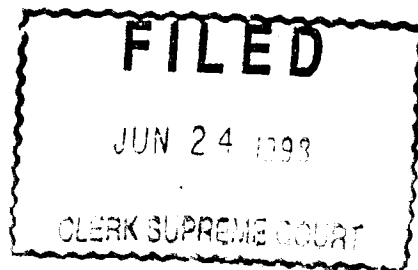


IN THE COURT OF APPEALS OF IOWA

No. 7-624 / 97-161



RAYMOND H. MAGNUSON, JR.,
Appellant,

vs.

MARY K. MEREDITH and DAVID MEREDITH,
Appellees,

and

CLARENCE GARRISON and REBECCA NELSON,
Defendants.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

The plaintiff appeals a district court ruling dismissing his replevin action to
recover possession of three vehicles, the title to which he claimed was wrongfully
obtained by the defendants. **AFFIRMED.**

Raymond H. Magnuson, Jr., Sioux City, pro se, appellant.

Shelley A. Horak, Sioux City, for appellees Meredith.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The plaintiff, Raymond Magnuson, Jr., appeals a district court ruling dismissing his replevin action to recover possession of three vehicles, the title to which he claimed was wrongfully obtained by the defendant, Mary Meredith.

Background. Raymond Magnuson, Jr. and Mary Meredith were living and working together in Sioux City. In August 1994, Raymond purchased a 1980 Buick, naming Mary second owner. In November 1994, he sold the Buick and transferred its title to Dorothy Sitzman and Harry Trotter. In December 1994, in settlement of a contempt action filed by Mary against Raymond, Raymond agreed to transfer title of the Buick solely to Mary, but did not disclose he no longer owned the vehicle.

Raymond also owned a 1979 pickup upon which he claims there was a lien held by American State Bank. Raymond transferred title to the pickup to Mary and gave her a bill of sale dated August 10, 1993. In consideration, Mary agreed to pay \$550 on the remaining balance of a note held by American State Bank and Raymond's attorney fees of \$700. Mary paid the attorney fees. No lien appears on the certificate of title.

Raymond also owned a 1981 Chevrolet aerial truck, equipped with a large boom used for tree trimming, which he and Mary did together. American State Bank originally held a lien against this truck as well, but this was satisfied by Raymond on April 29, 1994. That same day, Raymond assigned the title to Mary.

On June 25, 1995, Raymond filed a replevin action, claiming he was the owner of the three vehicles and that Mary had wrongfully obtained title.

The district court dismissed the replevin action holding that, because there was no evidence Mary had illegally obtained title or possession of the vehicles, Raymond was required to show he demanded that Mary return the vehicles and she had refused. Because there was no evidence Raymond had made such a demand, no damages could be awarded. The court also held Raymond had no standing to sue on the 1980 Buick because he had sold it to third parties before filing the replevin action. Raymond has appealed.

Scope of Review. An action for replevin is by ordinary proceedings. Iowa Code § 643.2 (1997). The scope of review is at law and findings of fact shall have the effect of a special verdict. Iowa R. App. P. 4. When a replevin action is tried to the court, its findings of fact have the force of a jury verdict and are binding upon us if based upon substantial evidence. *Keppy v. Lilienthal*, 524 N.W.2d 436, 438 (Iowa App. 1994). We construe the trial court's findings broadly and liberally. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the district court's judgment. *Id.*

I. Title. Motor vehicles are a peculiar type of tangible personal property, in that ownership is demonstrated and transferred by a certificate of title rather than by possession. “No person shall acquire any right, title, claim or interest in or to any

vehicle subject to registration under [chapter 321] from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle” Iowa Code § 321.45(2). The statute further states, with some exceptions not relevant to the instant case, “[N]o court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title” Iowa Code § 321.45(2)(d).

II. The 1981 aerial truck. Raymond alleged Mary illegally obtained title to the 1981 aerial truck by taking an assignment of title from his briefcase. He maintained the assignment of title of the truck to Mary was solely so she could obtain a loan against the truck, which Raymond’s bad credit prevented him from obtaining. He asserted that in the event the loan was not approved, as was the case, the assignment was to be destroyed.

However, the assignment was in his possession for several months before he went to jail and he did not destroy it. He now claims Mary stole the assignment from him. Mary disputed his testimony. She offered the certificate of title, assigned to her, at trial. We conclude substantial evidence supports the trial court’s decision concerning this vehicle.

III. The 1980 Buick. Raymond additionally argued Mary illegally obtained possession of the 1980 Buick. The record reveals Raymond transferred title of this vehicle to third parties in November 1994. Since he no longer had any right, title,

claim, or interest in the Buick, Raymond had no standing to maintain a replevin action for it. We conclude his argument he was suing in anticipation of a suit against him by the owners is without merit. The trial court correctly dismissed the replevin action concerning this vehicle.

IV. The 1979 pickup truck. Raymond also asserted Mary illegally assigned title of the 1979 pickup to her daughter, Rebecca Nelson and her boyfriend, Clarence Garrison. Mary later assigned title to her son, David. Mary claims Raymond sold the truck to her by a bill of sale in 1993. She was to pay the purchase price by paying \$700 of Raymond's legal fees and satisfying a \$550 lien against the truck in favor of American State Bank. The evidence at trial showed Mary paid the attorney fees and the lien against the truck was released, although Raymond contended the bank was still owed money on the truck. Substantial evidence supports the trial court's determination Mary obtained possession lawfully and Raymond was not entitled to possession.

V. Demand. Raymond also argues the district court erred in holding he was required to demand a return of the vehicles prior to filing a replevin action.

A prefiling demand for possession is required only where it is necessary to terminate the holder's right of possession or confer on the claimant the right of possession. *Varvaris v. Varvaris*, 255 Iowa 800, 804, 124 N.W.2d 163, 165 (1963). To require a demand in any other case "would impose on one party a vain and useless formality which the law will not exact." *Id.*

The purpose of a prefiling demand is to provide the one in possession the opportunity to relinquish possession before incurring litigation expenses. *Hart v. Wood*, 202 Iowa 58, 63, 209 N.W. 430, 432 (1926). However, when the one in possession claims an absolute right to possession, requiring a demand is a futile formality. *Id.* At trial, Mary stated she took possession of the vehicles because she was leaving Raymond after his incarceration for a felony in 1993 and wanted what was hers. She also answered the replevin petition denying that Raymond had any ownership interest in the vehicles. We agree Raymond was not required to make a demand prior to the filing of the replevin action.

Although the trial court based its decision, in part, on Raymond's failure to demand return of the vehicles, we nonetheless affirm the trial court's decision. There is substantial evidence Raymond had no interest in any of the vehicles. We will affirm the trial court's decision if any reason to affirm exists in the record. *See Grefe & Sidney v. Watters*, 525 N.W.2d 821, 826 (Iowa 1994) (appellate court is obliged to affirm where any proper basis appears in the record for the district court's judgment, even though it is not one upon which the court based its holding).

AFFIRMED.