STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1474

Jerome E. Johnson,
Appellant,

vs.

Stacy A. Bee,
Respondent,

Cheryl Steele,
Defendant.

Filed June 16, 2025
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-23-1665

Steve Silton, Cassandra M. Jacobsen, Cozen O'Connor, Minneapolis, Minnesota (for appellant)

Leif T. Simonson, Simonson Law, P.L.L.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The parties to this appeal were in a relationship and lived together for approximately a decade. When they ended the relationship, a dispute arose concerning one party's

personal property. The district court found that the plaintiff proved claims of conversion and replevin but is not entitled to any damages. We affirm.

FACTS

Jerome E. Johnson and Stacy A. Bee began dating in 2013. Soon thereafter, Bee moved into Johnson's home in the city of Wayzata. In 2017, Johnson purchased a condominium in Florida, which became the primary residence for him, Bee, and their two joint children.

In August or September of 2020, Johnson decided to sell his Wayzata home. He and Bee agreed that she would assume responsibility for packing, removing, and storing the contents of the Wayzata home in anticipation of a sale. With the assistance of a friend, Bee arranged for the rental of five portable storage units. Bee and her friend removed all furniture and other personal property from Johnson's Wayzata home and stored it in the portable storage units.

The parties' relationship deteriorated in 2022. In the late summer of that year, Johnson realized that he did not have access to the personal property that had been removed from the Wayzata home and stored in the portable storage units. According to the rental agreement, access to the portable storage units required a storage-unit identifier number, a customer ID number, a PIN number, and keys to any padlocks; likewise, online access to arrange for access or shipment required a username and password. Johnson repeatedly asked Bee for this information so that he could access the portable storage units. Bee did not cooperate.

In November 2022, Johnson signed an agreement to purchase a house in Florida, which he wanted to furnish with the items in the portable storage units. Because he did not have access to the portable storage units, he negotiated a purchase that included many of the house's existing furnishings, which increased the purchase price by $60,000 (from $4,040,000 to $4,100,000). Johnson closed on the purchase in December 2022.

In February 2023, Johnson commenced this action against Bee and the friend who helped Bee rent and load the portable storage units. Johnson asserted claims against Bee of conversion and replevin. For relief, he requested an order requiring Bee to transfer possession of the personal property in the portable storage units to him, damages, and attorney fees and costs.

Soon after commencing the action, Johnson filed a motion for pre-judgment recovery of his personal property. *See* Minn. Stat. § 565.23 (2024). In May 2023, the district court granted Johnson's motion and ordered Bee to give Johnson the information necessary to access the five portable storage units. Bee did so.

Before trial, Johnson voluntarily dismissed his claim against Bee's friend. The case proceeded to a court trial on one day in March 2024. After trial, each party submitted proposed findings of fact and conclusions of law. In Johnson's proposed findings and conclusions, he requested $60,000 in damages. In June 2024, the district court filed its findings of fact, conclusions of law, and order. The district court found that Johnson proved his claims of conversion and replevin but did not prove that he is entitled to any damages. Johnson appeals.

DECISION

Johnson argues that the district court erred by not awarding him damages. Bee did not file a responsive brief. Nonetheless, it is this court's duty to apply the law to the facts of the case and determine the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

A.

Before considering Johnson's arguments, we will summarize the applicable legal principles.

1.

Conversion is defined as "an act of willful interference with the personal property of another, done, without lawful justification, by which any person entitled thereto is deprived of use and possession," and "the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods." *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 585 (Minn. 2003) (quotations omitted). "Wrongfully refusing to deliver property on demand by the owner constitutes conversion." *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003) (quotation omitted).

Under Minnesota caselaw, the measure of damages on a conversion claim depends on the nature of the conversion. Three rules can be identified.

