

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0907**

Dannielle Zephier,
Appellant,

vs.

Derrick Agate, Jr.,
Respondent,

Lee Ann Krueger,
Respondent.

**Filed April 13, 2020
Reversed
Jesson, Judge**

Hennepin County District Court
File No. 27-CV-18-16555

Stephen F. Buterin, Heley, Duncan & Melander, PLLP, Minneapolis, Minnesota
(for appellant)

Steven Moore, Watje & Moore, Ltd., Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and
Slieter, Judge.

S Y L L A B U S

Minnesota Statutes section 345.75 (2018), which governs abandonment of tangible personal property, abrogated the common-law action for abandonment by necessary implication.

OPINION

JESSON, Judge

The central legal issue in this case is whether the statute governing the abandonment of tangible personal property abrogated common law on the same topic. The central factual dispute revolves around a dog named Oliver. Oliver, originally owned by appellant Dannielle Zephier, lived with respondent Derrick Agate Jr. for several years under an informal oral agreement. When Agate refused to return Oliver, Zephier sued Agate to retrieve him. The district court found for Agate. It determined that Zephier abandoned Oliver when she left him with Agate for so long. But the district court did not apply the notice requirements set forth in the governing statute, Minnesota Statutes section 345.75. Because we conclude that this statute, which governs abandonment of personal property including dogs, required Agate to give Zephier personal notice that ownership would transfer to him if she did not reclaim Oliver within 30 days—and because Agate failed to give Zephier this notice—Zephier remains Oliver’s legal owner. Accordingly, we reverse the district court’s judgment.

FACTS

This is a dispute about who owns a dog named Oliver.¹ Appellant Dannielle Zephier purchased Oliver in 2008. Oliver lived with Zephier and her other dog, Alex, in Minnesota. But Zephier eventually moved to California for school in about 2013.

¹ Oliver is a light-colored, mixed-breed dog with some poodle and beagle ancestry.

After Zephier moved, she needed someone to care for her dogs because her California housing did not permit dogs. Zephier and respondent Derrick Agate Jr. had briefly dated and were close friends around this time. Agate, who lived in Minnesota, agreed to care for Zephier's dogs beginning in either 2014 or 2015. Their agreement was informal and did not contain an explicit end date. The parties communicated often while Agate cared for the dogs, and Zephier visited the dogs in Minnesota.²

Zephier brought her smaller dog, Alex, back to California with her in November 2016. But Oliver remained in Minnesota with Agate.³ Almost a year later, Zephier visited Minnesota and attempted to visit Oliver but Agate suddenly changed his mind and refused to permit the visit. Zephier called the police to report Oliver as stolen, but the police declined to intervene.

After several attempts to communicate with Agate and reclaim Oliver, Zephier sued him in conciliation court in Minnesota. The conciliation court permitted Agate to keep the dog and ordered him to pay Zephier. Unhappy with this result, Zephier removed the case to district court, which vacated the conciliation court's judgment.

The district court conducted a bench trial. Zephier, Agate, and co-respondent Lee Ann Krueger testified, and the court received several exhibits from both parties. After

² During this time, Agate began dating co-respondent Lee Ann Krueger, and they moved in together.

³ Zephier explained that she took Alex but not Oliver at that time because Alex weighed only five pounds and could travel on the plane with her. Zephier said that she planned to retrieve Oliver by renting a car and driving him from Minnesota to California after she finished school.

taking the matter under advisement, the district court issued an order finding that Zephier had abandoned Oliver and denied her Oliver's recovery. Zephier appeals.

ISSUE

Did the district court err by concluding that Zephier abandoned Oliver?

ANALYSIS

While the ultimate issue in this case is who owns Oliver, the legal question concerns personal property and its abandonment. Minnesota courts have long held that companion pets—including dogs—are personal property. *See Corn v. Sheppard*, 229 N.W. 869, 870 (Minn. 1930). And because Oliver is personal property, our task is to determine whether Zephier abandoned him by leaving him with Agate.

