

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140724-U

NO. 4-14-0724

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 7, 2015
Carla Bender
4th District Appellate
Court, IL

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| PETER MAURER, |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | McLean County |
| JASON CHAMBERS, State's Attorney of McLean |) | No. 13MR680 |
| County, Illinois, |) | |
| Defendant-Appellee. |) | Honorable |
| |) | Rebecca Simmons Foley, |
| |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly granted defendant's motion to dismiss plaintiff's complaint for declaratory relief.
- ¶ 2 In July 2013, law-enforcement personnel seized \$8,700 from plaintiff, Peter Maurer, as part of a drug investigation. After plaintiff was served with a notice of pending forfeiture, in August 2013, plaintiff filed a verified claim asserting his interest in the property. In September 2013, defendant, Jason Chambers, State's Attorney of McLean County, Illinois, issued plaintiff a "denial of claim" letter in which it alleged plaintiff's claim failed to comply with the requirements in section 6 of the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/6 (West 2012)). Later that month, defendant issued a declaration of forfeiture, indicating plaintiff had forfeited his interest in the property due to his failure to file a verified claim within the applicable 45-day period.

¶ 3 Thereafter, in December 2013, plaintiff filed a complaint for declaratory relief, in which he sought (1) a declaration defendant had failed to comply with the Forfeiture Act and (2) the return of his property due to defendant's failure to comply. In March 2014, defendant filed a motion to dismiss, which the trial court granted following a June 2014 hearing.

¶ 4 Plaintiff appealed, arguing the trial court erred by dismissing his complaint. We affirm.

¶ 5 I. BACKGROUND

¶ 6 On July 19, 2013, law-enforcement personnel seized \$8,700 from plaintiff. On August 1, 2013, defendant published a notice of pending forfeiture, which he served on plaintiff as required by the Forfeiture Act. See 725 ILCS 150/4 (West 2012). The notice indicated plaintiff's property—the \$8,700—was subject to forfeiture under the Forfeiture Act.

¶ 7 On August 30, 2013, plaintiff filed a verified claim of his interest in the property. Plaintiff's verified claim stated (1) he would receive service by mail through his attorney; (2) he had an interest in the property, "in that he is the rightful owner of the property which was acquired through legitimate wages, earnings, savings, gifts, and frugalities"; and (3) the property was not used or acquired in the commission of any criminal offense or subject to forfeiture for any other reason under the Forfeiture Act. Plaintiff submitted with his verified claim a cashier's check, made payable to the McLean County State's Attorney Office, for \$870, or 10% of the value of the property as bond.

¶ 8 On September 5, 2013, defendant issued a letter to plaintiff, entitled "Denial of Claim Under 725 ILCS 150/6," explaining plaintiff's verified claim was deficient under section 6(C) of the Forfeiture Act (725 ILCS 150/6(C) (West 2012)) because it (1) failed to set forth the nature and extent of plaintiff's interest in the property (see 725 ILCS 150/6(C)(1)(iii) (West

2012)); (2) failed to set forth the date, identity of the transferor, and circumstances of his acquisition of the property (see 725 ILCS 150/6(C)(1)(iv) (West 2012)); (3) failed to set forth the names and addresses of all other persons known to have an interest in the property (see 725 ILCS 150/6(C)(1)(v) (West 2012)); (4) failed to set forth the specific provisions of law relied on in asserting the property was not subject to forfeiture (see 725 ILCS 150/6(C)(1)(vi) (West 2012)); (5) failed to set forth all essential facts supporting each assertion (see 725 ILCS 150/6(C)(1)(vii) (West 2012)); and (6) was not accompanied by an "appropriate" cost bond or indigency affidavit (see 725 ILCS 150/6(C)(2) (West 2012)).

¶ 9 On September 17, 2013, defendant issued a declaration of forfeiture, indicating plaintiff had failed to file a valid verified claim within 45 days of the notice of pending forfeiture and, therefore, forfeited his interest in the property.

¶ 10 Plaintiff took no further action until December 2013, when he filed a complaint for declaratory judgment, in which he sought (1) a finding that defendant failed to follow the requirements of the Forfeiture Act and (2) an order compelling defendant to return \$8,700 to plaintiff. Plaintiff's complaint asserted, *inter alia*, (1) defendant's notice of pending forfeiture was insufficient, as it failed to describe the conduct giving rise to forfeiture or the violation of law alleged; (2) he filed his verified claim and cost bond in compliance with section 6(C) of the Forfeiture Act (725 ILCS 150/6(C) (West 2012)); (3) defendant thereafter failed to institute judicial *in rem* forfeiture proceedings as required by section 9 of the Forfeiture Act (725 ILCS 150/9 (West 2012)); (4) defendant instead issued its "Denial of Claim Under 725 ILCS 150/6," which it had no authority to do under the Forfeiture Act; (5) even if defendant were authorized to issue such a document, the document merely listed all requirements of a verified claim and failed to specify what, if any, deficiencies defendant found with respect to plaintiff's verified claim; and

(6) defendant lacked authority under the Forfeiture Act "to sit in judgment, as a court would in an *in rem* forfeiture proceeding, of the validity of the claim submitted to it."

