

STATE OF MICHIGAN
COURT OF APPEALS

FORD MOTOR CREDIT COMPANY, LLC,

Plaintiff-Appellee,

v

YOLANDA SOPHIA HAGGEN, doing business
as HEAVY’S TOWING AND RECOVERY,
EDDIE HAGGEN, and LOUIS BERTRAND-
DANE SMART, JR.,

Defendants,

and

NATIONWIDE AUTO DEALER, INC.,

Defendant-Appellant.

UNPUBLISHED
March 15, 2016

No. 325889
Wayne Circuit Court
LC No. 13-009726-PD

Before: RONAYNE KRAUSE, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

Defendant-appellant, Nationwide Auto Dealer, Inc. (“Nationwide”), appeals as of right the order granting summary disposition in favor of Ford Motor Credit Company, LLC (“Ford Credit”), and declaring Ford Credit the legal owner and first secured party of a 2009 Ford Mustang Shelby GT, Vehicle Identification Number 1ZVHT88S995121010 (“the Mustang”). Because the circuit court lacked subject-matter jurisdiction, we vacate the order for possession and the order granting Ford Credit’s motion for partial summary disposition, and we remand for entry of an order of dismissal.

The issue whether a circuit court has subject-matter jurisdiction over a case is reviewed de novo. *Mich Ass’n of Home Builders v City of Troy*, 497 Mich 281, 285; 871 NW2d 1 (2015).

Courts are bound to take notice of the limits of their authority, and a court may, and should, on its own motion, though the question is not raised by the pleadings or by counsel, recognize its lack of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise disposing thereof, at any stage of the proceeding. [*Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 255 n 12; 701 NW2d 144 (2005) (citations and quotation marks omitted).]

We first note that the order granting Ford Credit's motion for partial summary disposition was not a final judgment or order. Following entry of the order granting Ford Credit's motion for partial summary disposition, Nationwide filed a claim of appeal in this Court. MCR 7.203(A)(1) provides that this Court has jurisdiction of an appeal as of right from "[a] final judgment or final order of the circuit court." MCR 7.202(6)(a)(i) defines a "final judgment" or "final order" in a civil case, in relevant part, as "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order."

Ford Credit filed a complaint against defendant Heavy's Towing and Recovery ("Heavy's Towing"), alleging a claim and delivery action and a claim for conversion with regard to the Mustang, which was in the custody of Heavy's Towing as an abandoned vehicle. The trial court entered an order for possession of the car. When Ford Credit learned that Heavy's Towing sold the car to defendant Louis Bertrand-Dane Smart, Jr., who later sold the car to Nationwide, Ford Credit filed an amended complaint against all of the defendants, asserting (1) a conversion claim against both Smart and Heavy's Towing, (2) a claim against Heavy's Towing for failing to comply with MCL 257.252 *et seq.*, and (3) a quiet title claim against Nationwide. Ford Credit then filed a motion for partial summary disposition with regard to the quiet title claim, which the trial court granted.

Although the order granting the motion for partial summary disposition indicates that it resolves the last pending claim and closes the case, there were remaining claims in the circuit court. Ford Credit still had outstanding claims against Heavy's Towing and Smart for conversion, in which it alleged treble damages, and a claim against Heavy's Towing for violation of MCL 257.252 *et seq.*, in which Ford Credit requested damages "in whatever amount above \$25,000.00 Ford Credit is found to be entitled, together with statutory damages, interest, costs and reasonable attorney fees." Thus, although Ford Credit received title to the Mustang, there remained outstanding claims for additional damages to which Ford Credit contended it was entitled. Therefore, the order granting the motion for partial summary disposition did not dispose of all the claims and adjudicate all the rights and liabilities of all the parties. See MCR 7.202(6)(a)(i). Accordingly, Nationwide was unable to appeal from the order as of right. See 7.203(A)(1). However, we exercise our discretion and treat the claim of appeal as an application for leave to appeal and grant the application in light of our determination that the circuit court lacked subject-matter jurisdiction. See *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 354; 833 NW2d 384 (2013).