First, if the converted property was not returned to the plaintiff, the plaintiff is entitled to damages equal to "the value of the property at the time of the conversion, with interest from that time." *McLeod Nash Motors v. Commercial Credit Trust*, 246 N.W. 17, 20 (Minn. 1932); *see also McKinley v. Flaherty*, 390 N.W.2d 30, 33 (Minn. App. 1986).

Second, if the converted property was wrongfully detained for a period of time but eventually was returned to the plaintiff, the plaintiff is entitled to damages equal to "the reasonable value of its use during the wrongful detention." *Bergquist v. Stenson Co.*, 260 N.W. 871, 873 (Minn. 1935) (quotation omitted).

Third, if the plaintiff's rights to property were interfered with in a "merely technical" way, a plaintiff is entitled to only nominal damages. *Sutton v. Great Northern Ry. Co.*, 109 N.W. 815, 816 (Minn. 1906); *see also McKusick v. Seymour, Sabin & Co.*, 50 N.W. 1116, 1117 (Minn. 1892).

2.

Replevin, sometimes called claim and delivery, "is a common law remedy in which a plaintiff claiming an entitlement to certain personal property demands the return of that property from the current possessor." *Zephier v. Agate*, 957 N.W.2d 866, 871 n.1 (Minn. 2021) (citing *Republic State Co. v. Brown*, 197 N.W. 840, 841 (Minn. 1924)). The "primary object" of the action "is the recovery of the possession of the specific thing rather than its value." *Breitman Auto Fin. Co. v. Buffalo*, 265 N.W. 36, 37 (Minn. 1936). If the defendant is in possession of the property and it is possible for the defendant to return it to the plaintiff, such delivery "must be ordered." *Widgren v. Massie*, 352 N.W.2d 420, 426 (Minn. App. 1984); *see also New England Furniture & Carpet Co. v. Bryant*, 66 N.W. 974, 975 (Minn. 1896).

If a plaintiff is able to obtain the return of wrongfully detained property, the plaintiff also may recover "damages for the detention or taking and withholding." *Widgren*, 352 N.W.2d at 426 (citing Minn. Stat. § 548.04 (Supp. 1983)). In that event, the measure of

damages is "the reasonable value of the use of it during the time of its wrongful detention," *Williams v. Wood*, 63 N.W. 492, 492 (Minn. 1895), or "the fair rental value of the [property], less the damage which would result to it from the extra wear and tear caused by its use," *Peerless Mfg. Co. v. Gates*, 63 N.W. 260, 261 (Minn. 1895). If it is not possible for the defendant to return the converted property to the plaintiff, the plaintiff may recover damages. *Bogestad v. Bothum*, 79 N.W.2d 371, 375 (Minn. 1956); *see also Schmalz v. Maxwell*, 354 N.W.2d 549, 552 (Minn. App. 1984) (affirming $50,000 damages award on replevin claim). In that event, "the proper measure of damages will be the fair, reasonable market value of the goods at the time of the taking, plus interest." *Schmalz*, 354 N.W.2d at 552.

B.

The district court noted that "Johnson does not request the value of property converted because that property has already been returned to him and he acknowledges the property was not damaged while it was outside his possession." The district court also noted that "Johnson requests $60,000 in monetary damages which arose from purchasing replacement furniture because his furniture was being detained."

Accordingly, the district court sought to determine the amount of Johnson's damages on his conversion claim by finding "the value of the use during the period of detention or prevention or the value of the use of or the amount paid for a substitute." This measure of damages is, in essence, the second measure of conversion damages identified above. *See Bergquist*, 260 N.W. at 873.

The district court proceeded to determine Johnson's damages with the following analysis:

> [T]he court acknowledges Johnson spent $60,000 he otherwise would not have if he had access to the [portable storage units] and his property therein to furnish his new home. However, the court also understands that Johnson remains in possession of those $60,000 in furnishings. To award Johnson the entire $60,000 would suggest the furnishings he purchased are now worth $0, a fact which has not been made to appear in the record. If the entire $60,000 was awarded to Johnson, he would receive a windfall equal to the value of the new furnishings because he can sell those new furnishings if he so chooses. As there is no record with respect to the value of the new furnishings on the day Johnson regained possession of his property, the court cannot determine by what amount he was damaged by purchasing the new furnishings. The court takes the purchase price of the new furnishings, $60,000, to be a reasonable measure of their value on the date his property was returned to him.
>
> . . . .
>
> Johnson's monetary and loss-of-use damages are equal to the cost of purchasing the new furnishings ($60,000) minus the value of those new furnishings on the day he regained possession of his property (May 23, 2023). No evidence was presented regarding the value of the new furnishings on the day Johnson regained possession of his property; therefore, the court concludes a reasonable measure of such value is the price at which they were purchased: $60,000.

The district court rejected Johnson's request for damages on his replevin claim for the same reasons.

C.

Johnson argues that the district court erred for five reasons. We address each argument in turn. To the extent that Johnson's arguments implicate questions of law

concerning damages, we apply a *de novo* standard of review. *Lagoon Partners, LLC v. Silver Cinemas Acquisition Co.*, 999 N.W.2d 113, 120 (Minn. App. 2023), *rev. denied* (Minn. Mar. 19, 2024). To the extent that Johnson's arguments challenge the district court's findings of fact concerning damages, we apply a clear-error standard of review. *In re Minnwest Bank Litig. Concerning Real Prop.*, 873 N.W.2d 135, 143 (Minn. App. 2015).

1.

Johnson first argues that the district court erred by considering the value of only some of his wrongfully detained personal property. Johnson asserts that the district court assigned a value of $200,000 to all of his personal property stored in the portable storage units. He contends that the district court "failed to award monetary damages for any of the rest of [his] wrongfully detained property," *i.e.*, the property other than the furnishings he wanted to use in his new Florida home, and "erred by making no supporting fact findings to support its decision to exclude the value of non-furniture property in the damage award."

This argument is without merit because Johnson did not preserve it in the district court. He did not ask the district court to consider the value of all of his personal property in the portable storage units and did not ask the district court to award him $200,000. Instead, in his proposed findings and conclusions, he asked the district court to conclude, with respect to his conversion claim, that he proved "actual monetary damages in the amount of $60,000.00 resulting from Defendant Bee's actions." Similarly, he asked the district court to conclude, with respect to his replevin claim, that he proved "actual monetary damages in the amount of $60,000.00, which was spent because of Defendant Bee's wrongful taking and withholding."

"It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court." *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 42 (Minn. App. 2014) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). Because Johnson did not request damages of $200,000 and did not ask the district court to award him damages for the conversion of property other than the furnishings that he wanted to use in his new Florida home, he cannot now argue that the district court erred by not awarding him damages for the conversion of "non-furniture property."

2.

Johnson also argues that the district court erred by not awarding him interest on the market value of his converted property for the period of time in which the property was wrongfully detained. He cites this court's opinion in *McKinley*, in which we stated, "The measure of damages in a conversion case is generally the value of the property at the time of the conversion plus interest from that time." 390 N.W.2d at 33 (citing *McLeod Nash Motors*, 246 N.W. at 20). But that measure of damages applies only if the defendant did not return the converted property to the plaintiff. *See McLeod Nash Motors*, 246 N.W. at 18-20; *McKinley*, 390 N.W.2d at 31-33. If, as in this case, converted property has been returned, the plaintiff is entitled only to loss-of-use damages. *See Bergquist*, 260 N.W. at 873. As the district court noted, an award of interest would be duplicative of an award of damages for loss of use.

3.

