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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2246

Coralie Ann Jacobson,
Appellant,

vs.

1998 Ford Windstar, VIN# 2FMDAS14XWBA49271,
Respondent.

Filed November 3, 2009
Affirmed
Larkin, Judge

Kandiyohi County District Court
File No. 34-CV-08-398

John E. Mack, Mack & Daby, P.A., P.O. Box 302, New London, MN 56273 (for appellant)

Lori Swanson, Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101; and

Boyd Beccue, Kandiyohi County Attorney, Shane Baker, Assistant County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

U N P U B L I S H E D   O P I N I O N

LARKIN, Judge

Appellant filed an action in district court challenging the forfeiture of her automobile and the constitutionality of Minn. Stat. § 169A.63 (2008). Because the district court correctly determined that appellant failed to comply with the service requirements of Minn. Stat. § 169A.63, subd. 8(d), and that appellant was therefore not entitled to judicial review of the claims brought in her forfeiture action, the district court properly dismissed the action without considering any of appellant's substantive arguments. We affirm.

FACTS

On January 23, 2008, appellant Coralie Ann Jacobson's ex-husband was arrested on suspicion of driving while impaired (DWI) and was subsequently charged with second-degree DWI. In jail that night, the Minnesota State Patrol served on him a notice of seizure and intent to forfeit vehicle. A separate notice, dated January 24, was served on Jacobson, who was the owner of the vehicle, via certified mail. On February 4, Jacobson filed a conciliation court statement of claim and summons with Kandiyohi County Court Administration, challenging the forfeiture and claiming that she was owed $2,665. While Jacobson's conciliation court statement of claim and summons states that she was owed "$2,600.00, plus filing fees and costs of $65.00," she also filed an "Attachment to Petition for Judicial Determination," which states that "[t]he value of [her] vehicle is less than $2,000, and hence less than $7,500."

Jacobson raised the following challenges to the forfeiture of her vehicle in her petition for judicial determination:

> III. [Jacobson] is not guilty of the predicate acts which would make this vehicle subject to forfeiture.
>
> IV. Minn. Stat. § 169A.63 is unconstitutional to the extent that it permits the seizure of exempt property for a liability, in violation of Minn. Stat. § 550.37 subd. 12a and Article I § 12 of the Minnesota Constitution.
> . . . .
>
> VIII. [Jacobson] neither knew that John Ellis Jacobson had taken her vehicle, nor did she give John Ellis Jacobson permission to take her vehicle or to drive the same, and in fact explicitly instructed John Ellis Jacobson not to drive that vehicle.

See Minn. Stat. § 169A.63, subd. 8(e) (providing the complaint "must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized, the claimant's interest in the vehicle seized, and any affirmative defenses the claimant may have").

Court administration informed Jacobson, via a "notice to use certified mail" dated February 14, that she must serve her conciliation court "[s]ummons upon the defendant by certified mail and file an Affidavit of Service with this office by the hearing date of March 24, 2008." Jacobson did not serve the Kandiyohi County Attorney's Office and the Commissioner of Public Safety until March 12, approximately 47 days after she was served with the notice of seizure and intent to forfeit vehicle. Because service was not timely under Minn. Stat. § 169A.63, subd. 8(d), which requires proof of service "[w]ithin 30 days following service of a notice of seizure and forfeiture," the district court, sitting as conciliation court, concluded that Jacobson had failed to demand judicial review as

described in the statute and that the district court therefore did not have authority to determine her claim. The district court dismissed Jacobson's conciliation court claim on May 21.

Jacobson filed a demand for removal to district court. The state moved to dismiss the case for lack of subject-matter jurisdiction, arguing that Jacobson failed to complete service as required under Minn. Stat. § 169A.63, subd. 8(d), (e). Jacobson responded that the seizure was unconstitutional and that the service requirements had been satisfied. The district court granted the state's motion and dismissed Jacobson's case with prejudice. This appeal follows.