To answer this question, we first determine the governing law. Under the common law, abandonment generally requires an act and some intent to abandon the property, which involves a fact-intensive analysis. *See In re Application of Berman*, 247 N.W.2d 405, 408 (Minn. 1976). But Minnesota Statutes section 345.75 imposes a clear time frame for abandonment, as well as notice requirements to the prior owner before ownership transfers to a new owner. Our analysis of which standard applies here is a legal question, which we review de novo. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). Once we determine which law governs this case, we apply it to the facts involving Oliver.

The common law regarding abandonment demands that a potential new owner show both an act and an intention to prove abandonment. *Shepard v. Alden*, 201 N.W. 537, 539 (Minn. 1924). As the Minnesota Supreme Court explained, “[t]here must be an actual

relinquishment of the property, accompanied by an intent to part with it permanently, so that it may be appropriated by any one finding it or having it in his possession.” *Id.* And beyond “act and intention,” courts also consider the facts and circumstances of the owner’s relationship with the property and the other party. *Berman*, 247 N.W.2d at 408. These facts and circumstances may be assessed using a four-factor framework outlined by the Minnesota Supreme Court. *Id.*⁴

Next, we turn to the statute. Minnesota Statutes section 345.75 was enacted in 2005 and provides an avenue for a possessor of abandoned property to obtain ownership rights to that property. The statute outlines the requirements:

345.75 ABANDONED TANGIBLE PERSONAL
PROPERTY.

The ownership of abandoned tangible personal property that is not subject to any other provision of statute may be transferred as provided by this section.

If property has *not been removed within six months* after it comes into the possession of a person, it *is abandoned* and shall become the property of the person in possession, *after notice to the prior owner*. Thirty days’ notice that the time period has elapsed and that the ownership will be transferred at the end of the 30 days shall be given to the prior owner personally or by certified mail, which is actually received.

⁴ The factors include:

- (1) failure to pay on the contract for a long period of time;
- (2) failure to take or retain possession of the property;
- (3) failure to pay real estate taxes; and
- (4) awareness of the seller’s intent to terminate the contract for deed interest, coupled with failure to assert any right to the property.

Berman, 247 N.W.2d at 408. We note that this framework originated from and has been applied only in appellate decisions concerning real property, specifically in cases involving contract-for-deed transactions.

Minn. Stat. § 345.75 (emphasis added).

This statute lays out a clear, concise process to obtain ownership of abandoned tangible personal property. It specifies that a six-month time period must pass before property may be deemed abandoned. *Id.* And it mandates that the possessor of the property provide 30 days of notice to its prior owner before ownership rights actually transfer to the possessor. *Id.* This notice provides an opportunity and time frame for the prior owner to retrieve her property before she loses all legal claim to it. *Id.* And notice must be made by personal service or certified mail that is actually received. *Id.*⁵

Comparing the common-law standard to the statutory requirements, we observe several critical differences. First, abandoned property is defined under the statute as property that is left by its owner for more than six months. *Id.* The common law contains no specific timeline for property to be considered abandoned. *See Erickson v. Sinykin*, 26 N.W.2d 172, 176 (Minn. 1947) (declaring that the “mere lapse of time does not in and of itself establish abandonment”). And the statutory requirement for the possessor to provide notice and an opportunity to retrieve the property is also absent from common law. With these differences in mind, we return to the question of whether section 345.75 supplants the common law.

Minnesota courts have held that statutes can only abrogate the common law “by express wording or necessary implication.” *Urban v. Am. Legion Dep’t of Minn.*,

⁵ There is also an alternative notice process if the prior owner is unknown. *Id.* And a process to ask a court to stay the transfer of ownership to allow the prior owner more time to retrieve the property. *Id.*

723 N.W.2d 1, 5 (Minn. 2006). No express wording in section 345.75 replaces the common law. But the question of whether the statute *necessarily implies* abrogation is less easily answered. For two reasons, we conclude that the statute abrogates the common law by necessary implication.

First, because permitting the common law to persist would render the notice provisions of the statute superfluous, the statute necessarily abrogated the common law. Notice is central to Minnesota Statutes section 345.75. The notice requirements, which are outlined in half of the sentences that make up the section, permeate the statute.

