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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1506**

Nathan Tow-Arnett,
Appellant,

vs.

City of Minneapolis,
Respondent.

**Filed April 10, 2017
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CV-15-20762

Nathan Tow-Arnett, Minneapolis, Minnesota (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, Gregory P. Sautter, George H. Norris,
Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Pro se appellant challenges a district court order affirming an administrative-hearing officer's order for disposal of appellant's cats and venomous snakes under Minn. Stat.

§ 343.235 (2016). Because the hearing officer’s decision is supported by substantial evidence and appellant has not otherwise established prejudicial error justifying reversal, we affirm.

FACTS

In July 2015, appellant Nathan Tow-Arnett sought treatment at the Hennepin County Medical Center after one of his venomous snakes bit him. The police obtained a warrant to search Tow-Arnett’s home based on Minneapolis, Minn., Code of Ordinances § 74.50 (Jan. 21, 2016), which prohibited the keeping of “any wild, exotic, dangerous, or non-domestic animal or reptile.” Officers executed the search warrant and found snakes, lizards, and cats living in poor conditions. Acting under Minn. Stat. §§ 343.01-.40 (2016), the officers seized 2 Mangshan Pit Vipers, 2 Western Diamondback Rattlesnakes, 2 Horned Vipers, 4 African Bush Vipers, 2 Toad Head Agamas lizards, 1 Brown Racer Snake, 12 Mangshan Pit Viper eggs, numerous other snake eggs, and 11 cats.

Tow-Arnett contested the seizure of his animals. Respondent City of Minneapolis held an evidentiary hearing that spanned four nonconsecutive days. Tow-Arnett testified at the hearing and was represented by legal counsel. He called his mother and the owner of Twin Cities Reptiles as witnesses. The city called officers from Minneapolis Animal Care and Control (MACC), a MACC veterinarian, and the curator at Reptile Gardens in South Dakota. The official hearing transcript is 379 pages long.

The administrative-hearing officer (AHO) credited the officers’ testimony that Tow-Arnett’s house had “a very strong odor of cat urine and an unusual odor [in] the room that housed the reptiles,” that “there were holes in the walls and in some of the floors,” and that

“there were seven cats in one room with no food and water present.” The AHO also credited a veterinarian’s testimony that multiple cats were in “poor condition,” that several cats had dirty and infested ears, and that “the condition of the cats’ ears was a condition that happened over a period of time, not something that happens overnight.” The AHO also credited testimony that the officers found a snake in an enclosure with “no food or water and feces in the food bowl,” that some of the enclosures had mold in them, and that one snake had a skin disorder due to the wet and moldy conditions of its enclosure. The AHO concluded that Tow-Arnett’s “animals were not physically fit and were not cared for properly” and that he “lacks the necessary animal husbandry to care for the animals.” The AHO ordered that the animals “shall be disposed of by the City.”

Tow-Arnett appealed to the district court. The district court rejected the city’s argument that the Minnesota Court of Appeals had exclusive jurisdiction to review the AHO’s decision, concluding that “the district court may be called upon by an aggrieved party to timely review” claims under Minn. Stat. § 343.235. The district court also concluded that “under any reasonable standard of review . . . [the AHO’s] conclusions should be upheld.” Tow-Arnett appeals from the district court’s affirmation of the AHO’s order.

D E C I S I O N

The AHO ordered disposal of Tow-Arnett’s animals under Minn. Stat. § 343.235, subd. 1, which provides that “[a]n animal taken into custody . . . may be humanely disposed of at the discretion of the jurisdiction having custody of the animal ten days after the animal is taken into custody, provided that the procedures in subdivision 3 are followed.” The

AHO's decision under that section is quasi-judicial, that is, one that involves: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Env'tl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999).

This court will reverse a quasi-judicial decision of an agency that does not have statewide jurisdiction "if the decision is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996) (quotation omitted). As a court of review, this court "will not retry facts or make credibility determinations." *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007). An appellant has the burden to show error and prejudice resulting from that error. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). The function of this court is that of review and not to demonstrate to the "litigants through a detailed statement of the evidence that its decision is right." *Engquist v. Wirtjes*, 243 Minn. 502, 503, 68 N.W.2d 412, 414 (1955).

I.

We begin with the city's request that this court "affirm" the district court's ruling that it had subject-matter jurisdiction to hear Tow-Arnett's administrative appeal under Minn. Stat. § 343.235, subd. 3. Tow-Arnett does not challenge the district court's ruling

that it had jurisdiction to review the AHO's decision. Thus, neither party seeks reversal of the district court's ruling.

