



Missouri Court of Appeals  
Southern District

Division Two

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. SD34843
	)	Filed: November 30, 2017
HEATHER EASTERDAY,	)	
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF RIPLEY COUNTY

Honorable Thomas D. Swindle, Associate Circuit Judge<sup>1</sup>

**REVERSED AND REMANDED WITH DIRECTIONS**

This is an appeal by the State of Missouri (“the State”) of an order entered by the trial court on January 11, 2017, purporting to sustain Heather Easterday’s (“Easterday”) “motion for lack of jurisdiction.” The State, in two points on appeal, asserts the trial court erred by dismissing the case for “lack of jurisdiction” because the trial court had subject matter jurisdiction, and erred in sustaining Easterday’s “Motion to Dismiss” based on the statute of limitations. Finding that the judgment is ambiguous, we remand the matter for further proceedings consistent with this opinion.

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<sup>1</sup> This case originated in Butler County. On March 11, 2014, a motion for change of judge was sustained and the case was transferred to the supreme court for assignment of a new judge. On March 13, 2014, the supreme court appointed The Honorable Thomas D. Swindle, an associate circuit judge in Ripley County. Thereafter, on May 19, 2014, a change of venue was granted and this case was transferred from Butler County to Ripley County.

## Factual and Procedural History

On September 25, 2013, the State filed a two-count “Complaint”<sup>2</sup> in the Circuit Court of Butler County. The Complaint alleged, in substance, that Easterday used credit cards of her employer to appropriate money and property for her own benefit, in violation of section 570.030.<sup>3</sup>

On February 3, 2014, the State filed a two-count “Information” in the Circuit Court of Butler County, alleging facts similar to the Complaint.

On September 6, 2016, the State filed an “Amended Information,” and a “Second Amended Information” in the Circuit Court of Ripley County.

On October 14, 2016, Easterday filed a “Motion to Dismiss,” which read:

COMES NOW [Easterday], by and through her undersigned attorney, and moves this Honorable Court for an order dismissing this cause of action for the following reasons:

1. On or about September 6, 2016, [the State] filed an Amended Information in this cause charging [Easterday] with two counts of receiving stolen property in violation of § 570.080 RSMo.
2. In Count I of the Amended Information, the [State] alleges the offense occurred between May 2010 and January 31, 2013.
3. In Count II of the Amended Information, the [State] alleges the offense occurred between November 2010 and September 2012.
4. All alleged criminal offenses are time barred by the statute limitation period set forth in § 556.036 RSMo. in that the alleged offenses occurred more than 3 years from the filing of the Amended Information.

**WHEREFORE**, [Easterday] respectfully prays for the above cause of action be dismissed and that [Easterday] be discharged.

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<sup>2</sup> The initial charging document in this case was styled as a “Complaint” rather than an “Information.” Such distinction is immaterial to the determination at issue. *See, State ex rel. Parton v. Eighmy*, 524 S.W.3d 204, 207–08 (Mo.App. S.D. 2017) (“The legal character of a pleading is determined by its subject matter and not its designation[.]”) (internal quotation and citation omitted).

<sup>3</sup> All references to statutes are to RSMo 2000, unless otherwise indicated.

On January 10, 2017, the State filed a “Third Amended Information.” The docket sheet reflects that a “motion” hearing was scheduled for January 11, 2017—the trial court entered the following order the same day:

Imposition of sentence suspended  all per separate formal sentencing/probation order  
 Case dismissed by prosecuting attorney  in open court  in writing  
 Other orders:

by the Court, sustaining  
the motion for lack  
of jurisdiction.

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Thomas David Swindle, 31595, Judge

This appeal followed.

In two points on appeal, the State argues:

1. The trial court erred in dismissing the case for “lack of jurisdiction” because a circuit court has jurisdiction over all matters, civil and criminal, under article I, section 14 of the Missouri Constitution; and
2. The trial court erred in dismissing the case based on statute of limitations grounds, in that the statute of limitations was tolled by the filing of an Information less than one year after the termination of a continuing offense.

### The Order is Ambiguous

On January 11, 2017, the trial court entered an order indicating that the case was dismissed by the prosecuting attorney in open court by the Court sustaining Easterday’s motion for lack of jurisdiction.<sup>4</sup> It is unclear from the trial court’s order whether it was the prosecutor or the trial court that dismissed the charges against Easterday. If, as the order indicates, the matter was dismissed by the prosecuting attorney in open court,<sup>5</sup> the trial court would immediately “lose[]

<sup>4</sup> We note that although the legal file appears to indicate there was a hearing on this matter, the transcript of such hearing, if one exists, was not made part of the legal file in this appeal.

<sup>5</sup> The prosecuting attorney would have the right to dismiss the case, even without the consent of the court. “Once a prosecutor enters a *nolle prosequi*, the trial court is without jurisdiction to take any further action in the case. Any orders entered after a trial court loses jurisdiction in a case are nullities. . . . Once a case is voluntarily dismissed, . . . there is no case or matter.” *State v. Dozler*, 455 S.W.3d 471, 473 (Mo.App. S.D. 2015).

jurisdiction,” and any further action by the trial court would be a “nullit[y].” *State v. Alqabbaa*, 525 S.W.3d 121, 124 (Mo.App. S.D. 2016) (internal quotation and citation omitted). In such instance, no appeal would be available. *State v. Dozler*, 455 S.W.3d 471, 473 (Mo.App. S.D. 2015). By contrast, if the trial court dismissed the case, the potential for different issues on appeal could be presented.

Further, the trial court’s order purports to sustain Easterday’s “motion for lack of jurisdiction.” However, Easterday’s “Motion to Dismiss” relied solely on the affirmative defense of the lapse of the statute of limitations, never claimed that the trial court lacked jurisdiction, or even used the word “jurisdiction.” This was proper as to the presentation of the defense, as “the lapse of the statute of limitations is not jurisdictional[.]” *State v. Marquis*, 446 S.W.3d 311, 319 (Mo.App. W.D. 2014); *cf.*, *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252-54 (Mo. banc 2009). To arrive at an estimation of what the trial court’s order “sustain[ed],” much less the underlying argument by which the trial court was apparently persuaded, would require unacceptable guesswork by this Court.

Where, as here, “we find ourselves simply unable to determine what exactly the court did or how it reached its resolution, and that effectively precludes appellate review.” *State v. Wright*, 431 S.W.3d 526, 531 (Mo.App. W.D. 2014). In such instance, it is appropriate that we remand to the trial court for clarification. *See, id.*

Accordingly, this matter is remanded to the trial court for further proceedings consistent with this opinion.

WILLIAM W. FRANCIS, JR., J. - OPINION AUTHOR

NANCY STEFFEN RAHMEYER, C.J./P.J. - Concur

JEFFREY W. BATES, J. - Concur