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2014 IL App (3d) 130374-U

Order filed April 9, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	
)	
2006 SUZUKI and \$420 UNITED STATES)	Appeal No. 3-13-0374
CURRENCY,)	Circuit No. 11-MR-340
)	
Defendant)	
)	
(Kema Fair,)	Honorable
)	Michael E. Brandt,
Claimant-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The claimant-appellant provided an insufficient record on appeal, and the trial court's forfeiture order is affirmed.

¶ 2 The claimant, Kema Fair, appeals the forfeiture of his 2006 Suzuki and \$420 United States currency. The claimant argues that the forfeiture violated his right to due process because he did not have notice and opportunity to be heard. We affirm.

¶ 3

FACTS

¶ 4

On August 12, 2011, the State filed a complaint for forfeiture. The complaint alleged that on April 19, 2011, Peoria police officers executed a search warrant on the claimant's home and seized the following: 4 one-ounce bags containing cocaine, 70 pills of suspected ecstasy, 5 bindles containing heroin, a grinder, \$421 United States currency, and the claimant's mail. The complaint also alleged that the claimant purchased a 2006 Suzuki with proceeds from a violation of the Controlled Substance Act (Act). 720 ILCS 570/401 *et seq.* (West 2010).

¶ 5

On August 12, 2011, the claimant filed an answer challenging the forfeiture complaint. The claimant argued that the property was not acquired through profits from illegal activities and should not have been seized.

¶ 6

On April 16, 2013, a notice of hearing was filed. The notice stated that hearing was to take place on May 14, 2013, in Peoria County courtroom 203. The notice was accompanied by a proof of service that stated the notice was served upon the claimant by United States mail on April 16, 2013.

¶ 7

On May 17, 2013, the trial court entered an order on the forfeiture complaint. The order stated that the claimant was not present. The order further stated that after hearing evidence and arguments of the parties, the court found the property at issue was subject to forfeiture.

¶ 8

On May 31, 2013, the claimant filed a notice of appeal.

¶ 9

ANALYSIS

¶ 10

On appeal, the claimant argues that the trial court erred in granting the State's forfeiture complaint because his right to due process was violated when he was not allowed to appear before the court. The claimant argues that on May 14, 2013, he was transported by Department of Corrections (DOC) officers to the Peoria County courthouse. While the claimant was in a courthouse holding cell, corrections officers Jump and Busco informed the trial court of the

claimant's arrival. Thereafter, Busco told the claimant that the trial court had refused to see the claimant and was entering a default judgment. After returning to Lawrence Correctional Center, the claimant received the forfeiture order that was file stamped May 17, 2013. From the order, the claimant argues that he was denied notice of a continuance and denied the right to be heard on May 17, 2013.

¶ 11 Whether the claimant was afforded due process is an issue of law that we review *de novo*. *People ex rel. Devine v. \$30,700 U.S. Currency*, 199 Ill. 2d 142 (2002).

¶ 12 A vehicle is subject to forfeiture where it was used or intended to be used to transport or facilitate the transportation, sale, receipt, possession, or concealment of either (a) a controlled substance or (b) raw materials, products and equipment that are used in manufacturing, distributing, or possessing a controlled substance. 720 ILCS 570/505(a)(3) (West 2012). Similarly, all money used or intended for use in violation of the Act is subject to forfeiture. 720 ILCS 570/505(a)(4) (West 2012).

¶ 13 In the event of a seizure, notice of forfeiture proceedings shall be given to all known interest holders. 720 ILCS 570/505(c) (West 2012). "Due process entails an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights." *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 432 (1990).

¶ 14 Here, the claimant does not contest receipt of notice of the May 14, 2013, hearing, but argues that he was denied the right to be heard. However, the claimant's allegations are unsupported by the record. The record does not contain a report of proceedings, docket entry, or written order showing the court's refusal to allow the claimant to appear. The record also does not include a writ of *habeas corpus*, DOC documentation, or affidavits from the correctional officers showing that the claimant was transported to the Peoria County courthouse on May 14,

2013. The common law record only contains a notice of the hearing on May 14, 2013, a proof of service, and an order entered May 17, 2013, that states the claimant did not appear. Without a docket sheet or report of proceedings to establish otherwise, we are unable to tell if the hearing was continued without notice or if the claimant was denied an appearance. As the appellant, it is the claimant's responsibility to preserve and present a sufficient record. *People v. Stewart*, 179 Ill. 2d 556 (1997). We construe any omission in the record in favor of the judgment rendered by the trial court. *People v. James*, 337 Ill. App. 3d 532 (2003). Therefore, we find that the claimant had notice of the forfeiture hearing, as required by due process and statute. We further find the claimant's failure to appear, as reported in the May 17, 2013, order, to be voluntary and not a due process violation. The trial court's forfeiture order is affirmed.

¶ 15

CONCLUSION

¶ 16

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 17

Affirmed.