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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0411**

Peter G. Noe,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 8, 2018
Affirmed
Bratvold, Judge**

Mower County District Court
File No. 50-CV-17-2553

Peter G. Noe, Florence, Colorado (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Scott K. Springer, Assistant County Attorney,
Austin, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's order dismissing his claims seeking the return of seized property. Because appellant's claims were time-barred and his proposed amended claim was properly denied, we affirm.

FACTS

In August 2017, appellant Peter G. Noe sued respondent State of Minnesota in conciliation court and made two claims: (1) for the return of over \$450 worth of lottery tickets that police seized when he was arrested on April 16, 2001, and (2) for the return of \$1,564 cash that police seized when he was arrested on April 5, 2002. The state moved to dismiss Noe's claims, arguing that they were time-barred. The conciliation court held a hearing on the state's motion, but Noe "failed to make adequate arrangements to appear." Accordingly, the conciliation court granted the state's motion to dismiss, determining that Noe's claims were barred by the statute of limitations.

Noe removed his claims to district court and filed a motion seeking to add a claim to recover \$9,584 in cash, which he alleged was seized by police on December 14, 2001. Noe's motion to amend claimed that local authorities investigated him from 1999-2002 for selling drugs and "on several occasions [Noe's] house was raided. . . . Money and other evidence were often taken from Noe in these raids." Noe asserted that the state never brought charges against him related to the December 2001 cash seizure, and that instead the state "turned the entire case over to the B.C.A. and the F.B.I. for prosecution." Because the state did not prosecute him criminally, Noe argued that the state lacked jurisdiction to forfeit money involved in a federal case. In his motion to amend, Noe acknowledged that a district court had previously determined that the property seized in December 2001 was forfeited. Noe claimed that he had planned to appeal, "but the feds got involved" before he

could do so. Noe's motion to amend stated that he sought to recover over \$11,000 seized during the April 2001, December 2001, and April 2002 arrests.¹

The state opposed Noe's motion to amend as "frivolous," because the December 2001 cash seizure had been adjudicated as forfeited in an August 2002 district court order. This order found that there was clear and convincing evidence that the seized cash was subject to forfeiture because it was "derived from the manufacture, delivery, or sale of controlled substances, i.e., marijuana and methamphetamine." *See* Minn. Stat. § 609.5311, subd. 4(b) (2000). The state argued that "there [was] no basis to make the same claim against the same party to the same court fifteen years after that claim was already made and determined." It is not clear from the record whether the district court ruled on Noe's motion to amend.

In January 2018, the state moved to dismiss Noe's claims based on the statute of limitations, and, in its motion to dismiss, included facts outside the original complaint. According to the state's written submission to the district court, as a result of the April 2001 arrest, charges were filed against Noe, and on May 3, 2001, he pleaded guilty and received a sentence of 90 days. Therefore, the state argued that Noe "had to commence his claim for [the return of the] lottery tickets not later than August 1, 2009." According to the state's written submission to the district court, charges were also filed against Noe as a result of the April 2002 arrest, and on January 27, 2003, the charges were dismissed. Thus,

¹ Noe's motion to amend stated that the "total amount" he sought to recover was "\$11,603." Based on our review of Noe's claims, this claim does not correctly reflect the total of Noe's three claims.

the state argued that Noe had to bring his claim to recover the \$1,564 seized in that matter no later than January 28, 2011. Because Noe did not file his claims until August 2017, the state asked the district court to dismiss Noe's claims with prejudice.

On February 16, 2018, the district court granted the state's motion and dismissed Noe's legal action. This appeal followed.

D E C I S I O N

The district court granted the state's motion to dismiss Noe's claims under Minn. R. Civ. P. 12.02(e). Under Minn. R. Civ. P. 12.02, "[i]f, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." *See Antone v. Mirviss*, 720 N.W.2d 331, 334 n.4 (Minn. 2006). Because the state submitted evidence that addressed matters not a part of Noe's complaint, and the district court appears to have considered this evidence in reaching its decision, we conclude that the state's motion became one for summary judgment under Minn. R. Civ. P. 56.01.

