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AUG 27 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re	)	2 CA-CV 2011-0169
	)	DEPARTMENT B
2003 JEEP.	)	
	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV201001434

Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED

James P. Walsh, Pinal County Attorney
By Craig Cameron
Florence
Attorneys for Appellee

William D. Shostak
Chandler
Attorney for Appellant

K E L L Y, Judge.

¶1 Appellant Ronnie Lewis appeals from the trial court's order forfeiting his 2003 Jeep. Lewis argues the court should have released his vehicle because the state did not file a notice of forfeiture and forfeiture complaint within the required time periods and because insufficient evidence supported the court's finding of probable cause for forfeiture. For the following reasons, we affirm.

Background

¶2 "We view the facts in the light most favorable to sustaining the verdict reached by the trial court." *In re 4030 W. Avocado*, 184 Ariz. 219, 219, 908 P.2d 33, 33 (App. 1995). On March 12, 2010, law enforcement officers conducting a narcotics investigation seized Lewis's Jeep for evidentiary purposes "pending a search warrant." On March 24, the officers searched the Jeep pursuant to a warrant and found evidence that it had been used to facilitate the sale of marijuana. The state then seized the Jeep for forfeiture and, on May 3, mailed Lewis a notice of property seizure and pending uncontested forfeiture. Lewis filed a claim for the Jeep on August 23, and the state filed a complaint on September 24. After an evidentiary hearing, the court found probable cause that the Jeep was subject to forfeiture. The court further found the state had proven grounds for forfeiture and ordered the Jeep forfeited. This appeal followed.

Discussion

¶3 Lewis claims the state did not timely file its notice of forfeiture and, therefore, the trial court should have returned his Jeep pursuant to A.R.S. § 13-4308(B). We review the court's application of the forfeiture statutes de novo and uphold its ruling if legally correct for any reason. *See In re $2,390.00 U.S. Currency*, 229 Ariz. 514, ¶ 5, 277 P.3d 219, 221 (App. 2012). Section 13-4308(B) provides for the release of seized property if the state "fails to initiate forfeiture proceedings against property seized for forfeiture by notice of pending forfeiture within sixty days after its seizure for forfeiture." The property was seized for evidentiary purposes "pending a search warrant" on March 12. The search warrant was executed on March 24, and, although the record is unclear,

the state apparently seized the vehicle for forfeiture on that date. *See In re $50,000.00 U.S. Currency*, 196 Ariz. 626, ¶¶ 9-10, 2 P.3d 1271, 1275 (App. 2000) (property seized for evidentiary purposes not "seized for forfeiture" as defined by statute; state must affirmatively assert property subject to forfeiture). The state mailed the notice of forfeiture on May 3, within sixty days of March 24.[1] *See* § 13-4308(B). Therefore, the notice complied with § 13-4308(B), and Lewis is not entitled to return of the Jeep on this ground.[2]

¶4 Lewis next argues he was entitled to the return of the Jeep because the state did not file its forfeiture complaint within the required time period. Section 13-4308(B)

[1]Even assuming, as Lewis asserts, that the Jeep was seized for forfeiture on March 12, the notice of forfeiture still was mailed within the sixty-day requirement of § 13-4308(B).

[2]Citing the trial court's minute entry from oral argument on his motion to release property, Lewis claims the court erred because, although it found the notice of forfeiture untimely, it denied relief based on a lack of prejudice. Because Lewis did not include the transcript of the proceeding as part of the record on appeal, the basis for the court's finding is not entirely clear. *See* Ariz. R. Civ. App. P. 11(b)(1) (appellant's burden to include transcripts on appeal). In Lewis's motion to release property, he argued the notice was untimely under A.R.S. § 13-4309(1), not § 13-4308(B). Section 13-4309(1) permits the state to file a notice of pending forfeiture within thirty days and, from the minute entry, it appears the court correctly found the notice was untimely under this statute. But, unlike § 13-4308(B), § 13-4309 does not provide for the release of property if the state's notice is untimely. And the court may properly consider lack of prejudice to the claimant in deciding whether to grant relief based on the state's failure to comply with § 13-4309. *Cf. State v. 1810 E. Second Ave.*, 193 Ariz. 1, 5-6, 969 P.2d 166, 170-71 (App. 1997) (no prejudice from state's failure to provide notice required by forfeiture statute where claimant had actual knowledge of proceeding, filed claim, and contested forfeiture to judgment). Further, to the extent Lewis argues the court's finding entitles him to release of his property under § 13-4308(B), that statute provides sixty days within which the state may file a notice of forfeiture, and the state complied with this requirement.

