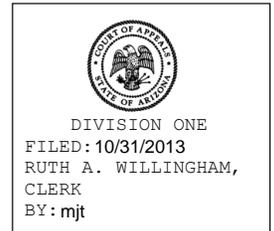


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of:) 1 CA-CV 12-0495
)
1993 CHEVROLET BLAZER AS) DEPARTMENT E
DESCRIBED IN THE ATTACHED)
APPENDIX.) **MEMORANDUM DECISION**
) (Not for Publication -
_____)) Rule 111, Rules of the
STATE OF ARIZONA,) Arizona Supreme Court)
)
Plaintiff/Appellee,)
)
v.)
)
JERRY BLUTH,)
)
Claimant/Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CV2011-019196

The Honorable Dean M. Fink, Judge

AFFIRMED

Jerry Bluth, Appellant *In Propria Persona* Tempe

Bill Montgomery, Maricopa County Attorney Phoenix
By Natalie C. La Porte, Deputy County Attorney
Attorneys for Appellee

T H O M P S O N, Judge

¶1 Jerry Bluth (Bluth) appeals from the trial court's grant of summary judgment in favor of the state in this

automobile forfeiture case concerning a 1993 Chevrolet Blazer (the Blazer) that was used in the commission of a theft in Tempe in August 2011. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 On August 2, 2011, Michael Fulton (Fulton) used the Blazer, which was titled and registered in his name, to steal two air conditioning units from a church in Tempe. Witnesses to the theft later identified both Fulton and the Blazer. Fulton pled guilty to one count of felony theft in September 2011. In October 2011, the state seized the Blazer for forfeiture pursuant to Arizona Revised Statutes (A.R.S.) section 13-4305 (2010).

¶3 Bluth filed a claim in superior court in December 2011, claiming ownership of the Blazer. On March 29, 2012, the state filed a motion for summary judgment. Bluth did not file a timely response, and the state filed a motion for entry of order granting summary judgment on May 8, 2012. On May 11, Bluth filed a motion for enlargement requesting an extension of time to file a response, which the trial court subsequently denied in July 2013.

¶4 The trial court entered an order of forfeiture on May 14, 2012, finding no genuine issue of material fact, that the Blazer had been used in the commission of a theft, and that Bluth lacked standing to contest its forfeiture. Bluth filed a

motion to vacate the order of forfeiture on May 18, 2012, which the trial court subsequently denied in July 2013. Bluth filed a motion to stay execution of the order of forfeiture on May 25, 2012; the trial court denied that motion on June 5, 2012.

¶5 On June 13, 2012, Bluth filed a timely notice of appeal "from the Judgment entered on May 14, 2012." In September 2012, Bluth filed a motion to suspend the appeal and re-vest jurisdiction in the superior court. On October 10, 2012, this court suspended the appeal "to and including November 26, 2012, and re-vest[ed] jurisdiction in the [trial court]" so that the trial court could rule on Bluth's motions to vacate the order of forfeiture and for enlargement, which were then still pending. Our order stated:

[O]n November 27, 2012, this appeal shall be automatically reinstated before this court, unless before that date appellant files a notice reinstating the appeal, a motion to dismiss the appeal, or a motion to continue the period of suspension of the appeal. If any party wishes for the rulings on the motions to be reviewed in this appeal, a timely notice or amended notice of appeal must be filed.

Before the trial court ruled on the two pending motions, our jurisdiction re-vested, because Bluth did not file any of the aforementioned pleadings in this court before November 27, 2012. Briefing was complete in this appeal in April 2013. On July 3, 2013, the trial court filed an unsigned minute entry denying

Bluth's motion to vacate order of forfeiture and motion for enlargement. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2) (Supp. 2012).

