STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0937

Nationwide Housing Corporation,
Respondent,

vs.

Wayne Skoglund,
Appellant,

John Doe, et al.,
Defendants.

Filed February 5, 2018
Affirmed
Hooten, Judge

St. Louis County District Court
File No. 69DU-CV-17-1064

Brent W. Malvick, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Gwen Updegraff, Legal Aid Service of Northeastern Minnesota, Duluth, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Smith, John, Judge.*

S Y L L A B U S

The exclusionary rule, as adopted by the United States Supreme Court and as codified in Minnesota Statutes section 626.21 (2016), is inapplicable to civil eviction

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

actions brought by private landlords under Minnesota Statutes sections 504B.281–.371 (2016).

O P I N I O N

HOOTEN, Judge

Appellant challenges the district court's eviction judgment, arguing that the evidence forming the basis of the eviction should have been suppressed under the Fourth Amendment exclusionary rule and Minn. Stat. § 626.21 (2016) because police unlawfully entered and searched his apartment. He also contends that, even if the evidence seized during the search is not suppressed, the district court erred by determining that respondent met its burden of proving that he violated his lease agreement. Because neither the Fourth Amendment exclusionary rule nor Minn. Stat. § 626.21 applies in a civil eviction proceeding brought by a private landlord, and because the district court's finding of a lease violation is not clearly erroneous, we affirm.

FACTS

On March 23, 2017, property management staff for respondent Nationwide Housing Corporation, a private business corporation, notified appellant Wayne Skoglund of its intent to replace the locks in his apartment in order to make the locks uniform throughout the building. A few days later, the property manager and a locksmith arrived at Skoglund's apartment to change the locks. The property manager knocked on the door but received no response. Skoglund was present in the apartment but decided to ignore their request for entry. Due to previous troubles with Skoglund, the property manager contacted the police and requested a "civil standby" while the locks were changed.

Officer Andrew Leibel of the Proctor Police Department and two Hermantown police officers arrived at the apartment and knocked on the door to announce their presence. The locksmith attempted but failed to unlock the door with a master key. Officer Leibel believed that some obstruction prevented the door from unlocking, leading him to also believe that Skoglund was in the apartment. The locksmith proceeded to open the door by using a drill bit. Skoglund heard the drilling and looked through the door's peephole. When he saw the property manager, locksmith, and officers at the door, he hid in a closet.

Once the locksmith opened the door, Officer Leibel peered into the apartment and did not see Skoglund or any other occupants. Due to their knowledge of police having past incidents with Skoglund, the officers conducted a welfare check and a protective sweep of the apartment. During the sweep, the officers found Skoglund in the closet. They then observed a bong and containers holding a green leafy substance in Skoglund's bedroom. Police believed that the substance in the containers was marijuana. Although the officers seized the suspected marijuana, they destroyed it without testing its contents and did not charge Skoglund with a crime.

After obtaining a police report relating to the incident, Nationwide's property management staff notified Skoglund on April 19, 2017 that it was terminating his lease and that he had ten days to vacate the apartment. Nationwide later filed an eviction action under Minn. Stat. § 504B.285, subd. 1(a)(2) (2016), alleging that Skoglund violated the lease by possessing illegal drugs on the property. Skoglund filed a motion to suppress, arguing that any evidence of the search was inadmissible because the police officers illegally entered and searched his apartment.

The district court held a hearing on June 5, 2017. The district court denied Skoglund's motion, determining that his reliance on criminal statutes and the exclusionary rule was misplaced in a civil eviction proceeding and that it was reasonable for the officers to conduct a protective sweep of the apartment. It also concluded that Nationwide satisfied its burden in proving that Skoglund violated the lease and therefore was entitled to possession of the property. The court administrator entered a judgment of eviction. This appeal followed.

ISSUES

I. Did the district court err in the eviction action against Skoglund by not applying the Fourth Amendment exclusionary rule or Minn. Stat. § 626.21 to suppress evidence arising from the police officers' warrantless entry and search of Skoglund's apartment?

