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NO. 5-12-0553

APPELLATE COURT OF ILLINOIS

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).

Honorable
Stephen P. McGlynn,
Judge, presiding.

parties to this action are entitled to conduct discovery and are entitled to a new trial on the merits of the State's action against the defendant.

¶ 3

FACTS

¶ 4 The facts necessary to our disposition of this appeal are as follows. On June 21, 2012, the State filed a verified complaint, pursuant to section 4-107(k) of the Illinois Vehicle Code (the Code) (625 ILCS 5/4-107(k) (West 2012)), for forfeiture of the backhoe, alleging that prior to being seized by the State on May 29, 2012, the backhoe was used by its owner, claimant Horatio Sumrall, in the commission of the offense of unlawful possession of a stolen or converted vehicle, in that Sumrall allegedly used the backhoe to assist in the movement and scrapping of one or more stolen semitrailers. On July 9, 2012, Sumrall filed a verified response to the petition in which he denied he had used the backhoe in the commission of any illegal activity. Discovery ensued, and in response to the State's request for admission of facts and genuineness of documents, Sumrall filed a motion for a protective order, "recusing him" from responding to discovery. In support thereof, Sumrall contended that he had been charged with the felony of unlawful possession of a stolen vehicle or converted vehicle, and that accordingly he wished to invoke his fifth amendment right against self-incrimination and to refuse to respond to discovery in this civil action.

¶ 5 At the August 24, 2012, hearing on Sumrall's motion, the State conceded that because of the criminal charges against him, Sumrall could invoke his right against self-incrimination, but contended that if he did so, the proper remedy would be to stay the proceedings in this civil action until the criminal case against Sumrall was complete, rather than to grant Sumrall a protective order that compelled the State to move forward with this action in the absence of any meaningful discovery. In response, the trial judge stated that "[t]he rules that permit liberal discovery don't trump his Fifth Amendment rights," and that he did not believe that granting the protective order, rather than staying the case, "works that big of hardship" for

the State. Moments later, the judge reiterated that he did not believe the State was "necessarily prejudiced by going forward on this" without discovery. Just prior to the trial that followed, the State again asked the judge to stay proceedings until the criminal case against Sumrall was over. The judge responded, "Give him [the backhoe] back, I will stay it." A brief discussion ensued, in which the judge stated that "the problem" he had with staying proceedings was that the State was "holding a piece of equipment that [Sumrall] uses to make a living." Subsequently, the judge denied the State's renewed motion for a stay, stating that he believed "frankly it puts [Sumrall] more in peril than the State." The trial proceeded, and at its conclusion, the judge took the case under advisement. Approximately one month later, the judge entered a written order in which he found that although the State "offered compelling evidence that [Sumrall] was engaged in the unlawful possession and destruction of a stolen trailer," nevertheless, "the evidence failed to establish that [the backhoe] was used in the commission of possessing and scrapping of the stolen trailer in question." Judgment was rendered for Sumrall, and this timely appeal followed.

¶ 6

ANALYSIS

¶ 7 "A forfeiture action is civil in nature and is an *in rem* proceeding against the item used in the commission of a crime." *People v. 1998 Lexus GS 300*, 402 Ill. App. 3d 462, 465 (2010). On appeal, the State contends both that the trial judge erred in holding "the State to a higher burden than establishing by a preponderance of the evidence the backhoe was used in the commission of the crime," and that the judge erred in denying the State's motions to stay. Because we agree with the State's second contention, we need not address its first contention. We begin by noting our standard of review. "The standard of review in an appeal of a motion to stay is abuse of discretion." *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 29. When we consider whether a trial judge has abused his or her discretion in granting or denying a motion to stay, we do not

decide whether we agree with the judge's decision; instead, we must decide whether the judge "acted arbitrarily without the employment of conscientious judgment or *** exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *Id.* (quoting *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594-95 (1991)). We agree with the State that the trial judge's denial of the State's motions to stay substantially prejudiced the State, and that in making his ruling, the trial judge ignored recognized principles of law.

¶ 8 By stating that "[t]he rules that permit liberal discovery don't trump his Fifth Amendment rights," the judge was creating a false dichotomy. In fact, there was no need for either party's rights in this case to trump those of the other. Clearly, a claimant in a forfeiture action has the right to invoke his or her fifth amendment privilege in the context of the forfeiture proceedings. See, e.g., *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 332 (1997). But in a civil action, it has long been recognized in this state that "[d]iscovery is intended to be a mechanism for the ascertainment of truth, for the purpose of promoting either a fair settlement or a fair trial" (*Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 282 (1982)), and that because "truth is the heart of all discovery," there is little that is more egregious than forcing a party to go to trial without having had the opportunity to discover the truth. *Buehler v. Whalen*, 70 Ill. 2d 51, 67 (1977). Moreover, as the State pointed out to the trial judge, the Code specifically allows the seizure of a vehicle pending forfeiture proceedings pursuant to the Code. See 625 ILCS 5/4-107(k) (West 2012). Sumrall did not contend, and the trial judge did not find, that section 4-107(k) of the Code is unconstitutional. Accordingly, where the rights of each party under the Code can be easily respected and maintained, they should be. The proper remedy in this case—as the State noted repeatedly at the trial court level—was to stay the proceedings in this forfeiture action until the criminal case against Sumrall was completed. By so doing, the judge could

have ensured the respect and maintenance of both the State's right to engage in discovery and Sumrall's right to assert his fifth amendment privilege.

¶ 9 The State contends that discovery was necessary in this case, and that the State was substantially prejudiced by its inability to engage in discovery, because only through discovery could the State have ascertained the identity of the other owners of the many semitrailer parts that were found cut up and strewn about Sumrall's property, all of which had had their legally required VIN numbers and plate numbers removed or obscured. Learning the identity of these owners would have provided the State with more potential witnesses, and thus more evidence tying the backhoe to the commission of the crimes Sumrall was alleged to have committed. We agree. Indeed, the trial judge's conclusion that although the State "offered compelling evidence that [Sumrall] was engaged in the unlawful possession and destruction of a stolen trailer," nevertheless, "the evidence failed to establish that [the backhoe] was used in the commission of possessing and scrapping of the stolen trailer in question" demonstrates the extent to which the State was hindered by its inability to engage in discovery.

¶ 10 CONCLUSION

¶ 11 For the foregoing reasons, we vacate the order of the circuit court of St. Clair County and remand with directions to stay this action until the resolution of the State's criminal case against claimant Sumrall, at which time the parties to this action are entitled to conduct discovery and are entitled to a new trial on the merits of the State's action against the defendant.

¶ 12 Order vacated; cause remanded with directions.