

STATE OF MICHIGAN
COURT OF APPEALS

JOHN LAUER and DEREK STEVENS,

Plaintiffs-Appellees,

v

WAYNE COUNTY,

Defendant-Appellant.

UNPUBLISHED

June 16, 2005

No. 254318

Wayne Circuit Court

LC No. 03-333341-CF

Before: Talbot, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant Wayne County appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(1), (C)(5), (C)(7), (C)(8), and (C)(10). We reverse.

Defendant raises several issues on appeal, including that the trial court did not have jurisdiction over this matter. Because we agree that the trial court did not have subject matter jurisdiction, we need not consider defendant's other issues.

As a preliminary matter, we note that while MCR 7.202(6)(v)¹ provides that "[a]n order denying governmental immunity" is appealable by right, MCR 7.203(A)(1) provides that "[a]n appeal from an order described in MCR 7.202(7)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right." Where the language of a court rule is clear and unambiguous, it must be enforced as written. *In re KH*, 469 Mich 621, 628; 677 NW2d 800 (2004); *Pierce v Lansing*, 265 Mich App 174, 182; 694 NW2d 65 (2005). In an appeal by right from an order denying a defendant's claim of governmental immunity, this Court recently held that it does not have the authority to consider issues other than that part of the trial court's order denying the defendant's claim of governmental immunity. *Pierce*, *supra* at 182. "To conclude otherwise would render part of the court rule nugatory." *Id.*

¹ This subsection was formerly (7) but effective May 1, 2004, was renumbered (6). See 469 Mich clxxxi. MCR 7.203(A)(1) still refers to this subsection as MCR 7.202(7).

Nevertheless, jurisdictional defects may be raised at any time, even if raised for the first time on appeal.² *Polkton Charter Twp v Pellegroni*, 265 Mich App 88, 97; 693 NW2d 170 (2005). Subject matter jurisdiction issues raise questions of law that are reviewed de novo on appeal. *Id.* at 98. Although defendant did not move for summary disposition under MCR 2.116(C)(4), this omission does not prevent this Court from granting relief based on lack of subject matter jurisdiction. “The jurisdiction of a court arises by law, not by the consent of the parties.” *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992).

In general, subject matter jurisdiction is a court’s power to hear and determine a cause or matter. *Id.* at 36. 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.

Thus, circuit courts are presumed to have subject matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute. *Id.* at 38. A court that lacks subject matter jurisdiction cannot adjudicate the parties’ claims. *Id.* at 56. A court should recognize its lack of jurisdiction and, on its own motion, dismiss the action. *Id.* When a court lacks subject matter jurisdiction to hear a claim, any action it takes, other than to dismiss the action, is void because of lack of jurisdiction. *Id.*; *Jackson City Bank & Trust Co v Franklin*, 271 Mich 538, 544; 260 NW 908 (1935).

Disposition of the seized and subsequently forfeited money in this case is governed by the controlled substances act, MCL 333.7521 *et seq.*; *In re Return of Forfeited Goods*, 452 Mich 659, 665; 550 NW2d 782 (1996); *Hollins v Detroit Police Dep’t*, 225 Mich App 341, 344; 571 NW2d 729 (1996). Property that was legally seized may be administratively forfeited by a governmental agency that provides the owner with notice that the property has been seized and of the intent to forfeit the property. MCL 333.7523(1)(a); *In re Return of Forfeited Goods, supra* at 665; *Hollins, supra* at 345. In *In re Return of Forfeited Goods, supra* at 667, the Michigan Supreme Court held that a trial court does not have jurisdiction to review a lawful administrative forfeiture. See also *Hollins, supra* at 347.

The first step in determining if the trial court had jurisdiction is to determine if the money was lawfully forfeited pursuant to the controlled substances forfeiture act. MCL 333.7521 *et seq.*; *In re Return of Forfeited Goods, supra* at 665; *Hollins, supra* at 347. Plaintiffs argue that

² As plaintiff correctly points out, defendant has ignored the elementary principle of appellate procedure that the record on review only includes evidence submitted to the trial court before its decision on the motion. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Although the trial court’s order appealed by defendant was entered on February 17, 2004, defendant’s exhibits 3, 9, 10 and 16 were created months later. As a result, we have not considered those documents in deciding this appeal.

the money was not lawfully forfeited because they did not receive notice of the seizure and intent to forfeit.

