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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2230
A12-2231**

Gale Rachuy,
Appellant,

vs.

Rick Lake, et al.,
Respondents.

**Filed May 20, 2013
Reversed and remanded
Larkin, Judge**

Carlton County District Court
File No. 09-CV-12-2208

Gale A. Rachuy, Oakdale, Louisiana (pro se appellant)

Thomas H. Pertler, Carlton County Attorney, Carlton, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the dismissal, under Minn. Stat. § 563.02 (2012), of two
inmate in forma pauperis actions asserting claims for the return of property and

suppression of evidence under Minn. Stat. §§ 626.04, .21 (2012). Because the district court erred by concluding that the claims were frivolous, we reverse and remand.

FACTS

These consolidated appeals arise from the district court's dismissal of two separate inmate in forma pauperis actions filed by appellant Gale Rachuy. In the first, Rachuy filed a complaint in Carlton County dated May 12, 2012. The complaint named Carlton County Sheriff Deputy Rick Lake and Carlton County Attorney Thomas Pertler as defendants. Rachuy alleged that Lake entered onto his property and seized two vehicles from his "yard" without a warrant. Rachuy further alleged that he had requested the return of paperwork and two compact discs from the vehicles but that the items were not returned. Rachuy asserted a claim under Minn. Stat. § 626.21, asking for the return of his papers and compact discs and that the district court "[o]rder the evidence be suppressed of the search of both vehicles where there was no search warrant." The district court dismissed Rachuy's action with prejudice, using a preprinted form for its order. The court checked a box on the form stating: "The action, or a portion of it, is frivolous or malicious, because . . . [i]t has no arguable basis in law or in fact[.]"

About two months later, Rachuy filed another inmate in forma pauperis action in Carlton County. The complaint dated July 17 named Lake, Pertler, and Carlton County as defendants. In this complaint, Rachuy once again alleged that Lake seized two vehicles from his property without a warrant. He alleged that he had requested, by letter dated May 21, the return of papers and compact discs that were left in both vehicles. Rachuy requested a jury trial; an "[o]rder for return of [his] property"; an "[o]rder

pursuant to Minn. Stat. §§ 626.04 and 626.21 that all of the receipts, papers, bill of sales and the 1997 Nissan Pathfinder and 2009 GMC Denali . . . be suppressed”; that he be awarded damages in excess of \$50,000 for trespass; that he be awarded damages in excess of \$50,000 for “the unlawful seizure of the 1997 Nissan Pathfinder and 2009 GMC Denali, which were not stolen”; and compensation for litigation costs.

The district court dismissed the action, again concluding that “[t]he action, or a portion of it, is frivolous or malicious, because . . . [i]t has no arguable basis in law or in fact.” Rachuy appeals the district court’s dismissal of both actions.

D E C I S I O N

The district court shall dismiss with prejudice an action commenced by an inmate who seeks to proceed in forma pauperis, if the court determines that the action is frivolous or malicious. Minn. Stat. § 563.02, subd. 3(a). “In determining whether an action is frivolous or malicious, the court may consider whether . . . the claim has no arguable basis in law or fact[.]” *Id.*, subd. 3(b)(1); *see also Maddox v. Dep’t of Human Servs.*, 400 N.W.2d 136, 139 (Minn. App. 1987) (“A frivolous claim is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law.” (quotation omitted)). The court may dismiss the action “before or after service of process, and with or without holding a hearing.” Minn. Stat. § 563.02, subd. 3(c). The district court has broad discretion in considering proceedings in forma pauperis and will not be reversed absent an abuse of discretion. *Maddox*, 400 N.W.2d at 139.

Rachuy argues that the district court abused its discretion because Minnesota Statutes sections 626.04 and 626.21 “provide clear remedies for the return of property seized in violation of one’s constitutional rights” and because the district court failed to provide a rationale for its decision that his claims under these sections are frivolous.

Minn. Stat. § 626.21

Rachuy asserted claims under Minn. Stat. § 626.21 in both the May 12 and July 17 complaints. Section 626.21 provides that

[a] person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the district court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

Minn. Stat. § 626.21. Section 626.21 “allows a person aggrieved by a search the opportunity to raise an issue not necessarily germane to any criminal prosecution, i.e. possession of property, before a criminal complaint has been filed and in a court which may not have jurisdiction over the criminal offense.” *Bonyng v. City of Minneapolis*, 430 N.W.2d 265, 266 (Minn. App. 1988).

