IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TERRON TAYLOR AND OZNIE R. MANHERTZ,
Petitioners,

v.

HON. KAREN J. STILLWELL, JUDGE PRO TEMPORE OF THE
SUPERIOR COURT OF THE STATE OF ARIZONA,
IN AND FOR THE COUNTY OF PINAL,
Respondent,

and

THE STATE OF ARIZONA; CRAIG CAMERON, DEPUTY PINAL COUNTY
ATTORNEY; AND THE PINAL COUNTY ATTORNEY'S OFFICE,
Real Parties in Interest.

No. 2 CA-SA 2014-0034
Filed September 25, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Special Action Proceeding
Pinal County Cause No. S1100CV201301482

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Kenneth S. Countryman, P.C., Tempe
By Kenneth S. Countryman
Counsel for Petitioners

M. Lando Voyles, Pinal County Attorney
By Craig Cameron, Deputy County Attorney, Florence
Counsel for Real Parties in Interest

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Espinosa concurred.

V Á S Q U E Z, Judge:

¶1 In this special action arising from a seizure for forfeiture, petitioners Terron Taylor and Oznie Manhertz challenge respondent Judge Karen Stillwell's orders denying several of their motions, including motions for an order directing the state to release their property. For the reasons that follow, we accept special action jurisdiction and grant relief.

Factual and Procedural Background

¶2 On June 27, 2012, a Pinal County Sheriff deputy stopped a truck for a traffic offense. The driver and passenger of the vehicle were arrested and the officer seized the truck, as well as a handgun and $26,305 in currency found inside. The truck was registered to "VIP Line Com" and Manhertz was listed on the title as the first lienholder. The driver and passenger were given "copies of the seizure paper work," including a "Notice of Property Seizure [and] Pending Uncontested Forfeiture" as to the currency and the truck.

¶3 Taylor filed a verified claim as to the currency on July 26, 2012, in the Maricopa County Superior Court. He sent copies by certified mail to the Pinal County Narcotics Task Force and the Pinal County Attorney Asset Forfeiture Team on the same date. On September 11, 2012, Taylor called the office of Craig Cameron in the Asset Forfeiture Unit of the Pinal County Attorney's Office to inquire about the status of his claim. He spoke with an assistant, Barbara Ludwig, and cited the case number listed on the notice given to the occupants of the truck when they were arrested. Ludwig told him there was no record of that case number, the office could not find the copy of his claim that had been mailed to it, and Cameron would contact him when the office received paperwork on the case. Taylor left his telephone number and sent a copy of the claim to the office by facsimile.

¶4 In June 2013, nearly a year after it had originally seized the property, the state filed an "Initiation of Civil Forfeiture Proceedings." In that document and a subsequent amended pleading, filed in July, the state indicated it had provided notice as to the truck and currency either personally or by publication. Specifically, that VIP Line and Manhertz were each issued a "Notice of Pending Uncontested Forfeiture" as to the truck on June 7, 2013. The state further indicated that Vaughn Johnson was issued such a notice as to the handgun on July 3, 2013. The state published notice of the seizure of the currency in the Florence Reminder and Blade-Tribune on June 13, 2013. In response to the state's filing, Manhertz filed a "Verified Claim" as to the truck on June 28.

¶5 In September 2013, the state filed an "Application for Order of Forfeiture and Allocation of Property." In that application, the state represented that it had given notice of the forfeiture as required by law and that no claim had been filed in response to that notice. Shortly thereafter, Manhertz filed a motion for an order directing the state to release the truck. Taylor likewise filed a motion for an order directing the state to release the currency. Manhertz and Taylor also sought and obtained subpoenas for depositions of both Cameron and Ludwig. The state apparently did not respond to the motions, or to the petitioners' later motions for

summary disposition of the motions for orders. Instead, the state filed a motion to vacate the subpoenas.

¶6 Two days later, the Honorable Jason R. Holmberg telephoned Manhertz's and Taylor's counsel, Kenneth Countryman, while Cameron was present in the courtroom. Judge Holmberg informed Countryman that Cameron had filed a motion to vacate the subpoena and the court was calling to address the motion. Countryman informed the court that he had not received notice of a hearing on the matter, nor had he received the motion from Cameron. The court recessed for about five minutes for Cameron and Countryman to speak directly by telephone, after which Countryman agreed not to conduct the depositions on the set date, subject to a later telephonic conference with Cameron. The court then set a status review hearing.