An appellate court decides only actual controversies and avoids issuing advisory opinions. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). Although the issue of subject-matter jurisdiction cannot be waived and may be questioned "at any time, even if the parties to a case have not done so," there is no dispute regarding jurisdiction in this appeal. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 585 (Minn. 2016). We therefore limit our review to Tow-Arnett's assertions of error, as best we can understand them.

II.

Tow-Arnett generally contends that the AHO's order was not supported by substantial evidence. The Minnesota Supreme Court has described substantial evidence, in part, as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Staehele*, 732 N.W.2d at 310.

The city's witnesses testified that Tow-Arnett's animals were living in poor conditions. Tow-Arnett challenges the credibility of those witnesses. For example, he argues that a MACC officer lied about there being "fecal matter, moisture, and mold growing on the bottom of the cage of [his] female Mangshan viper cage." The AHO found the testimony of the city's witnesses credible, and we defer to that credibility determination. *See id.* at 303.

Tow-Arnett also invites us to retry the facts. For example, he argues that his cats did not develop ear infestations at his home, that "all [his] cats passed the Veterinary

examination when admitted,” and that his snake developed a skin condition after MACC seized it. Such arguments are unavailing because “[i]t is not within the province of appellate courts to determine issues of fact on appeal.” See *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009) (quotation omitted). Also, this court does not reweigh conflicting evidence on appeal. *Staeheli*, 732 N.W.2d at 312.

Moreover, some of Tow-Arnett’s challenges to the credibility of the city’s witnesses and the probative value of the city’s evidence are raised for the first time on appeal. For example, Tow-Arnett vehemently asserts that the city altered evidence and colluded with the Reptile Gardens curator to falsify evidence in an effort to acquire his snakes. He asserts that the city’s photographic evidence “was digitally altered to make it appear as [though] there was no water in the [cat’s] bowl.” An appellate court generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because Tow-Arnett did not argue, at the administrative hearing or in district court, that the city’s photographic evidence was altered, that argument is not properly before this court, and we do not consider it.

Lastly, Tow-Arnett contends that he “was not allowed to present all of [his] evidence . . . to [his] defense or address certain allegations by the City.” For example, he argues that documentation of his down payment for the Mangshan Vipers “wasn’t admitted into the record.” However, he does not cite to the record to establish that the AHO or the district court prevented him from presenting this evidence. Our review of the record does not suggest that the AHO or district court prevented Tow-Arnett from presenting evidence.

In sum, Tow-Arnett has not shown that the AHO's decision is not supported by substantial evidence.

III.

Tow-Arnett contends that the conditions of two of his seized cats were not specifically addressed by either party at the administrative hearing and that, therefore, these animals are not subject to the AHO's order.

Once a hearing officer determines that seizure and impoundment of an animal was valid, the hearing officer may "authorize the return of the animal, if the . . . hearing officer finds that: (1) the animal is physically fit; and (2) the person claiming an interest in the animal can and will provide the care required by law for the animal." Minn. Stat. § 343.235, subd. 3(b)-(c). Substantial evidence shows that Tow-Arnett was not properly caring for many of the animals in his home. Thus, we are not persuaded that the lack of specific evidence regarding the conditions of two of the seized cats requires the return of those cats.

IV.

Tow-Arnett complains that his attorney failed to request discovery in district court. But he does not explain why his attorney's alleged failure constitutes prejudicial error. Assignments of error in a brief based on "mere assertion" and not supported by argument or authority are waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). Because we do not discern obvious prejudicial error, Tow-Arnett's complaints regarding discovery are waived.

V.

Tow-Arnett contends that he did not receive adequate notice regarding the seizure of his animals or the statutory hearing requirements under Minn. Stat. § 343.235, subd. 3. Tow-Arnett suggests that owners must “immediately” be notified that their animals have been seized and of the procedures under Minn. Stat. § 343.235, subd. 3. This section provides for notice of the right to a hearing and requires that “[t]he authority taking custody of an animal . . . shall give notice of this section by delivering or mailing it to a person claiming an interest in the animal.” Minn. Stat. § 343.235, subd. 3. This section does not contain the word “immediate,” and it allows for some delay to the extent that it permits notice by mail.

The city notes that the police left a copy of the warrant and a list of the animals seized at Tow-Arnett’s home when the seizure occurred. Tow-Arnett’s brief indicates he was aware of the seizure the day after it occurred. His brief also indicates that he received notice of statutory hearing requirements eight days after the seizure. Tow-Arnett does not establish that his receipt of notice eight days after the city seized his animals prejudiced him. He is therefore not entitled to relief.

VI.

Tow-Arnett contends that his due-process rights were violated. The city counters that Tow-Arnett did not raise a due-process claim at the administrative hearing or in the district court and argues that because the claim was not previously raised, this court should not consider it. *See Thiele*, 425 N.W.2d at 582.

