). At this point, the Respondent was put on notice that he must consult Section 609.5314, subd. 3 in order to properly request a judicial determination of forfeiture. The statute makes it clear that naming the “Ramsey County Attorney Forfeiture Department,” a non-existent entity, as a Defendant in place of his 2004 Ford Crown Victoria deprives the Respondent of his right to request the return of his property. *See* Minn. Stat. § 609.5314, subd. 3(b) (2009). Although this is a harsh result for the Respondent, this Court’s decisions in *Bolanos*, *Sing*, and *Garde* all require a strict construction of the statute at issue and militate in favor of Ramsey County’s

position that the Respondent was required to name his vehicle as Defendant in order to maintain a request for judicial determination of forfeiture.

Because the Respondent failed to meet a mandatory pleading requirement when he did not name his 2004 Ford Crown Victoria as the defendant in this case, the District Court lacked subject matter jurisdiction over this dispute and its decision to deny Ramsey County's motion for a dismissal, or in the alternative summary judgment, was an error of law.

B. The District Court improperly allowed the Respondent to amend his complaint in the absence of having subject matter jurisdiction.

In an effort to avoid a harsh result to the Respondent, the District Court granted his motion to amend his complaint to properly name the seized vehicle as the defendant. Also, while this appeal was pending, the District Court issued an order direct Ramsey County to change the caption on its filings to name the Respondent's 2004 Ford Crown Victoria as the Defendant-Appellant. Add. 8, 15, 22-23. These orders amounted to a legal error because, as was established above, this District Court lacked jurisdiction over this matter and the District Court did not provide sound legal justification for its order.

The District Court's reliance on the fact that Minnesota is a notice pleading state is improper because the procedural requirements for requesting a judicial determination of forfeiture are mandated by statute. The District Court's decision to allow the Respondent to amend his complaint was an error of law for three reasons. First, the District Court disregarded the letter of the law in an effort to achieve what it believed was a more equitable disposition. Second, the Minnesota Rules of Civil Procedure were not

implicated in the dispute because the District Court lacked subject matter jurisdiction. Third, the cases cited by the District Court are readily distinguishable from the instant case.

i. The District Court improperly ignored the letter of the law to achieve a what it believed was a more equitable result.

The District Court ignored the intent of the legislature in this case by not applying the mandatory language of Section 609.5314, subd. 3. The Legislature has clearly stated “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2009). As mentioned in the previous section, the statute which outlines the procedure for requesting a judicial determination of forfeiture in the circumstances of this case is unambiguous. *Bolanos v. 1992 Acura*, No.A05-172, 2005 WL 2208093, *3 (Minn. Ct. App. Sept. 13, 2005). Thus, it was an error of law for the District Court to rely on the fact that Minnesota is a notice pleading state to allow the Respondent the opportunity to amend his pleading.

Further, the District Court’s preoccupation with fairness provides reinforcement for Ramsey County’s argument that the District Court disregarded the letter of the law under the pretext of achieving what it believed was a just result. The transcript from the October 1, 2009 hearing sheds light on this point. In one instance, the District Court stated “I got to tell you, while I’m not sure I understand the law fully at this point, I got to tell you it seems totally unfair” and then made the observation that “the law generally is suppose to be fair” [sic]. Tr. 5:8-10. At another point, the District Court stated:

The result here, I have to say, even if I find for the city of Roseville and/or Ramsey County Attorney's Office, whoever happens to be the actual defendant here, even if I do rule in favor of that entity, there is a part of me that says it just isn't fair.²

Tr. 17:11-16. It is undisputed that the circumstances of this case are unfortunate, but this Court has already observed that it is inappropriate for a District Court to ignore Section 609.5314's mandate in an effort to arrive at an equitable result.

Bolanos, 2005 WL 2208093, at *3.

Based on the foregoing, it is clear that the District Court violated guidelines for statutory interpretation and relevant decisions from this Court when it declined to apply the letter of the law in this case and allowed the Respondent to amend his complaint.

ii. The Minnesota Rules of Civil Procedure were not implicated in the dispute because the District Court lacked subject matter jurisdiction.

The District Court's use of Rule 8.06 of the Rules of Civil Procedure and case law applying Rule 15.03 to allow the Respondent to amend his pleading and name his 2004 Ford Crown Victoria as the Defendant was improper because subject matter jurisdiction was not first established.