This court reviews summary judgment decisions de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In doing so, we "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* The evidence is viewed "in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Further, "the construction and applicability of a statute of limitation or repose is a

question of law subject to de novo review.” *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

We conclude that Noe’s claims, which seek the return of property seized during his April 2001 and April 2002 arrests, were correctly dismissed as time-barred. Minnesota law provides a six-year limitations period for claims of “taking, detaining, or injuring personal property, including actions for the specific recovery thereof.” Minn. Stat. § 541.05, subd. 1(4) (2016). The limitations period begins when a cause of action accrues. *Dalton v. Dow Chemical Co.*, 158 N.W.2d 580, 583 (Minn. 1968). A cause of action accrues when it could survive a motion to dismiss. *Noske v. Friedburg*, 670 N.W.2d 740, 742 (Minn. 2003).

Minnesota law also provides that the state must commence a forfeiture action regarding seized property within two years of the defendant’s conviction or when the criminal proceedings are no longer pending against the defendant. Minn. Stat. § 541.07(2) (2016); *see also State v. \$6,276 in U.S. Currency*, 478 N.W.2d 333, 337 (Minn. App. 1991) (“Thus, the two-year statute of limitations for filing a forfeiture complaint can, with logic, only be measured from conviction. . . .”), *review denied* (Minn. Jan. 30, 1992); *Humphrey v. \$1,109 in U.S. Currency*, 539 N.W.2d 1, 3-4 (Minn. App. 1995) (holding that the statute of limitations on a forfeiture action begins to run when the defendant “cease[s] to have criminal proceedings pending against him”), *review denied* (Minn. Dec. 20, 1995).

We apply these statutes to both of Noe’s claims. First, the \$450 worth of lottery tickets that were seized in April 2001 were subject to forfeiture until two years after Noe’s conviction on May 3, 2001. Therefore, Noe’s claim to recover the lottery tickets could have been brought as of May 3, 2003. Thus, the six-year statute of limitations for Noe’s claim

to recover his lottery tickets expired on May 3, 2009. Second, the \$1,564 in cash that was seized in April 2002 resulted in charges that were dismissed on January 27, 2003. Therefore, Noe's claim to recover the \$ 1,564 in cash could have been brought as of January 27, 2005. Thus, the six-year statute of limitations for Noe's claim to recover the cash expired on January 27, 2011. Because Noe did not commence his claims until August 2017, we affirm the district court's order dismissing these claims as untimely.

Still, Noe argues that his claims are not time-barred because he attempted to commence his legal action before the statute of limitations expired. Noe argues that he contacted a "court administrator" and that she informed him that he was required to file a "notice of intent to forfeit." He asserts that the state "refused to provide the 'notice,'" the court administrator would not allow him to file his claim in conciliation court without the notice, and thus, a "fatal flaw" in the system prevented him from timely pursuing his claim. But Noe did not make this argument during district court proceedings, and this court will not consider issues not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Regarding the December 2001 seizure, we agree with the state that Noe's motion to amend was properly denied because his claim fails as a matter of law. *See Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 714 (Minn. 2012). A claim fails as a matter of law if it has already been fully decided on the merits. *See Schober v. Comm'r of Revenue*, 853 N.W.2d 102, 111 (Minn. 2013); *see also Application of Hofstad*, 376 N.W.2d 698, 701 (Minn. App. 1985) ("Where res judicata and collateral estoppel apply, amendment [of the complaint] is improper."). As stated, a district court ordered the

seized cash forfeited in August 2002. Noe concedes that he did not appeal the August 2002 forfeiture decision. Thus, the August 2002 decision is final and Noe is precluded from attacking the December 2001 seizure in a subsequent action. *See Emp'rs Nat. Ins. Co. v. Breaux*, 516 N.W.2d 188, 190 (Minn. App. 1994) (party who fails to appeal is bound by decision of the district court), *review dismissed* (Minn. Sept. 16, 1994).

Affirmed.