Because “administrative bodies generally lack subject-matter jurisdiction to decide constitutional issues,” Tow-Arnett did not waive his constitutional claim by not raising it at the administrative hearing. *See Holt v. State Bd. of Med. Exam’rs*, 431 N.W.2d 905, 906 (Minn. App. 1988), *review denied* (Minn. Jan. 13, 1989). But Tow-Arnett could have raised a due-process claim in district court. Nonetheless, because the city briefed the merits of Tow-Arnett’s due-process claim, the factual record is adequate, and the city will not be disadvantaged if this court addresses the claim, we elect to do so. *See Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 306 (Minn. 2015) (considering an issue for the first time on appeal partly because the parties had briefed the issue and all of the relevant facts were before the court).

The Due Process Clause of the United States Constitution guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The basic requirements of due process are “notice and an opportunity for a hearing appropriate to the case.” *Sisson v. Triplett*, 428 N.W.2d 565, 568 (Minn. 1988). A court conducts a two-part analysis to determine whether the government has violated an individual’s right to procedural due process. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). First, the court considers whether “the government has deprived the individual of a protected life, liberty, or property interest.” *Id.* Second, if the court concludes that an individual was deprived of a protected interest, the court determines “whether the procedures followed by the government were constitutionally sufficient.” *Id.* (quotation omitted). In determining the adequacy of specific procedures, the court applies a three-factor balancing test that considers

the private interest that will be affected by the official action; . . . the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and . . . the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976); *Sawh*, 823 N.W.2d at 632.

We are satisfied that the seizure and disposal of Tow-Arnett's animals constitutes deprivation of a protected property interest under caselaw. *See Sawh*, 823 N.W.2d at 632 ("We have long held that dogs are personal property under Minnesota law . . ."). We therefore consider whether the government's procedures were constitutionally sufficient, using the *Mathews v. Eldridge* factors.

As to the first *Mathews* factor, "Minnesota law treats an animal like any other item of tangible personal property." *Id.* at 633. Thus, a property interest in an animal "is not nearly as substantial as the property interests [the supreme court] has recognized in other contexts." *Id.* at 633-34. As to the second *Mathews* factor, the city notified Tow-Arnett that it had seized his animals. Tow-Arnett received a four-day contested hearing at which he was represented by an attorney and had the opportunity to challenge the city's evidence and present his own evidence. Moreover, the district court heard his initial appeal, over the city's objection. We discern little risk of erroneous deprivation stemming from those procedures. As to the third *Mathews* factor, the city persuasively argues that it has a compelling interest in ensuring the health and safety of its citizens, which includes prohibiting possession of dangerous animals.

All three *Mathews* factors weigh in favor of the city. Tow-Arnett was notified of the seizure of his animals and had a full-and-fair opportunity to contest the seizure. He does not explain why the process was constitutionally deficient or what additional process was necessary to protect his right to due process. We therefore reject his due-process claim.

VII.

Tow-Arnett contends that the city improperly relied on the opinions of both a veterinarian and a hearing officer to justify the seizure of his animals. He argues that under Minn. Stat. § 343.235(3)(b), the city must “pick one or the other.”

Minn. Stat. § 343.235(3)(b) states:

Upon request of a person claiming an interest in the animal, . . . a hearing must be held[.] . . . [And] the municipality taking custody of the animal . . . may either (1) authorize a licensed veterinarian with no financial interest in the matter or professional association with either party or (2) use the services of a hearing officer to conduct the hearing.

When a statute is unambiguous, we apply its plain meaning. *Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010). The plain language of the statute authorizes the city to select either a veterinarian or a hearing officer to conduct the hearing. It does not prohibit a veterinarian from testifying as a witness at the hearing when a hearing officer conducts the hearing.

VIII.

In Tow-Arnett’s reply brief, he refers to the “14th and 8th Amendments of the U.S. Constitution and Article 1 of the Minnesota Constitution sec. 2, 5, 10, and 11” and argues that the seizure of his animals “should be unconstitutional under the 8th amendment for

excessive fines considered to the nature of the offense.” He asserts that his Mangshan Vipers are worth more than two million dollars, presumably equating their seizure and disposal to an excessive fine that violates the 8th Amendment. He does not provide further legal argument to support his position.

Issues not raised and argued in an appellant’s principal brief generally cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). We do not discern a reason to depart from that general rule here, where Tow-Arnett has relied on numerous sections of the U.S. and Minnesota Constitutions without providing the city an opportunity to respond.

Conclusion

In conclusion, the record shows that the AHO’s decision is supported by substantial evidence and Tow-Arnett has not otherwise established prejudicial error justifying reversal. We therefore affirm the district court’s affirmation of the AHO’s order.

Affirmed.