Whether a court has subject-matter jurisdiction is established by the pleadings, and a judgment that is entered by a court lacking subject-matter jurisdiction over a case is void. *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 561; 840 NW2d 375 (2013). MCL 600.605 provides,

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 257.252e(1) provides:

The following courts have jurisdiction to determine if a police agency, towing agency or custodian, or private property owner has acted properly in reporting or processing a vehicle under [MCL 257.252a, MCL 257.252b(6) to (11), or MCL 257.252d]:

(a) The district court.

(b) A municipal court.

Ford Credit's argument in the circuit court was that Heavy's Towing failed to comply with the abandoned vehicle reporting and processing requirements for the Mustang when it failed to allow Ford Credit to redeem the car and refused to communicate with Ford Credit regarding the car. In its original complaint, Ford Credit brought an action for claim and delivery under the theory that Heavy's Towing had wrongful possession of the Mustang and refused to allow Ford Credit to inspect the car, and for conversion under the theory that Heavy's Towing "wrongfully exercised dominion and control" over the Mustang and deprived Ford Credit of possession of the car. Although Ford Credit did not mention the fact that the Mustang was considered an abandoned vehicle in its initial complaint, the action stemmed from the contention that the towing company failed to comply with the abandoned vehicle processing requirements with regard to the Mustang. See MCL 257.252e(1).

In its first amended complaint, Ford Credit brought a claim for conversion against Heavy's Towing and Smart, a claim for quiet title against Nationwide, and a claim against Heavy Towing for violation of MCL 257.252 *et seq.* With regard to the conversion claim, Ford Credit detailed Heavy Towing's refusal to allow Ford Credit to redeem the Mustang and its fraudulent sale of the car to Smart. With regard to the claim against Heavy's Towing for violation of MCL 257.252 *et seq.*, Ford Credit alleged that Heavy's Towing refused to allow it to pursue its rights under MCL 257.252a and failed to comply with MCL 257.252g. Ford Credit further alleged that Heavy's Towing "in violation of Ford Credit's rights as the secured party and in violation of MCL §257.252a and §257.252g, fraudulently prepared an Abandoned Vehicle Bill of Sale, which was filed with the Secretary of State causing a fraudulent Certificate of Title to be issued." Once again, the gravamen of Ford Credit's complaint was that Heavy's Towing improperly deprived Ford Credit of possession of the Mustang because it refused to allow Ford Credit to act under MCL 257.252a and then proceeded to sell the car without a public sale pursuant to MCL 257.252g. The remaining claims stemmed from the claim that Heavy's Towing failed to comply with the procedures to allow Ford Credit to redeem the car. We therefore conclude that the district court had jurisdiction to determine the claims. See MCL 257.252e(1).

Ford Credit argues that the circuit court did not determine whether Heavy's Towing improperly reported or processed the Mustang under MCL 257.252a since the towing company made admissions that it failed to allow Ford Credit to redeem the car. However, the issue whether the circuit court had subject-matter jurisdiction over the case was based on the pleadings in the case, rather than subsequent admissions of the opposing party. See *Clohset (On Remand)*, 302 Mich App at 561. Additionally, Ford Credit contends that the issue whether Heavy's Towing complied with MCL 257.252g was properly before the circuit court since MCL 257.252g is not one of the statutory provisions that falls within the jurisdiction of the district court under MCL 257.252e(1). However, Ford Credit's claim revolved around whether Heavy's

Towing complied with the abandoned vehicle procedures and was not limited to whether Heavy's Towing properly conducted a public sale under MCL 257.252g. Ford Credit's claims stemmed from the fact that Heavy's Towing refused to allow it to redeem the Mustang under MCL 257.252a in spite of numerous attempts at redemption. Therefore, the circuit court lacked subject-matter jurisdiction over the case. See MCL 257.252e(1).

We vacate the order for possession and the order granting Ford Credit's motion for partial summary disposition, and we remand for entry of an order of dismissal for lack of subject-matter jurisdiction. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens