**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-770**

Donna Zetwick,
Appellant,

vs.

Chevrolet Avalanche 2002,
Respondent.

**Filed December 14, 2010**
**Affirmed**
**Worke, Judge**

Itasca County District Court
File Nos. 31-CV-09-3392, 31-CO-09-274

Andrew T. Jackola, Andrew T. Jackola, PLC, Oakdale, Minnesota (for appellant)

John J. Muhar, Itasca County Attorney, Michael J. Haig, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

**U N P U B L I S H E D  O P I N I O N**

**WORKE**, Judge

Appellant challenges the district court's dismissal of her forfeiture-reclaim action for lack of jurisdiction. We affirm.

## D E C I S I O N

***Jurisdiction***

Appellant Donna Zetwick sought to reclaim her forfeited 2002 Chevrolet Avalanche. The district court dismissed for lack of jurisdiction following removal from conciliation court because appellant failed to serve the Minnesota State Patrol (MSP), the agency that initiated the forfeiture action. Appellant argues that the district court erred in strictly applying the forfeiture statute. "Statutory interpretation is a question of law subject to de novo review." *Schons v. State Farm Mut. Auto. Ins. Co.*, 621 N.W.2d 743, 745 (Minn. 2001). The object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2008). If a statute is unambiguous, we must apply its plain language. *Garde v. One 1992 Ford Explorer XLT*, 662 N.W.2d 165, 166 (Minn. App. 2003); *see also* Minn. Stat. § 645.16 (providing that when the language of a statute is "clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"). We review de novo whether a district court has jurisdiction. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. App. 1999).

The forfeiture statute provides that when a vehicle is seized, the appropriate agency must serve the vehicle's owner with notice of the seizure and intent to forfeit the vehicle. Minn. Stat. § 169A.63, subd. 8(b) (2008). The statute provides the requirements that a claimant must follow in demanding a judicial determination of the forfeiture:

> Within 30 days following service of a notice of seizure and forfeiture under this subdivision, a claimant may file a demand for a judicial determination of the forfeiture. The

> demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture *and the appropriate agency that initiated the forfeiture*, including the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis.

*Id.*, subd. 8(d) (emphasis added).

Thus, the statute requires a claimant to (1) file a demand in the form of a civil complaint, along with proof of service, with the court administrator in the county in which the seizure occurred, (2) serve the complaint on the prosecuting authority, (3) serve the complaint on the agency that initiated the forfeiture, and (4) pay the filing fee or receive authorization to proceed in forma pauperis. The statute is unambiguous and we must apply its plain language, giving effect to the legislature's intent that a claimant must fulfill four requirements of filing a demand for a judicial determination. In *Garde*, the claimant failed to serve the demand for judicial review on the prosecuting authority, as required by statute, and we held that that failure deprived the district court of jurisdiction. 662 N.W.2d at 166-67.

Appellant's vehicle was seized pursuant to the commission of a designated offense—appellant's live-in caretaker was convicted of chemical-test refusal after being stopped while driving appellant's vehicle. A forfeiture coordinator from the MSP sent appellant a certified letter with a copy of the Notice of Seizure and Intent to Forfeit Vehicle. The letter indicated that the back side of the notice included the process to contest the forfeiture. The notice indicated that forfeiture was automatic unless appellant

demanded a judicial determination within 30 days of receipt of the form. The notice indicated that if the procedure for obtaining a judicial determination was not done "EXACTLY AS PRESCRIBED," appellant would lose the right to a judicial determination. The notice outlined the procedure for obtaining a judicial determination that conforms to the procedure detailed in the forfeiture statute:

> The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture and the appropriate agency that initiated the forfeiture.

Appellant filed a statement of claim and summons in conciliation court, paid a filing fee, and served the prosecuting authority. But appellant failed to serve the MSP as the agency that initiated the forfeiture action. Appellant failed to follow all of the statutory requirements; thus, the district court lacked jurisdiction. *See id.* at 167 (failure to comply with statutory service requirement deprives the district court of jurisdiction).

***Due Process***

Appellant argues, however, that although she failed to comply with the service requirement, she was an innocent owner with diminished capacity and was not afforded appropriate due-process protections. Appellant suffers from organic brain syndrome, which causes mental impairment limiting her ability to follow instructions, recognize consequences, complete tasks, and cognitively process challenging procedures. She asserts that her particular situation demands flexibility. This court reviews the procedural

due process afforded a party de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

The United States and Minnesota Constitutions provide that no person shall be deprived of property "without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. In determining whether a party's due-process rights have been violated, this court considers (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedures; and (3) the government's interest, including the function involved and the fiscal and administrative burdens of additional or substitute procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976).

*Private Interest*

Appellant is the registered owner of the vehicle. The loss of appellant's vehicle is a private interest entitled to procedural-due-process protections.