Both complaints allege that Lake conducted an unlawful search and seizure, without a warrant, of Rachuy’s property in Carlton County. Rachuy requests return of the property and suppression. Given the allegations in the complaints and the plain

language of the statute, Rachuy's claims under section 626.21 have an arguable basis in law. The district court made no findings to support the conclusion that Rachuy's claims have no basis in fact. Moreover, the statute specifically provides for the district court to receive evidence to decide any issue of fact necessary to its decision. Minn. Stat. § 626.21; *see also Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (addressing a motion to dismiss for failure to state a claim upon which relief can be granted and stating that "it is immaterial whether or not the plaintiff can prove the facts alleged . . . we will not uphold a Rule 12.02(e) dismissal if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded" (citation and quotation omitted)).

We therefore conclude that the district court abused its discretion in dismissing Rachuy's claims under section 626.21. But we observe that our decision is not based on the merits of those claims. To succeed on remand, Rachuy must establish that he was "aggrieved by an unlawful search and seizure." *See* Minn. Stat. § 626.21. "For a search to be held unconstitutional under the Fourth Amendment the one searched must have had an 'actual expectation of privacy' in the area searched and that expectation of privacy must be 'one that society is prepared to recognize as reasonable.'" *State v. Colosimo*, 669 N.W.2d 1, 5 (Minn. 2003) (quoting *Bond v. United States*, 529 U.S. 334, 338, 120 S. Ct. 1462 (2000)). Rachuy may or may not have had a reasonable expectation of privacy in the area of his "yard" where the suspected stolen vehicles were found and seized. *See State v. Sorenson*, 441 N.W.2d 455, 458 (Minn. 1989) (stating that the constitutional "protections against unreasonable search and seizures extend to the curtilage of a home"

but what constitutes curtilage often “defies precise definition”). Nevertheless, we are bound to follow the standard established by the legislature and applied by the district court: “whether . . . the claim has no arguable basis in law or fact[.]” Minn. Stat. § 563.02, subd. 3(b)(1). Rachuy’s pleadings survive dismissal under that standard.

Minn. Stat. § 626.04

Rachuy asserted a claim under section 626.04 in his July 17 complaint. Minnesota Statutes section 626.04 provides that

[w]hen any officer seizes, with or without warrant, any property or thing, it shall be safely kept by direction of the court as long as necessary for the purpose of being produced as evidence on any trial. If the owner of the property makes a written request to the seizing officer’s agency for return of the property, and the property has not been returned within 48 hours of the request . . . the person whose property has been seized may file a petition for the return of the property in the district court in the district in which the property was seized. . . . The determination of the petition must be without jury trial and by a simple and informal procedure. At the hearing, the court may receive relevant evidence on any issue of fact necessary to the decision on the petition without regard to whether the evidence would be admissible under the Minnesota Rules of Evidence. . . . After a hearing, the court shall not order the return if it finds that:

- (1) the property is being held in good faith as potential evidence in any matter, charged or uncharged;
- (2) the property may be subject to forfeiture proceedings;
- (3) the property is contraband or may contain contraband; or
- (4) the property is subject to other lawful retention.

. . . The court shall make findings on each of these issues as part of its order.

Minn. Stat. § 626.04(a), (b).

Rachuy's complaint alleges that Lake seized his property, that Rachuy requested its return in writing, and that the property has not been returned. Given the allegations in the complaint and the plain language of Minn. Stat. § 626.04, Rachuy's claim has an arguable basis in law and fact. Yet the district court did not hold a hearing and did not make any findings regarding whether the property was being held as evidence, was subject to forfeiture, was contraband, or was being held for any other reason.¹ *See id.* We conclude that the district court abused its discretion in dismissing Rachuy's claim under section 626.04.

Conclusion

Rachuy's complaints allege facts that raise an arguable basis for relief under both Minn. Stat. § 626.21 and Minn. Stat. § 626.04. We therefore reverse the district court's dismissal of his claims as frivolous and remand for further proceedings on his claims under sections 626.21 and 626.04.²

Reversed and remanded.

¹ Rachuy mentions in his brief that criminal charges related to the seizure were brought but later dismissed. The district court's order does not reference the criminal case and does not address whether or not the issues raised in this appeal were addressed during the course of the criminal case.

² Rachuy does not assign error to the district court's dismissal of any of his other claims.