II. Did the district court err by determining that Nationwide met its burden in proving that Skoglund possessed marijuana in violation of the lease agreement?

ANALYSIS

I.

Skoglund first argues that he had a reasonable expectation of privacy in his apartment and that the police officers violated the Fourth Amendment when they entered and searched his apartment, requiring suppression of the evidence. But, for reasons set forth below, we conclude that the Fourth Amendment exclusionary rule and Minn. Stat. § 626.21 do not require suppression of the evidence seized in the search.

A. The Fourth Amendment Exclusionary Rule

Skoglund argues that the district court erred by not applying the Fourth Amendment exclusionary rule to suppress the evidence discovered in the search. Whether the exclusionary rule applies in a civil eviction action raises a matter of first impression in Minnesota.

The exclusionary rule prohibits the use of evidence obtained in violation of the Fourth Amendment to the United States Constitution or Article I, Section 10 of the Minnesota Constitution. *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 665–66 (Minn. 2014); *see also State v. McMurray*, 860 N.W.2d 686, 689 (Minn. 2015) (stating that Fourth Amendment's language is "substantially similar" to language of article I, section 10 of Minnesota Constitution). "[T]he rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *United States v. Calandra*, 414 U.S. 338, 348, 94 S. Ct. 613, 620 (1974). Despite having a broad deterrent purpose, the exclusionary rule does not apply to all proceedings or against all persons and is generally restricted to areas in which the goal of deterring unlawful police conduct is "most efficaciously served." *Id.* at 348, 94 S. Ct. at 620; *see also Garcia-Mendoza*, 852 N.W.2d at 666–67 (noting United States Supreme Court's current trend towards more limited application of exclusionary rule).

When deciding whether the exclusionary rule applies, the United States Supreme Court has developed a balancing test whereby courts weigh the likely social benefits of excluding unlawfully obtained evidence against the possible costs. *I.N.S. v. Lopez-*

Mendoza, 468 U.S. 1032, 1041, 104 S. Ct. 3479, 3484 (1984). But invoking the exclusionary rule has typically been confined to cases in which the state seeks to use illegally seized evidence to criminally prosecute an individual who experienced an unlawful search. *Calandra*, 414 U.S. at 347, 94 S. Ct. at 620. For example, the *Calandra* Court concluded that the costs of extending the exclusionary rule to grand jury proceedings outweighed the benefits of deterring police misconduct. *Id.* at 354, 94 S. Ct. at 623.

Nationwide contends that the Fourth Amendment exclusionary rule does not apply to a strictly civil proceeding, such as an eviction action. The exclusionary rule is occasionally applied in situations that are not purely civil. For instance, the Minnesota Supreme Court recently held that the exclusionary rule applies to a civil forfeiture action due to this type of proceeding's "quasi-criminal" character. *Garcia-Mendoza*, 852 N.W.2d at 667. And Minnesota courts have also established that the exclusionary rule may be applied in a civil implied-consent proceeding. *See Ascher v. Comm'r of Pub. Safety*, 527 N.W.2d 122, 125 (Minn. App. 1995), *review denied* (Minn. Mar. 21, 1995); *see also State v. Lemmer*, 736 N.W.2d 650, 654 (Minn. 2007) (explaining that an implied-consent proceeding is a civil proceeding which involves revocation of a driver's license after a DWI arrest).

Skoglund claims that an eviction is very similar to a civil forfeiture. An eviction proceeding is a summary proceeding through which an occupant may be removed from possession of real property by the process of law. Minn. Stat. § 504B.001, subd. 4 (2016). It is "civil in nature" and requires the district court to determine whether the facts alleged

in the eviction complaint are true. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003).

