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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0464**

Compassion Over Killing, Inc., complainant,
Appellant,

vs.

Quality Pork Processors, Inc.,
Respondent.

**Filed October 23, 2017
Affirmed
Kirk, Judge**

Mower County District Court
File No. 50-CV-16-2658

Laura A. Hage, Hage Law Office, St. Paul, Minnesota; and David Ebert (pro hac vice),
Ingram Yuzek Gainen Carroll & Bertolotti, LLP, New York, New York (for appellant)

John S. Beckman, Samantha E. Steward, Jacob J. Lundborg, Hoversten, Johnson,
Beckmann & Hovey, LLP, Austin, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges the district court's decision to quash an application for a search
warrant and investigation of animal cruelty. Because the information in the application
was stale, we affirm.

FACTS

From May to October 2015, appellant Compassion Over Killing, Inc. (COK) conducted an undercover investigation at respondent Quality Pork Processors, Inc. (QPP)'s meatpacking plant in Austin, Minnesota, and observed and recorded video of inhumane handling and abuse of pigs. COK alerted county officials about its animal-cruelty concerns at QPP's meatpacking plant on October 27, 2015. The county relied on the findings made by the U.S. Department of Agriculture (USDA), following an investigation by Food Safety and Inspection Services (FSIS). In a written statement to COK, the USDA advised that the evidence collected by FSIS indicated that QPP's meatpacking plant was not in compliance with federal regulations, and that if FSIS inspectors had directly observed the actions that COK's investigator recorded, immediate regulatory action would have been taken against QPP. The parties never received a report from the USDA, and neither the USDA nor the county took further action.

COK filed an application for a warrant and investigation of animal cruelty against QPP under Minn. Stat. § 343.22, subd. 1 (2016), in December 2016. The district court quashed the original application due to its procedural defects. COK then filed an amended application in January 2017 that corrected the defects but was substantively the same. In its application, COK alleged that the practices and treatment of pigs at QPP's meatpacking plant "flagrantly violated" the provisions of Minn. Stat. § 343.21 (2016), part of Minnesota's animal-cruelty law. COK based its allegations entirely on the practices observed and recorded by COK's undercover investigator more than 14 months earlier. The district court summarily quashed COK's application without a hearing, and judgment

was entered. Subsequently, the court denied COK's request to file a motion to reconsider because it concluded that COK's evidence was stale.¹

On appeal, COK argues that the district court erred in quashing its application for a warrant and investigation without holding a hearing.

D E C I S I O N

I. The district court did not err in concluding that the evidence offered was stale and insufficient to establish probable cause for a search warrant.

“An appellate court reviews a district court's decision to issue a warrant only to consider whether the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). “[W]hen reviewing a district court's probable cause determination made in connection with the issuance of a search warrant, an appellate court should afford the district court's determination great deference.” *Id.*

“Under the fourth amendment, the probable cause to search cannot be established by stale information.” *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984) (citing *United States v. Steeves*, 525 F.2d 33, 37-38 (8th Cir. 1975)), *review denied* (Minn. Jan. 14, 1985). “Proof must be of facts so closely related to the time of issue of the warrant as to justify a finding of probable cause at that time.” *Id.* (quoting *Sgro v. United States*, 287

¹ The district court granted QPP's motion to quash the application and entered judgment without explanation, but later provided its rationale in the memorandum to its March 7, 2017 order denying COK's request to file a motion to reconsider. COK lists the March 7 order for judgment in its statement of the case and notice of appeal, but states in its reply brief that it is not appealing this order. This court considers the March 7 order pursuant to Minn. R. Civ. App. P. 103.04, which allows this court, on appeal from a judgment, to consider any order involving the merits or affecting that judgment.

U.S. 206, 210, 53 S. Ct. 138, 140 (1932)). There is no “arbitrary time limit[]” to obtain a warrant or “a rigid formula for the judge’s informed decision.” *Id.* Rather, staleness is a practical common-sense question that is determined by the circumstances of each case. *Id.* Factors to consider in determining if information is stale include: “whether there is any indication of ongoing criminal activity; whether the items sought are innocuous or incriminating; [and] whether the property sought is easily disposable or transferable.” *Id.* at 193-94. The court must decide if “given all the circumstances . . . there is a fair probability that . . . evidence of a crime will be found in a particular place.” *Id.* at 193 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

Minn. Stat. § 343.22, subd. 1, provides that:

Any person who has reason to believe that a violation of [the animal-cruelty statute] has taken place or is taking place may apply to any court having jurisdiction over actions alleging violation of that section for a warrant and for investigation. . . . If the court is satisfied of the existence of the grounds of the application, or that there is probable cause to believe a violation exists, it shall issue a signed search warrant and order for investigation to a peace officer in the county. . . .

Here, the district court found that the evidence observed and recorded by COK’s investigator from May to October 2015 was stale and did not establish probable cause to believe that violations of animal-cruelty law had taken place or were taking place at QPP’s meatpacking plant at the time COK requested the warrant in December 2016. COK argues that the evidence was not stale because the passage of time by itself does not make evidence stale and because Minn. Stat. § 343.22, subd. 1, does not require proof of ongoing abuse. COK also argues that QPP’s violations are part of its ongoing processes, practices, and methods. COK further suggests that under Minn. Stat. § 343.22, subd. 1, COK was only

required to show “reason to believe” that a violation occurred, and that the court was “satisfied of the existence of the grounds of the application,” which is a lower standard than probable cause.