We presume that every statute has a purpose and that no statutory language be deemed superfluous. *See Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018) (stating that a statute “should ordinarily be read as a whole to harmonize all its parts, and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant”). By allowing both common-law abandonment and statutory abandonment, as *Agate* suggests, the strict notice requirement would be just that: superfluous. And deeming these notice provisions superfluous directly contradicts our general approach to strictly construe notice requirements expressed in statute. *See Ridgway v. Hennepin County*, 182 N.W.2d 674, 677 (Minn. 1971) (concluding that a statute requiring notice by publication should be strictly construed and complied with); *see also Klapmeier v. Town of Center of Crow Wing County*, 346 N.W.2d 133, 136 (Minn. 1984) (“There must be strict compliance with the statutory notice provisions.”). Because we construe a statute “to give effect to all of its provisions,” *Fish v. Comm’r of Minn. Dep’t of Human Servs.*,

748 N.W.2d 360, 364 (Minn. App. 2008), and Agate’s position essentially disregards half of the statutory language, this statute abrogated common law.

Our conclusion is buttressed by the statute’s role as part of a regulatory scheme regarding unclaimed property. The legislature generally intends a statute to supersede existing common law on a matter when it enacts a complete regulatory scheme with regard to an aspect of the law. *See, e.g., Axelberg v. Comm’r of Pub. Safety*, 848 N.W.2d 206, 211 (Minn. 2014) (holding that the implied consent framework is a complete system of law on the topic and thus supersedes all prior law); *Anderson v. Federated Mut. Ins. Co.*, 465 N.W.2d 68, 70 (Minn. App. 1991), *aff’d*, 481 N.W.2d 48 (Minn. 1992) (concluding that common law of arbitration was supplanted by necessary implication upon enactment of the Minnesota Uniform Arbitration Act).

Here, chapter 345 broadly concerns unclaimed property. The backbone of this chapter consists of the Uniform Disposition of Unclaimed Property Act. *See* Minn. Stat. §§ 345.31-.60 (2018). The act generally concerns the disposition of *intangible* property, “including bank accounts, unclaimed insurance proceeds, and unclaimed wages.” *Hall v. State*, 908 N.W.2d 345, 351 (Minn. 2018). And it provides guidance to various private and state entities about how to claim, report, or dispose of certain intangible property that may be in their custody but they may not own. *Id.* at 349. For example, this chapter applies to funds held by the Minnesota Public Pension Fund and deposits paid to public utilities. Minn. Stat. §§ 345.381, .34.⁶

⁶ Chapter 345 also includes the Minnesota Museum Property Act, which governs personal property, including loans, gifts, and undocumented property, held by museums and the

Since Minnesota’s adoption of its version of the Uniform Unclaimed Property Act in 1969, this act has evolved to address the changing nature of intangible property. *See* 1969 Minn. Laws ch. 725, §§ 1-30, at 1297-1308. In 2005, the legislature considered amending certain notice provisions within the act to grant more discretion to the commissioner of commerce, who has rulemaking authority to carry out some provisions of the chapter. *See* 2005 Minn. Laws ch. 109, § 5, at 669-70. Recognizing that the chapter broadly governed the disposition of *intangible* personal property but that no state statute addressed *tangible* property, the legislature adopted section 345.75. *See* 2005 Minn. Laws ch. 109, § 7, at 670. This section is a catchall provision, applying to “abandoned tangible personal property that is *not subject to any other provision* of statute.” Minn. Stat. § 345.75 (emphasis added).

By reading this section in context with the rest of the chapter, as advised in *Kremer*, 912 N.W.2d at 623, we observe that it is part of the larger regulatory scheme for how we dispose of unclaimed property in Minnesota. Within this larger context, we view section 345.75 as part of a regulatory framework that provides the exclusive method for transferring ownership of abandoned tangible personal property. And section 345.75 is consistent with the rest of the chapter by providing clear instructions as to the time frames, notice requirements, and responsibilities of the various parties. The legislature’s adoption of this framework demonstrates its movement to a straightforward, simple process—a clear trade-off with the common law, which requires a multi-factor, fact-intensive analysis.

subsequent disposition and conservation of that property. Minn. Stat. §§ 345.70-.74 (2018).

