NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 13, 2023
Decided January 8, 2024

Before

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1543

ALEXANDR KLIMASHEVSKY,
Plaintiff-Appellant,

v.

DRUG ENFORCEMENT ADMINISTRATION,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Illinois.

No. 21-cv-01291-JPG

J. Phil Gilbert,
Judge.

O R D E R

Alexandr Klimashevsky moved to set aside the forfeiture of cash that Drug Enforcement Administration agents seized from his vehicle. Klimashevsky did not receive a notice of forfeiture until about 20 days after the deadline for filing a claim for the return of the property—months after the DEA had sent the notice. The district court dismissed the claim, concluding that the DEA's efforts to notify Klimashevsky complied with due process. We agree that, under the totality of the circumstances in this case, the

government complied, albeit minimally, with its notice obligation, and we therefore affirm.

The parties agree on the facts. On March 3, 2021, DEA agents stopped Klimashevsky while he was driving, obtained his consent to search his car, and then seized $585,610 in cash they found inside. The agents provided Klimashevsky with a receipt and informed him that he would receive a mailing from the DEA about further proceedings.

By certified mail, the agency sent a notice of seizure to Klimashevsky on April 28, declaring its intent to initiate civil forfeiture proceedings and explaining Klimashevsky's options and the applicable deadlines for action. The notice stated that Klimashevsky had to file a claim by June 2 to contest the forfeiture. The DEA also posted notice of the proceeding on Forfeiture.gov from May 10 to June 8.

Klimashevsky did not receive the notice until July 28. When the notice arrived, the return receipt card for the certified mailing was still attached. According to the United States Postal Service tracking report, the notice was postmarked April 29, but its status remained "In Transit to Next Facility" until long after Klimashevsky's claim was due. The DEA did not check the status of the mailing before that deadline, and it never sought or obtained confirmation that the notice was delivered before proceeding with the forfeiture.

Klimashevsky submitted a claim to contest the forfeiture on August 18, within 30 days of actually receiving the notice. The DEA checked the USPS tracking report for the notice three times after receiving the claim, each time finding the status to be "In Transit." Still, it rejected his claim as untimely. On September 30, the DEA's Forfeiture Counsel entered an administrative forfeiture order that gave the United States ownership of the seized currency.

Klimashevsky filed a timely motion under 18 U.S.C. § 983(e) in the district court to set aside the forfeiture, which the government opposed. Before the court resolved this motion, Klimashevsky moved for summary judgment. The court denied Klimashevsky's motion and instead entered judgment for the government. The court determined that the DEA had given adequate notice under § 983(e) because its mailing was never returned undelivered, it had published notice online, Klimashevsky was aware of the initial seizure, and actual notice is not required.

On appeal, Klimashevsky presses only his contention that the court should have set aside the forfeiture under § 983(e) based on inadequate notice. (He previously relied on Rule 41(g) of the Federal Rules of Criminal Procedure as well.) This court reviews the sufficiency of notice de novo. *Chairez v. United States*, 355 F.3d 1099, 1101 (7th Cir. 2004).

The notice requirement ensures that, before the government deprives someone of property, the person has a meaningful chance to oppose it. Due process generally requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The due process analysis is case-specific. See, e.g., *Lobzun v. United States*, 422 F.3d 503, 507 (7th Cir. 2005); *Garcia v. Meza*, 235 F.3d 287, 291 (7th Cir. 2000). Still, a few general principles guide our inquiry. One is that there is no actual notice requirement. *Garcia*, 235 F.3d at 290–91. A second is that sending notice via certified mail satisfies due process unless the sender knows, or has reason to know, that the notice would be ineffective. *Id.* at 290.

We know that Klimashevsky did not receive actual notice in time to file a timely claim, and so the question is whether the DEA had reason to know that the notice it sent would not be effective. Klimashevsky argues that the DEA had to follow up when it did not receive delivery confirmation of its certified mailing. The government counters that the DEA had no reason to know that the notice was ineffective because it sent a certified mailing without the postal service returning it, undelivered, to the agency.

We cannot disagree with Klimashevsky that the government's efforts to ensure effective notice were minimal, but on these facts, we conclude that they were adequate to satisfy due process. Although the government did not receive delivery confirmation, it also did not have its letter returned as undeliverable. As a result, other factors inform our conclusion that the DEA did not have reason to know that its notice would be ineffective.

Klimashevsky's argument—that the DEA had an obligation to check, and keep checking, the tracking information, instead of awaiting either a return receipt or a return of the entire mailing—finds no support in statute or our precedent. True, the DEA could have done more. It did not follow up with Klimashevsky, as the government had with the plaintiff in *Lobzun*, 422 F.3d at 508, or send a second notice when delivery confirmation didn't materialize. Still, we have cautioned that only "exceptional circumstances" require more than sending the written notice by certified mail, *id.* at 507,

and we have "decline[d] to impose an affirmative duty upon the government to seek out claimants in each case" or achieve actual notice, *Garcia*, 235 F.3d at 291.

And unlike the plaintiff in *Garcia*, Klimashevsky made no effort to seek out his seized property and get it back. 235 F.3d at 291. It is "significant" to the due process inquiry whether "the government was aware that the plaintiffs were actively pursuing their interest in the forfeited property" while forfeiture proceedings were ongoing. *Lobzun*, 422 F.3d at 508. And whereas the plaintiff in *Garcia* initiated judicial and administrative proceedings to recover seized property, 235 F.3d at 291, Klimashevsky did not show that he made any efforts to recover the property after the March seizure, despite being aware that it had been taken and by whom. Apparently he passively waited for a mailing that did not come. He did not contact the DEA or check online to see that the agency had published notice there. He is right that publication alone is insufficient notice in circumstances like these, see *Mullane*, 339 U.S. at 318, but the publication is relevant to the adequacy of the agency's efforts under the totality of the circumstances. Finally, we note that Klimashevsky did not rush to file a claim even after getting actual notice on July 28. Even though the notice made plain that his time for filing a claim had expired, Klimashevsky did not contact the agency about the late notice and waited another couple of weeks, until August 18, to file a claim.

In sum, because the DEA sent notice by certified mail, published it online, and was not aware of any efforts by Klimashevsky to get the cash back until forfeiture proceedings were well underway, it complied with due process.

AFFIRMED