*Risk of Erroneous Deprivation*

Appellant argues that there is a high risk of erroneous deprivation through the procedures used because strict compliance with the statute is difficult for even a "savvy" citizen and she has a documented mental condition. But it is difficult to appreciate appellant's argument because she did comply with three of the four statutory requirements. Appellant filed a civil complaint, paid a filing fee, and served the county attorney. If she had failed to follow more than one of the requirements, her argument that the statute is confusing would be more compelling. Further, due process requires adequate notice before deprivation of a property interest. The notice appellant received

was from the MSP—the agency that initiated the forfeiture that appellant was required to serve. Thus, appellant received adequate notice and was afforded an opportunity to be heard.

Appellant filed an affidavit describing how her diagnosis has impaired her life and supplied an affidavit from her physician supporting appellant's descriptions of how she has difficulty concentrating, impaired memory, an inability to understand complicated instructions, and an inability to fully comprehend consequences of actions that are not plainly explained. But appellant was aware of her condition. Knowing that she has difficulty understanding instructions and knowing that she received a notice of vehicle forfeiture, appellant should have been aware that she required assistance in seeking a judicial determination of the forfeiture.

Additionally, appellant claims that she is not able to fully comprehend the consequences of actions that are not plainly explained. But appellant's required actions and consequences for failure to act were plainly explained in the letter and notice appellant received. The letter referred appellant to the back side of the notice for the process to contest the forfeiture. The notice states:

> Forfeiture of the property is automatic unless within 30 days of receipt of this form you demand a judicial determination of this matter. The procedure for obtaining a judicial determination is set out in Minnesota Statutes, Section 169A.63, Subdivision 8 on the reverse side of this form. IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SECTION 169A.63, SUBDIVISION 8, YOU LOSE THE RIGHT TO A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT

> YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY.

The letter also provides a phone number to contact with questions. The statutory procedure is then laid out.

After appellant experienced confusion over what was required of her, she could have called the number provided and sought assistance. In fact, the forfeiture coordinator interviewed appellant six days before appellant filed her conciliation-court claim. Thus, if appellant was confused, she could have asked the forfeiture coordinator what was required of her in reclaiming her vehicle. Appellant's required actions are provided in the statute and the consequences for failure to act are plainly stated—the procedure must be followed *exactly* or appellant will lose the right to a judicial determination.

Appellant also argues that she was an innocent owner and dismissal prevents her from presenting her defense. The district court found that the evidence was conflicting regarding the extent of appellant's consent to her caretaker's use of her vehicle. The record shows that appellant was aware that her caretaker had a prior DWI conviction and did not have a Minnesota-issued driver's license. Appellant allowed her caretaker to drive her vehicles and she stored her car keys in an area that was accessible to her caretaker. Our review of the record supports the district court's finding that the evidence is conflicting; thus, it is not likely that there is a high risk of erroneous deprivation.

*Government's Interest/Additional Requirements*

Appellant argues that there are procedures that would ensure her right to due process without impairing the government's interests in the administration of forfeiture

proceedings and public safety. Appellant submits two alternatives: (1) presumption of service on the MSP and a finding that she is an innocent owner entitled to the return of her vehicle, or (2) remand to the district court with instructions to permit leave for appellant to serve the MSP.

Appellant claims that it should be presumed that she served the MSP because the prosecuting authority was served and the prosecuting authority represents the MSP's interests. But the legislature intended for the prosecuting authority and the agency initiating the forfeiture to be served. If the legislature intended a presumption of service, it either would have not required service on both the prosecuting authority and the initiating agency, or it would have included the existence of a presumption. It did neither. Because the statute unambiguously requires the claimant to serve the prosecuting authority *and* the initiating agency, we must apply the plain language and give effect to the legislature's intent. Appellant also suggests that this court make a finding that she is an innocent owner entitled to the return of her vehicle. But the role of this court is to correct errors, not to find facts. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990); *see also Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966) (stating that it is not within the province of appellate courts to determine fact issues on appeal).

Alternatively, appellant proposes that we remand with instructions to grant appellant leave to serve the MSP. But the statute requires the claimant to serve the agency within 30 days following service of notice. Remanding with instructions to grant her leave impermissibly extends this mandatory 30-day time limit and makes her demand

untimely. *See Van Note v. 2007 Pontiac*, 787 N.W.2d 214, 220 (Minn. App. 2010) (stating that claimant's demand for judicial determination was untimely because she did not file her demand within 30 days following service of the notice of seizure and forfeiture).

The government has an interest in providing a uniform procedure on which agencies can rely. The government also has a "compelling" interest in "protecting citizens from the hazards posed by impaired drivers." *Heino v. One 2003 Cadillac*, 762 N.W.2d 257, 264 (Minn. App. 2009) (concluding that district court "placed disproportionate weight on an individual's property interest in a car as compared with the . . . government's compelling interest in protecting its citizens from drunk drivers"). The additional procedural safeguards that appellant proposes would burden the state. Thus, appellant's due-process claim fails.

**Affirmed.**