² This quotation is also important because it highlights how the Respondent's failure to name his 2004 Ford Crown Victoria as the Defendant created significant confusion about who was a proper party in this dispute and resulted in the Ramsey County Attorney's Office bearing sole responsibility for costs and sanctions. This result is not contemplated by the Legislature, which created a statutory scheme for disbursing costs and sanctions pursuant to Minn. Stat. § 609.5314, subd. 3(d) and Minn. Stat. § 609.5315, subd. 5. These statutory provisions will be discussed in more detail below. *See infra*, pp. 21-23.

The District Court permitted the Respondent to amend his complaint to substitute his 2004 Ford Crown Victoria as Defendant in place of the “Ramsey County Attorney Forfeiture Department” pursuant to Rules 8.06 and 15.03 of the Minnesota Rules of Civil Procedure. Add. 18-19. Although the Minnesota Rules of Civil Procedure generally govern a demand for judicial determination of forfeiture in cases involving controlled substances, there are two reasons why the Rules of Civil Procedure are not applicable to this dispute.

Most importantly, Section 609.5314, subd. 3(b) specifically states that its mandatory requirements apply “notwithstanding any law to the contrary.” There is no reason to believe that the phrase “any law” does not include the Rules of Civil Procedure. Furthermore, this Court has previously suggested that the Rules of Civil Procedure do not apply in cases where jurisdiction is not first established. Minn. Stat. § 609.5314, subd. 3(a) (2009); *Qualley v. Commissioner of Public Safety*, 349 N.W.2d 305, 309 (Minn. Ct. App. 1984). As noted above, Respondent’s failure to name his vehicle as the defendant in this matter should have prevented the District Court from exercising subject matter jurisdiction over this dispute. Thus, the District Court’s reliance on Rule 8.06 of the Rules of Civil Procedure to liberally construe the Respondent’s demand for a judicial determination of forfeiture amounted to an error of law. Add. 17.

Lastly, it was erroneous for the District Court to conclude that the Ramsey County Attorney’s Office would not be unfairly prejudiced if the Complaint were amended. As will be discussed in Section II of this brief, the District Court’s decision left Ramsey

County solely responsible for all costs and sanctions in this case when, by statute, it is only responsible for 20 percent of costs and sanctions – assuming costs and sanctions are appropriate. This amounts to unfair prejudice. As a result, the District Court lacked subject matter jurisdiction and erred in allowing the Respondent to amend his pleading pursuant to the Minnesota Rules of Civil Procedure.

iii. The case law cited by the District Court is readily distinguishable from the instant case.

In order to bolster its argument in favor of allowing the Respondent to amend his complaint, the District Court cited case law that is easily distinguishable from the matter at hand.

The cases *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 (Minn. Ct. App. 1990) were improperly used by the District Court because they are not applicable here. Add. 18. *Haugland* involved an interpretation of the Civil Damages Act, which does not contain the same language as Section 609.5314, subd. 3. *Hovelson* does not apply because it was an *in personam* action, not an *in rem* proceeding.

The issue in *Haugland* involved a determination of whether a complaint filed by the trustee for the next of kin of a decedent set out a legally sufficient civil damages action on behalf of the decedent under the Civil Damages Act, such that the complaint was not time barred and could be amended and relate back to the original. 666 N.W.2d 689, 692 (Minn. 2003). Although the trustee was allowed to amend the complaint in *Haugland*,

the holding has no bearing on actions brought under Section 609.5314. *Id.* at 695. The reason lies in the fact that the statutes are written differently.

The Civil Damages Act, Minn. Stat. § 340A.801, does not contain the same mandatory language found in Section 609.5314. It grants a right of action to “[a] spouse, child, parent, guardian, employer, or other person injured ... by an intoxicated person or by the intoxication of another person” against a liquor establishment. Minn. Stat. § 340A.801 (2009). However, the statute is silent as to the consequences of failing to bring an action in the name of an injured person and it does not contain language articulating circumstances in which a plaintiff would lose the right to file a claim. The same cannot be said of Section 609.5314, subd. 3(b), which states with specificity the consequences of failing to caption a complaint in the name of the claimant as plaintiff and the seized property as defendant. As noted above, the consequence is the inability to maintain an action for judicial determination of forfeiture. It is inappropriate to rely on the Minnesota Supreme Court’s interpretation of the Civil Damages Act because the statute does not contain language that can be properly analogized to the words contained in the statute at issue here.