¶7 At the status review hearing on November 1, Cameron informed the respondent judge that the state would release the truck and the handgun and the state thereafter issued a notice of release of property as to both. The state then argued that as to the currency a hearing was required, pursuant to A.R.S. § 13-4310(D), to establish Taylor's ownership. The state also argued Taylor had improperly filed his notice of claim in Maricopa County, rather than in Pinal County Superior Court. The respondent judge ordered the state to respond in writing to the motions for summary disposition of the motions for orders directing the state to release the currency, as the truck and handgun apparently had been released pursuant to the notices of release.

¶8 In its response, the state argued that before any hearing or proceeding could be held, Taylor had the burden to prove he was the owner of the property. And the state claimed Taylor had not produced any evidence to support his ownership of the currency other than his own assertion.

¶9 On November 25, 2013, Taylor and Manhertz filed a motion requesting "immediate ruling[s] on pending motions" and arguing the respondent judge had exceeded the time for issuing rulings as set forth in article VI, § 21 of the Arizona Constitution.

After hearing oral argument on December 16, the respondent issued an under-advisement ruling on January 6, 2014, finding Taylor "ha[d] no standing" and denying his motions to strike the state's response and for summary disposition, as well as his separate motion to compel production of public records and request for attorney fees. The ruling then stated, however, that the respondent did "not reach the questions whether Taylor is time-barred from filing a claim" or "whether the State is time-barred from pursuing forfeiture." The respondent ordered the parties "to attempt to negotiate a reasonable settlement" and it set the matter "for internal review" in February 2014.

¶10 Taylor filed a motion to vacate the respondent judge's ruling pursuant to Rule 59, Ariz. R. Civ. P., which the respondent also denied. In that ruling, the respondent specified that "this matter has not yet concluded and the currency has not been forfeited or released." The respondent ordered the state to file notices confirming the release of the truck and the handgun by April 25, 2014, and set the matter for internal review in May 2014. In June 2014 Taylor and Manhertz initiated this special action.[1]

Jurisdiction

¶11 The issues raised in this proceeding are purely legal questions of statutory interpretation which are appropriate for special action review. *See State ex rel. Romley v. Martin*, 203 Ariz. 46, ¶ 4, 49 P.3d 1142, 1143 (App. 2002). Furthermore, the questions have wide-ranging importance and are likely to arise again "because of the heavy volume of forfeiture cases filed in this State" and, apparently in Pinal County. *State ex rel. McDougall v. Superior Court*, 173 Ariz. 385, 386, 843 P.2d 1277, 1278 (App. 1992).

[1]Although both Taylor and Manhertz were named petitioners in the special action, the argument presented in the petition for special action focuses mainly on Taylor's claims relating to the seized currency. For ease of reference, we therefore refer in our discussion to Taylor, except when Manhertz took separate action.

¶12 The state argues Taylor "is attempting to use this special action as a substitute to an appeal" because he "chose to not appeal the signed rulings and orders of the court." But, as we discuss above, and as the state acknowledges, the respondent judge expressly declined to bar either Taylor or the state from taking further action in this matter. We therefore cannot characterize any of the court's rulings as final and appealable. *See* Ariz. R. P. Spec. Actions 1. For all these reasons, we conclude special action review is appropriate and accept jurisdiction.

Discussion

¶13 In his petition for special action, Taylor maintains the "dispositive issue is whether the Attorney for the State timely initiated forfeiture proceedings." He contends the respondent judge acted prematurely by concluding he lacked standing based on his failure to file a claim because his obligation to file a claim only arises after the state serves a notice of pending forfeiture. "We review the trial court's application of the forfeiture statutes de novo." *See In re $2,390 U.S. Currency,* 229 Ariz. 514, ¶ 5, 277 P.3d 219, 221 (App. 2012). And, in doing so, "[w]e seek to interpret statutes in the way intended by the legislature and 'look first to the language' of statutes as 'the most reliable indicator' of that intent." *Excell Agent Servs., L.L.C. v. Ariz. Dep't of Revenue*, 221 Ariz. 56, ¶ 9, 209 P.3d 1052, 1053 (App. 2008), *quoting Obregon v. Indus. Comm'n* , 217 Ariz. 612, ¶ 11, 177 P.3d 873, 875 (App. 2008).

