Zephier v. Agate

Supreme Court of Minnesota

March 31, 2021, Filed

A19-0907

Reporter
957 N.W.2d 866 *; 2021 Minn. LEXIS 132 **; 2021 WL 1311456

Dannielle Zephier, Respondent, vs. Derrick Agate, Jr., Lee Ann Krueger, Appellants.

Prior History: **[**1]** Court of Appeals.

Zephier v. Agate, 942 N.W.2d 380, 2020 Minn. App. LEXIS 88 (Minn. Ct. App., Apr. 13, 2020)

Disposition: Affirmed in part, reversed in part.

Case Summary

Overview

HOLDINGS: [1]-Because appellants did not provide notice to respondent that they considered her to have abandoned the dog, they did not meet the requirements of Minn. Stat. § 345.75 (2020) and could not claim ownership of the dog under the statute; [2]-Respondent did not abandon the dog under the common law because she did not relinquish ownership of the dog, as she had a verbal agreement with one appellant that he would care for the dog while she could not; further, there was no evidence in the record showing that respondent intended to permanently part with the dog.

Outcome
Affirmed in part and reversed in part.

Syllabus

SYLLABUS

1. Minnesota Statutes section 345.75 (2020) does not abrogate the common law of abandonment as to tangible personal property.

2. The court of appeals did not err when it reversed the district court's decision regarding abandonment because, under both common law and Minn. Stat. § 345.75, Zephier did not abandon her dog Oliver.

Counsel: Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, P.A., Minneapolis, Minnesota, for appellants.

Stephen F. Buterin, Fisher Bren & Sheridan LLP, Minneapolis, Minnesota, for respondent.

Judges: McKeig, J.

Opinion by: MCKEIG

Opinion

[*870] MCKEIG, Justice.

This appeal requires us to consider whether Minn. Stat. § 345.75 (2020), which governs the abandonment of tangible personal property, abrogates by implication the common law in this area. We conclude that Minn. Stat. § 345.75 does not abrogate by implication the common law of abandonment of tangible personal property, contrary to the decision of the court of appeals, and therefore we reverse that holding. However, because we agree with the court of appeals that respondent did not abandon her dog under Minn. Stat. § 345.75, and that the district court erred in concluding that she abandoned the dog under the common law, we affirm that portion of the court of appeals's decision.

FACTS

In July 2008, respondent **[**2]** Dannielle Zephier purchased a dog named Oliver. Zephier traveled frequently for work starting in 2009, so her two dogs, Oliver and Alex, began staying with her father in South Dakota.

Around September 2015, Zephier's father moved and the dogs could no longer live with him. Zephier had moved to Los Angeles, California, and could not bring the dogs to live with her. She asked appellant Derrick Agate, Jr., whom she had previously dated, to take care of both dogs. Agate agreed to do so, but they did not have a written agreement about the care of the dogs.

Zephier and Agate dispute who paid the dogs' expenses. Zephier assumed she would pay for the expenses, and thus, she took care of multiple vet bills dealing with Oliver while he stayed with Agate.

While the dogs stayed with Agate, he and Zephier communicated regularly via text message including frequent discussions about the dogs. Between 2015 and 2017, Zephier flew back to Minnesota to visit the dogs on multiple occasions. In 2016, while the dogs were still staying with Agate, appellant Lee Ann Kruger moved in with him.

In November 2016, Zephier moved Alex to her home in California. She did not take Oliver at the time because he was larger **[**3]** and she did not believe she would be able to take him with her on the plane. She planned to rent a car in order to pick up Oliver and drive him back to California to live with her. After Zephier brought Alex to live with her, she and Agate continued to communicate about Oliver.

In October 2017, Zephier made plans with Agate to fly to Minnesota and visit Oliver. After Zephier arrived in Minnesota, she coordinated with Agate to pick up Oliver from his apartment. Zephier texted Agate when she arrived and he replied that he would "be out shortly." Three minutes later, Agate texted again: "I can't bring him out I'm sorry." Zephier demanded that Agate return Oliver to her, he refused, and they continued to have a back-and-forth text exchange. Agate came out to talk to Zephier in person and then refused to hand Oliver over to her.