Furthermore, the *Hovelson* case has no bearing on the instant dispute because it involved an *in personam* action, not an *in rem* proceeding. As a threshold matter, the facts of that case are distinguishable from this dispute. *Hovelson* involved a situation where a salesperson identified her employer as a defendant in a lawsuit

using the employer's alias name. 450 N.W.2d 137, 138 (Minn. Ct. App. 1990). The alias name was contained on the employee's business cards, the form contracts she used, and the company letterhead. *Id.* at 139. In the present case, the Respondent was given nothing that would suggest the Ramsey County Attorney Forfeiture Department was an entity that actually existed. Indeed, he was given a notice specifically directing him to the statute that required his 2004 Ford Crown Victoria to be named as Defendant.

It is equally important to consider the fact that *Hovelson* was not an *in rem* action. Civil forfeitures involving court action, like this proceeding, are *in rem* proceedings. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. Ct. App. 1999). *In rem* jurisdiction involves “[a] court’s power to adjudicate the rights to a given piece of property, including the power to seize and hold it.” Black’s Law Dictionary, 8th Ed. 2004, “jurisdiction”. If a request for judicial determination is properly filed, the District Court is charged with determining the disposition of the subject seized property. In this case, the Respondent did not just mistakenly identify the Defendant using a well-known alias – as was the case in *Hovelson* – he named a non-existent department of the Ramsey County Attorney’s Office in place of seized property. 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. This argument will be discussed in detail in the following section.

Based on the foregoing, the District Court's decision to allow the Respondent to amend his complaint in the absence of subject matter jurisdiction was an error of law for three reasons. First, the District Court disregarded the letter of the law in an effort to achieve what it thought was a more equitable disposition. Second, the Minnesota Rules of Civil Procedure were not implicated in the dispute because the District Court lacked subject matter jurisdiction. Third, the cases cited by the District Court are readily distinguishable from the instant case.

Because the District Court lacked subject matter jurisdiction to hear this dispute and its attempts to allow the Respondent to amend his pleading were invalid, the District Court erred in denying Ramsey County's motion for dismissal, or in the alternative summary judgment.

II. THE DISTRICT COURT'S AWARD TO THE RESPONDENT IGNORED THE FACT THAT LIABILITY FOR COSTS AND SANCTIONS CANNOT BE SOLELY IMPUTED TO THE RAMSEY COUNTY ATTORNEY UNDER MINN. STAT. § 609.5314, SUBD. 3(d).

This case is about more than a mere technicality. The practical reason why the Respondent's failure to name the proper Defendant in this case is important, besides the fact that it is required to establish subject matter jurisdiction, lies in the fact that the District Court improperly placed sole responsibility for costs and sanctions on the Ramsey County Attorney's Office. This is not the result intended by the Legislature.

As a direct result of the Respondent's fatal pleading defect, this action took on the characteristics of a civil action against the Ramsey County Attorney's Office, not an *in rem* proceeding intended to determine the disposition of the Respondent's 2004 Ford

Crown Victoria. This is contrary to legislative intent, which has outlined a specific mechanism for apportioning liability for costs and attorneys fees under Section 609.5314.

Section 609.5314 allows a District Court to award filing fees and even sanctions if there is a judicial determination of forfeiture and the property is ordered to be returned to the claimant. However, the statute specifically defines who is responsible for paying those costs and how the costs much must be paid. It provides “[the costs] 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) (2009). Section 609.5315, subd. 5, states the following:

The money or proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 70 percent of the money or proceeds must be forwarded to the appropriate agency for deposit as a supplement to the agency's operating fund or similar fund for use in law enforcement;

(2) 20 percent of the money or proceeds must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes; and

(3) the remaining ten percent of the money or proceeds must be forwarded within 60 days after resolution of the forfeiture to the state treasury and credited to the general fund ...³

³ It should also be noted that the District Court apparently used this statute as the basis for its erroneous assertion that “the City of Roseville and Ramsey County already have agreements in place to deal with the allocation of forfeiture proceeds.” Add. 20. There is no evidence in the record that supports this determination.