D E C I S I O N

The district court's dismissal was based on its determination that Jacobson failed to perfect service as required under Minn. Stat. § 169A.63, subd. 8. Whether service of process was properly made is a legal question, subject to de novo review. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

Minn. Stat. § 169A.63, subd. 8(d), sets forth the following service requirements for an administrative forfeiture proceeding:

> Within 30 days following service of a notice of seizure and forfeiture under this subdivision, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, *together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture and the appropriate agency that initiated the forfeiture. . . .*

Minn. Stat. § 169A.63, subd. 8(d) (emphasis added).

Section 169A.63 provides that a forfeiture challenge may be filed in conciliation court if the value of the seized property is $7,500 or less. Minn. Stat. § 169A.63, subd. 8(d). Jacobson claims that because she filed her claim in conciliation court, the procedural rules governing conciliation-court proceedings apply, and she therefore had 60 days to serve the summons on the state. *See* Minn. R. Gen. Pract. 508(d)(1) ("If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice."). But Minn. Stat. § 169A.63, subd. 8(d), specifically provides that when a forfeiture challenge is filed in conciliation court, "[a] copy of the conciliation court statement of claim must be served personally or by mail on the prosecuting authority having jurisdiction over the forfeiture, as well as on the appropriate agency that initiated the forfeiture, *within 30 days following service of the notice of seizure and forfeiture*." (Emphasis added.) We hold that the specific 30-day statutory service deadline for forfeiture actions filed in conciliation court governs over the general 60-day deadline for other conciliation-court claims. *See* Minn. Stat. § 645.26, subd. 1 (2008) (providing that when two statutes are in conflict, the specific governs over the general, absent specific legislative intent to the contrary).

While Jacobson filed a timely conciliation court statement of claim and summons, she did not serve the Kandiyohi County Attorney or the Commissioner of Public Safety until approximately 47 days after she had been served with the notice and intent to forfeit. Thus, Jacobson did not comply with the service requirements of Minn. Stat. § 169A.63,

subd. 8(d). Section 169A.63, subdivision 8, provides "(e) … an action for the return of a vehicle seized under this section may not be maintained by … any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision." Because Jacobson failed to comply with the statutory service requirements, she lost her right to a judicial determination of the forfeiture. Minn. Stat. § 169A.63, subd. 8(e); *see also Garde v. One 1992 Ford Explorer*, 662 N.W.2d 165, 167 (Minn. App. 2003) (holding that because the claimant did not strictly comply with the service requirements of section 169A.63, subd. 8, he could not maintain his action for judicial determination of forfeiture). Accordingly, the district court correctly determined that Jacobson failed to perfect service and properly dismissed the action. *See Garde*, 662 N.W.2d at 167.

Jacobson argues that the notice to use certified mail from court administration was ambiguous because it implied that she had until March 24, 2008 to perfect service. She further argues, based on this ambiguity, that "judicial estoppel" compels a conclusion that she perfected service. However, the doctrine of judicial estoppel has no application in this case. Judicial estoppel "is intended to prevent a *party* from assuming inconsistent or contradictory positions during the course of a lawsuit." *State v. Pendleton*, 706 N.W.2d 500, 507 (Minn. 2005) (emphasis added). Moreover, the doctrine has not yet been expressly adopted by the Minnesota courts. *Id.* Jacobson actually appears to be asserting a due-process claim rather than a judicial-estoppel claim. "Due process prohibits state representatives from misleading individuals as to their legal obligations." *Whitten v. State*, 690 N.W.2d 561, 565 (Minn. App. 2005) (citing *McDonnell v. Comm'r of Pub.*

Safety, 473 N.W.2d 848, 854 (Minn.1991)). Indeed, *Whitten* was the case Jacobson cited at the district court hearing.