Zephier threatened to, and eventually did, call the police. The police refused to get involved because the dispute was a civil matter. On October 30, 2017, Kruger registered Oliver with the City of Minneapolis—

there is no evidence that anyone had previously registered him with the city. In May 2018, Zephier filed a police **[*871]** report claiming that Agate and Kruger stole **[**4]** Oliver.

In July 2018, Zephier filed a claim in conciliation court against Agate and Krueger, seeking replevin of Oliver.[1] The referee denied replevin but entered a monetary judgment for $570 in Zephier's favor. Zephier removed the case to district court. The district court denied recovery because it found that Zephier had abandoned Oliver. Specifically, the district court found that Zephier abandoned Oliver when she picked up Alex and returned to California in November of 2016, "thereby relinquishing any remaining ownership interest she may have had in Oliver." The district court also found Zephier "made an intentional and voluntary decision to permanently part with Oliver when she reclaimed full ownership of Alex in November 2016." The district court further found that the requirements of Minn. Stat § 345.75, which governs the abandonment of tangible personal property, had been met because Agate possessed Oliver for more than six months; Zephier did not take Oliver with her; and she had personal notice in November 2016 that she was abandoning Oliver, but did not dispute his ownership until October 2017.

Zephier appealed. The court of appeals reversed in a published opinion. *Zephier v. Agate*, 942 N.W.2d 380 (Minn. App. 2020). The court of appeals analyzed **[**5]** the text of Minn. Stat. § 345.75, and held that the statute abrogated the common law of abandonment of tangible personal property by necessary implication. 942 N.W.2d at 384. The court further concluded that under the statute, Agate was required to give Zephier notice that she had abandoned Oliver, and because he did not, the district court clearly erred in finding that Zephier had personal notice that she had abandoned Oliver. *Id.* at 386-87. We granted the petition for review.

ANALYSIS

I.

Respondents Agate and Kruger argue that the court of appeals erred when it held that Minn. Stat. § 345.75 abrogated the common law of abandonment of tangible personal property by necessary implication.[2] We review the application of common law de novo. *Soderberg v. Anderson*, 922 N.W.2d 200, 203 (Minn. 2019). We presume that statutes are consistent with the common law and, "we do not presume that the Legislature intends to abrogate or modify a common law rule except to the extent expressly declared or clearly indicated in the statute." *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 73 (Minn. 2012).

Minnesota Statutes section 345.75 governs the abandonment of tangible personal property. It states:

> The ownership of abandoned tangible personal property that is not subject to any other provision of statute may be transferred as provided by this section.
>
> If property has not been removed within six months after it comes into **[**6]** the possession of a person, it is abandoned and shall become the property of the person in possession, after notice to the prior owner. Thirty days' notice that the time period has elapsed and that the ownership will be transferred at the end of the **[*872]** 30 days shall be given to the prior owner personally or by

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[1] Replevin is a common law remedy in which a plaintiff claiming an entitlement to certain personal property demands the return of that property from the current possessor. *Republic State Co. v. Brown*, 158 Minn. 396, 197 N.W. 840, 841 (Minn. 1924) ("The gist of an action in replevin is to determine the right of possession of personal property or the tittle thereto.").

[2] Under Minnesota law, dogs are personal property. *See Corn v. Sheppard*, 179 Minn. 490, 229 N.W. 869, 870 (Minn. 1930).

> certified mail, which is actually received. If the name of the prior owner is not known, and cannot be ascertained with reasonable diligence, three weeks' published notice shall be given in the county where the property is located. The prior owner or another person claiming an interest in the property may petition the district court to stay the transfer of ownership for a reasonable period to allow the removal of the property. The transfer is stayed while the petition is pending before the court.

