

*This opinion is nonprecedential except as provided by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
A22-1300**

John Joseph Wawersich,
Respondent,

vs.

2020 Ford F150, MN Plate FLC249, VIN 1FTFW1E40LKE95724,
Appellant.

**Filed April 17, 2023
Affirmed in part, reversed in part, and remanded
Gaïtas, Judge**

Ramsey County District Court
File No. 62-CV-21-5638

Michael J. Brandt, Isabel L. McClure, Brandt Kettwick Defense, Anoka, Minnesota (for respondent)

Katrina E. Joseph, Mounds View City Prosecutor, Gregory P. Holly, Assistant City Prosecutor, H | J LAW, Blaine, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant 2020 Ford F150, MN Plate FLC249, VIN 1FTFW1E40LKE95724, a vehicle that was seized for forfeiture, appeals the district court's grant of summary judgment in favor of respondent John Joseph Wawersich and order for the Mounds View police department to immediately release the vehicle to Wawersich without charging

towing, seizure, and storage costs, and without requiring security. Appellant argues that the district court erred in granting summary judgment because the record does not establish that Wawersich enrolled in the ignition interlock program, a requirement for him to obtain release of the vehicle. Additionally, appellant contends that the district court had no authority to waive the police department's statutory rights to charge towing, seizure, and storage costs, and to require a bond or security for the vehicle before its release. Because appellant fails to identify any fact issue, and the district court correctly applied the law, we affirm the district court's order for release of the vehicle to Wawersich. But because the district court did not have authority to waive the police department's statutory rights to charge reasonable towing, seizure, and storage costs, and to require security for the vehicle, we reverse those portions of the order. We remand to the district court to address Wawersich's request for sanctions against the prosecuting authority.

FACTS

This appeal arises from proceedings for forfeiture of a pickup truck used in a driving-while-impaired (DWI) offense. Appellant, the truck, is represented by attorneys for the City of Mounds View, where the offense occurred. Wawersich, who is the registered owner of the truck, admitted that he drove it while he was impaired.

The relevant facts, presented in the light most favorable to appellant, are as follows. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (stating that, on appeal from summary judgment, the appellate court views "the evidence in the light most favorable to the party against whom summary judgment was granted"). On October 6, 2021, a Mounds View police officer arrested Wawersich, who had been

driving the truck, for suspected impaired driving. A breath test revealed that Wawersich's alcohol concentration was more than twice the legal limit. Following his arrest, Wawersich was charged with two counts of second-degree driving while impaired and an open bottle violation.

Because Wawersich had multiple DWI convictions, the Mounds View police department seized the truck and initiated forfeiture proceedings. Wawersich received a notice of seizure and intent to forfeit the vehicle. On October 22, 2021, Wawersich's counsel timely filed a demand for judicial determination, challenging the forfeiture of his truck.

Wawersich's counsel then made ten attempts to contact the Mounds View city prosecutor (Mounds View attorney)—via email, text messages, and in person—to arrange for service of his demand for judicial determination. He received no response. On December 4, 2021, the Mounds View attorney finally contacted Wawersich and signed an acknowledgment-of-service form.

Several weeks later, on December 21, 2021, Wawersich pleaded guilty to one count of second-degree DWI.¹ At the plea hearing, he produced a letter from the Minnesota Department of Public Safety (DPS letter) authorizing the installation of an ignition interlock device on his truck.² Under Minnesota law, a vehicle seized for forfeiture

¹ The other two charges against him were dismissed.

² An “ignition interlock device” is a piece of equipment that “measure[s] breath alcohol concentration and . . . prevent[s] a motor vehicle’s ignition from being started by a person whose breath alcohol concentration measures 0.02 or higher.” Minn. Stat. § 171.306, subd. 1(b) (2022).

following a DWI must be returned to the driver if the driver is a participant in the ignition interlock program. Minn. Stat. § 169A.63, subd. 13 (2020). Wawersich showed the DPS letter to the Mounds View attorney, and he also emailed it to her. The Mounds View attorney agreed to communicate with Wawersich about the return of the truck.

But the December 2021 plea hearing was the last time the Mounds View attorney communicated with Wawersich or his attorney until September 2022—when the parties appeared before the district court to argue competing summary-judgment motions in the forfeiture case. Between December 30, 2021, and January 13, 2022, Wawersich’s counsel emailed the Mounds View attorney five times requesting arrangements for the return of the truck. He received no response. On February 24, 2022, the district court held a settlement conference in the forfeiture case. The Mounds View attorney failed to appear. On March 3, 2022, the district court issued an order requiring the Mounds View attorney to communicate with Wawersich about the return of the truck within seven days and warned that “[f]ailure to comply . . . may result in an award of costs and attorney fees.” The Mounds View attorney did not comply with the district court’s order.