MCL 333.7523 provides in pertinent part:

(1) If property is seized pursuant to section 7522, forfeiture proceedings shall be instituted promptly. If the property is seized without process as provided under section 7522, and the total value of the property seized does not exceed \$50,000.00, the following procedure shall be used:

(a) The local unit of government that seized the property, or, if the property was seized by the state, the state shall notify the owner of the property that the property has been seized, and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice shall be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

If the property owner files a claim, the prosecutor must commence forfeiture proceedings:

Upon the filing of the claim, and the giving of a bond to the local unit of government or the state in the amount of 10% of the value of the claimed property, but not less than \$250.00 or greater than \$5,000.00 The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. [MCL 333.7523(1)(c).]

In *In re Return of Forfeited Goods*, *supra* at 667, the Michigan Supreme Court stated that the procedure articulated in MCL 333.7523(1)(c) “is the *only* means by which the statute confers jurisdiction on the circuit court.” (Emphasis in original.)

Failure to file a claim or post a bond activates the automatic forfeiture clause of MCL 333.7523(1)(d): “If no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state *shall declare the property forfeited and shall dispose of the property*” (Emphasis added.) The Supreme Court determined that where no claim was filed after proper notice, the property was ceded as a matter of law, and the trial court did not have jurisdiction to review the matter. *Id.* at 668.

Here, defendant determined, based on the bond receipt, that plaintiff Stevens was the owner of the bond money. The Wayne County Sheriff’s Department mailed a certified letter to Stevens’ address, which was listed with the Michigan Secretary of State, and attempted a personal delivery of the notice of seizure and intent to forfeit to that address. When those attempts to notify Stevens failed, defendant ran an advertisement regarding the intent to forfeit the \$22,100 in the Detroit Legal News for ten successive publishing days. The advertisement included both plaintiffs’ names. These efforts comported with the statutory requirements for notification of intent to forfeit. MCL 333.7523(1)(a).

Plaintiffs argued that notification was defective because the money belonged to Lauer and his fiancée, Maria DeSeranno. However, both plaintiffs and DeSeranno acknowledged that Stevens posted the bond money, and only Stevens' name was on the bond receipt. United States currency is normally considered to be a bearer instrument. *In re Forfeiture of \$19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995). Possession of such property is prima facie evidence of ownership, and the burden of producing evidence regarding ownership rests upon the person disputing such ownership. *Id.* Stevens was in possession of the currency when it was turned over to the Sheriff's Department. Plaintiffs presented no evidence to show that ownership of the bond had been transferred to Lauer. The Sheriff's Department could properly rely on the presumption that the bearer, Stevens, was the owner.

Because defendant fully complied with the notice requirements of the controlled substances act before administratively forfeiting the money, plaintiffs' failure to file a claim within twenty days after the date of the first publication of notice is fatal to their case. Plaintiffs had every right to contest the forfeiture within twenty days of the first day of notice publication by filing a claim and posting a bond. MCL 333.7523(1)(c). The failure to do so activated the automatic forfeiture clause of MCL 333.7523(1)(d), and the property was administratively forfeited. After the lawful administrative forfeiture had been declared, the trial court did not have jurisdiction to review the matter. *In re Return of Forfeited Goods*, *supra* at 668. The trial court should have dismissed the case on its own motion for want of subject matter jurisdiction. See *Bowie*, *supra* at 56. Because the trial court lacked jurisdiction, its decision denying defendant's motion for summary disposition and granting plaintiffs' partial motion for summary disposition is void.

Because of our resolution of this issue, we need not examine defendant's other issues.³

Reversed.

/s/ Michael J. Talbot
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

³ If the lower court had jurisdiction over these claims, we would nonetheless conclude that plaintiff did not meet his burden of establishing an exception to defendant's statutory governmental immunity. *Ridley v Detroit (On Remand)*, 258 Mich App 511, 515; 673 NW2d 448 (2003). Plaintiff's complaint contains no allegation in avoidance of statutory immunity, and his argument on appeal that defendant was engaged in a proprietary function is defeated by the fact that defendant acted pursuant to statutory authorization, and therefore was engaged in a governmental function. MCL 691.1401(f); *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 134; 545 NW2d 642 (1996).