Under the common law, abandonment "is the voluntary relinquishment, surrender, or disclaimer of a known property right, absolutely and without reference to any particular person or purpose." *Bd. of Trs. of First Congregational Church v. Cream City Mut. Ins. Co.*, 255 Minn. 347, 96 N.W.2d 690, 693-94 (Minn. 1959). "Abandonment is made up of two elements; act and intention. There must be an actual relinquishment of the property, accompanied by an intent to part with it permanently, so that it may be appropriated **[**7]** by any one finding it or having it in his possession." *Shepard v. Alden*, 161 Minn. 135, 201 N.W. 537, 539 (Minn. 1924). Intent can be inferred from the owner's "conduct and the nature and situation of the property." *Erickson v. Sinykin*, 223 Minn. 232, 26 N.W.2d 172, 176 (Minn. 1947) (citation omitted) (internal quotation marks omitted). Although "mere lapse of time does not in and of itself establish abandonment," it is an important factor in determining whether property has been abandoned. *Id.* Therefore, under the common law of abandonment of tangible personal property, there must be (1) actual relinquishment of property, and (2) an intent to permanently part with the property. Determination of abandonment generally involves a fact-intensive analysis. *See In re Application of Berman*, 310 Minn. 446, 247 N.W.2d 405, 408 (Minn. 1976).[3]

Agate and Kruger argue that section 345.75 does not abrogate the common law because the abandonment procedure set forth in the statute and the requirements for abandonment under the common law can coexist. They argue that the statute is not exclusive, but merely provides that ownership of abandoned property may be transferred pursuant to the statutory provisions.

Zephier suggests that, although the common law has addressed the abandonment of real property, no common law applies to the abandonment of *tangible personal* property; accordingly, she argues, the statute **[**8]** is the only law applicable to abandoned tangible personal property. Zephier further argues that there are differences between the common law and section 345.75 "that cannot be reconciled," and thus the court of appeals correctly concluded that the statute abrogated the common law.

We begin with the court of appeals holding that section 345.75 abrogated the common law by necessary implication. *Zephier*, 942 N.W.2d at 384. The court reasoned that the notice requirement of section 345.75 would be superfluous if the statute and common law coexisted. *Id.* We disagree.

To be sure, the court of appeals is correct that the notice requirement is central to the procedure set out **[*873]** under section 345.75, and that the common-law method of determining abandonment does not require that notice be given. However, the mere fact that the two causes of action have different requirements does not mean that one must displace the other. In addition, we see nothing improper with the Legislature providing a clear path for the current possessor of apparently-abandoned property to transfer legal ownership of the property without the necessity of filing a court action and the uncertainty of litigating a fact-intensive inquiry. If a possessor of property wishes to transfer ownership via the statute, **[**9]** they must follow the notice requirements. If they wish to establish ownership without

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[3] The court of appeals cited, and appellants rely on, a four-factor framework we set out in *Berman* in their analysis of the common law rule of abandonment. As the court of appeals noted, 942 N.W.2d at 383 n.4, we have not applied that framework outside of the abandonment of real property in a contract for deed situation. We need not decide in this case whether the *Berman* factors could be used in the common law analysis of abandonment of tangible personal property.

following the statutory procedure, their claim is subject to the fact-intensive analysis applicable at common law.

The available legislative history on the introduction of section 345.75 makes this purpose clear. Section 345.75 was introduced with other amendments to chapter 345—which broadly deals with unclaimed property—because there was no statutory mechanism to establish ownership of abandoned tangible property without risk of a lawsuit being brought by the prior owner to recover the property.[4] If a possessor chooses to establish abandonment of an item of personal property via the statute, the statutory requirement of notice must be met.[5] Although the statute provides a more streamlined way to establish abandonment, the statute does not expressly or by implication establish that that process is the *only* way to do so.

Agate and Kruger additionally argue that the term "may" in the clause "ownership . . . may be transferred as provided by this section" is permissive, and the statute therefore "provides an additional vehicle for exercising abandonment claims and transferring ownership rights, as an alternative to common law." By contrast, the court of appeals interpreted the term "may" as "permissive for the *possessor* to attempt to transfer ownership of the property to himself." *Zephier*, 942 N.W.2d at 386. The court reasoned that if the statute had included the term "shall" instead of "may," then a possessor of abandoned property would be *required* to take the actions outlined in the statute, instead of having the option to let the property sit where it is. *Id.* at 386 & n.7.