Still, Agate attempts to seek refuge in the word “may” in the first line of the statute to argue that the statute does not supplant the common law here. The complete first line states, “ownership of abandoned tangible personal property that is not subject to any other provision of statute *may* be transferred as provided by this section.” Minn. Stat. § 345.75 (emphasis added). According to Agate, the word “may” implies an optional or permissive application of the statute. We disagree. Rather than read the word “may” to permit alternative methods of transferring ownership of tangible personal property—such as the common law—we read “may” as permissive for the *possessor* to attempt to transfer ownership of the property to himself.⁷

For example, if a snow blower is left in your garage for an extended period of time, as the possessor, you may permit the owner to leave it there indefinitely without consequence. On the other hand, you *may* seek to become the owner of the snow blower yourself after six months, by providing notice to the prior owner and an opportunity for him or her to reclaim it. Our reading of the statute allows a possessor to choose whether to attempt to assert ownership over the property but does not require that the possessor do so.⁸

⁷ If the legislature had said the property “shall” be transferred as provided in section 345.75, it would appear to require the possessor of the property to take the actions outlined.

⁸ We note that this reading is consistent with the available legislative history. When proposing this section on the senate floor, Senator Neuville explained his belief that it was necessary because, at that time, the chapter only governed *intangible* personal property and there was no statute governing the abandonment of *tangible* personal property. S. Floor Deb. on S.F. No. 1360 (May 17, 2005) (statement of Sen. Neuville). And he described a personal example about tangible personal property in a barn passing through a will, which went unclaimed by the new owner for some time. *Id.* The senator opined that the barn owner could follow the process outlined in the proposed section to ensure he was legally

Following our conclusion that section 345.75 supersedes the common law, we turn to the facts before us. In its application of section 345.75, the district court found that Zephier “had personal notice that she was abandoning Oliver” in 2017 when she left him with Agate but took Alex back to California. But this action—while particularly relevant under the common law—did not include notice from Agate that because he had been in possession of Oliver for six months, ownership would pass to him after 30 days, unless Zephier removed Oliver. And that is what the statute requires: notice delivered personally or through certified mail.

At trial, Agate admitted that he did not provide Zephier any notice. He testified that he did not tell Zephier, either orally or in writing, that he considered her leaving Oliver with him to be abandonment. He never provided Zephier with a timeline for removing Oliver or requested that she take him. Zephier also testified that she had no knowledge or notice that Agate believed that she had abandoned Oliver.⁹ Therefore, the district court’s finding that Zephier had personal notice of her abandonment of Oliver is contrary to the record and clearly erroneous.¹⁰

In sum, Minnesota Statutes section 345.75 supplanted the common law and governs this matter. And the statute requires personal notice be given or sent through certified mail,

protected if he wanted to dispose of the contents of the barn. *Id.* And the senate approved of his amendment, which was eventually codified as section 345.75. *Id.*; *see also* 2005 Minn. Laws ch. 109, § 7, at 670.

⁹ During oral arguments, counsel for Agate admitted that the notice to Zephier was not “that strong.”

¹⁰ The district court appears to have concluded that Zephier had notice by mere implication. But the statute mandates, by its use of “shall,” personal notice or notice by certified mail. *See* Minn. Stat. § 645.44, subd. 16 (2018).

neither of which occurred here. Because Agate failed to provide this statutory notice, Zephier remains the legal owner of Oliver.

D E C I S I O N

Minnesota Statutes section 345.75, which governs abandonment of tangible personal property, abrogated the common-law action for abandonment by necessary implication. And under this section, Agate was required to give Zephier notice that she abandoned Oliver and that ownership would transfer to him if she did not reclaim Oliver within 30 days. Because Agate did not give Zephier the required notice, we reverse the district court's judgment.

Reversed.