allows for the release of property seized for forfeiture if the state "fails to pursue forfeiture of . . . property on which a timely claim has been properly filed by filing a complaint . . . within sixty days after notice of pending forfeiture." As Lewis asserts, the state filed its complaint on September 24, over four months after it mailed the notice of forfeiture on May 3 and outside the sixty days provided by § 13-4308(B). But under § 13-4308(B) the sixty-day requirement applies only when "a timely claim has been properly filed" by the claimant, and Lewis did not file his claim until August 23, over three months after the notice of forfeiture was mailed and well outside the thirty-day period provided by A.R.S. § 13-4311(D).[3] Therefore, because Lewis did not file a timely claim, the state was not required to file its complaint within sixty days of the mailing of the notice.

¶5 Finally, Lewis argues the trial court erred in concluding the state had established probable cause to seize his vehicle for forfeiture. "[W]e review the trial

[3]Although the state mailed the notice of forfeiture to Lewis's correct address by certified mail, the notice was not delivered due to a postal service error. The state acknowledged this error and did not contest the timeliness of Lewis's claim. To the extent Lewis asserts the state failed to provide effective notice, he has not developed this argument and it is therefore waived. *See* Ariz. R. Civ. App. P. 13(a)(6) ("An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal). And, even if the argument were not waived, the state was required only to send the notice by certified mail to a "known" address for Lewis in order to comply with the notice requirement. *See* A.R.S. § 13-4307(1)(b). Moreover, Lewis had actual notice as demonstrated by his filing a claim against the property. *See 1810 E. Second Ave.*, 193 Ariz. at 5-6, 969 P.2d at 170-71 (failure to provide notice required by forfeiture statute "inconsequential" where claimant had actual knowledge of proceeding, filed claim, and contested forfeiture to judgment).

court's probable cause determination de novo." *In re $24,000.00 U.S. Currency*, 217 Ariz. 199, ¶ 12, 171 P.3d 1240, 1243 (App. 2007). The state has the initial burden in a civil in rem forfeiture proceeding to show by a preponderance of the evidence that the property is subject to forfeiture. A.R.S. § 13-4311(M). The state meets this burden by establishing the existence of probable cause for the forfeiture "'supported by more than a mere suspicion, but less than prima facie proof.'" *In re $315,900.00 U.S. Currency*, 183 Ariz. 208, 211, 902 P.2d 351, 354 (App. 1995), *quoting In re 1986 Chevrolet Corvette*, 183 Ariz. 637, 640, 905 P.2d 1372, 1375 (1994).

¶6 Following the evidentiary hearing, the trial court found probable cause "to believe that the vehicle was used to promote or facilitate the commission of possession of marijuana for sale." Lewis argues this finding was in error because the evidence presented "establishe[d], at most, that [he] may have personally used marijuana in the Jeep" and there was "no evidence that the Jeep had been used to facilitate a drug transaction." But as Lewis concedes, the state presented testimony from the detective who executed the search warrant that the Jeep contained a bag of marijuana, a digital scale and several "small Ziploc baggies." Additionally, a ledger, containing names and notations, was found in the vehicle. The detective testified that the notations were consistent with records of payment and that, based on his training and experience, the evidence in the Jeep indicated the vehicle was used to facilitate the sale of marijuana. Therefore, contrary to Lewis's claim, the evidence presented by the state consisted of

more than "mere suspicion" and was sufficient to support the court's finding that probable cause existed for the forfeiture. *See id.* Accordingly, we find no error.[4]

¶7 Lewis requests costs, attorney fees, and sanctions pursuant to A.R.S. §§ 12-341.01(C) and 12-349. Because Lewis is not the prevailing party on appeal, we deny his request.

Disposition

¶8 The trial court's order is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

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

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

[4]To the extent Lewis presents additional arguments in his reply brief, we do not consider them. *See Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, n.1, 111 P.3d 1003, 1004 n.1 (2005) (appellate court does not consider arguments first raised in reply brief).