Minn. Stat. § 609.5315, subd. 5 (2009) (emphasis added). Thus, under the scheme created by the Legislature, the Ramsey County Attorney's Office should have been on the hook for 20 percent of the costs and sanctions awarded to the Respondent. Of course, this is operating under the assumption that sanctions were appropriate in this case – an assertion that will be disputed in the final section of this brief.

Because the District Court chose to treat this matter in a manner similar to a civil action against the prosecuting authority and not an *in rem* proceeding, the Ramsey County Attorney's Office bore 100 percent responsibility for the costs and sanctions awarded to the Respondent. This is a gross departure from the Legislature's directive and constitutes an error of law.

III. EVEN IF THE EXERCISE OF JURISDICTION WERE PROPER, THE DISTRICT COURT ABUSED ITS DISCRETION IN AWARDING SANCTIONS TO THE RESPONDENT BECAUSE THERE IS NO CLEAR GUIDANCE RELATED TO WHO IS RESPONSIBLE FOR PAYING STORAGE AND TOWING FEES WHEN A FORFEITURE UNDER SECTION 609.5314 IS ABANDONED.

Even if the District Court properly exercised subject matter jurisdiction over this dispute, the Court's decision to sanction the Ramsey County Attorney's Office was not appropriate in the circumstances of this case because neither Ramsey County nor the Roseville Police Department acted manifestly unreasonable in light of the law as it exists today.

This Court will not reverse an award of sanctions absent an abuse of discretion. *Wolf Motor Company, Inc v. One 2000 Ford F-350*, 658 N.W.2d 900, 904 (Minn. Ct.

App. 2003). The applicable statute authorizes sanctions only when there is a judicial determination of forfeiture and the court orders the return of seized property. Minn. Stat. § 609.5314, subd. 3(d) (2009). In this case, the conduct that resulted in sanctions occurred after the Ramsey County Attorney's Office ordered the return of the Respondent's vehicle. The District Court did not order the return of the Respondent's vehicle and there was no judicial determination of forfeiture to make because the Ramsey County Attorney's Office instructed the Roseville Police Department to return the Respondent's vehicle and the vehicle was returned to a lien holder – Ford Motor Credit. Thus, it is questionable whether the statute even authorizes sanctions in this case, especially in light of the fact that the statute is silent as to how the County Attorney should proceed upon abandoning forfeiture.

As the law currently stands, the only definitive obligation placed on a County Attorney's Office after it chooses to abandon an administrative forfeiture is that it must order the return of the vehicle. *Strange*, 597 N.W.2d at 358. Although *Strange* is distinguishable factually from this case because the District Court had original jurisdiction, the analysis in that case provides useful guidance here. In *Strange*, a seized vehicle was not returned to the owner after the County Attorney sought to abandon forfeiture. *Id.* The owner subsequently filed a request for judicial determination of forfeiture. *Id.* at 357. While a request for a judicial determination of forfeiture was pending, the Federal Drug Enforcement Agency initiated its own effort to forfeit the vehicle. *Id.* Although the central issue in this case related to a question of jurisdiction,

this Court did affirmatively state that a County Attorney must order the release of a vehicle if administrative forfeiture is abandoned.

Moreover, *Strange* is significant for another reason. The concurring opinion in that case, which focused on the structure of the law enforcement system in Minnesota, is helpful to explain why Ramsey County should not be held accountable for the actions of the Roseville Police Department. Judge Harten noted:

The chief law enforcement officer in each county is the elected county attorney; the county attorney, not the police, decides whether to initiate civil or criminal court process on behalf of the state. Problems occur when persons or agencies in the law enforcement system act outside normal channels.

Id. at 359-60 (Harten concurring). He went on to observe that problems in the *Strange* case occurred after the State Patrol apparently disagreed with the County Attorney's decision to abandon the administrative forfeiture and sought to have the vehicle forfeited under federal law. *Id.* at 360. These observations recognize that competing interests sometimes exist between law enforcement agencies. In the instant case, the Ramsey County Attorney's Office ordered the release of the Respondent's vehicle. For whatever reason, the Roseville Police Department then decided to give the Respondent two days to produce accrued storage and towing fees before he would have access to his vehicle. Any decisions made by the Roseville Police Department regarding the disposition of the Respondent's vehicle occurred after the Ramsey County Attorney's Office complied with its obligations upon abandonment of forfeiture as they have been presently defined. Accordingly, the District Court's conclusion that "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” erroneously treats the Ramsey County Attorney’s Office and the Roseville Police Department as one entity. Add. 21.

