IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY FIRE DEPARTMENT, Appellant, vs. 1978 MERCEDES BENZ, VIN #12303012013957, AND RON PICHE, Respondents.	No. 37107 FILED APR 08 2003 JANETTE M. BLOOM CLERK OF SUPREME COURT BY [signature] CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in respondent Ron Piche's favor with respect to a 1978 Mercedes Benz automobile owned by Piche. The underlying matter involved a forfeiture action arising from the Clark County Fire Department's (CCFD) investigation of an arson that allegedly involved the vehicle.

On November 8, 1999, the district court conducted a hearing regarding Piche's motion for summary judgment. At the hearing, CCFD informed the court that it would release the automobile to Piche. The court heard further argument regarding depreciation damages and attorney fees. The court took the matter under advisement pending inspection of the vehicle. CCFD contends that its concession to release the car "effectively dismissed" the matter, thus leaving no unresolved complaint for the court to consider.

We find this claim unpersuasive on two counts. First, the record belies the notion that any of the parties could rationally have considered the matter resolved. If there were an "effective dismissal," there would be no reason for the court to take the matter under

advisement and personally inspect the automobile. The court noted in its minutes of November 8, 1999, that while the forfeiture action would not go forward, fees and costs were still yet to be determined. Thus, the complaint was still active, even though the disposition of the vehicle itself had been resolved.

Second, CCFD filed a request for an order granting its motion to dismiss the forfeiture complaint on May 22, 2000. At the hearing, CCFD asserted its belief that the case had been resolved. The district court disagreed. Because the record fails to demonstrate that all complaints had been dismissed and because CCFD's actions demonstrate that it recognized that there was a continuing dispute in this matter, CCFD's claim that there was no active complaint is not persuasive.

CCFD also contends that it was inappropriate for the district court to award monetary damages for the diminution in value of the vehicle without a pending claim or cross-claim from which to make such an award. Piche's claim that he is entitled to monetary damages is supported by United States v. One 1965 Chevrolet Impala Convertible,[1] wherein the Sixth Circuit held that the proper remedy in cases of improper seizure is "the value of depreciation from the date on which the automobile[was] seized to the date[] on which [it was] sold or ordered returned."[2] The Impala court further held that "[t]o have required the owners to file new actions . . . in order to assert their claims . . . would

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[1]475 F.2d 882 (6th Cir. 1992).

[2]Id. at 886.

have placed an unreasonable burden on the owners and the courts."[3] Here, since the vehicle was worthless at the time of return, Piche was entitled to its full value at the time of seizure. Additionally, Impala supports the proposition that requiring Piche to file an independent claim to recover monetary damages would have been unreasonably burdensome.

CCFD next claims that law of the case doctrine precludes the district court from reconsidering Piche's motion for summary judgment because the court had already ruled against a previous motion essentially identical to the one granted by the court. This court has previously held that "a trial court ruling does not constitute law of the case."[4] "The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same."[5] CCFD contends that law of the case was established by the district court's denial of Piche's previous motion for summary judgment.[6] This contention is erroneous because only this court, not the district court, can establish law of the case.

CCFD next claims that it was deprived of proper notice when the district court ruled on Piche's May 26, 2000 countermotion on May 30.

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[3]Id. at 886, n.2. See also United States v. Real Property in Township of Charlton, County of Otsego, State of Michigan, et al., 764 F.Supp. 1219, 1222 (E.D. Mich. 1991).

[4]Byford v. State, 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000).

[5]Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969), vacated in part on other grounds by Walker v. Nevada, 408 U.S. 935 (1972) (citing State v. Loveless, 62 Nev. 312, 150 P.2d 1015 (1944); Graves v. State, 84 Nev. 262, 439 P.2d 476 (1968)).

[6]This motion was filed by Piche on October 26, 1999 and denied by the district court on April 4, 2000.

NRCP 56(c) provides that "[t]he motion shall be served at least 10 days before the time fixed for the hearing." CCFD contends that the district court improperly granted Piche's motion for summary judgment since it was filed only four days prior to the hearing at which the motion was granted.

There are several reasons why the district court's actions in this particular instance are appropriate. First, CCFD itself filed a motion for summary judgment and requested that the motion be granted without providing Piche with ten days to respond.

Additionally, it is well established that a court may enter summary judgment on its own without any request to do so.[7] Even if the district court had determined that Piche's motion for summary judgment was improper because it did not provide CCFD with sufficient notice, the court was within its discretion to grant summary judgment sua sponte.

Further, EDCR 2.26 permits a hearing for summary judgment with notice of less than ten days if the party opposing the motion will not suffer prejudice.[8] Various aspects of this case had been litigated extensively over a period of almost nine years. Both sides had filed motions for summary judgment and knew that a hearing would be held on May 30, 2000. CCFD, the nonprevailing party, was the party that filed the motion for an order shortening time.

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[7]Exber, Inc. v. Sletten Constr. Co., 92 Nev. 721, 733, 558 P.2d 517, 554 (1976) (citing Wright & Miller, Federal Practice and Procedure, Civil § 2719, at 454 (1973)).

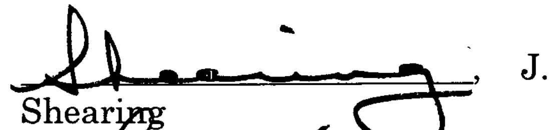
[8]Cheek v. FNF Constr., Inc., 112 Nev. 1249, 1253, 924 P.2d 1347, 1350 (1996).

CCFD argues that summary judgment was inappropriate because genuine issues of material fact remained with respect to damage amounts regarding the vehicle. It contends that there was no fair determination about the condition of the vehicle at the time of seizure or at the time of judgment. CCFD claims, therefore, that the district court erred in granting Piche's motion for summary judgment.

In this case, the district court was provided only one estimate of the vehicle's value at the time of seizure – the $12,800 appraisal supplied by Piche. No appraisal, however, was provided that designated the vehicle's value at the time of judgment. Piche maintained that the vehicle was worthless. The court agreed, after personally examining the vehicle. CCFD offered no countervailing evidence to support a claim that the vehicle was worth less than $12,800 at the time of seizure or that it had any value at all at the time of judgment.

CCFD provided no such evidence during the nine-year period that this matter was before the district court. Such evidence, if available, would have supported CCFD's own motion for summary judgment. In the absence of any such evidence, the court did not abuse its discretion in accepting Piche's appraisal and awarding the full value of damages to Piche. Accordingly, we

ORDER the judgment of the district court AFFIRMED.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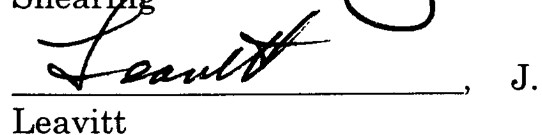
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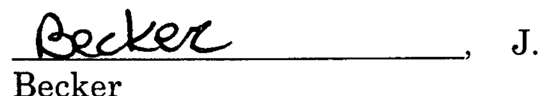
_______________, J.
Becker

cc: Hon. Gene T. Porter, District Judge
Clark County District Attorney
Clark County District Attorney/Civil Division
Potter Law Offices
Clark County Clerk