Jacobson argues that the following statement in the notice to use certified mail is misleading: "[Y]ou must serve the Summons upon the defendant by certified mail and file an Affidavit of Service with this office by the hearing date of March 24, 2008." Jacobson argues that this statement reasonably led her to believe that she had until March 24 to serve the summons on defendant. While the statement is arguably misleading, the notice of seizure and intent to forfeit vehicle that was served on Jacobson clearly states the 30-day service deadline. Additionally, Jacobson does not dispute that the notice to use certified mail was accompanied by "Instructions for Conciliation Court Judicial Review of Motor Vehicle Forfeiture for Alcohol Related Offenses," which also clearly indicates the 30-day service deadline. We will not excuse Jacobson from compliance with the clear service requirements of section 169A.63, subdivision 8(d). *See Gruenhagen v. Larson*, 310 Minn. 454, 460, 246 N.W.2d 565, 569 (1976) (holding that a court will not modify ordinary rules and procedures because a pro se party lacks the skills and knowledge of an attorney).

The district court properly dismissed Jacobson's action without deciding any of her substantive claims, including her constitutional claim that she was entitled to an exemption from forfeiture under Minn. Const. Art. I, § 12 ("A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability."); Minn. Stat. § 550.37, subd. 12a (2008) (creating an automobile exemption from property liable to attachment, garnishment, or sale on any process); and *Torgelson v. Real*

Property Known as 17138 880th Ave., Renville County, 749 N.W.2d 24 (Minn. 2008). Jacobson contends that we should rule on the merits of her constitutional claim even though the district court did not consider it. We normally will not consider matters not considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In support of her contention, Jacobson argues that she was not required to raise her constitutional claim to an exemption in the context of a forfeiture action under section 169A.63. Jacobson further argues that to the extent her exemption claim could have been raised in a proceeding under section 550.37, instead of in the context of a forfeiture action under section 169A.63, it is governed by Minn. Stat. §§ 550.01-.42 (2008), and not by section 169A.63.

Jacobson cites no legal authority to support her contention that she may avoid the clear statutory service requirements of section 169A.63 simply because, in theory, she could have raised her exemption claim in a separate proceeding under section 550.37.[1] Because Jacobson raised her constitutional claim to an exemption in the context of a forfeiture action, the claim is governed by the service requirements of section 169A.63. The district court did not err by dismissing the claim without considering its merits, and we will not determine the claim for the first time on appeal. *See Thiele*, 425 N.W.2d at 582.

We recognize that the district court's stated basis for not considering Jacobson's constitutional claim is her failure to notify the Minnesota Attorney General of the claim

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[1] We do not consider or decide Jacobson's claim that she is constitutionally entitled to a statutory exemption under *Torgelson* or her claim that she may pursue an exemption outside the context of a forfeiture proceeding under Minn. Stat. § 169A.63.

under Minn. R. Civ. P. 5A (requiring notice of constitutional challenge to a statute) and *In re Appeal of Leary*, 272 Minn. 34, 47, 136 N.W.2d 552, 560 (1965) (construing predecessor Minn. R. Civ. P. 24.04 and noting that service must be made upon the attorney general in all cases where the attorney general is not already a party because he or she cannot be expected to have knowledge of every proceeding in which any subdivision of the state represented by a county attorney may raise a constitutional issue as to a statute). Jacobson argues that notice was not required because the state is a party and that the district court therefore erred by refusing to consider her constitutional claim based on noncompliance with rule 5A. But because the constitutional claim was raised in the context of Jacobson's demand for a judicial determination of the forfeiture under section 169A.63, subdivision 8, and because Jacobson did not comply with the statutory service requirements, Jacobson was not entitled to a determination of this claim under the express language of the statute. Minn. Stat. § 169A.63, subd. 8(e) ("an action for the return of a vehicle 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"). It is therefore unnecessary to review the district court's conclusion that dismissal was appropriate under Minn. R. Civ. P. 5A.

Affirmed.

Dated: ______________________________

Judge Michelle A. Larkin