

*This opinion is nonprecedential except as provided by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
A21-0320**

Candi Lemarr,
Appellant,

vs.

Brown County,
Respondent.

**Filed December 20, 2021
Affirmed
Johnson, Judge**

Brown County District Court
File No. 08-CV-20-978

Joseph A. Gangi, Farrish Johnson Law Office, Mankato, Minnesota; and

James J. Kuettner, Kuettner Legal, P.L.L.C., Mankato, Minnesota (for appellant)

Charles W. Hanson, Brown County Attorney, New Ulm, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Klaphake,
Judge.*

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Brown County deputy sheriff searched Candi Lemarr's rural property after receiving reports that she was keeping malnourished animals. A veterinarian who

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

accompanied the deputy determined that several animals were underweight and malnourished. The deputy informed Lemarr that he intended to seize 11 animals and gave her the opportunity to voluntarily surrender her interests in those animals. She agreed to do so. Lemarr later filed an action in district court to seek the return of the seized animals, arguing that she was under duress at the time she surrendered her interests in the animals. The district court determined that Lemarr is not entitled to a hearing on the validity of the seizures of the animals because she was not under duress when she surrendered her interests in the animals. We conclude that the district court did not clearly err in making that finding. Therefore, we affirm.

FACTS

In 2020, Lemarr operated a business called Sapphire Equestrian Farms on rural property near the city of Sleepy Eye. She owned horses, which were used for riding lessons and by local competitive riding teams, as well as donkeys and one miniature horse.

In November 2020, the Brown County Sheriff's Office received a complaint that Lemarr was keeping "emaciated and malnourished" animals on the property. Deputy Sheriff Reed sought and obtained a court-ordered warrant to search and investigate pursuant to a statute that authorizes investigations by law enforcement into reports of cruelty to animals. *See* Minn. Stat. § 343.22, subds. 1, 2 (2020).

On November 23, 2020, Deputy Reed, another deputy, and a veterinarian went to Lemarr's property to investigate, arriving at approximately 1:00 p.m. Deputy Reed met and introduced himself to Lemarr and Lemarr's 20-year-old son and informed Lemarr of the purpose of his investigation. The two deputies were joined by two additional law-

enforcement officers, who arrived later in the afternoon. Deputy Reed and the other representatives of the county remained on the property until approximately 5:45 p.m.

After their arrival, Deputy Reed and the veterinarian were given a “tour” of Sapphire Farms by Lemarr. They inspected the premises, including the paddocks, barns, and places where animal feed was stored. They also inspected the animals. The veterinarian scored each animal on the Henneke Body Conditioning Scale, which can be used to estimate an animal’s weight and nourishment. The scale ranges from 1 to 9, with 1 being “skeletal” and 9 being “grossly overweight.”

During and after their inspections, Deputy Reed and the veterinarian had various conversations with Lemarr and her son. In those conversations, Lemarr discussed the potential dispositions of various animals. For example, Lemarr asserted that one horse that was in her care should be given to her farrier, who knew the owner. Lemarr stated that some horses should not be seized because they were being held for third parties who would be picking them up that day. Lemarr stated that she and her son wanted to keep some horses that they had “had forever” and that she wanted to keep certain other horses that were essential to her business. At one point, Lemarr asked, “If you wanna take [the miniature horse and donkeys] and we can be left with riding horses so my business doesn’t go under, then can we do it that way?”

After speaking with Lemarr, Deputy Reed and the veterinarian decided to seize 11 animals. Specifically, they seized seven animals that had received Henneke scores of 2½ or lower. They also decided to seize four animals that had received scores of 4, which is near the mid-point of the Henneke scale, but were volunteered for seizure by Lemarr.

Deputy Reed provided Lemarr with three documents entitled “Notice of Seizure,” “Request for Hearing or Voluntary Surrender,” and “Surrender and Release Form.” The first document states that 11 animals would be seized and held at the Minnesota Hooved Animal Rescue Foundation, a non-profit organization near the city of Zimmerman. The second document described two options. Lemarr placed a check mark next to the option that stated:

I voluntarily relinquish all ownership, privileges, rights, and title of the animal(s) described on the Seizure Notice. I hereby give the animal(s) described on the Seizure Notice to the entity listed on this notice for whatever disposition this entity deems best. I realize, by doing so, the security amount is waived.

Lemarr did not check the option that stated:

I do not voluntarily relinquish ownership to the animal(s) and instead request a hearing to determine whether or not the seizure or impoundment was substantially justified by law and to prevent disposition of the animal(s) until the court has made its determination. I understand my request for a hearing must be made within ten (10) days of the date of seizure. (Minn. Stat. sec. 343.235, subd. 3b.) I understand, to prevent disposition of the animal, I or a person claiming an interest in the animal may post security in an amount sufficient to provide for the animal’s actual costs of care and keeping. The security must be posted within ten days of the seizure inclusive of the date of the seizure.