We disagree with the reasoning of the court of appeals. Under the rules of statutory construction, "may" is permissive, not mandatory. Minn. Stat. § 645.44, subd. 15 (2020). The court of appeals interpreted "may" in section 345.75 to give the possessor of abandoned property two options: **[**11]** transfer ownership under this statute or do not attempt to transfer ownership of the property "indefinitely." 942 N.W.2d at 386. We read "may" **[*874]** slightly differently, as allowing the possessor to transfer the property via the procedure in the statute or not to invoke the statute for that transfer. We see nothing in the latter course of conduct that precludes application of the common law.[6] Further, the use of "may" is consistent with the Legislature's decision to allow the common law to survive the statute, which merely provides an additional way in which a possessor of property may establish ownership.

Zephier, however, argues that the common law and section 345.75 treat the issue of time differently, which is an inconsistency between them that cannot be reconciled. Specifically, she contends that the statute defines abandoned property by a specific time period (6 months) while the common law does not; and the statute requires 30-days' notice while the common law does not. We are not persuaded.

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[4] Senator Thomas Neuville introduced the text of Minn. Stat. § 345.75 on the senate floor on May 17, 2005, while the senate was discussing amendments to chapter 345. Senator Neuville stated:

> I was surprised to find out we don't have an abandoned property statute in Minnesota regarding tangible personal property. And I actually had a situation where parents died, they deeded the farm to one child and the equipment, and parts, and personal property to another. The barn was full of stuff, and the party **[**10]** who it belonged to never came and got it. They just abandoned it, but there was no way to really deal very well with it, because if the person who owned the land and the barn now just threw it away they ran the risk of getting sued.

Sen. debate on S.F. 1360, 84th Minn. Leg., May 17, 2005 (audio recording) (statement of Sen. Neuville).

[5] Because it is undisputed that Agate did not give Zephier the notice required by the statute, we need not decide here whether Section 345.75 requires strict compliance with its notice requirements.

[6] The remainder of the statute uses the word "shall," indicating that the minimum 6-month possession and notice requirements are mandatory when determining abandonment *via the statute*. Minn. Stat. § 345.75.

Under the common law, the "mere lapse of time does not in and of itself establish abandonment, [but] it nevertheless is of persuasive importance on the question of the former owner's intentions." *Erickson*, 26 N.W.2d at 176. Section 345.75, by contrast **[**12]** states that property "is abandoned" after 6 months. However, the statutory language does not end there. Rather, abandonment under the statute is inchoate until the statutory requirements are followed: property that "is abandoned . . . shall become the property of the person in possession, *after notice to the prior owner*." *Id.* (emphasis added). Only after notice is given according to the requirements of the statute does the statutorily "abandoned" property "become the property of the person in possession." *Id.* The common law rule, on the other hand, contemplates a judicial determination regarding abandonment that conclusively determines the rights of the former owner and the putative new owner of ostensibly abandoned property: a conclusion of abandonment means that the property "may be appropriated by any one finding it or having it in his possession." *Shepard*, 201 N.W. at 539.

Thus, under section 345.75, the lapse of time, in and of itself, does not establish the right of the person in possession of the property to own the property. Instead, the lapse of time allows the person in possession to give notice, which serves a purpose similar to the common law's intent inquiry. Although the common law and the statute treat the **[**13]** lapse of time differently in determining whether a person in possession of ostensibly abandoned property is the new owner, we discern nothing that makes either treatment inconsistent with the other.

Similarly, the statutory notice requirement is not indicative of an intent to abrogate the common law. As noted, section 345.75 includes an express notice requirement that is absent from the common law: "Thirty days' notice that the time period has elapsed and that the ownership will be transferred at the end of the 30 days shall be given to the prior owner personally or by certified mail, which is actually received." Minn. Stat. § 345.75. The court of appeals reasoned that allowing both common law abandonment and the statutory abandonment process to coexist would make this notice requirement superfluous. Thus, it concluded that the statute must have been intended to displace the common law. *Zephier*, 942 N.W.2d at 384.

