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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STEVE HEATHCOTT ARABIANS, LLC, *Plaintiff/Appellee*,

v.

STACEY GRIFFITH, *Defendant/Appellant*.

No. 1 CA-CV 16-0558
FILED 12-28-2017

Appeal from the Superior Court in Maricopa County
No. CV2015-055391
The Honorable Susan M. Brnovich, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Justice Rebecca W. Berch¹ joined.

S W A N N, Judge:

¶1 Stacey Griffith appeals the superior court’s transfer of her ownership interest in a horse to Steven Heathcott Arabians, LLC (“Heathcott”). We hold that the court properly exercised jurisdiction, properly conducted agister’s-*lien* proceedings, and made reasonably supported factual findings. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Griffith contracted with Heathcott for boarding, training, and showing services for Griffith’s horse. Heathcott provided those services and sent monthly invoices to Griffith, but Griffith did not pay the bills. After Heathcott expressed concern to Griffith about the debt and indicated it would not release the horse without a payment, Griffith entered Heathcott’s property through a back gate and removed the horse over employees’ objections.

¶3 Heathcott filed an action against Griffith for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and trespass. Heathcott also asserted a *lien foreclosure* claim under A.R.S. § 3-1295(A), which provides, in relevant part:

A person who furnishes pasture, feed or other services for livestock on the premises of that person has a *lien* on the stock for the amount of the charges that are due and unpaid. A person having such *lien* may retain the stock until the charges are paid. If possession continues for twenty days after the charges accrue, and the charges have not been paid, the person retaining possession of the stock may perfect the amount of the *lien* by filing an action in either superior court

¹ The Honorable Rebecca White Berch, retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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or justice court, according to the amount in controversy, in the jurisdiction of the holder of the stock. The hearing shall be held not less than ten and not more than twenty days after the date the action is filed in court. If the prevailing party does not receive payment due within ten days after the final judgment of the court, the prevailing party becomes the owner of the stock.

¶4 The superior court held an evidentiary hearing, determined that Heathcott had a proper agister's lien against the horse, and ordered Griffith to return the horse to Heathcott within seven days unless she first paid the amounts owed. Griffith neither returned the horse nor paid Heathcott's charges; instead, she disputed the charges and asserted that she could not return the horse because it was not in her possession. The court entered a Judgment Lien of Livestock ordering that Heathcott had perfected its lien on the horse and if Griffith did not satisfy the judgment of \$29,889 within ten days, ownership of the horse would pass to Heathcott. Griffith did not satisfy the judgment. After a hearing to determine Griffith's ownership interest in the horse,² the court transferred ownership of the horse to Heathcott.

¶5 Griffith timely appeals.³ She contends that the superior court lacked jurisdiction because the subject matter of the action – the horse – was not in Arizona when Heathcott filed the action. She also challenges the

² Griffith asserted that her daughter, Ashley Griffith, owned one-half of the horse. Heathcott named Ashley as a defendant in the lawsuit and served her with the complaint, but because Ashley failed to appear at her deposition or a court-ordered hearing, the court struck her answer and entered a default judgment against her. As a result, the court deemed Stacey Griffith to be the sole owner of the horse.

³ Though the Judgment Lien of Livestock contained finality language under Ariz. R. Civ. P. 54(c), that language was inappropriate and did not create grounds for appeal because claims remained pending in the superior court. *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, 224, ¶ 6 (App. 2014). But the superior court later entered a final, appealable judgment under Ariz. R. Civ. P. 54(b) when it transferred ownership of the horse to Heathcott, finally disposing of the lien claim and finalizing the court's prior rulings on the claim. *Hill v. City of Phoenix*, 193 Ariz. 570, 573, ¶ 15 (1999).

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manner in which the court conducted the initial evidentiary hearing and its factual determination that Griffith owed monies to Heathcott.

DISCUSSION

I. THE SUPERIOR COURT PROPERLY EXERCISED IN PERSONAM JURISDICTION.

¶6 Griffith contends that the superior court lacked jurisdiction because a claim under § 3-1295(A) is an in rem action against the animal upon which the lien attaches, and the horse was not in Arizona when Heathcott filed the action. “We review jurisdictional issues de novo.” *Ellsworth Land & Livestock Inc. v. Bush*, 224 Ariz. 542, 543, ¶ 5 (App. 2010).