Wawersich filed a motion for summary judgment in the forfeiture case and requested an order releasing the truck to him under the statute authorizing release for participants in the ignition interlock program. *See* Minn. Stat. § 169A.63, subd. 13. He also moved the district court to find that the Mounds View attorney had acted in bad faith by refusing to communicate with him and to sanction the attorney by ordering attorney fees and waiving the costs and fees associated with the forfeiture of the truck. A hearing on Wawersich’s motion was set for September 15, 2022.

The day before the hearing, appellant, represented by the Mounds View attorney, filed a cross-motion for summary judgment asking the district court to find that forfeiture was required as a matter of law.

On September 15, immediately following the hearing, the district court filed an order granting Wawersich's motion for summary judgment and directing the Mounds View police department to immediately release the truck to Wawersich without charging Wawersich for towing, seizure, and storage costs, or requiring a bond or security for the truck. The district court's order does not expressly address Wawersich's request for sanctions against the Mounds View attorney. Appellant now challenges the district court's grant of summary judgment in favor of Wawersich and the district court's directives to release the truck without payment of statutory fees and costs or requiring security.³

DECISION

Appellant argues that the district court erred in granting Wawersich's motion for summary judgment because the truck was subject to forfeiture and Wawersich failed to establish that he was enrolled in the ignition interlock program. Alternatively, appellant argues that the district court erred in prohibiting the Mounds View police department from

³ After filing the notice of appeal, the Mounds View attorney filed a motion in the district court to stay the order releasing the truck until the completion of the appeal. But the Mound's View attorney did not appear at the hearing on the motion, and the district court denied it. In a special term order, this court granted the Mounds View attorney's motion to stay the release of Wawersich's truck pending appeal based on the in rem nature of the action, the district court's decision not to impose a security requirement, and the possibility that the vehicle could become unavailable.

charging for towing, seizure, and storage costs and from requiring Wawersich to provide security or post a bond for the truck.

I. There is no genuine issue of material fact, and the district court did not err in determining that Wawersich was entitled to release of the truck.

A party is entitled to summary judgment if “there is no genuine issue as to any material fact” and the party “is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. Appellate courts review a district court’s decision to grant summary judgment de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010); *see also Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). “In doing so, [appellate courts] determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview*, 790 N.W.2d at 170.

In considering whether there are genuine issues of material fact, the appellate court views the evidence in the light most favorable to the nonmoving party, against whom summary judgment was granted. *STAR Ctrs.*, 644 N.W.2d at 76-77. “A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution.” *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976). Inferences and doubts about material facts are resolved in favor of the nonmoving party. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). If a reasonable person can draw different conclusions based on the evidence presented, then a motion for summary judgment should not be granted. *Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019).

Before turning to appellant’s arguments, we briefly review the law concerning civil forfeiture. “Civil forfeiture is a process by which a law enforcement agency . . . obtains legal title to property connected with criminal activity.” *Jensen v. 1985 Ferrari*, 949 N.W.2d 729, 734 (Minn. App. 2020). Vehicle forfeitures premised on an impaired driving offense are governed by Minnesota Statutes section 169A.63 (2020).⁴

The vehicle forfeiture process begins after a person commits a “designated offense.” Minn. Stat. § 169A.63, subd. 6(a) (“A motor vehicle is subject to forfeiture . . . if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.”). Once a vehicle is seized, the prosecuting authority sends a notice describing “its intent to seek forfeiture.” *Jensen*, 949 N.W.2d at 734-35; *see also* Minn. Stat. § 169A.63, subd. 2(b)(3). A vehicle owner may challenge the forfeiture by filing a demand for judicial determination. Minn. Stat. § 169A.63, subds. 1(h), 8(e). “There is a presumption that a vehicle seized under [section 169A.63] is subject to forfeiture if the prosecuting authority establishes that the vehicle was used in the commission of the designated offense” *Id.*, subd. 9(e).

Wawersich concedes that he used the truck to commit a designated offense—second-degree DWI. *See* Minn. Stat. §§ 169A.25 (defining second-degree DWI), .63, subd. 1(e)(1) (stating that second-degree DWI is a designated offense) (2020). However,

⁴ Section 169A.63 was amended in 2021 before Wawersich’s DWI offense. *See* 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 5, § 7, at 2069-71. The amendments do not apply to the forfeiture proceeding in Wawersich’s case as they only apply to seizures occurring on or after January 1, 2022. *Id.* We rely on the version of the statute that was published in 2020 and was in effect at the time of Wawersich’s offense.

under the version of the vehicle-forfeiture statute in effect when Wawersich committed the designated offense, if the driver “becomes a program participant in the ignition interlock program under section 171.306,” then “the forfeiture proceeding is stayed and the vehicle *must* be returned.” Minn. Stat. § 169A.63, subd. 13(a) (emphasis added). And if the driver successfully completes the program, “the stayed forfeiture proceeding is terminated or dismissed and any vehicle, security, or bond held by an agency must be returned to the owner of the vehicle.” Minn. Stat. § 169A.63, subd. 13(j); *see also* Minn. Stat. § 171.306 (2022) (detailing the ignition interlock program requirements).