¶14 The statutes setting forth the process for forfeiture provide an interrelated set of procedures for in rem, in personum, and uncontested forfeiture proceedings. *See, e.g.*, A.R.S. §§ 13-4309, 13-4311, 13-4312. In this case, although the state asserts in its response to Taylor's petition for special action that the proceeding is "an In Rem forfeiture proceeding," the state has not, on the record before us, initiated a civil in rem proceeding. *See* § 13-4311(A), (B), (C). Rather, the state apparently proceeded under the uncontested forfeiture procedures set forth in § 13-4309, ultimately filing an application for forfeiture pursuant to A.R.S. §§ 13-4314 and 13-4315, as directed by § 13-4309(4).

¶15 In an uncontested forfeiture proceeding, the state is first required to "provide notice of pending forfeiture by giving notice within thirty days after seizure for forfeiture . . . to all persons known to have an interest." § 13-4309(1). A person is "known to have an interest," and the state therefore is required to give notice of a pending forfeiture, when a person's interest in the property "can be readily ascertained at the time of the commencement of the forfeiture action." A.R.S. § 13-4301(6). An owner of property may then file either a claim or petition for remission or mitigation of forfeiture "within thirty days after the notice." § 13-4309(2). If no such claim or petition is filed, the state proceeds to seek a disposition by applying to the court for an order of forfeiture and allocation of forfeited property. §§ 13-4309(4), 13-4314, 13-4315.

¶16 Taylor argues that because the state did not issue him a notice of pending forfeiture, his obligation to file a claim was not "triggered." The state does not directly address this argument, or whether it was obligated to provide Taylor with notice. But Taylor's actions to make his interest in the currency known to the state are well-documented. The record before us shows he mailed a copy of a notice of claim to Cameron's office;[2] he telephoned the office and spoke directly to Ludwig, who not only took his information, but told him there was no case number or knowledge of his property; and he faxed to that office a copy of his claim. The state does not mention this contact with Taylor.[3] Rather it essentially argues it could not have known about his interest, stating that Taylor "had no

[2]We acknowledge that the notice of claim was not filed in Pinal County, but based on our disposition of this matter, we need not address the effect of Taylor's filing in another county.

[3]Indeed, in relation to its argument that Taylor could have sought a probable cause hearing, which is discussed below, the state asserts, "One would hope if one is an owner of several thousands of dollars of currency they diligently seek quick (if not immediate) return of the property." But, as noted, Taylor did so, seeking return of the currency by mailing a copy of his claim to the state's attorney's office a month after the seizure and calling the office to inquire about it approximately a month and a half later.

readily apparent association with the currency."[4] But the record before us reflects that Taylor's association with the currency, which he asserted repeatedly, was readily ascertainable by the state within the meaning of § 13-4301(6). *Cf. $2,390 U.S. Currency*, 229 Ariz. 514, ¶¶ 3, 10, 277 P.3d at 221, 222-23 (concluding no notice required to registered owner of car in which person arrested with seized currency had driven when no other indication of connection to currency).

¶17 The state argues, however, as it did below, that Taylor was required to have filed a claim and established his ownership of the currency before he could request the release of his property. The state relies on § 13-4310(D), which provides that "[i]n any judicial forfeiture . . . proceeding . . . the . . . claimant must establish by a preponderance of the evidence that he is an owner of or interest holder in the property seized for forfeiture before other evidence is taken." The state suggests this statute relieves it of giving notice to someone who merely asserts, but does not immediately prove, ownership of seized property. But, the clear language of the statute contradicts this position.

