Not for publication
Judge Brian S. Miller

DIVISION II

CA06-1395

December 5, 2007

CRAIG WILLIAMS
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

AN APPEAL FROM UNION COUNTY CIRCUIT COURT
[No. CV2005-296]

HONORABLE DAVID F. GUTHRIE, CIRCUIT JUDGE

APPEAL DISMISSED

This appeal involves $41,880 in currency and two vehicles that the State sought to forfeit in connection with a criminal case. Appellant Craig Williams brings this appeal from an agreed order resolving the forfeiture action, asserting that the circuit court lacked jurisdiction to enter the agreed order because the court had dismissed the action more than ninety days prior to the entry of the agreed order. Williams also challenges the circuit court's settlement of the record. We dismiss the appeal because a party cannot appeal from an agreed order. Under these circumstances, we need not decide whether the circuit court's settlement of the record was proper.

Background

On July 20, 2005, the State filed a complaint against Williams and Laquita Palmer seeking to forfeit $41,880 in currency, a 1997 Chevrolet Tahoe, and a 1997 Nissan Altima seized by the State following the arrest of Williams and Palmer on drug and weapons

charges.[1] Williams and Palmer answered and denied the material allegations of the complaint.

Williams and Palmer filed a motion for sanctions on December 22, 2005, alleging that the State had failed to comply with an earlier order compelling the State to respond to certain discovery requests. The circuit court entered an order on January 11, 2006, granting the motion for sanctions, dismissing the forfeiture action, and ordering the return of the seized property to Williams and Palmer.

Before being retained to represent Williams, his present counsel was the attorney for a third party, who claimed ownership of one of the seized vehicles. On July 5, 2006, counsel sent a letter to the Union County Prosecuting Attorney demanding to know why the prosecutor agreed to return the property to Williams and why the prosecutor did not fight against returning the property. Counsel was so outraged at the prospect of the property being returned to Williams that he was prompted to ask: "What the hell is going on?"

Less than two weeks after counsel's letter to the prosecutor, the circuit court set a hearing on possession of the property for August 3, 2006. There is no indication that the hearing was held on August 3; however, on August 9, 2006, the court entered an agreed ordered, signed by Williams, his former attorney, and the attorney for the State. That order provided that $14,000 of the currency would be returned to Williams, one-half of the remaining balance would be paid to his former attorney, and the remaining funds would be

[1]This court recently affirmed Williams's conviction on the drug and weapons charges. *Williams v. State*, No. CACR06-1184 (Ark. App. Sept. 26, 2007) (not designated for publication). Williams has a petition for review pending before the supreme court.

"forfeited" to the State to be distributed to the El Dorado Police Department pursuant to Ark. Code Ann. § 5-64-505(i)(1)(B). Finally, the order provided that the vehicles would be returned to their titled owners. Williams filed a timely notice of appeal from the agreed order. Williams asserts five points on appeal. We, however, address only the entry of the agreed order.

The Agreed Order

Williams first argues that the circuit court lacked jurisdiction under Ark. R. Civ. P. 60(a) to enter the agreed order. We need not decide that question because it would not change the result of the case given the contractual nature of the agreed order. Nor can we agree with Williams's argument that the circuit court erred in distributing the currency and the two vehicles because the court made no such distribution. Instead, the parties entered into an agreement that effectively implemented the earlier January 11 order. An agreed order is not a judicial determination of any litigated right and is not the judgment of the court except in the sense that the court allows it to be made a part of the record and have the force and effect of a judgment. *Selig v. Barnett*, 233 Ark. 900, 350 S.W.2d 176 (1961). Here, Williams, his former attorney, and the State agreed to the distribution of the currency between the three and the return of the vehicles to the registered owner of each vehicle. The court simply made the agreement a part of the record. Likewise, the court did not make an award of attorney's fees, as Williams argues. Because the parties clearly agreed to the resolution of the forfeiture action and the distribution of the currency and the vehicles, the August 9 agreed order is one

from which an appeal does not lie. *Lawson v. Madar*, 76 Ark. App. 23, 60 S.W.3d 497 (2001).

We next turn to Williams's argument that the January 11, 2006, order of dismissal was res judicata and prevented the circuit court from reopening the case. We disagree because an order of dismissal as a sanction for noncompliance with a court's order is generally without prejudice. Ark. R. Civ. P. 41(b); *Croney v. Lane*, ___ Ark. App. ___, ___ S.W.3d ___ (June 27, 2007). A dismissal without prejudice is not an adjudication on the merits and will not bar a subsequent suit on the same cause of action. *Middleton v. Lockhart*, 344 Ark. 572, 43 S.W.3d 113 (2001). Therefore, the circuit court's January 11 order did not bar the State from seeking the forfeiture of the currency and vehicles.

Appeal dismissed.

MARSHALL and VAUGHT, JJ., agree.