DISCUSSION

¶6 Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c)(1) (Rule 56(c)(1)). We review the grant of summary judgment de novo to determine whether any genuine issue of material fact exists, and we view the evidence and all reasonable inferences in favor of the nonmoving party. *Chalpin v. Snyder*, 220 Ariz. 413, 418, ¶ 17, 207 P.3d 666, 671 (App. 2008) (citation omitted). Summary judgment should only be granted "if the facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim. . . ." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

¶7 On appeal, Bluth argues that the trial court erred in granting summary judgment to the state because there was an issue of material fact regarding his standing as a claimant. We disagree. Bluth failed to file a timely response to the state's

motion for summary judgment.¹ “[I]f the opposing party does not serve and file the required answering memorandum, . . . such non-compliance may be deemed a consent to the . . . granting of the motion, and the court may dispose of the motion summarily.” *White v. Lewis*, 167 Ariz. 76, 80, 804 P.2d 805, 809 (App. 1990) (citing Rule IV(b) of the Uniform Rules of Practice for the Superior Court of Arizona); see also Rule 56(c)(2) (“A party opposing the motion [for summary judgment] must file its response and any supporting materials within 30 days after service of the motion.”). “[A]n adverse party who fails to respond does so at his peril because uncontroverted evidence favorable to the movant, and from which only one inference can be drawn, will be presumed to be true.” *Choisser v. State ex rel. Herman*, 12 Ariz. App. 259, 261, 469 P.2d 493, 495 (1970).

¶8 The uncontested facts were that Michael Fulton used the Blazer to steal air conditioning units, and the Blazer was titled and registered in Fulton’s name. To have standing as a claimant to contest a forfeiture pursuant to A.R.S. § 13-2314(G)(3) (2010), one must establish by a preponderance of the evidence that he or she is “an owner of or interest holder in

¹ Bluth asserts that he timely “communicated to the court via two faxed letters of [his] intent to file a response opposing the [motion for summary judgment] as well as [his] intent to request more time in which to file” He acknowledges that the faxed letters were ex parte communications. The trial court properly disregarded the faxed letters. See Ariz. R. Sup. Ct. 81, Canon 2.9(A).

the property" seized. A.R.S. § 13-4311(M) (2010). Arizona law does not recognize a claim based on a hidden property interest. *In re 1986 Chevrolet Corvette*, 183 Ariz. 637, 639, 905 P.2d 1372, 1374 (1994); see also A.R.S. § 13-4301(5) (2010) ("A purported interest which is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest . . . shall not be recognized as an interest . . . in an action pursuant to this chapter."). The Blazer was never titled or registered in Bluth's name, either as owner or lienholder. To the extent that Bluth argues that his due process rights were violated because the trial court granted the motion for summary judgment without holding a hearing, we note that a hearing was not required in light of Bluth's failure to file a response and failure to timely request a hearing. See Rule 56(c)(1) (trial court's decision to hold a hearing on a motion for summary judgment is discretionary if a request for a hearing is not timely made).

¶8 Bluth further argues that the trial court abused its discretion by failing to rule on his motions for enlargement and to vacate the order of forfeiture. We cannot consider this argument. Bluth appealed from the order of forfeiture entered by the trial court on May 14, 2012. Subsequently, Bluth filed a motion to suspend the appeal and reconstitute jurisdiction in the superior court. On October 10, 2012, this court suspended the

appeal until November 26, 2012, when it was automatically reinstated. When the trial court filed an unsigned minute entry denying Bluth's motion to vacate order of forfeiture and motion for enlargement, it lacked the authority to do so, and Bluth did not appeal from that order at any rate.² See *State v. O'Connor*, 171 Ariz. 19, 22, 827 P.2d 480, 483 (App. 1992).

¶9 For the foregoing reasons, we affirm the trial court's decision granting summary judgment to the state.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge

² On August 21, 2013, Bluth filed a "motion to vacate, strike, recall, overturn or nullify superior court rulings on pending motions" with this court, asking us to vacate the trial court's July 3, 2013 minute entry. For the reasons stated above, we deny the motion.