¶18 Under § 13-4310(D), Taylor is required to produce evidence to support his ownership of the property, but that rule applies "in any judicial forfeiture hearing, determination or other proceeding pursuant to" the chapter providing for forfeiture of property. The plain language of the statute, therefore, indicates that once a proceeding is properly initiated and a claim is made, a claimant must establish ownership of the property before further proceedings will be held. The statute does not require that a person prove ownership before the state must give notice of seizure, rather, in an uncontested proceeding such as this, the statutes require the

[4]The state's failure to discuss, or even acknowledge in its statement of facts, Taylor's contact with the county attorney's office suggest either a lack of diligence or a lack of candor to this court. We strongly caution counsel to more carefully consider his arguments in relation to his ethical duties in the future. *See* ER 3.3, Ariz. R. Prof'l Conduct, Ariz. R. Sup. Ct. 42.

state to provide notice "to all persons known to have an interest." § 13-4309(1). Had the legislature intended that ownership be proven before notice of seizure was required, it certainly could have said so. *See Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976) (a fundamental rule of statutory construction "is the presumption that what the Legislature means, it will say").

¶19 When the state fails to properly provide notice as required by statute, the trial court is deprived of jurisdiction over the owner's property. *State ex rel. Horne v. Rivas*, 226 Ariz. 567, ¶¶ 14, 16, 250 P.3d 1196, 1200 (App. 2011). "Compliance with the notice requirements of the statutes is necessary to both give the court jurisdiction over a property and to give an owner of record an opportunity to protect his interests." *Id.* ¶ 16. Because the state failed to comply with the statutory notice requirement—indeed it went so far as affirmatively representing to Taylor that it had not seized his property for forfeiture—the court here lacked jurisdiction to proceed in a forfeiture action against the currency.[5]

¶20 Taylor also contends the respondent judge wrongly concluded, in its ruling on Taylor's Rule 59 motion, that his motions relating to the truck and the handgun "are moot," apparently because the state indicated it would release those items. Indeed, the state issued notices of release of property as to both the truck and the handgun. But, the respondent ordered the state to file "proper notice with the Court confirming the release of the property . . . no later than . . . April 25, 2014." The record before us does not include such notice, nor has either party stated clearly whether the property has been released. In the absence of a record on this point, we cannot say the claims related to the truck and the handgun are moot.

¶21 As discussed above in relation to the currency, the respondent judge here also was without jurisdiction to proceed with

[5]The state did issue notice as to the currency by publication, but such notice is only appropriate when "the owner's or interest holder's address is not known" or "his interest is not known." A.R.S. § 13-4307(3). As discussed above, neither was the case here.

a forfeiture action as to the handgun on the same basis. The officer who had stopped the truck testified at a criminal trial on the matter that he had received a report from the Bureau of Alcohol, Tobacco, and Firearms indicating Taylor was the owner of the handgun in May 2013. Taylor's identity as the owner of the gun, therefore, was readily available to the state. The state, however, did not provide Taylor with notice of pending forfeiture as to the handgun.

¶22 Furthermore, a proceeding for disposition by the court under § 13-4314 was inappropriate as to the truck. That section provides the procedure to be employed when "no petitions for remission or mitigation or claims are timely filed." § 13-4314(A). But in this case, Manhertz filed a verified claim in Pinal County Superior Court on June 28, 2013—twenty-one days after the state issued its Notice of Pending Uncontested Forfeiture. The state, however, filed its application for an order of forfeiture and indicated no claim had been filed.[6] That procedure is only available under § 13-4309(4) when "no petitions for remission or mitigation or claims are timely filed." When a claim has been filed, "it shall be determined in a judicial forfeiture proceeding after the commencement of such a proceeding pursuant to § 13-4311, subsection A or § 13-4312, subsection A." § 13-4309(6)(a). No such proceeding took place here.

¶23 Without addressing whether its own actions in this proceeding were sufficient under the statute, the state suggests Taylor could have filed an application for a hearing on probable cause to seize the property. Indeed, pursuant to § 13-4310(B), an owner may make such an application within fifteen days of "actual knowledge" of the seizure, or notice of seizure from the state. But, nothing in that section suggests that it is mandatory or that an owner's failure to make such application relieves the state of following the proper statutory procedures. Because the state failed to comply with the statutory requirements for seizure, the trial court

[6]We again caution counsel to consider his ethical obligation of candor to the courts in this regard.

lacked jurisdiction, and the respondent judge abused her discretion in determining that Taylor lacked standing.