Johnson next argues that the district court "erred in determining that [his] monetary damages and loss-of-use damages . . . are the same." Johnson again asserts that the value of his wrongfully detained property is $200,000 and that he incurred $60,000 in expenses when he purchased temporary furnishings. It appears that Johnson challenges the district court's measure of damages. As stated above, if wrongfully detained property is returned to a plaintiff, the plaintiff is entitled to damages equal to "the reasonable value of its use during the wrongful detention." *Id.* In that situation, a plaintiff is not entitled to damages for both the value of converted property and the value of loss of use of the converted property. *See id.* A plaintiff is entitled to damages equal to the value of converted property only if the converted property is not returned. *See McKinley*, 390 N.W.2d at 31-33; *McLeod Nash Motors*, 246 N.W. at 18-20. The district court did not err by seeking to determine Johnson's damages by finding the value of his loss of use.

4.

Johnson next argues that the district court erred by not awarding him damages on his replevin claim.

In its conclusions of law, the district court specifically addressed this issue:

> The damages for the detention, taking, and withholding of Johnson's property in statute and common law are identical to those damages identified in the conversion section above. Specifically, the actual monetary damages and loss of use damages are the $60,000 Johnson paid for new furnishings minus the value of those new furnishing on the day he regained possession of his property. Because these damages are identical to the damages discussed in the conversion section above, the court restates its analysis from the conversion

> section with the understanding that Johnson will not receive a double recovery for conversion and replevin.

Johnson contends that, under the law of replevin, he is entitled to damages for the detention of the property. We agree that, under the law of replevin, if wrongfully detained property is returned, the plaintiff may recover damages equal to "the reasonable value of the use of it during the time of its wrongful detention," *Williams*, 63 N.W. at 492, or "the fair rental value of the [property], less the damage which would result to it from the extra wear and tear caused by its use," *Peerless Mfg. Co.*, 63 N.W. at 261. The district court did not misapprehend the applicable law. The district court simply found that Johnson is not entitled to replevin damages for the same reason that he is not entitled to conversion damages: the furniture he purchased for $60,000 is still worth $60,000. The district court did not err in that reasoning.

5.

Johnson last argues that the district court clearly erred by finding that the furnishings that he purchased for $60,000 in December 2022 had the same value when Bee gave him access to the portable storage units in May 2023.

The district court reasoned that Johnson is entitled to the value of the loss of use of the personal property that was wrongfully detained in the portable storage units. The district court further reasoned that the value of Johnson's loss of use may be determined by finding the decrease in the value of the furnishings he purchased to temporarily replace his furnishings in the portable storage units. In the circumstances of this case, the district

court's methodology is logical and consistent with the applicable law. *See Bergquist*, 260 N.W. at 872.

As the plaintiff, Johnson bore the burden of proving both the existence and amount of his damages. *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997); *Wick v. Widdell*, 149 N.W.2d 20, 22 (Minn. 1967). But Johnson did not introduce any evidence concerning the value of the temporary furnishings in May 2023. Accordingly, the district court stated that "there is no record with respect to the value of the . . . furnishings on the day Johnson regained possession of his property." Johnson does not challenge that statement by identifying any evidence in the record of the value of the temporary furnishings as of May 2023. He merely asserts, without evidentiary support, that the temporary furnishings depreciated during his ownership and that "any subsequent purchaser would be unwilling to pay the same mark-up amount . . . as they would pay to a furniture store." But that also was true in December 2022, when Johnson purchased the temporary furnishings from the previous owner of the house, and Johnson used the temporary furnishings for no more than six months.

This court has stated, in the replevin context, that an item's "cost may be the only evidence of its value, and may therefore be considered its value." *Schmalz*, 354 N.W.2d at 552. In this case, the only evidence in the trial record concerning the value of the temporary furnishings is the evidence that Johnson purchased them for $60,000 in December 2022. Given the absence of any other evidence, the district court did not clearly err by finding that the temporary furnishings that Johnson purchased in December 2022, which were used

when he purchased them and were used by him for no more than six months, also had a value of $60,000 in May 2023.

In sum, the district court did not err by not awarding Johnson any damages.

Affirmed.