The district court determined that there was no genuine issue of material fact that the Mounds View attorney agreed to return the truck if Wawersich complied with the requirements of section 169A.63, subdivision 13. Wawersich emailed the Mounds View attorney the DPS letter showing he had been authorized for the ignition interlock program, and the Mounds View attorney failed to communicate with Wawersich thereafter. Based on this undisputed record evidence, the district court concluded that Wawersich had complied with the requirements of section 169A.63, subdivision 13(a), and was entitled to the return of his truck.

Appellant contends that the district court erred when it failed to order Wawersich’s vehicle forfeited under Minnesota law. In its brief to this court, appellant argues that the truck is subject to forfeiture because Wawersich committed a designated offense. But the district court did not determine otherwise. In ruling that Wawersich was entitled to return of the truck based the ignition interlock program, the district court implicitly determined that the truck *is* subject to forfeiture. And, as noted, Wawersich *agrees* that the truck is

subject to forfeiture. We discern no error in the district court’s analysis of the threshold issue of whether the truck is subject to forfeiture.

Appellant also argues that “there was no evidence produced in the court below that Wawersich enrolled in the ignition interlock program or otherwise met the requirements of subdivision 13(a).” Thus, appellant continues, “the district court committed plain error in ordering that the vehicle be released.”

The summary-judgment record and the law do not support this argument. Along with Wawersich’s motion for summary judgment, his attorney submitted an affidavit stating:

4. On December 21, 2021, at Mr. Wawersich’s plea hearing for the accompanying criminal matter . . . , Mr. Wawersich provided me with a letter from the Minnesota Department of Public safety, dated December 14, 2021, authorizing the installation of the ignition interlock device. I communicated that to the Mounds View City Prosecutor and the Mounds View City Prosecutor agreed to communicate to me what was required to release Mr. Wawersich’s vehicle.

5. That same day, December 21, 2021, we emailed a copy of the Ignition Interlock Device Program Installation Authorization letter from DPS to the Mounds View City Prosecutor.

Appellant presented no evidence in the summary-judgment proceedings. Accordingly, based on the undisputed evidence, Wawersich qualified for the ignition interlock program.

On appeal, appellant does not contend that there is any factual dispute. *See Warren*, 926 N.W.2d at 374-75 (concluding that summary judgment should not be granted if a genuine issue of material fact exists). Rather, appellant argues that Wawersich is not eligible for return of the truck under subdivision 13 because he is not “enrolled” in the

ignition interlock program. But subdivision 13 applies to a “program participant . . . under section 171.306.” A “program participant” is defined as “a person who has qualified to take part in the ignition interlock program under [section 171.306], and whose driver’s license has been . . . revoked, canceled, or denied [as a result of violations including impaired driving].” Minn. Stat. § 171.306, subd. 1(d)(1) (2022). Because the undisputed evidence shows that Wawersich was authorized to participate in the ignition interlock program, the district court correctly concluded that he was entitled to return of the truck under section 169A.63, subdivision 13(a), and we affirm the order to the extent it requires release of the truck.

II. The district court did not have authority to prohibit the Mounds View police department from charging for towing, seizure, and storage costs and from requiring Wawersich to provide security for the truck.

Appellant argues that, even if the district court properly ordered the Mounds View police department to release the truck to Wawersich, the district court had no authority to order the release without payment of statutory fees and costs or the provision of security.

To address appellant’s arguments, we must interpret section 169A.63, subdivision 13. The interpretation of a statute presents a question of law, which is reviewed de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016); *see also Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2022); *see also Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012). The first step when interpreting a statute is to determine if the plain language is ambiguous. *Green v. Kellen*, 921 N.W.2d 768, 771 (Minn. App. 2018), *rev. denied* (Minn.

Feb. 19, 2019). If the statute is unambiguous, appellate courts apply the plain language and do not “explore [the statute’s] spirit or purpose.” *Cocchiarella*, 884 N.W.2d at 624 (citing *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013)). On the other hand, if the statute is ambiguous, a court may utilize the tools prescribed by Minnesota Statutes section 645.16—including legislative history—to ascertain the legislature’s intent. *Staab*, 813 N.W.2d at 73.

Applying these standards, we now turn to the applicable provisions in section 169A.63, subdivision 13.

