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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1880**

Michael James Brouillette,
Appellant,

vs.

Jennifer Lee Lund,
Respondent.

**Filed December 2, 2008
Reversed
Ross, Judge**

Dakota County District Court
File No. C9-07-12331

Michael James Brouillette, P.O. Box 111004, St. Paul, MN 55111-0004 (pro se appellant)

Jennifer Lee Lund, 4241 Blackhawk Road, Eagan, MN 55122 (pro se respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This appeal concerns a dispute between a former boyfriend and girlfriend over ownership of a 2001 Chevrolet Monte Carlo that was once a gift between them. Michael Brouillette filed suit in conciliation court to recover \$7,500 or the Chevy from Jennifer Lund. Brouillette claims that Lund wrongly assumed ownership by having his name

removed from the title. The conciliation court entered judgment for Lund. Brouillette appealed to the district court seeking a jury trial, but the district court granted Lund summary judgment. Brouillette argues on appeal that Lund’s summary judgment motion was untimely, that the district court demonstrated bias by engaging in ex parte communication with Lund, and that disputed material facts existed. Because disputed material facts preclude summary judgment, we reverse.

FACTS

Brouillette and Lund were recorded as co-owners of the disputed Chevy. The two had a romantic relationship and had anticipated marriage, and Brouillette asserts that he gave the car to Lund only conditionally, in contemplation of marriage. The marriage never occurred and Lund kept the car. Brouillette sought to recover the car from Lund, whom he claims in his conversion lawsuit “stole the title.” On the date set for jury trial in district court, the court heard Lund’s motion to dismiss or for summary judgment, which she had made orally the same day. At the hearing, Lund presented the car’s title bearing Brouillette’s signature and identifying Lund, alone, as its owner. Brouillette testified regarding the authenticity of the signature and ownership:

THE COURT: Is that your signature?

[BROUILLETTE]: It’s close. It may or may not be.

THE COURT: It appears to be your signature.

[BROUILLETTE]: It comes close to it [Y]ou know, this title has been changed. I had—all of my titles were signed from—all of my titles, I still have all of my titles. I have a son. In case anything happens to me, all of my titles were in advance to make it easy for him. I know it wasn’t signed in 2002, and if it was signed in 2002, why did she wait until 2004 to transfer it?

. . . .

THE COURT: Brouillette, in response to her motion, what say you?

[BROUILLETTE]: That it should be decided by a jury trial. This gift was given in anticipation of marriage.

THE COURT: Did you say it was an engagement gift?

[BROUILLETTE]: It wasn't really an engagement gift. I bought it on our engagement, just like the ring. I bought it for her because we were going to be married and live together.

The district court found that “nothing [Lund] did by way of conduct was contrary to the owner’s [(Lund’s)] right to the personal property,” implicitly concluding that Lund, not Brouillette, was the car’s owner. The district court therefore granted Lund summary judgment, holding that Brouillette’s conversion claim failed as a matter of law. The court also discussed a history of harassment between Brouillette and Lund, specifically including the filing of conciliation court claims, but this apparently did not factor into the court’s grant of summary judgment. Brouillette appeals the judgment.

DECISION

Brouillette argues on appeal that the motion for summary judgment was not timely noticed; that the district court judge and Lund engaged in an improper ex parte communication before the hearing on the motion; and that material factual questions exist regarding the Chevy’s ownership. We agree that a fact dispute prevents summary judgment.

I

Brouillette asserts that Lund’s summary judgment motion was untimely. Despite its framing, Lund’s motion was only for summary judgment. If a court considers matters outside the pleadings on a pretrial motion to dismiss, the motion is treated as one for

summary judgment. Minn. R. Civ. P. 12.03, *Carlson v. Lilyerd*, 449 N.W.2d 185, 187 (Minn. App. 1989), *review denied* (Minn. Mar. 8, 1990). The district court took Brouillette's testimony regarding ownership of the car and the authenticity of his signature on its title. The district court also relied on records from the Bloomington Police Department. The court's reliance on matters outside the pleadings rendered Lund's motion one for summary judgment.

Motions for summary judgment must comply with Minn. R. Civ. P. 56.03 and Minn. R. Gen. Pract. 115.03. *See* Minn. R. Civ. P. 56.03 (specifying certain requirements for motions for summary judgment and requiring compliance with Minn. R. Gen. Pract. 115.03). They shall not "be served less than [10] days before the time fixed for the hearing." *Id.* The 10-day service requirement is mandatory unless clearly waived. *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419 (Minn. App. 2003).