But, unlike a civil forfeiture, in which the goal "is to penalize for the commission of an offense against the law," *Garcia-Mendoza*, 852 N.W.2d at 666 (quotation omitted), or an implied-consent proceeding, in which revoking a driver's license is typically associated with an arrest, *Lemmer*, 736 N.W.2d at 654, the purpose of an eviction action is to determine the right of present possession and to reinforce the public policy of preventing parties from taking the law into their own hands, *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 72 (Minn. App. 2015), *review denied* (Minn. June 30, 2015); *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 446 (Minn. App. 2001). Moreover, other jurisdictions have chosen not to extend the exclusionary rule to similar civil proceedings, such as forcible-entry and detainer actions. *See*, *e.g.*, *U.S. Residential Mgmt. & Dev., LLC v. Head*, 922 N.E.2d 1, 5 (Ill. App. Ct. 2009) (concluding that forcible-entry and detainer actions are civil in nature and not quasi-criminal); *see also Hous. Auth. of Stamford v. Dawkins*, 686 A.2d 994, 996–97 (Conn. 1997) (explaining that the exclusionary rule does not apply to summary process action alleging lease violations).

Skoglund nevertheless emphasizes the Supreme Court's balancing test and argues that the deterrent value in this case greatly outweighs the costs of suppressing the illegally-obtained evidence. He claims that excluding evidence in eviction cases will have a deterrent effect on police misconduct in conducting illegal searches of tenants' residences, thereby satisfying the underlying purpose of the exclusionary rule. *See Lopez-Mendoza*, 468 U.S. at 1041, 104 S. Ct. at 3484. But the police have no stake in a private eviction

proceeding between property management (Nationwide) and a tenant (Skoglund). Because the state never charged Skoglund and is not a party to this case, Skoglund is unable to show how the exclusion of the suspected marijuana would deter the police from conducting a similar search in the future. *See State v. Lindquist*, 869 N.W.2d 863, 869 (Minn. 2015) ("Application of the exclusionary rule is therefore unwarranted when exclusion does not result in appreciable deterrence." (quotation omitted)). Additionally, property management such as Nationwide has an interest in being able to enforce lease agreements that are designed to promote the safety of its tenants and deter illegal conduct within its properties. *See Head*, 922 N.E.2d at 7. The balancing test demonstrates that the societal costs of excluding the evidence outweigh any benefits in this case and further supports our conclusion that it is not appropriate to apply the exclusionary rule in this civil eviction action.

The district court's duty in this eviction action is to decide whether Skoglund violated the lease, not whether he violated the law. We hold that the Fourth Amendment exclusionary rule does not extend to a civil eviction proceeding brought by a private landlord.

B. Minnesota Statutes section 626.21

Skoglund also argues that the evidence from the search should have been suppressed pursuant to the plain language of Minn. Stat. § 626.21. Statutory interpretation presents a question of law which we review de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). The aim of statutory interpretation is to effectuate legislative intent. Minn. Stat. § 645.16

(2016). If a statute is unambiguous, this court must apply the statute's plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

Skoglund argues that, according to Minn. Stat. § 626.21, any evidence that is seized pursuant to an illegal search shall not be admissible at any hearing or trial. The statute provides in relevant part:

> 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 . . . . 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.

Nationwide contends that Minn. Stat. § 626.21 is a criminal statute and is not applicable in a civil eviction proceeding. We agree. The statute is located in an area of the statutory code (chapters 625–634) labeled "Criminal Procedure; Peace Officers; Privacy of Communications," and chapter 626 is titled "Peace Officers; Searches; Pursuit; Mandatory Reporting." *See* Minn. Stat. §§ 625.01–634.36 (2016). We recognize that this general description of these chapters, and the title of chapter 626 itself, are not controlling as to the meaning of the statutes. *See* Minn. Stat. § 645.49 (2016) ("The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute."); *see also Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 303

n.23 (Minn. 2000). But, Minnesota courts read and construe statutes as a whole and interpret each section in light of surrounding sections to avoid conflicting interpretations. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000); *see also County of Hennepin v. Hart*, ___ N.W.2d ___, No. A17-0831 (Minn. App. Jan. 29, 2018) (observing that subdivision titles carry little weight but noting importance that statutory provisions should not be read in isolation). In light of the statute's placement in the statutory scheme and its relation to the sections surrounding it, we interpret Minn. Stat. § 626.21 to apply in conjunction with criminal matters. Indeed, much of the statute's language, such as "an unlawful search and seizure," "the district court having jurisdiction of the *substantive offense*," and "the property was *illegally seized without warrant*," indicates application to situations within the criminal context. Minn. Stat. § 626.21 (emphasis added).

