

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITIZENS BANK,

Plaintiff-Appellant,

v

ATLAS DISTRIBUTING, INC.,

Defendant/Cross Defendant/  
Third Party Defendant,

and

GRAY'S TOWING SERVICE, INC.,

Defendant/Cross Plaintiff/Third-  
Party Plaintiff-Appellee.

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UNPUBLISHED

September 29, 2005

No. 261584

Genesee Circuit Court

LC No. 03-077499-PD

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting summary disposition to defendant, Gray's Towing Service, Inc.,<sup>1</sup> holding that it lacked jurisdiction and dismissing the case without prejudice. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

In 1999, plaintiff provided financing to Kevin Pieniozek for part of the purchase price of a 1999 Shasta motor home. In October 2002 defendant towed away the motor home pursuant to a writ of execution granted to Atlas Distributing, Inc. Plaintiff learned of the writ and defendant's possession of the motor home at a creditors meeting after Pieniozek filed for bankruptcy.

Following that March 2003 meeting of creditors, the parties and attorneys communicated about plaintiff's interest in the motor home, possible litigation, and possible settlement options, but they did not agree to anything until October 2003.

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<sup>1</sup> Atlas Distributing, Inc. was dismissed by stipulation with prejudice, and is not a party to this appeal. The term defendant in this opinion will refer only to Gray's Towing Service, Inc.

On October 6, 2003 the Genesee Township police department, on defendant's request, completed a notice of abandoned vehicle form to begin the process of transferring title to defendant. The notice stated that Pieniozek was the registered owner, and plaintiff was a secured party of the motor home. According to the Genesee Township clerk, the notice was sent to both Pieniozek and plaintiff. But plaintiff stated in an affidavit that it did not receive the notice. Defendant sold the motor home at a public sale on December 11, 2003.

Plaintiff filed a complaint for claim and delivery on October 10, 2003. That complaint was not officially served on defendant until January 8, 2004 despite prior attempts to serve defendant's attorney. After plaintiff learned of the sale of the motor home, it amended its complaint to include a claim for conversion.

Defendant moved for summary disposition on many grounds including that the circuit court lacked jurisdiction based on the Michigan Vehicle Code's provisions governing abandoned vehicles. The trial court granted defendant's motion because it concluded that the abandoned vehicle statutes did apply; therefore the circuit court lacked subject matter jurisdiction. The trial court dismissed plaintiff's complaint without prejudice.

We review de novo decisions on motions for summary disposition. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998). When reviewing a motion for summary disposition based on a lack of subject matter jurisdiction, this Court has to determine whether the pleadings demonstrate that defendant was entitled to judgment as a matter of law. *Id.*

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. The Michigan Vehicle Code specifically states which courts have jurisdiction to determine whether a police agency has properly processed an abandoned motor vehicle. At the time of this litigation, MCL 257.252e(1) provided:<sup>2</sup>

The following courts shall have jurisdiction to determine if a police agency has acted properly in processing a vehicle under section 252a, 252b(6) to (10), 252c, or 252d:

- (a) The district court.
- (b) The municipal court.
- (c) The common pleas court of the city of Detroit.

The statute's specific grant of jurisdiction to other courts precludes the circuit court from asserting it.

Section 252c of the Michigan Vehicle Code, MCL 257.252c, governed the removal of a vehicle from private property at the direction of someone other than the owner or a police agency

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<sup>2</sup> 2004 PA 495 amended the statute effective October 1, 2005 to eliminate subsection (c).

during the time in question.<sup>3</sup> Here, the motor home was removed from Pieniozek's property pursuant to a writ of execution granted to Atlas Distributing, Inc. MCL 257.252c provided:

(1) When a vehicle is removed from private property at the direction of a person other than the registered owner of the vehicle or a police agency, the custodian of the vehicle immediately shall notify the police agency from whose jurisdiction the vehicle was towed. The custodian shall supply that information which is necessary for the police agency to enter the vehicle into the law enforcement information network. . . .

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(3) The owner of the vehicle removed as described in subsection (1) may obtain the release of the vehicle by paying the accrued towing and storage fees to the custodian of the vehicle. . . .

(4) If the vehicle described in subsection (1) is not claimed by the owner within 7 days after the police agency has been notified by the custodian that it has been taken into custody, the vehicle is deemed abandoned and the procedures prescribed in section 252a(4)(c) to (9) shall apply.

Plaintiff claims that because it had notified defendant of its interest in this vehicle before defendant applied for title to an abandoned vehicle, the vehicle was not abandoned. The notice, however, plainly specified, and as required by statute, the proper court in which to request a hearing concerning the application of the abandonment statutes. MCL 257.252a(5)-(6).

The dispute concerning facts as to whether the notice was sent and received does not preclude or remove the question of statutorily conferred jurisdiction. Rather, the statute applies to the circumstances of this case and provides the district courts resolve such disputes in a determination of whether the police properly followed the statutes' provisions. Therefore, the trial court correctly concluded that it did not have jurisdiction over this matter and properly granted summary disposition without prejudice in favor of the defendant.

We affirm.

/s/ Henry William Saad  
/s/ Kathleen Jansen  
/s/ Jane E. Markey

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<sup>3</sup> The statute was repealed effective December 29, 2004.