STATE OF MICHIGAN

COURT OF APPEALS

VITALIANA GOVEA,

Plaintiff-Appellee,

v

CITY OF GRAND RAPIDS,

Defendant-Appellant.

UNPUBLISHED
September 3, 1999

No. 209874
Kent Circuit Court
LC No. 97-006382 AW

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

PER CURIAM.

Defendant appeals by right from the circuit court's order of mandamus directing defendant to accept plaintiff's claim and bond to contest a forfeiture of property pursuant to the forfeiture statutes in the controlled substances provisions of the Public Health Code, MCL 333.7521 *et seq*.; MSA 14.15(7521) *et seq*. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's decision for an abuse of discretion. *Keaton v Village of Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 (1993). Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has a clear legal duty to perform it, (3) the act is ministerial, and (4) the plaintiff is without other adequate legal or equitable remedy. *Tuscola Co Abstract Co v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-11; 522 NW2d 686 (1994).

Here, the trial court found that defendant provided plaintiff with "proper notice" of seizure and intent to forfeit at the time of her arrest on a drug offense. However, the trial court reasoned that because the notice form was subsequently removed from plaintiff when she entered the county jail, and thereafter remained "unavailable" to her or her attorneys during her incarceration, plaintiff's failure to file

* Circuit judge, sitting on the Court of Appeals by assignment.

a claim and bond within twenty days of her receipt of notice, as required by MCL 333.7523(1)(c); MSA 14.15(7523)(1)(c) should be excused. We respectfully disagree.

Specifically, MCL 333.7523; MSA 14.14(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.

According to one of the arresting officers, he showed the completed notice form to plaintiff, explained that it was a seizure form, told plaintiff exactly which items were being seized and the amount of bond, and advised her that she would have to appear within twenty days, identifying another officer as the person for her to contact. He offered plaintiff an opportunity to ask questions, but she did not ask any. The officer also testified that he placed plaintiff's copy of the form in front of her on the kitchen table and that she appeared to read it. He estimated that the form remained in front of plaintiff and her son on the kitchen table for approximately thirty to forty five minutes, until the time that plaintiff and her son were taken to jail. He did not see whether plaintiff had the notice with her when she left for jail, explaining that once a notice is served, it is the recipient's own choice whether to take the notice or to leave it at home.

As plaintiff's own complaint concedes and the trial court itself found, plaintiff was in fact personally served with "proper notice" at the time of her arrest. At that point the notice requirements of MCL 333.7523(1)(a); MSA 14.14(7523)(1)(a) were satisfied. Although plaintiff claimed that she was "in shock," at the time, there is no indication that she was actually mentally or physically incapacitated at the time. Cf. *Midler v Judge of Superior Court*, 38 Mich 310 (1878) (service of process by merely laying it on the body of a person too sick to understand it is not valid). Although plaintiff is from Mexico, she has lived in the United States for twenty-seven years and has earned a degree in computers from Davenport College. She testified in English and obviously has an adequate understanding of the language.

As defendant notes, neither plaintiff nor the trial court cites any authority to support the notion that defendant had any further obligation to provide notice after delivering the written notice required by

the statute to plaintiff. MCL 333.7523(1)(c); MSA 14.15(7523)(1)(c) provides that the 20-day claim period commences upon "receipt," suggesting that delivery of the required notice is all that is necessary to charge the property owner with the obligation of filing a claim and bond within twenty days.

As noted by this Court in *In re Forfeiture of $19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995), federal courts have also been reluctant to extend a notifying jurisdiction's duty beyond the initial notice absent exceptional circumstances. This Court cited *Sarit v United States Drug Enforcement Administration*, 987 F2d 10, 14-15 (CA 1, 1993), a case where a notice of forfeiture mailed to the property owner was found to be adequate even though the notice letter was later returned "unclaimed," where the property owner's lawyer had actual notice of the forfeiture proceedings. The court in *Sarit* opined that the focus should be limited to whether the notifying jurisdiction knew or had reason to know that the notice would be ineffective at the time it was sent. While other federal courts have found an obligation to provide further notice where the notifying jurisdiction later learns that the initial notice was never received, we are unaware of any cases suggesting that the notifying jurisdiction has any continuing obligation with respect to notice once it has been actually received by a competent person entitled to receive it.

It may well be true, as plaintiff argues, that the statute contemplates providing property owners with written notice a full twenty days prior to the deadline for contesting forfeiture in order to allow the recipient adequate time to gain full comprehension and knowledge through inquiry and counsel. However, it does not follow that it is the responsibility of the notifying jurisdiction to ensure that the recipient actually keeps the notice document "available" for that purpose, just as it does not follow that the jurisdiction has any responsibility to ensure that the recipient actually discusses the matter with her attorneys. In short, what the recipient does with the notice after receiving it is the recipient's responsibility.

Because defendant had no clear legal duty to monitor and ensure the continued "availability" of the notice document after plaintiff received it, the trial court's order of mandamus should be reversed.[1] We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Peter D. Houk

[1] Defendant's alternative argument, that mandamus was inappropriate because plaintiff had an adequate legal remedy in the form of a separate civil action for conversion or wrongful taking of property is meritless, however. MCL 333.7523(2); MSA 14.15(7523)(2) bars institution of a civil action to recover seized property subject to forfeiture under the controlled substance provisions of the Public Health Code, and therefore filing a claim and bond to contest forfeiture in accordance with the procedures of the code is plaintiff's sole remedy. *In re Return of Forfeited Goods, supra*; *Derrick v City of Detroit*, 168 Mich App 560, 562-563; 425 NW2d 154 (1988). It should also be noted that there is no merit to plaintiff's objection that defendant has no appeal of right because the trial court's mandamus ruling is an interlocutory matter, akin to an order setting aside a default judgment. Unlike the

default situation, where relief is granted in the same proceeding in which the default was entered, an action for mandamus is an original action, entirely separate from the forfeiture proceedings in question. Thus, when the trial court granted plaintiff's request for an order of mandamus, the court disposed of all of the claims involved in the mandamus case, and the order of mandamus therefore constitutes a final order or judgment for purposes of an appeal by right. MCR 7.202(8)(a)(i).