COURT OF APPEALS
DECISION
DATED AND FILED

April 23, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1782 **Cir. Ct. No. 2006SC4806**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

JOHN B. SIMONSON,

PLAINTIFF-APPELLANT,

V.

JAHNKE AUTO PARTS, INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County: SCOTT C. WOLDT, Judge. *Affirmed.*

¶1 BROWN, C.J.[1] John B. Simonson appeals the summary judgment against him in his small-claims case. Simonson sued Jahnke Auto Parts, Inc., for

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

"the illegal taking and disposal" of his car after it had been towed by the city. The Appleton Police Department had Jahnke tow and impound Simonson's car on July 12, 2005, in accord with Jahnke's contract with the city of Appleton. One month later, on August 12, 2005, the city sold the car to Jahnke pursuant to WIS. STAT. § 342.40(3)(c), and Jahnke disposed of the car. Simonson claims that Jahnke is liable to him for the cost of the vehicle. Simonson is wrong for two main reasons. First, as the small claims court noted, it was the city that towed his car and ultimately sold it. If anyone was liable to Simonson for the car, it would be the city and not Jahnke. But still more importantly, the city disposed of the car in accord with the statutory procedure, after Jahnke had waived all right, title, and interest in the vehicle and consented to its sale by failing to exercise his right to claim it. We affirm.

¶2 Simonson alleges the following facts (though, we note, without adequately citing the record; we will assume them to be true for our own convenience and because Jahnke does not contend that they are not). Simonson went to see his probation agent and was arrested in the agent's office on June 21, 2005. Simonson was taken to jail and his car remained in the parking lot of the probation office. On July 12, an Appleton police officer talked to the person listed as Simonson's emergency contact, who apparently consented to the towing of the vehicle and volunteered to reclaim it. The vehicle was towed and on the same day the police sent Simonson a letter at the jail informing him that his car had been towed and that he could claim it by calling Jahnke during business hours Monday through Friday. The letter also explained the towing and storage fees that would be required for pickup, and stated that "[f]ailure … to claim the vehicle within 15 days of the above date, will be deemed as a waiver of all right, title and interest in the vehicle and a consent for the City of Appleton to sell or junk the vehicle."

Further, the letter noted that "[t]he owner can claim personal effects in the vehicle within the 15-day period…. Personal items will be disposed of, along with the vehicle, if unclaimed within that 15-day period."

¶3 Over the next several months, still incarcerated, Simonson sent five letters to Jahnke repeatedly claiming that various people would be picking up the car and threatening legal consequences should it be sold or junked. Apparently nobody ever did try to pick up the car, and on August 12 the city sold it to Jahnke. It is unclear from the record what Jahnke did with the car, but suffice it to say that Simonson did not get it back. Jahnke brought this small claims action in November and the court ultimately granted summary judgment to Jahnke, holding that it was the city, and not Jahnke, that Simonson could have sued.

¶4 This is an appeal of a summary judgment and so our review is de novo. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). Though we agree with the circuit court that Jahnke has no liability for the city's sale of the vehicle, we will focus our discussion on explaining why Simonson's claim fails, regardless of who he should sue.

¶5 Simonson acknowledges that WIS. STAT. § 342.40 establishes the procedure for towing and storing abandoned vehicles, and if the vehicles are not claimed, disposing of them by sale. Simonson contends, however, that his vehicle was not "abandoned" under the statute. He does not claim that the vehicle was not abandoned when it was left in the probation office's parking lot for three weeks; rather he claims that it ceased to be abandoned because of the series of letters that he wrote to Jahnke. He argues that, by these letters, he "exercise[d] his rights" to claim his vehicle and thus rendered it no longer abandoned.

¶6 We cannot agree with this reading of the statute. WISCONSIN STAT. § 342.40(3)(c) requires that after impoundment, an abandoned vehicle "shall be retained in storage for a minimum period of 10 days" after notice is sent to the owner "to permit reclamation of the vehicle *after payment of accrued charges*." (Emphasis added.) Further, the notice must inform the owner (as the one here did) "that the failure of the owner or lienholders to exercise their rights to reclaim the vehicle under this section shall be deemed a waiver of all right, title, and interest in the vehicle and a consent to the sale of the vehicle." ***Id.*** In our view, the statute is quite clear about the right that it confers on the owner of an impounded vehicle: the right to pick it up *after* paying the towing charges, storage charges, and forfeitures. *See* § 342.40(3), (3)(c). Despite Simonson's protestations to the contrary, we see no reasonable way of reading the statute to allow a person to "reclaim" an impounded vehicle simply by writing letters to the company holding it. Nor does the fact that Simonson did not interpret the required notice in the police department's letter correctly exempt him from complying with the statute if he wanted to reclaim his vehicle.

¶7 Simonson protests that this is unfair and unreasonable, especially in the case of a person who is incarcerated; he suggests that the ten-day limit ought to be expanded to a "reasonable time" for reclamation. He also claims that Jahnke has a duty to behave reasonably and that it violated this duty here. We can only respond that everything Simonson complains of was done in accordance with the

statute, and so these arguments are properly directed to the legislature.[2] We also note that Simonson has, through the course of this proceeding, mentioned multiple people who might have helped him out by paying the charges and picking up the vehicle for him. If they had done so, there would be no case. The fact that they did not does not give Simonson a cause of action against Jahnke.

¶8 Simonson also suggests that the use of the statute in this case may constitute a violation of his due process rights. However, for this claim he simply cites a few cases generally, without pinpoint citations, and makes no real argument. We decline to address it.[3]

¶9 Finally, in his reply brief Simonson unwinds a rather novel theory of contract law by which he, the city, and Jahnke are the three parties to three bilateral agreements. He did not raise this issue below or in his appellant's brief, however, and so we will not consider it.

By the Court.—Order affirmed.

[2] We note that the facts here are significantly different than those in ***Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.***, 865 N.E. 2d 558, 567 (Ill. App. Ct. 2007), *appeal denied*, 875 N.E.2d 1109 (IL Sept. 26, 2007) (No. 104574). In that case the court held that a towing company had an implied duty to respond to inquiries about or challenges to the amount of towing charges, and also to respond to "a letter from a lienholder stating that a vehicle which was towed due to alleged abandonment was not actually abandoned." In that case, the court decided that the vehicle had not been abandoned and held the towing company liable. ***Id***. Here, by contrast, we conclude that all of the towing company's actions were in accord with the statute, and so its lack of response to Simonson's letters did not cause any recompensable harm to Simonson.

[3] We also note that contrary to the claim in Simonson's brief, the police department's letter to him did, in fact, explain that he had the right to take the personal property out of his vehicle.

This opinion will not be published. *See* WIS. STAT. RULE § 809.23(1)(b)4.