¶7 An in rem proceeding is one based on the forum state’s assertion of jurisdiction over property located within its territorial boundaries, rather than the defendant’s contacts with the state. *State v. W. Union Fin. Servs., Inc.*, 220 Ariz. 567, 571-72, ¶ 19 (2009). For example, search warrant and seizure proceedings are in rem because they are “directed primarily against the property, not the owner.” *Id.* at 571, ¶ 18 (citation omitted). In rem jurisdiction therefore logically requires the presence of the subject property in the forum state. *Id.*

¶8 Here, however, the superior court did not proceed in rem based on its power over property within its territory; rather, it exercised in personam jurisdiction over Griffith arising out of her contacts with Arizona.⁴ Accordingly, the court could adjudicate Griffith’s rights to property even if it was located outside of the state. *TWE Ret. Fund Trust v. Ream*, 198 Ariz. 268, 272, ¶ 14 (App. 2000) (“An in personam proceeding, brought in equity to determine the rights of individuals, may be filed in any court that has personal jurisdiction over the parties, even if the proceeding involves realty located in another state.”); Restatement (Second) of Conflict of Laws (“Restatement”) § 55 (1971) (“A state has power to exercise judicial jurisdiction to order a person, who is subject to its judicial jurisdiction, to do, or not to do, an act in the state, although the carrying out of the decree may affect a thing in another state.”). “For example, it is common practice for a court of one state to order a defendant who is subject to its jurisdiction

⁴ We do not suggest that the superior court could not proceed in rem under § 3-1295 when, for example, a party has abandoned an animal with an agister and his or her whereabouts are unknown. Here, however, because the court had personal jurisdiction over Griffith, it did not exercise in rem jurisdiction.

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to give plaintiff a deed to land in another state if such a deed would be effective under the local law of the other state to convey legal title to the land.” Restatement § 55 cmt. a.

¶9 Griffith’s reliance on our supreme court’s decision in *Western Union* is misplaced. In *Western Union*, the state obtained a seizure warrant for the proceeds of money wire transfers sent via Western Union from persons in other states to Sonora, Mexico, based on an allegation that those monies were the proceeds of illegal racketeering activities in Arizona. 220 Ariz. at 568, ¶¶ 5–6. There was no dispute that the state “had not established in personam jurisdiction over any owner or interest holder of any seized transfer” and the case involved only the “narrow issue” of the exercise of in rem jurisdiction. *Id.* at 569, ¶ 10. The supreme court held that the wire transfers were not “located” within Arizona and the state therefore could not exercise in rem jurisdiction over them. *Id.* at 575, ¶ 36. The court noted, however, that “[i]f those with interests in the property are subject to in personam jurisdiction in the forum state, a court in that state undoubtedly has jurisdiction consistent with the Due Process Clause to enter orders relating to the property.” *Id.* at 574, ¶ 33. That was the case here. Because the superior court exercised in personam jurisdiction over Griffith, it had jurisdiction to issue orders concerning the horse even though the horse was not then located in Arizona.

II. THE SUPERIOR COURT PROPERLY CONDUCTED THE PROCEEDINGS AND MADE REASONABLY SUPPORTED FINDINGS.

¶10 Griffith next contends that the superior-court proceedings did not comply with § 3-1295 and the court erred by determining that she owed Heathcott monies for boarding the horse.

A. The Superior Court Properly Conducted the Proceedings.

1. Heathcott’s Loss of Possession Did Not Defeat Its Lien.

¶11 Griffith contends that Heathcott could not assert a lien under § 3-1295 because it no longer possessed the horse and the plain language of the statute requires a lien claimant to be in possession of the subject animal.

¶12 Generally, if a party voluntarily releases an animal on which he has a possessory lien, he loses his lien rights. *See, e.g., Ag Servs. of Am., Inc. v. Kechter*, 44 P.3d 1117, 1120 (Idaho 2002) (“A common-law lien or a statutory lien that is dependent on possession continues only so long as possession is voluntarily retained.” (citation omitted)); *McTiernan v. Jellis*,

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316 P.3d 1153, 1159, ¶ 19 (Wyo. 2013) (holding that statutory lien on goods, chattels, or animals is possessory and that a party must have possession of the article to assert such a lien); *Hughes v. Aetna Ins. Co.*, 261 S.W.2d 942, 951 (Mo. 1953) (“As a general rule a lien dependent on possession is waived or lost by the lienholder voluntarily and unconditionally parting with possession or control of the property to which it attaches.” (citation omitted)). But “if possession is obtained by the owner or another party by clandestine means or false promises, the surrender of the [animal] is not voluntary and the lien remains.” *La Junta Prod. Credit Ass’n v. Schroder*, 800 P.2d 1360, 1363 (Colo. App. 1990) (holding that release of animals to sheriff under writ of execution did not constitute waiver of agister’s lien); *see also Sample v. Verner-Kelly Live Stock Comm’n Co.*, 186 S.W. 1125, 1127 (Mo. Ct. App. 1916) (holding that “the right to take possession of the cattle and enforce [the agister’s] lien is not destroyed by the [owner’s] surreptitious taking of the cattle”); *Twin Falls Cty. v. Coates*, 80 P.3d 1043, 1046 (Idaho 2003) (holding that agisters’ loss of possession of cattle to government seizure did not extinguish their lien).