Finally, the question of who bears the burden of towing and storage costs when an administrative forfeiture is abandoned appears to be a case of first impression. Ramsey County’s position is that the Roseville Police Department’s decision to ask the Respondent to pay the storage and towing costs cannot warrant sanctions because there is no legislative or judicial pronouncement that offers specific guidance on this issue. The only case somewhat on point is *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114 (Minn. 2001). In that case, the Supreme Court held that a vehicle owner was not responsible for storage fees when police seized his vehicle and it was later returned to him after a judicial determination of forfeiture under DWI laws. *Id.* at 115. There is no certainty as to whether the holding of this case applies when forfeiture is abandoned. There may be an equitable argument that the holding in *Genin* should apply under the facts of this case, but the fact of the matter is that the issue has never been addressed on appeal or by the Legislature and thus should not be a basis for sanctions.

Even if this Court does decide to apply *Genin* to these facts, the case still does not warrant sanctions against the Ramsey County Attorney’s Office. In *Genin*, the City of Centerville was responsible for storage fees because, as the appropriate agency, it had the right, title, and interest in the seized vehicle. *Id.* at 119. The Supreme Court determined that the “appropriate agency” is responsible for storage costs because it bore primary

responsibility for the vehicle under the statutory scheme. *Id.* The statutes at issue here contain substantially similar language. Section 609.531 also provides that all right, title, and interest in property subject to forfeiture under Section 609.5314 vests in the appropriate agency upon commission of the act giving rise to the forfeiture. Minn. Stat. § 609.531, subd. 5 (2009). Further, the definition of “appropriate agency” includes city police departments, but not County Attorney’s Offices. *Id.* at subd. 1(e). Thus, even if this Court decides to apply the principles in *Genin* to situations where forfeiture is abandoned, the Roseville Police Department should be solely responsible any misconduct arising from an attempt to charge storage and towing costs because it was the appropriate agency. The District Court abused its discretion in sanctioning the Ramsey County Attorney’s Office in the form of attorney’s fees, transcript fees, and filing fees.

Based on the foregoing, even if jurisdiction was proper, the sanctions levied on the Ramsey County Attorney’s Office should be reversed.

CONCLUSION

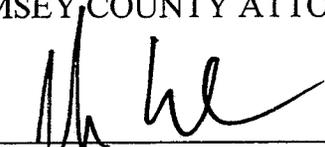
Ramsey County respectfully requests this Court to issue an order reversing the District Court’s December 22, 2009 decision to deny Ramsey County’s motion for dismissal and exercise jurisdiction over this case because the Respondent did not comply with mandatory pleading requirements. In the event this Court finds the District Court did have jurisdiction, Ramsey County requests this Court to issue an order reversing the sanctions levied on the Ramsey County Attorney’s Office due to ambiguity in the law

related to accrued storage and towing costs and to reapportion any appropriate award to the Respondent in a manner consistent with Minn. Stat. § 609.5314, subd. 3(d).

Respectfully submitted,

SUSAN GAERTNER
RAMSEY COUNTY ATTORNEY

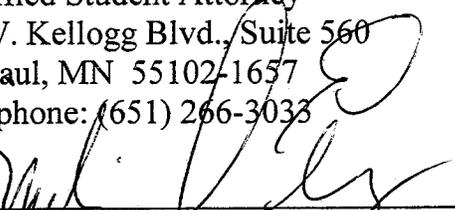
Dated: April 27, 2010

By:  _____

John Edison

Certified Student Attorney
50 W. Kellogg Blvd., Suite 560
St. Paul, MN 55102-1657
Telephone: (651) 266-3033

Dated: April 27, 2010

By:  _____

Melinda S. Elledge (#26402)

Assistant Ramsey County Attorney
50 W. Kellogg Blvd., Suite 560
St. Paul, MN 55102-1657
Telephone: (651) 266-3112

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Brief complies with the word count limitation of Minn. R. Civ. App. P. 132.01, subd. 3(a). I further certify that, in preparation of this Brief, I used Microsoft Word 2007, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. All text is 13-point Times New Roman. I further certify that the Brief contains 7,441 words.



Melinda Soelledge