The third document identified the 11 animals that were seized. Lemarr signed the second and third documents. Deputy Reed presented these documents to Lemarr while they were sitting in the front seat of Deputy Reed’s squad car. Before Lemarr signed the documents, Deputy Reed told her that she could choose to either contest the seizures in court or voluntarily relinquish her interests in the animals as well as her right to challenge the

seizures. The conversation lasted approximately 15 minutes and was recorded by Deputy Reed's body-worn video-camera.

Seven days later, Lemarr's attorney sent a letter to the district court to request a hearing on the validity of the seizures of the animals. In response, the county moved to dismiss Lemarr's action on the ground that she had voluntarily surrendered her interests in the animals. Lemarr filed a memorandum of law in opposition to the motion in which she argued that she did not voluntarily surrender her interests in the animals because her decision to do so was made under duress, and she argued further that she is entitled to an evidentiary hearing on the issue of whether the seizures were proper. In support of her response, Lemarr submitted five affidavits of persons who expressed support for Lemarr and praised her skill as a caretaker of horses.

In mid-December 2020, the district court conducted a three-day evidentiary hearing on the limited issue of duress. Lemarr called her therapist as a witness. The therapist testified that Lemarr sometimes experiences "dissociation" in response to stress, which could lead to lapses in attention and general confusion, even though Lemarr might appear outwardly calm.

Lemarr testified on her own behalf. She testified that, while the deputies and the veterinarian were at her property on November 23, 2020, she "started panicking" when she was told that the county was there to seize animals. Lemarr testified that her "head started spinning" and that she "couldn't think straight" during the conversation with the deputies and veterinarian. Lemarr testified that she had limited memory about what had happened,

what she had been told, and what she had said to the deputies, except that she recalled that she could “either give [the animals] up” or they were “just going to take them.”

The county called Deputy Reed, who testified about the investigation at Lemarr’s property and the seizures of animals on November 23, 2020. He testified that Lemarr told him she was “kind of stressed” but that she appeared coherent. He testified that Lemarr asked genuine questions, showed concern for which horses would be taken, and engaged in conversation with them. He also testified that Lemarr was free to leave the deputies’ presence at any time and did so on multiple occasions. He testified that Lemarr was in the front seat of his squad car when she signed the documents because she entered the car of her own volition. The deputy indicated that he reviewed the documents with Lemarr and told her that she was not required to sign any of them, that he would seize animals regardless of whether Lemarr signed the documents, and that she would have a right to a hearing on the seizures if she did not consent. The county also introduced into evidence seven video-recordings made by Deputy Reed’s body-worn camera, including a video-recording of the conversation between Deputy Reed and Lemarr while they were sitting in Deputy Reed’s squad car.

In January 2021, the district court filed an order in which it determined that Lemarr was not under duress when she surrendered her interests in the seized animals and, consequently, that she is not entitled to a hearing on the question whether the seizures were proper. Lemarr appeals.

DECISION

Lemarr argues that the district court erred by finding that she was not under duress when she surrendered her interests in the seized animals.

This action is governed by state statutes concerning cruelty to animals. A district court must issue a warrant authorizing a law-enforcement officer to conduct a search and an investigation if there is probable cause to believe that the statute has been violated. Minn. Stat. § 343.22, subd. 1. The district court may require that a veterinarian accompany the law-enforcement officer. *Id.* The law-enforcement officer may “retain in custody . . . any property or things which are specified in the warrant, including any animal if the warrant so specifies.” *Id.*, subd. 2. A seized animal “may be immediately disposed of” if it is “suffering and is beyond cure through reasonable care and treatment.” *Id.*, subd. 3. Otherwise a seized animal “may be humanely disposed of” after 10 days. Minn. Stat. § 343.235, subd. 1 (2020); *see also* Minn. Stat. § 343.22, subd. 3. Within 10 days of the seizure of an animal, “a person claiming an interest in the animal” may request a hearing “to determine the validity of the seizure and impoundment.” Minn. Stat. § 343.235, subd. 3(b). A district court “may authorize the return of the animal” if “(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.” *Id.*, subd. 3(c).

In this case, the county argued to the district court that, because Lemarr voluntarily surrendered all her interests in the seized animals, she no longer is “a person claiming an interest in” the animals and, thus, is not entitled to a hearing on the validity of the seizures. *See id.*, subd. 3(b). The district court did not expressly state that Lemarr is not “a person

claiming an interest in” the seized animals. But that is the implication of the district court’s determination that Lemarr is not entitled to a hearing. On appeal, Lemarr does not challenge the premise that she surrendered her interests in the seized animals. Rather, she argues that her surrender of her interests in the seized animals is invalid because she acted under duress. Accordingly, we focus on the issue of duress.