¶13 Here, where Griffith covertly entered Heathcott’s property and removed the horse over the objections of Heathcott’s employees, Heathcott’s loss of possession did not defeat its lien. Further, we discern no impropriety in the superior court’s attempt to restore the horse to Heathcott’s possession so that it could perfect its lien rights. *See Air Ruidoso, Ltd. v. Exec. Aviation Ctr., Inc.*, 920 P.2d 1025, 1029 (N.M. 1996) (“Except when actual possession has been involuntarily relinquished, there is no doctrine of constructive possession that supports a possessory lien.”).

2. The Proceedings Substantially Complied With the Statutory Timing Requirements, and the Deviations Caused No Prejudice.

¶14 Section 3-1295(A) requires the court to hold a hearing on an action to perfect an agister’s lien “not less than ten and not more than twenty days after the date the action is filed in court.” Griffith contends that the superior court erred by failing to conduct the initial evidentiary hearing in accordance with these requirements.

¶15 Heathcott filed its complaint on May 1, 2015. The superior court set a hearing date (May 20) within the time the statute prescribed and directed that Heathcott must serve Griffith with the notice of hearing at least 48 hours before the scheduled time. Heathcott moved to continue the hearing because it was unable to timely serve Griffith. The court issued an amended notice re-setting the hearing to June 12. Heathcott served the

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summons, complaint, and amended notice of hearing on June 9. Griffith's counsel appeared in person at the scheduled hearing on June 12, and Griffith appeared telephonically. Counsel argued that the proceeding was improper because Griffith had less than ten-days' notice of the hearing.⁵ The court denied Griffith's motion to dismiss and took evidence, but held the hearing open for five additional days to allow Griffith to file supplementary briefing.

¶16 We hold that though the court proceedings did not perfectly comply with § 3-1295, they substantially complied. We further conclude that the substantial compliance was sufficient. *Cf. Columbia Grp., Inc. v. Jackson*, 151 Ariz. 76, 79 (1986) ("We have repeatedly held that mechanics' and materialmen's lien statutes are remedial and are to be liberally construed in favor of materialmen. Substantial compliance with the statutes, not inconsistent with the legislative purpose, is sufficient."). Further, because Griffith does not assert that the superior court's failure to conduct the initial hearing within the statutory time frame caused her any prejudice, we reject her argument. *See, e.g., Volk v. Brame*, 235 Ariz. 462, 470, ¶ 26 (App. 2014) ("Due process errors require reversal only if a party is thereby prejudiced."); *Cty. of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 598, ¶ 12 (App. 2010) ("Even assuming the County was deprived of its due process right to notice and an adequate opportunity to present its claims, . . . because it fails to demonstrate how it was unreasonably prejudiced by the deprivation, we do not find reversible error.").

B. The Superior Court Made Reasonably Supported Findings.

¶17 Finally, Griffith contends that Heathcott could not have a lien on the horse because she owed no money to Heathcott. "We defer to the trial court with respect to any factual findings explicitly or implicitly made, affirming them so long as they are not clearly erroneous, even if substantial conflicting evidence exists." *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cty.*, 208 Ariz. 532, 537, ¶ 10 (App. 2004). And we "must give due regard to the trial court's opportunity to judge the credibility of witnesses." Ariz. R. Civ. P. 52(a)(6).

⁵ Griffith asserts that she also filed a motion to continue that the superior court refused to address before Heathcott presented evidence. That motion is not part of the record on appeal, although the record does contain Heathcott's response. The court implicitly denied Griffith's motion to continue by proceeding with the June 12 hearing.

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¶18 Section 3-1295(A) allows a lien – in the amount of any charges that are due and unpaid – to a person who furnishes pasture, feed, or other services for livestock on his or her premises. Heathcott presented evidence that it provided pasture, feed, and other services to the horse on its property for more than a year and Griffith did not pay any of the invoices it sent to her. Griffith admitted that Heathcott provided qualifying services but she disputed that she owed Heathcott any money. She maintained Heathcott had agreed it would not be paid for its services until it sold the horse on Griffith’s behalf, at which time Heathcott would recover its fees from the sale proceeds. Griffith insisted she had never received an invoice from Heathcott and she disputed the amounts Heathcott claimed were due, alleging it had “padded” the bills. Griffith also asserted that Heathcott did not make reasonable efforts to sell the horse. Heathcott denied that it agreed to defer its fees until after the horse sold.

¶19 In view of the foregoing evidence, we find no clear error in the superior court’s determination that Heathcott had a proper agister’s lien. Though Griffith disputed the terms of the parties’ agreement and denied that any amounts were due, the factual dispute was for the superior court to resolve.

CONCLUSION

¶20 We affirm.

¶21 Both parties request an award of costs and fees on appeal under § 3-1295(A), which provides that the court shall award costs and reasonable attorney’s fees to the prevailing party in an action concerning an agister’s lien. We deny Griffith’s request because she is not the prevailing party on appeal. We grant Heathcott’s request upon its compliance with ARCAP 21.