Section 163A.63, subdivision 13(f), provides: “Notwithstanding [the requirement to return the vehicle to a participant in the ignition interlock program], an entity in possession of the vehicle is not required to release it until the reasonable costs of towing, seizure, and storage of the vehicle have been paid by the vehicle owner.” Moreover, when a law enforcement agency releases a seized vehicle to a participant in the ignition interlock program, the agency “may require an owner or driver to give security or post bond payable to the agency in an amount equal to the retail value of the vehicle.” Minn. Stat. § 169A.63, subd. 13(g), (h). If an owner or driver provides security or posts a bond, “any future forfeiture action against the vehicle must instead proceed against the security as if it were the vehicle.” *Id.*, subd. 13(g).

These provisions unambiguously authorize a law enforcement agency to require payment of the reasonable costs of towing, seizure, and storage, and to require security or a bond before releasing a seized vehicle based on participation in the ignition interlock

program. And the statute contains no language authorizing a district court to waive an agency's rights to reasonable costs and security equal to the value of the vehicle.

The district court's order states that Wawersich "shall not be responsible for any impound fees, storage costs, or administrative fees associated with the forfeiture of [the] vehicle or the return of [the] vehicle." It further states that Wawersich "shall not be required to post a bond or any other security for the return of his vehicle." These directives are not permitted by the plain language of section 169A.63, subdivision 13.

Wawersich argues that the district court has inherent power to bar fees, costs, and security as a sanction. And according to Wawersich, the district court's directives regarding fees, costs, and security were sanctions for the bad-faith conduct of the Mounds View attorney.

District courts are "vested with considerable inherent judicial authority necessary to their vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118-19 (Minn. 1995) (quotation omitted). However, that power is not absolute. Courts cannot impede on powers that are reserved for the executive and legislative branches of government. *See State v. M.D.T.*, 831 N.W.2d 276, 280-81 (Minn. 2013). "[W]hen a question arises regarding the scope of the judiciary's inherent authority, courts must 'resolve all reasonable doubts in favor of a co-ordinate branch.'" *Id.* at 280 (quoting *Gollnik v. Mengel*, 128 N.W. 292, 292 (Minn. 1910)).

We are not convinced that the district court had inherent judicial authority to sanction the Mounds View attorney by waiving the statutory rights of the Mounds View police department to fees, costs, and security. Moreover, we previously concluded in a nonprecedential (and therefore nonbinding) opinion⁵ that the state cannot be made to pay storage costs for a forfeited vehicle directly. *Janssen v. 2012 Harley Davidson Motorcycle*, No. A18-1015, 2019 WL 3886607, at *1, *3 (Minn. App. Aug. 19, 2019). And, although Wawersich contends that the district court's directives to release the truck without fees, costs, and security were intended to sanction the Mounds View attorney, the district court made no findings regarding its intent. Because the district court's order to release the truck without payment of any statutory fees or costs or the provision of security is not supported by the law, we reverse in part.

However, in his motion for summary judgment, Wawersich specifically asked the district court to find that the Mounds View attorney acted in bad faith by failing to diligently communicate about release of the truck and by unreasonably delaying the proceedings. And Wawersich moved the district court to impose sanctions, including attorney fees, based on the conduct of the Mounds View attorney. The district court did not expressly address these requests in its order.

A district court has authority to impose sanctions under rule 16.06 of the Minnesota Rules of Civil Procedure if “a party or party’s attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial

⁵ See Minn. R. Civ. App. P. 136.01, subd. 1(c) (nonprecedential decisions of this court are nonbinding but may be cited as persuasive authority).

conference, . . . or if a party or party's attorney fails to participate in good faith.” Furthermore, the district court may make any orders that are “just, including any of the orders provided in Rule 37.02(b)(2), (3), (4).” Minn. R. Civ. P. 16.06. Rule 37.02(b)(4) of the Minnesota Rules of Civil Procedure provides, in relevant part, that a district court may issue “an order treating as a contempt of court [a party's] failure to obey” prior orders. Under both rule 16.06 and 37.02, the district court may order reasonable expenses, including attorney fees. *See* Minn. R. Civ. P. 16.06; Minn. R. Civ. P. 37.02(b).

The vehicle forfeiture statute also specifically allows for sanctions. *See* Minn. Stat. § 169A.63, subd. 9(h) (stating that a district court “may order sanctions under section 549.211 (sanctions in civil actions)” and that “[a]ny reimbursement fees or sanctions must be paid from other forfeiture proceeds of the law enforcement agency and prosecuting authority involved”). Under Minnesota Statutes section 549.211, subdivision 4(a) (2022), “[a] motion for sanctions . . . must be made separately from other motions or requests.”

Because the district court did not expressly address Wawersich's request for sanctions, we remand to the district court. On remand, the district court has discretion to consider Wawersich's request for sanctions, to determine whether sanctions are appropriate, and to make findings supporting any decision. Our opinion should not be construed as expressing any opinion regarding the imposition of sanctions.

Affirmed in part, reversed in part, and remanded.