

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1159**

Jenna Kayleen Christensen,
Respondent,

vs.

Karrie Kelly, Wabasha County Attorney, et al.,
Appellants.

**Filed April 5, 2021
Affirmed
Frisch, Judge**

Wabasha County District Court
File No. 79-CV-20-237

Zachary C. Bauer, Meshbesher & Spence, Ltd., Rochester, Minnesota (for respondent)

Karrie S. Kelly, Wabasha County Attorney, Wabasha, Minnesota (attorney pro se and for
appellant Wabasha County Sheriff)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellants argue that the district court erred by granting a petition for the return of
seized property because respondent failed to file a timely demand for judicial determination
of forfeiture regarding the property. We affirm.

FACTS

Appellants in this case are the Wabasha County Sheriff's Office and the Wabasha County Attorney (collectively, the county). On August 25, 2018, sheriff's deputies executed a search warrant at the home of respondent Jenna Kayleen Christensen and her codefendant as part of an investigation into the possession of illegal controlled substances. Law enforcement arrested Christensen and seized a 2015 Chevrolet Silverado, 15 firearms, ammunition, firearm accessories, three drones, video cameras, surveillance equipment, GPS equipment, and other accessories.

A detective spoke with Christensen at the jail and gave her two documents. The first page (the forfeiture notice) is titled, "NOTICE OF SEIZURE AND INTENT TO FORFEIT VEHICLE/PROPERTY." The forfeiture notice provides:

YOU ARE NOTIFIED THAT pursuant to Minnesota laws, the following property has been taken into custody: (Include plate number and VIN number for vehicles; attach additional sheet if necessary)

2015 Chevrolet Silverado

No Plate, No Temp Sticker

Savage – Model 64 .22 Cal – Ser 3134679 w/ Pinty Scope

. . . .

WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. . . .

Christensen signed the forfeiture notice next to the text, "Notice of Seizure Received by."

The second page (the property receipt) is titled, "PROPERTY RECEIPT." The property receipt provides, "On 08-25, 2018, at [Christensen's residence], I took into

custody the property and things listed below.” The document contains a listing of 14 firearms, ammunition, three drones, cameras, surveillance equipment, GPS equipment, and various accessories. Christensen signed the property receipt in the space accompanying the text, “Property Receipt received by.”

The state charged Christensen and her codefendant with felony controlled-substance crimes. Christensen and her codefendant each pleaded guilty to controlled-substance crimes, and the district court imposed stays of adjudication in both cases. Neither Christensen nor her codefendant appealed.

On April 7, 2020, Christensen filed a petition for the return of property pursuant to Minn. Stat. § 626.04 (2020), and requested that the county return the items listed in the property receipt. Christensen alleged that the county informed her that the property would be available for pickup once her codefendant’s appeal period expired, that she had requested return of the property after that deadline lapsed, and that the county then informed her the property had already been forfeited. Christensen claimed that the county failed to provide a proper notice of seizure and intent to forfeit the property listed in the property receipt.

The county responded with a motion to dismiss, arguing that the district court lacked subject-matter jurisdiction because the detective had served Christensen with a notice of seizure and intent to forfeit property and Christensen had failed to demand a judicial determination of the forfeiture within the 60-day statutory deadline governing forfeitures of property seized in connection with controlled-substance seizures. *See* Minn. Stat. § 609.5314, subds. 2-3 (2020). The county furnished an affidavit from the detective, in

which he swore he “served [a] two-page Notice of Seizure and Intent to Forfeit Vehicle/Property upon . . . Christensen, and watched her sign the bottom of both pages.”

Christensen opposed the motion to dismiss, arguing that the forfeiture paperwork “was not appropriate and not effective” as to the requested property and that there was no jurisdictional defect. She supplied an affidavit swearing that the detective provided her with the two pages separately, that she reviewed and signed them separately, and that the detective never clarified that the items on the property receipt were subject to forfeiture.