Brouillette claims to have received no notice of the motion and that it was made on the day scheduled for trial. No written motion or evidence of service of the motion appears in the record. Lund's brief does not address Brouillette's assertion that he lacked notice. The record reflects no express waiver by Brouillette. On the contrary, he insisted at the hearing that the matter be decided by a jury. Because the motion was not timely noticed and no clear waiver of notice appears in the record, Lund failed to properly present her motion for summary judgment for hearing by the district court under the rules.

Although the timing of Lund's motion did not track the schedule contemplated in the rules, the district court appropriately considered the motion on the first day of trial. A

district court may grant summary judgment on its own motion without following formal motion practice when summary judgment is warranted, provided that the nonmoving party is not prejudiced by the lack of a formal motion. *Id.* A party is not prejudiced if the court gives him “a meaningful opportunity to oppose summary judgment.” *Id.* (quotation omitted). What constitutes a meaningful opportunity depends on the circumstances of the case. *Id.* The circumstances of this case indicate that Brouillette had a meaningful opportunity to respond to Lund’s summary judgment motion.

Lund brought her motion on three grounds: that the certificate of title in her name alone bore Brouillette’s signature; that the claim of conversion was allegedly frivolous and brought to harass Lund; and that the question of ownership was already resolved by a criminal case under the doctrine of *res judicata*. The grounds of the motion were presented at the outset of the hearing, and the district court gave Brouillette an opportunity to respond. Considering that the motion concerned ownership and was heard the day and time set for trial on the principal issue of ownership, Brouillette was not prejudiced by the motion’s timing. The first and third grounds for summary judgment provoked the same defenses Brouillette would have needed to deliver at the trial. And Brouillette was not prejudiced concerning the motion’s second ground because the district court did not base summary judgment on it. Because Brouillette was not prejudiced by the timing of the court’s consideration of the motion for summary judgment, we proceed to consider his claim of improper bias.

II

Brouillette contends that the district court was partial to Lund, demonstrated by an ex parte discussion. He alleges that Lund, Lund's new boyfriend, and the district court judge were conversing when he entered the courtroom at the time set for trial. Lund denies that this conversation took place. We will not consider a party's allegation of bias if he did not first seek relief from the district court. *Davis v. Davis*, 306 Minn. 536, 538, 235 N.W.2d 836, 838 (1975). Brouillette did not seek relief until this appeal. Even if the allegedly improper conversation took place, therefore, Brouillette's failure to object to it in the district court waived his chance to contest it.

III

We turn finally to the merits of Brouillette's summary judgment challenge. We review summary judgment for errors of law and to determine whether genuine issues of material fact exist. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We consider disputed issues of fact by viewing the evidence in the light most favorable to the nonmoving party. *Strauss v. Thorne*, 490 N.W.2d 908, 911 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). Doubts about the existence of a factual question "must be resolved in favor of finding that [it] exists." *Woody v. Krueger*, 374 N.W.2d 822, 825 (Minn. App. 1985).

The district court concluded that Brouillette's claim failed as a matter of law because he failed to prove that Lund's "conduct was contrary to the owner's right" to the car. The district court concluded that Lund owned the Monte Carlo, or at least that Brouillette was not the owner, although it did not expressly state either conclusion. The

district court relied on three factors as support: (1) Brouillette testified “that the vehicle had been a ‘gift’”; (2) Brouillette was charged criminally with having stolen the car from Lund after she alone held title; and (3) Brouillette’s signature appears on the title document conveying it to Lund. For the reasons that follow, we hold that these bases alone cannot overcome the disputed material facts to allow for summary judgment in Lund’s favor.

The Car as a “Gift”

The district court emphasized Brouillette’s testimony that the car was a gift to Lund. Brouillette asserts that the Monte Carlo was intended only as a gift on condition of marriage. Brouillette had raised the conditional gift theory before the district court during the motion hearing:

[BROUILLETTE]: This gift was given in anticipation of marriage. . . .

THE COURT: Did you say it was an engagement gift?

[BROUILLETTE]: It wasn’t really an engagement gift. I bought it on our engagement, just like the ring. I bought it for her because we were going to be married and live together.

The district court did not address the gift’s purported conditional nature before entering summary judgment.

Minnesota courts have recognized that gifts may be conditional. *Benassi v. Back & Neck Pain Clinic, Inc.*, 629 N.W.2d 475, 484 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). Whether a gift is conditional depends on the donor’s intent, which is a factual question. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Although Brouillette’s testimony might be interpreted as an admission that he did not intend to

make the gift conditionally, that interpretation does not necessarily follow from the ambiguous representation. Lund stated that she consented to marry Brouillette in “late ’02, early ’03.” Brouillette’s signature on the title is dated Christmas Day, December 25, 2002. A finding that the gift was conditioned on marriage is not implausible on these facts. The district court did not consider Brouillette’s conditional gift argument either factually or legally. Because the gift’s conditional nature remains a genuine issue of material fact, the district court should not have relied on Brouillette’s description of the car as a “gift” to grant summary judgment.

