FILED BY CLERK
DEC 14 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re	)	2 CA-CV 2011-0146
	)	DEPARTMENT A
U.S. CURRENCY IN THE AMOUNT OF $2,900.00	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20109564

Honorable Paul E. Tang, Judge

VACATED AND REMANDED

Barbara LaWall, Pima County Attorney
By Kevin S. Krejci
Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 In this civil in rem proceeding, the state appeals the trial court's denial of its application for forfeiture based on failure to provide notice as required by A.R.S. § 13-4307(1). Because the state complied with § 13-4307(1), we vacate the court's order and remand for further proceedings.

Factual and Procedural Background

¶2 The forfeiture action is unopposed; thus the facts from the state's forfeiture application are undisputed. *See In re $24,000 U.S. Currency*, 217 Ariz. 199, n.1, 171 P.3d 1240, 1242 n.1 (App. 2007). Police officers seized $2,900 from a closet in a room occupied by Davis Zirpolo. The house and Zirpolo's room both contained marijuana and drug paraphernalia. The officers reported that Zirpolo identified the room in the house as his. The state provided a notice of pending forfeiture to Zirpolo by certified mail sent to the same residence, but this letter was returned "unclaimed." The state also sent the notice by first class mail, and it was not returned.

¶3 The state filed an application for an order of forfeiture of the money. The trial court denied the application based on "failure to follow [A.R.S. §] 13-4307.1." This appeal followed.

Discussion

¶4 The state argues the trial court erred by refusing to order the forfeiture, contending it had complied with the requirements in A.R.S. § 13-4307(1). No other party had appeared in the action below. We are therefore left in the unusual and uncomfortable position of deciding the issue without adversarial briefing, based solely on the trial court's minute entries and the transcript from a short hearing. We review the court's interpretation of a statute de novo. *State ex rel. Horne v. Rivas*, 226 Ariz. 567, ¶ 9, 250 P.3d 1196, 1199 (App. 2011).

¶5 Section 13-4309(1), A.R.S., permits the state to initiate an uncontested forfeiture proceeding by providing notice under § 13-4307. Section 13-4307 specifies

how the notice must be given to the property owner, providing "it shall be given or provided in one of the following ways and is effective at the time of personal service, publication or the mailing of written notice, whichever is earlier." When the owner's name and address are known, notice may be given by personal service or by "[m]ailing a copy of the notice by certified mail to the address." § 13-4307(1). If the owner's current address is unknown, but his interest in the property is required to be recorded with certain agencies, the state may mail the notice by certified mail to any address on record. § 13-4307(2). If an owner's address is unknown and not on record, the state may provide notice "by publication in one issue of a newspaper of general circulation in the county in which the seizure occurs." § 13-4307(3).

¶6 Here, the state mailed the notice of pending forfeiture by certified mail to the owner's purported current address. The statute provides that such notice is effective upon mailing. Furthermore, the statute allows for mailing the notice to addresses on file in state records or for publication if the address is unknown. Therefore, the statute does not require the owner actually receive the notice for the notice to be effective. Accordingly, the state complied with § 13-4307(1), and the trial court erred by finding otherwise.

¶7 Citing *Rivas*, the state recognizes that no one may be deprived of property without due process of law. 226 Ariz. 567, ¶ 8, 250 P.3d at 1199. Relying on *Windsor v. McVeigh*, 93 U.S. 274, 279 (1876), it further notes that historically the seizure of the property itself brought the property into the custody of the court and gave notice to the owner. It then cites *Jones v. Flowers*, 547 U.S. 220, 234-35 (2006), for the proposition

that the state is not required to guarantee the owner actually receive the notice, as long as the state takes "reasonable additional steps" which could include resending the notice by regular mail or posting on the door after certified mail has been returned unclaimed. But, the trial court only found a violation of the statute; it did not find a due process violation. And, the record before us is extremely limited. We therefore do not address whether the notice given here satisfied any due process concerns, leaving that issue, and any others that may arise, for the trial court in the first instance.[1] *See Jett v. City of Tucson*, 180 Ariz. 115, 123-24, 882 P.2d 426, 434-35 (1994) (refusing to address due process issue when trial court did not address it).

Conclusion

¶8 Because the state complied with the notice requirements under A.R.S. § 13-4307(1), we vacate the judgment and remand this case for further proceedings consistent with this decision.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

[1]Also not raised by this appeal or in the decision of the trial court is the issue of whether Zirpolo continued to reside at the address or remained in law enforcement custody.