Following a hearing on the petition and motion to dismiss, the district court denied the county’s motion to dismiss and granted Christensen’s petition. It found that the items listed in the forfeiture notice “did not reference any additional items or otherwise indicate that the items on the Property Receipt document were also subject to forfeiture.” It found that the detective handed the documents to Christensen together but that “the documents were not stapled to one another.” Pursuant to Minn. Stat. § 626.04(a), the district court considered whether any circumstance precluded the return of Christensen’s property. In relevant part, the district court concluded:

The property subject to the Petition is not subject to forfeiture proceedings. The Notice of Seizure and Intent to Forfeit Vehicle/Property . . . provided to Ms. Christensen only gave notice that two items were subject to forfeiture. The items on the document labeled “Property Receipt” were not part of the notice that listed items that were subject to forfeiture. Although the documents were given to Ms. Christensen together, nothing ties the two pages together that would indicate that the items on the Property Receipt would also be subject to forfeiture. The Notice of Seizure and Intent to Forfeit Vehicle/Property does not reference a second page, it does not say “page 1 of 2”, it does not say “see attached”, or have any such similar language.

The district court stated “the property listed on the Property Receipt must be returned to its owner or another person entitled to possess said property pursuant to Minn. Stat. § 626.04(b),” but because Christensen was prohibited from possessing firearms and ammunition while on probation, indicated that it “w[ould] not provide for the return of any firearm or ammunition to her possession.”

The county appeals.

DECISION

The county argues that the district court clearly erred by finding that the county failed to notify Christensen of the forfeiture of the items in the property receipt and that Christensen’s failure to file a timely demand for a judicial determination of the forfeiture deprived the district court of subject-matter jurisdiction to order the property’s return. Christensen urges us to affirm because the items in the property receipt were not subject to the forfeiture notice.

The district court granted Christensen’s petition pursuant to Minn. Stat. § 626.04(a), which governs requests for the return of property seized by law enforcement. The statute prohibits the district court from ordering property returned if it finds any one of four conditions exist, including that “the property may be subject to forfeiture.” Minn. Stat. § 626.04(a). The county’s argument on appeal is concerned less with section 626.04 and more with Minn. Stat. § 609.5314 (2020), which governs the administrative forfeiture of property seized in connection with controlled-substance seizures. In essence, the county argues that: (1) it gave a proper notice of forfeiture under section 609.5314; (2) Christensen’s failure to file a timely demand for a judicial determination of forfeiture

deprived the district court of subject-matter jurisdiction to dispose of the property under section 609.5314; and (3) the district court therefore lacked subject-matter jurisdiction to grant a petition for the return of the forfeited property under section 626.04. Questions of subject-matter jurisdiction and statutory interpretation are subject to de novo review. See *Briles v. 2013 GMC Terrain*, 907 N.W.2d 628, 631 (Minn. 2018) (statutory interpretation); *In re Civil Commitment of Giem*, 742 N.W.2d 422, 425-26 (Minn. 2007) (subject-matter jurisdiction).

Firearms, ammunition, and firearm accessories are presumed subject to forfeiture if found “on the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under chapter 152.” Minn. Stat. § 609.5314, subd. 1(a)(iii). But within 60 days (and up to an additional 90 days) of the seizure, the state must provide the property owner with a written notice of seizure and intent to forfeit property containing: (1) a description of the property seized, (2) the date of seizure, and (3) “notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review.” *Id.*, subd. 2(a), (b).

Judicial review of an administrative forfeiture under section 609.5314 is not automatic. “Within 60 days *following service of a notice of seizure and forfeiture under* [section 609.5314], a claimant may file a demand for a judicial determination of the forfeiture.” *Id.*, subd. 3(a) (emphasis added). We have described this deadline in jurisdictional terms, explaining that “[s]trict compliance is required, and if the owner of the affected property fails to properly serve the demand for judicial determination, no forfeiture

action is commenced, and the district court lacks subject-matter jurisdiction to address the matter.” *Kokosh v. \$4657 U.S. Currency*, 898 N.W.2d 284, 287 (Minn. App. 2017).¹

But by the plain language of the statute, the 60-day period to demand a judicial determination of forfeiture begins only “*following* service of a notice of seizure and forfeiture.” Minn. Stat. § 609.5314, subd. 3(a) (emphasis added); *see also Briles*, 907 N.W.2d at 632 (stating “the time to raise this argument was within 60 days of receipt of the . . . notice”). In other words, the service of a statutorily compliant notice of seizure and intent to forfeit is a precondition to the running of the 60-day deadline.