In concluding that section 345.75 abrogates the common law abandonment action, the court of appeals noted **[*875]** that the statute was enacted as part of a larger statutory scheme governing unclaimed property. *Id.* at 384-85. The Legislature generally intends a statute to supersede existing common law on an aspect of the law when the Legislature enacts a complete regulatory **[**14]** scheme with regard to that aspect of the law. *See, e.g.*, *Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 211 (Minn. 2014) (holding that a driver challenging the revocation of her driver's license could not raise the common law affirmative defense of necessity because that area of the law had been abrogated by a comprehensive statutory scheme), *superseded by statute*, Act of May 22, 2015, ch. 65, § 10, 2015 Minn. Laws 474, 527 (codified at Minn. Stat. § 169A.53, subd. 3(h) (2020)). Here, however, no language in the statute shows that the Legislature intended to create a comprehensive statutory scheme for the disposition of unclaimed tangible personal property. The legislative history here shows something different: not that the Legislature intended a comprehensive legislative scheme, but that it intended to create a clear and definite procedure to deal with abandoned property and to help a possessor avoid the risk of being sued if they disposed of such property.

We therefore hold that Minn. Stat. § 345.75 does not abrogate the common law of abandonment of tangible personal property.

II.

Next, we must determine whether the district court erred in finding that Zephier abandoned Oliver. Findings of fact are not to be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *In re Pamela Andreas Stisser Grantor Tr.*, 818 N.W.2d 495, 507 (Minn. 2012). We review the district court's application of the law de **[**15]** novo. *Harlow v. State Dep't of Hum. Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

We will first analyze whether Zephier abandoned Oliver under Minn. Stat. § 345.75. The statute requires the person attempting to obtain ownership of abandoned property to provide notice, personally or by certified mail, to the original owner. *Id.* In other words, it requires an affirmative act by the person claiming the property. Here, Agate admitted that he never gave Zephier "formal notice, written or oral" that he considered her to have abandoned Oliver. Because Agate and Kruger never provided notice, they did not met the statutory requirements of section 345.75 and cannot claim ownership of Oliver under the statute.

The district court found that Zephier had implied "personal notice that she was abandoning Oliver in November 2016" when she returned to California with Alex and left Oliver behind. However, such implied notice based on the abandoning party's own acts is not sufficient under the plain language of the statute. *See* Minn. Stat. § 345.75 (directing the possessor of property to provide notice to the original owner of the property either personally, via certified mail that is actually received, or by publishing a public notice for three weeks).

We next analyze whether Zephier abandoned Oliver under the common law. As noted **[**16]** above, under the common law of abandonment of tangible personal property, there must be (1) actual relinquishment of property, and (2) an intent to permanently part with the property. *Shepard v. Alden*, 161 Minn. 135, 201 N.W. 537, 539 (Minn. 1924). Here, neither element is met.

First, Zephier did not relinquish ownership of her dog. She and Agate had a verbal agreement that he would care for Oliver while she could not. Nothing in the record suggests that she would no longer care for him or that she had renounced her **[*876]** ownership of him. Second, there is no evidence in the record showing that Zephier intended to permanently part with Oliver. In fact, quite the opposite is true—this dispute arose after Zephier flew to Minnesota from California for the very purpose of visiting her dog. She had arranged to pick up Oliver when Agate changed his mind and then refused to bring out the dog. Nothing in this interaction shows an intent by Zephier to part with Oliver. Additionally, Zephier's decision to retrieve one dog in 2016 does not mean that she was abandoning the other. To be sure, Zephier did not intend to take Oliver home with her when she took Alex, but nothing in the record suggests that leaving Oliver at that time meant that she did not intend to **[**17]** retrieve him at another time. To the contrary, she continued to communicate with Agate regarding Oliver and flew to Minnesota to see Oliver. Therefore, Zephier did not abandon Oliver under the common law of abandonment of tangible personal property.

In sum, Zephier did not abandon Oliver under Minn. Stat. § 345.75 or under the common law. Thus, the court of appeals correctly reversed the district court's erroneous finding of abandonment.

CONCLUSION

For the foregoing reasons, we affirm in part and reverse in part the decision of the court of appeals.

Affirmed in part, reversed in part.

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