Skoglund asserts that Minnesota caselaw establishes that Minn. Stat. § 626.21 may apply beyond general criminal proceedings. He cites to *In re VanSlooten*, in which this court held that the district court may return property to an individual pursuant to Minn. Stat. § 626.21 before any criminal charges are filed. 424 N.W.2d 576, 577–78 (Minn. App. 1988), *review denied* (Minn. July 28, 1988). But his reliance on *VanSlooten* is misguided. That case must be viewed in the criminal context because the individual requesting the return of his property was a suspect in a murder investigation. *Id.* And, *VanSlooten* differs from this case in that it involved a request for the return of property. *Cf. id.* This court has interpreted the statute as providing a mechanism for returning seized property before any similar motion could be brought in a criminal proceeding. *See Bonynge v. City of Minneapolis*, 430 N.W.2d 265, 266 (Minn. App. 1988) ("Minn. Stat. § 626.21, however,

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.").

Skoglund also claims that the caselaw demonstrates that Minn. Stat. § 626.21 allows a broader use of the exclusionary rule than that allowed under the Fourth Amendment. We disagree. In deciding whether the exclusionary rule may apply in a grand jury proceeding, the *Calandra* Court analyzed the applicability of Fed. R. Crim. P. 41(e), a rule that once shared very similar language to Minn. Stat. § 626.21. *See* 414 U.S. at 348 n.6, 94 S. Ct. at 620 n.6. Rule 41(e), as interpreted in *Calandra*, provided in relevant part, that "a person aggrieved by an unlawful search and seizure may move the district court . . . for the return of the property and to suppress for the use as evidence anything so obtained." *Id.* (quoting Fed. R. Crim. P. 41(e) (1972)). And, in identical language to Minn. Stat. § 626.21, the rule also stated that, "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." Fed. R. Crim. P. 41(e) (1972). The apparent purpose of the rule was to impose restrictions on searches and seizures that protect individuals against "official invasion of privacy and the security of property." *Jones v. United States*, 362 U.S. 257, 261, 80 S. Ct. 725, 731 (1960), *overruled by United States v. Salvucci*, 448 U.S. 83, 85, 100 S. Ct. 2547, 2549 (1980). The *Calandra* Court determined that rule 41(e) did not constitute a "statutory expansion" of the Fourth Amendment exclusionary rule because it had previously recognized that rule 41(e) could not be construed as broader than the Fourth Amendment

exclusionary rule. *Calandra*, 414 U.S. at 348 n.6, 94 S. Ct. at 620 n.6 (citing *Alderman v. United States*, 394 U.S. 165, 173 n.6, 89 S. Ct. 961, 966 n.6 (1969)).

Based on the timing and context of the legislature's passage of Minn. Stat. § 626.21, it appears that the legislature intended for the statute to codify the federal exclusionary rule as established in *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961). *See* 1963 Minn. Laws ch. 850, § 1, at 1556; *Lindquist*, 869 N.W.2d at 891 (Lillehaug, J., dissenting) (addressing whether good-faith exception applies to exclusionary rule and explaining that "[p]lainly, section 626.21, enacted in the aftermath of *Mapp*, is Minnesota's codification of the federal exclusionary rule"). Accordingly, the statute applies only in criminal matters, to permit the return of property before a criminal prosecution has been initiated. As discussed previously, we conclude that the Fourth Amendment exclusionary rule does not apply to civil eviction proceedings brought by private landlords. We similarly hold, that because Minn. Stat. § 626.21 is not a statutory expansion of the Fourth Amendment exclusionary rule, the statute does not apply under the circumstances of this case.

II.