Accordingly, the county’s jurisdictional argument rests on its assertion that the district court clearly erred by finding that it failed to provide Christensen with a proper notice of seizure and intent to forfeit. “The sufficiency of notice and service of process are questions of law, which this court reviews *de novo*.” *Van Note v. 2007 Pontiac*, 787 N.W.2d 214, 217 (Minn. App. 2010). “But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Van Note*, 787 N.W.2d at 218.

The county asserts that the district court clearly erred by finding that the forfeiture notice “does not say ‘see attached’, or have any such similar language” because the form

¹ The supreme court has questioned whether such deadlines are jurisdictional while declining to decide the question. *See Briles*, 907 N.W.2d at 632 n.2. We assume for the sake of the county’s argument that the deadline is jurisdictional in nature.

provides, “attach additional sheet if necessary.” But that provision is a directive to the individual *preparing* the form, rather than an advisory to the *recipient* of the form that additional property is subject to the same notice. We note the plain language of the forfeiture notice identifies only “the following property” as subject to forfeiture: the vehicle and the .22 caliber rifle. The advisory on the forfeiture notice similarly refers only to “the above-described property.” There is nothing in the forfeiture notice that references the property receipt or any of the items listed therein. Accordingly, the district court’s finding that the forfeiture notice “does not reference a second page” (the property receipt) is not clearly erroneous.

The county also argues that it is logical to infer that the forfeiture notice included and referred to the items listed in the property receipt because the detective gave the documents to Christensen together and because the documents jointly identify a “claimant,” a term also appearing in Minn. Stat. § 609.5314, subds. 1(c), 3(a)-(c). But the question is not whether Christensen could have or should have inferred that the items in the property receipt *might* have been subject to the forfeiture proceedings described in the separate forfeiture notice. The pertinent question is whether the county effected the “notice” as required by the statute.²

² The Minnesota Supreme Court has explained, “At its core, due process requires that the procedures used by the government before depriving an individual of his or her protected life, liberty, or property interest must provide [that] individual with notice and an opportunity to be heard at a meaningful time and in a meaningful way.” *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 601 (Minn. 2019) (alteration in original) (quotation omitted).

We must apply the plain and unambiguous language of Minn. Stat. § 609.5314 as it is written. *See Floding v. Gillespie (In re Dakota County)*, 866 N.W.2d 905, 909 (Minn. 2015). The notice provision set forth in Minn. Stat. § 609.5314, subd. 2(b), plainly requires that the notice contain the following information: (1) a description of the property seized, (2) the date of the seizure, (3) an advisory that the loss of property ownership is automatic absent judicial review, and (4) “notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review.” Only one page—the forfeiture notice—contained all of this information. By contrast, the property receipt (1) did not contain the words “seize” or “forfeit” or any other language suggesting that the property was subject to forfeiture and (2) contained no advisory of the right to obtain judicial review. We therefore reject the county’s suggestion that Christensen was constructively notified of the seizure and intent to forfeit the property listed in the property receipt.

In short, the district court’s finding that “nothing ties the two pages together” is supported by the record. The fact that the two documents may have been delivered to Christensen at the same time does not mean that they are substantively related, let alone satisfy the statutory notice requirements to facilitate a property forfeiture. The documents were not secured together, nor were they enclosed together in an envelope. And there is no express or implied connection between the two documents. The district court’s finding that the items in the property receipt “were not part of the notice that listed items that were subject to forfeiture” is not clearly erroneous.

The county contends that the district court allowed the “absurd result” of allowing Christensen to “unilaterally extend[] the 60-day deadline [to file a demand for judicial

determination] to well over one year.” But this argument rests upon the mistaken premise that the 60-day period had begun and that the deadline lapsed. Neither occurred because the county failed to provide Christensen with a proper notice of seizure and intent to forfeit the property listed in the property receipt. Accordingly, the county’s jurisdictional argument fails. The county offers no other basis to reverse the district court’s order and we therefore affirm.

Affirmed.