¶ 11 In March 2014, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2012)). As to the section 2-619 portion of the motion to dismiss, defendant contended (1) the trial court lacked subject matter jurisdiction because the property was declared forfeited and dispersed according to the administrative forfeiture provisions in section 6 of the Forfeiture Act (725 ILCS 150/6 (West 2012)); and (2) plaintiff failed to file a petition for judicial review within 30 days of the effective date of the notice of declaration of forfeiture as is required by section 14 of the Forfeiture Act (725 ILCS 150/14 (West 2012)). In May 2014, plaintiff filed a response to defendant's motion to dismiss. In June 2014, following a hearing, the trial court granted defendant's motion to dismiss.

¶ 12 In July 2014, plaintiff filed a motion to reconsider, asserting the trial court improperly dismissed his complaint for declaratory judgment. In August 2014, following a hearing, the court denied defendant's motion to reconsider. In doing so, the court found because plaintiff had failed to avail himself of the relief provided for under section 14 of the Forfeiture Act (725 ILCS 150/14 (West 2012)) within 30 days of his receipt of the declaration of forfeiture, it lacked jurisdiction over plaintiff's complaint.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff contends the trial court erred by granting defendant's motion to dismiss his complaint. Specifically, plaintiff argues defendant, at all times, acted in contravention of the Forfeiture Act. Further, plaintiff argues, to affirm the court's ruling would

"allow the McLean County State's Attorney's Office to continue its role as the sole arbiter of [v]erified [c]laims, in conflict with the same [o]ffice's goal of forfeiting the property, and continuing to deny legitimate property owners their due process rights." We will begin by addressing the standard of review.

¶ 16 A. Standard of Review

¶ 17 In this case, it appears the trial court granted defendant's motion to dismiss pursuant to section 2-619 of the Civil Code, given the court's finding it lacked jurisdiction over plaintiff's complaint. A section 2-619 motion admits the legal sufficiency of the complaint but asserts some affirmative matter outside the complaint bars or defeats the plaintiff's cause of action. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. Under section 2-619, dismissal is proper where no genuine issue of material fact exists and dismissal is proper as a matter of law. *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 178, 874 N.E.2d 1, 7 (2007). We review *de novo* a dismissal pursuant to section 2-619. *Reynolds*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. Under this standard, we may affirm the court's judgment on any basis supported by the record. *Elston v. Oglesby*, 2014 IL App (4th) 130732, ¶ 12, 21 N.E.3d 57. Additionally, *de novo* review is appropriate to the extent our review requires us to interpret certain provisions of the Forfeiture Act. *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 27, 28 N.E.3d 758. With this standard in mind, we turn to the merits of plaintiff's appeal.

¶ 18 B. The Trial Court Properly Granted Defendant's Motion To Dismiss

¶ 19 In this case, section 6 is the applicable provision of the Forfeiture Act. Section 6 of the Forfeiture Act provides for nonjudicial forfeiture for personal property that does not exceed \$150,000 in value, as an alternative for judicial *in rem* forfeiture proceedings. 725 ILCS

150/6 (West 2012). If the seized property's value does not exceed \$150,000, the State's Attorney is required to provide notice to the owner of the seized property within 45 days of the property's seizure. 725 ILCS 150/6(A) (West 2012). Any person claiming an interest in the seized property may, within 45 days after the effective date of the notice, file a verified claim with the State's Attorney to express his or her interest in the property. If no verified claim and cost bond are submitted pursuant to section 6(C)(2) within the 45 days, the State's Attorney "shall declare the property forfeited." 725 ILCS 150/6(C)(2) (West 2012).

¶ 20 Section 6(C) sets forth a number of requirements with which the verified claim must comply. It provides, in pertinent part, as follows:

"(1) *** The claim must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(v) the name and address of all other persons known to have an interest in the property;

(vi) the specific provision of law relied on in asserting the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion;

and

(viii) the relief sought.