Skoglund also contends that, even if the evidence from the search is not suppressed, the district court erred by entering an eviction judgment because Nationwide failed to meet its burden to prove that he violated the lease. As stated above, an eviction is a summary proceeding to determine an individual's possessory rights to real property. Minn. Stat. § 504B.001, subd. 4; *Stange*, 631 N.W.2d at 445–46. We will uphold the district court's factual findings unless they are clearly erroneous. *Cimarron Vill.*, 659 N.W.2d at 817. But

we review the district court's legal conclusions de novo. *W. Insulation Servs. v. Cent. Nat'l Ins. of Omaha*, 460 N.W.2d 355, 357 (Minn. App. 1990).

Nationwide appears to suggest that Skoglund waived this argument based on a discussion between the district court and Skoglund's counsel at the hearing. Prior to the district court taking testimony, the following exchange occurred:

> THE COURT: If the search is suppressed, then there is no—then we have to decide—or you would have to present other evidence to show that an eviction is warranted. If I don't suppress the search, then I would assume, at that point, the eviction goes forward. Ms. Updegraff, any dispute with that?
> COUNSEL: No, Your Honor.

But, contrary to Nationwide's assertions, Skoglund's counsel argued near the end of the hearing that Nationwide had not proved marijuana was found in Skoglund's apartment:

> COUNSEL: Your Honor, there is one other matter, in the event that you're denying the exclusion motion, which is that it is the burden of the plaintiff to prove the offense here by a preponderance of the evidence. This is based on the substance that they found, which they claim was marijuana. However, no testing was done, and the substance was destroyed. So I submit that the plaintiff has not proven that marijuana was—or any other controlled substance was found in Mr. Skoglund's apartment.

We conclude that Skoglund did not waive this argument and therefore the issue is properly before us.

Section 9(i) of Skoglund's lease with Nationwide provides that "[t]he Landlord may terminate this Agreement for . . . drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control." In addition, Skoglund agreed

to a "Drug/Crime-Free Housing Addendum," which provides that he "shall not engage in criminal activity, including drug-related criminal activity, on or off the premises." The addendum further defines "Drug-related criminal activity" as "the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Chapter 102 of the Controlled Substance Act [21 U.S.C. 802])." A "controlled substance" under 21 U.S.C. § 802 is "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." 21 U.S.C. § 802(6) (2012). Marijuana is classified as a schedule I controlled substance. 21 U.S.C. § 812, sched. I(c)(10) (2012). Accordingly, because use or possession of marijuana would violate the lease, the question turns to whether Nationwide presented sufficient evidence for the district court to find by a preponderance of the evidence that Skoglund possessed marijuana.

We do not set aside findings of fact in an appeal from a civil judgment unless the findings are clearly erroneous. *See* Minn. R. Civ. P. 52.01. Nationwide was required to establish by a preponderance of the evidence a statutory ground to evict Skoglund. *See Parkin v. Fitzgerald*, 307 Minn. 423, 425–26, 240 N.W.2d 828, 830–31 (1976). Officer Leibel testified that he discovered drugs and drug paraphernalia in Skoglund's bedroom. He further stated that he suspected, based on his experience, that the "green leafy substance" in the containers near Skoglund's bed was marijuana. Officer Leibel acknowledged that the substance was destroyed before it could be tested. Based on Officer Leibel's testimony, the district court determined that he had the necessary knowledge to conclude that the substance in the containers was marijuana. Despite the fact that the

substance was not tested, we conclude that it was not clearly erroneous for the district court to determine that Nationwide proved by a preponderance of the evidence that Skoglund possessed marijuana. *Cf. State v. Olhausen*, 681 N.W.2d 21, 28–29 (Minn. 2004) (holding that non-scientific, circumstantial evidence may be presented to prove identity of controlled substance).

D E C I S I O N

We conclude that the district court did not err by denying Skoglund's motion to suppress the evidence of marijuana discovered in the police officers' search of his apartment because the exclusionary rule under the Fourth Amendment, or pursuant to Minn. Stat. § 626.21, does not apply in a civil eviction action brought by a private landlord. We further conclude that, based on the evidence in the record, the district court did not commit clear error in finding that the substance located in Skoglund's bedroom was marijuana. Therefore, the district court did not err by ordering Skoglund's eviction based upon this violation of his lease agreement.

Affirmed.