¶24 The respondent judge also abused her discretion in denying Taylor's and Manhertz's motions for return of their property. Under A.R.S. § 13-4308(B),

> [i]f 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, or fails to pursue forfeiture of such property on which a timely claim has been properly filed by filing a complaint, information or indictment pursuant to § 13-4311 or 13-4312 within sixty days after notice of pending forfeiture or, if uncontested forfeiture has been made available, within sixty days after a declaration of forfeiture, whichever is later,

the property "shall be released from its seizure for forfeiture on the request of an owner or interest holder, pending further proceedings." The state does not contend it timely took any of the actions set forth in § 13-4308(B), nor does the record show that it did.

¶25 In its argument below, the state instead argued to the respondent judge that § 13-4308(B) allows "further proceedings" to "be commenced within seven years after actual discovery of the last act giving rise to forfeiture," and that therefore it is entitled to hold the property and continue proceedings until those seven years have expired. But, § 13-4308(B) clearly requires property to be returned to the owner if its requirements are not met. Indeed, this court has expressly rejected the argument made by the state. *In re $3,636.24 U.S. Currency*, 198 Ariz. 504, ¶¶ 14-15, 11 P.3d 1043, 1045 (App. 2000) ("When the state did not act in a timely fashion, and appellant made a request that the property be released, the trial court was obliged under the statute to release the property from its seizure for forfeiture.").

¶26 The state also asserted that a trial court "has complete authority to issue any rule, any order, any protective order, [or] any subsequent order to preserve the assets pending the completion of the forfeiture proceedings." And it suggested that such power justified its retention of the property. Indeed, pursuant to § 13-4310(A), within the context of a statutory forfeiture proceeding, a court may take various measure to protect property on application by the state. But, as discussed above, no forfeiture action was properly or timely initiated here, and, furthermore, the record before us does not show that the state requested any such action or that the property was being held in relation to any such order. Rather, the state had simply retained the property.

¶27 In sum, because the state did not timely or properly initiate a forfeiture proceeding against any of the property, it was required to return it upon request by the owners. *See* § 13-4308(B). The respondent judge, therefore, abused her discretion in denying Taylor's request for return of the currency on the ground of standing. Instead, the respondent was required to allow Taylor to establish his ownership of the currency, and upon such proof to order the state to release the property. *See* §§ 13-4308(B), 13-4301(5) ("'Owner' means a person . . . who has an interest in property, whether legal or equitable."). We therefore remand this matter to the respondent judge so that she may conduct such proceedings as are necessary to resolve the issue of Taylor's ownership of the currency, and if his ownership is established she shall order the currency released.[7] As to the truck and the handgun, there being evidence of ownership on the record and no dispute of such

[7]Taylor requests that we remand the matter "with orders to transfer the matter to a new judicial officer." But Taylor has not asserted any grounds requiring the respondent judge to be recused from this matter.

evidence by the state, the respondent shall order the state to release the property to its owners if it has not done so.[8]

¶28 Finally, Taylor requests an award of attorney fees in this court. We deny his request insofar as it is based on A.R.S. § 12-2030 and A.R.S. § 39-121.02, because we decline to address Taylor's claims that Cameron has failed to "perform an act imposed by law as a duty on the officer" and his claims relating to public records requests. Neither of these claims is properly before this court or sufficiently supported by evidence in the record to allow disposition. We likewise reject his claim made pursuant to A.R.S. § 12-341.01, because Taylor has failed to show how this action arises out of a contract. As to the remaining grounds, in view of the need for further proceedings as to the issue of ownership of the currency, we decline to award attorney fees here, but remand for the respondent judge's determination of attorney fees, including those relating to this special action, following resolution of the issues.

Disposition

¶29 For the foregoing reasons, we accept special action jurisdiction and grant relief. We reverse the respondent judge's rulings and remand the case for further proceedings consistent with this decision.

[8] Because we conclude the respondent judge abused her discretion on these grounds, we need not address Taylor's arguments that respondent failed to timely rule on his motions.