Brouillette’s Arrest

The district court also relied on Brouillette’s arrest and prosecution for stealing the Monte Carlo when it decided ownership in Lund’s favor. The district court seems to have applied the doctrine of collateral estoppel to bar Brouillette’s argument that he had an ownership interest in the car. Collateral estoppel, or issue preclusion, may bar evidence of previously litigated issues. *State v. Lemmer*, 736 N.W.2d 650, 658 (Minn. 2007). A party asserting collateral estoppel bears the burden of proof. *Virsen v. Beutel, Johnson, Rosso & Ebersold*, 356 N.W.2d 333, 337 (Minn. App. 1984). An issue established as part of a criminal conviction cannot be re-litigated in a subsequent civil action involving him. *Noske v. Friedberg*, 670 N.W.2d 740, 744 (Minn. 2003). The issue of ownership may have been resolved in a criminal prosecution for possession of stolen property, because ownership of personal property is an element of the crime. Minn. Stat. § 609.52, subd. 2 (2006). Brouillette’s lack of ownership therefore may be demonstrated by his conviction for illegally possessing the Chevy. But when the

question of whether an issue has been adjudicated is speculative or doubtful, there is no basis to apply collateral estoppel. *Virsen*, 356 N.W.2d at 337.

The record available on appeal in this civil proceeding allows only speculation regarding Brouillette's conviction in the criminal case. Brouillette was charged with possession of a stolen vehicle based on his possession of the Chevy. The district court referred only to its "understanding" that Brouillette pleaded guilty to that crime, but the transcript does not indicate the basis for this understanding. And we see no evidence of the conviction in the record. The transcript of the summary judgment hearing indicates instead that Brouillette claimed that the criminal charge was dismissed, and he offered to acquire the clerk's file for the district court. The district court judge responded agreeably, answering, "So we need to pull the criminal file and see if it was ever decided before." But the record does not indicate whether the district court ever read the criminal file or accepted Brouillette's offer to obtain it. Given the uncertainty of whether a legal or factual determination in the criminal case resolves Brouillette's ownership, and weighing that uncertainty in Brouillette's favor, ownership of the car has not yet been established by collateral estoppel. We conclude that Brouillette raised a genuine issue regarding the status of his criminal case and Lund did not meet her burden of proving that a prior criminal judgment barred Brouillette from asserting ownership.

Brouillette's Signature on the Title

The district court also relied on the title bearing Brouillette's signature as disproving his ownership. It obtained Brouillette's testimony of authenticity:

THE COURT: Is that your signature?

[BROUILLETTE]: It's close. It may or may not be.

THE COURT: It appears to be your signature.

[BROUILLETTE]: It comes close to it [Y]ou know, this title has been changed. I had—all of my titles were signed from—all of my titles, I still have all of my titles. I have a son. In case anything happens to me, all of my titles were in advance to make it easy for him. I know it wasn't signed in 2002, and if it was signed in 2002, why did she wait until 2004 to transfer it?

Brouillette did not deny signing the title, although his testimony was equivocal. He acknowledged that “all of [his] titles were signed” in advance. But he has consistently asserted that Lund “stole[] the title” to the car.

We consider this assertion in the mix of Brouillette's conditional gift defense. Viewing the facts in the light most favorable to Brouillette, the signature does not prove that he intended to convey the car to Lund unconditionally. Neither at the summary judgment hearing nor in her brief on appeal did Lund controvert the accusation that she accepted the gift as conditional or that she failed to satisfy the alleged condition by changing her plans to marry Brouillette. She acknowledges that substantial time elapsed between Brouillette's signature and her registration of title in her name. Although Brouillette's signature is dated December 25, 2002, Lund did not obtain title until March 19, 2004. These circumstances potentially support Brouillette's argument that the car was merely a conditional gift in 2002, and a genuine factual issue therefore exists concerning the significance of his signature and whether Lund rightfully relied on it to register title in her name alone after the change in plans to marry.

We do not imply that Brouillette will necessarily persuade a jury on these facts, and we do not address any potential legal obstacle to his conditional gift defense, which

was not addressed in the district court. But because Brouillette raised a genuine issue of material fact regarding the car's ownership, Lund is not entitled to summary judgment.

Reversed.