The district court made a practical, common-sense determination that evidence that was more than 14 months old, and that had previously been investigated by the USDA and reported to the county with no resultant action, was stale. The district court was in the best position to weigh the individual circumstances of this case and to determine that the evidence was too stale at the time COK requested the warrant to establish probable cause. Even under the lower “reason to believe” standard that COK argues for, it was practical for the court to conclude that an application based on stale evidence was insufficient to satisfy “the existence of the grounds of the application.”

Further, COK’s argument that staleness does not apply to past activity is absurd. If this argument were accepted, the practical result would be that evidence of a past violation, no matter how remote, could justify the issuance of a search warrant now or in the future. There must be a reasonable limit to the age of evidence on which a district court can rely in determining if there is a substantial basis for probable cause to issue a warrant and order an investigation. Because this reasonable limit is not rigidly defined, we rely on the district court to determine if, under the circumstances, the proof offered is so closely related to the time of issue of the warrant so as to justify a finding of probable cause. Here, the court in its discretion determined that the evidence presented in COK’s application did not justify a warrant and investigation of animal cruelty. We defer to that determination. See *Rocheftort*, 631 N.W.2d at 804.

II. The district court did not hold a hearing, but the error, if any, did not impact COK's substantial rights, and we must disregard it.

COK argues that the district court erred by granting QPP's motion to quash without allowing COK an opportunity to respond because a motion to quash a warrant application is a dispositive motion, and as such, COK was entitled to respond. COK makes a distinction between dispositive motions and nondispositive motions that does not exist under Minnesota law. Under Minnesota law, a party is allowed an opportunity to respond to dispositive and nondispositive motions. *See* Minn. R. Gen. Pract. 115.03(b), 115.04(b).

Further, COK's reliance on the rules of motion practice is misplaced because there was no case pending before the district court when the motion was made. COK filed an application for a warrant and investigation and erroneously labeled it a complaint. In turn, QPP filed a motion to quash the application. The plain language of Minn. Stat. § 343.22, subd. 1, allows a concerned person to apply for a warrant and investigation of animal cruelty. If the application is granted, it has the same force as a criminal search warrant issued pursuant to Minn. Stat. ch. 626 (2016). *See* Minn. Stat. § 343.22, subd. 2. In the criminal context, after a search warrant is granted and an investigation takes place, a prosecutor may decide to file criminal charges. The prosecutor would then file a complaint and an accompanying statement of probable cause. *See* Minn. R. Crim. P. 2.01, 2.02. A civil action commences when a summons and complaint is served upon the defendant. Minn. R. Civ. P. 3.01, 3.02. COK's application, pursuant to the animal-cruelty statute, was not a complaint commencing a proceeding. Because a civil action was not pending, there was no case to dispose of, as COK suggests. Thus, COK was not entitled to respond to QPP's motion to quash.

COK also argues for the first time in its reply brief that the animal-cruelty statute requires the district court to conduct a fact-finding hearing in addition to receiving affidavits from the applicants.² Minn. Stat. § 343.22, subd. 1, provides that:

The court shall examine under oath the person so applying and any witnesses the applicant produces and the court shall take their affidavits in writing. The affidavits must set forth facts tending to establish the grounds for believing a violation of this chapter has occurred or is occurring, or probable cause to believe that a violation exists.

The statute's plain language does not require a hearing on the merits of the application. It requires the district court to examine the person applying for a warrant and investigation under oath and through affidavits. This examination of the applicant is a safeguard for the subject of the warrant application against potentially non-meritorious applications, it is not a protection for the applicant. Here, the district court did not examine COK or its witness under oath, and instead directly considered COK's application, affidavit, and evidence before granting QPP's motion to quash. This procedure did not impact COK's substantial rights as the applicant, and QPP did not challenge the court's procedure.

The court granted the motion to quash and denied COK's request to file a motion to reconsider because it found that COK's evidence was stale. In filing the application and then in requesting to file a motion to reconsider, COK did not offer any new or additional evidence and did not suggest that it intended to do so. Even if a hearing on the merits of the application had taken place, the court would have received and reviewed the same

² Issues not raised 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). Because statutory interpretation is a legal question that we review de novo, we elect to address COK's argument. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20 (Minn. 2014).

evidence it previously concluded was stale. Thus, COK failed to show that the court's failure to hold a hearing impacted its substantial rights or otherwise impacted it in anyway. Under Minn. R. Civ. P. 61, "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Even if the court erred in failing to hold a hearing on COK's application, the error did not affect COK's substantial rights, and we disregard it.

III. Additional arguments raised.

The respondent raises and the parties argue several other issues on appeal, including preemption, procedural defects in COK's first warrant application, the constitutionality of the animal-cruelty statute, and justiciability. Although these issues were raised at the district court, the court did not consider or address them in granting QPP's motion to quash COK's warrant application on other grounds. Thus, we need not address them on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts do not generally consider matters not argued to and considered by the district court).

Affirmed.