Lemarr relies primarily on *Wise v. Midtown Motors, Inc.*, 42 N.W.2d 404 (Minn. 1950), in which the supreme court defined duress as “coercion by means of physical force or unlawful threats which destroys the victim’s free will and compels him to comply with some demand of the party exerting the coercion.” *Id.* at 407. To determine whether a person was under duress, the key question is “whether the coercion was of such a character as to overcome the free will of the victim.” *Id.* Because duress is governed by a subjective standard, “[t]he test is not the nature of the threats, but rather the state of mind induced thereby in the victim.” *Id.* But a finding of duress requires either “physical force or unlawful threats, which destroys one’s free will and compels compliance with the demands of the party exerting the coercion.” *St. Louis Park Inv. Co. v. R.L. Johnson Inv. Co., Inc.*, 411 N.W.2d 288, 291 (Minn. App. 1987), *rev. denied* (Minn. Oct. 30, 1987). “Because a person has a right to threaten to do that which he has a right to do, a threat to bring an action to enforce a lawful demand, or one which he in good faith believes to be lawful, does not constitute duress.” *Wise*, 42 N.W.2d at 407. The existence of duress is a question of fact. *Id.* at 408. Accordingly, this court applies a clear-error standard of review to the district court’s findings. Minn. R. Civ. P. 52.01; *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

The district court made 26 paragraphs of findings of fact concerning the events that occurred at Lemarr's property on November 23, 2020, and Lemarr's state of mind. In its conclusions of law, the district court recited the applicable caselaw concerning duress and summarized its reasoning as follows:

The actions of Investigator Reed in this case do not amount to duress. Plaintiff had the option of allowing the animals to be removed involuntarily and demanding a court hearing. There is no indication that Plaintiff was suffering from dissociation during her contact with Investigator Reed; she spoke clearly and lucidly and asked relevant questions. Plaintiff was allowed to consult with her son and was free to leave the property and did so. Contrary to her testimony that Investigator Reed isolated her in his vehicle, her son spoke to her through an open window. Plaintiff volunteered to allow Mini-Bit and the three donkeys to be taken. She discussed with the veterinarian which animals could go and which she would keep; her decisions were rationally focused on keeping the animals that would allow her to continue to offer riding lessons and releasing the animals that were not income producers.

Lemarr challenges the district court's order primarily by contending that her free will was overcome by the stressful events that occurred on November 23, 2020. In essence, Lemarr reiterates the arguments that she presented to the district court. Her contention is contrary to several of the district court's findings of fact. For example, the district court found that Deputy Reed arrived in civilian clothes and an unmarked squad car, that Lemarr offered to show Deputy Reed and the veterinarian around the property, and that Lemarr engaged in a conversation with Deputy Reed and the veterinarian in which they "discussed which animals Plaintiff was willing to surrender and which she wanted to keep." The district court also found that Lemarr voluntarily took a seat in the front of Deputy Reed's squad car, did not express any confusion or misunderstanding, and did not "stare into space

or break down.” The district court noted the testimony of Lemarr’s therapist but discounted it on the ground that the therapist was not present at Lemarr’s property on November 23, 2020.

These findings of fact are supported by the record. In particular, the video-recording captured by Deputy Reed’s body-worn camera captured Lemarr’s conversations with the deputies and the veterinarian and shows her acting in a way that is inconsistent with her testimony and consistent with the district court’s findings. For example, the video-recording shows Lemarr engaging in a discussion with Deputy Reed about which animals should be removed and which animals should stay on the property. In addition, the video-recording of Deputy Reed and Lemarr sitting in the squad car indicates that Lemarr was under control and able to carry on a meaningful conversation. The video-recording shows that Deputy Reed explained the documents to her carefully, without rushing her, and informed her that she was not required to sign the documents and could contest the seizures in court if she did not sign.

Lemarr also contends that she was under duress because Deputy Reed made an unlawful threat. Specifically, she contends that Deputy Reed stated that he would seize *all* of her animals even though he was authorized to seize only those animals that had been neglected. Lemarr does not identify with specificity the evidence of a statement by Deputy Reed that he would seize all of the animals. In addition, the warrant is not in the evidentiary record. We must assume that the warrant is consistent with the authorizing statute, which permits a law-enforcement officer to seize “any property or things,” including “any animal if the warrant so specifies.” Minn. Stat. § 343.22, subd. 2. Thus, Lemarr cannot

demonstrate that Deputy Reed made a statement that exceeded the authority provided by the warrant.

Before concluding, we note that Lemarr also argues that the district court erred by depriving her of her right to due process. In response, the county argues that Lemarr has not preserved a due-process argument because she did not present it to the district court. The county is correct; Lemarr did not make a due-process argument in the district court. “It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court.” *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist. No. 13*, 842 N.W.2d 38, 42 (Minn. App. 2014) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). “[I]f an appellant fails to preserve an argument or issue in district court proceedings, the issue or argument is forfeited and may not be asserted in an appellate court.” *Id.* at 43. Because Lemarr has not preserved her due-process argument, it has been forfeited and may not be considered on appeal.

In sum, the district court did not err by denying Lemarr’s request for a hearing on the validity of the seizures of the animals.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew Johnson". The signature is written in a cursive, flowing style with a large initial "M".