(2) If a claimant files the claim and deposits with the State's Attorney a cost bond, in the form of a cashier's check *payable to the clerk of the court*, in the sum of 10 percent of the reasonable value of the property as alleged by the State's Attorney *** then the State's Attorney shall institute judicial in rem forfeiture proceedings *** within 45 days after receipt of the claim and cost bond." (Emphasis added.) 725 ILCS 150/6(C) (West 2012).

In the event an interested person fails to file a verified claim and submit a cost bond within the 45-day period after he or she receives notice of the pending forfeiture, the State's Attorney must declare the property forfeited and provide notice to the owner and all known interest holders. 725 ILCS 150/6(D) (West 2012).

¶ 21 In this case, the State's Attorney determined plaintiff's verified claim failed to comply with section 6 and that he failed to tender an "appropriate" cost bond or indigency affidavit. However, during oral argument, the State conceded the adequacy of the verified claim, but maintained the cost bond submitted by plaintiff in the form of a cashier's check made payable to the McLean County State's Attorney's Office, as opposed to the "clerk of the court", fell short of the requirements of the Forfeiture Act. See 725 ILCS 150/6(C)(2) (West 2012). Given the State's concession regarding the verified claim, we are left to decide the impact of plaintiff's failure to submit a cost bond payable to the proper entity.

¶ 22 After determining plaintiff's verified claim and cost bond were deficient, the State's Attorney sent plaintiff a "denial of claim" letter informing plaintiff his claim and cost bond did not comply with section 6(C). Plaintiff thereafter declined to amend his claim or make his cost bond payable to the appropriate entity. According to plaintiff, once a verified claim and cost bond are submitted, regardless of whether the claim and accompanying bond comply with the requirements of section 6(C) of the Forfeiture Act (725 ILCS 150/6(C) (West 2012)), the State's Attorney must either (1) return the property to the claimant or (2) initiate judicial *in rem* proceedings. We hold, under the circumstances of this case, plaintiff's failure to comply with the Forfeiture Act required defendant to declare the property forfeited.

¶ 23 Section 6(C)(2) is clear: upon receipt of a verified claim and "a cashier's check payable to the clerk of the court," the State is required to institute judicial *in rem* forfeiture proceedings. 725 ILCS 150/6(C)(2) (West 2012). Because the State has conceded the sufficiency of the verified claim, we are not called upon to determine what, if any, role the State would have in determining the sufficiency of the verified complaint as it relates to the State's obligation to initiate judicial *in rem* proceedings. Our attention therefore shifts to plaintiff's cost bond. As it relates to the cost bond, section 6(C)(2) of the Forfeiture Act provides the cost bond is to be made payable to the clerk of the court. 725 ILCS 150/6(C)(2) (West 2012). As plaintiff's bond was made payable to the McLean County State's Attorney, plaintiff failed to comply with a statutory requirement which, in part, triggers the State's obligation to file judicial *in rem* proceedings.

¶ 24 Moreover, our decision today does not leave individuals such as plaintiff without recourse when the State's Attorney administratively forfeits their property. The Forfeiture Act

provides for judicial review of administrative forfeiture that occurs under section 6. Section 14 provides as follows:

"Judicial Review. If property has been declared forfeited under Section 6 of this Act, any person who has an interest in the property declared forfeited may, within 30 days of the effective date of the notice of the declaration of forfeiture, file a claim and cost bond as described in subsection (C) of Section 6 of this Act.

If a claim and cost bond is filed under this Section, then the procedures described in Section 9 of this Act shall apply." 725

ILCS 150/14 (West 2012).

Section 9 of the Forfeiture Act sets forth what is to occur once judicial *in rem* proceedings are initiated. 725 ILCS 150/9 (West 2012).

¶ 25 In this case, once plaintiff received the notice of declaration of forfeiture, he had the opportunity to institute judicial review proceedings under section 14 by filing a verified claim and cost bond, in compliance with section 6(C), within 30 days of the effective date of the notice of declaration of forfeiture. Instead of amending his cost bond to comply with section 6(C), plaintiff waited approximately three months and initiated an action outside of the statutory guidelines by filing his complaint for declaratory relief. Thus, the trial court correctly determined it was improper to adjudicate such a claim where the statute provided clear guidelines for judicial review. See *Fredman Brothers Furniture Co., Inc. v. Department of Revenue*, 109 Ill. 2d 202, 210, 486 N.E.2d 893, 896 (1985) (discussing circuit court's power to review administrative actions and stating "[i]n the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the

circuit court"). Accordingly, we conclude the court properly granted defendant's motion to dismiss.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the trial court's judgment.

¶ 28

Affirmed.