

SUPREME COURT OF FLORIDA

GAILYN W. WHEELER,
Petitioner,

vs.

CASE NO. 72,922

FINLAY CORBIN, as Mayor of
Blountstown, a subdivisoin of
the State of florida, and R.W.
DEASON, as Police Chief of the
Blountstown Police Department,

Respondents.

FILED
SID J. WHITE

SEP 20 1988

CLERK, SUPREME COURT
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Deputy Clerk

ON REVIEW
FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

PETITIONER'S INITIAL BRIEF

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ATTORNEYS FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner was the Appellant/Plaintiff in the lower courts and will be referred to in this brief as Petitioner. Respondents were the Appellees/Defendants in the lower courts and will be referred to in this brief as Respondents.

ISSUE ON APPEAL

A GOVERNMENTAL AGENCY SHOULD BE LIABLE TO AN OWNER FOR LOSS OF USE OF HIS VEHICLE DURING FORFEITURE PROCEEDINGS WHEN THE FORFEITURE IS HELD TO BE UNLAWFUL UPON APPELLATE REVIEW.

STATEMENT OF THE CASE AND FACTS

Petitioner, Gailyn Wheeler, challenges the correctness of the lower court's dismissal of her claim for damages resulting from the loss of use of her vehicle during forfeiture proceedings. Petitioner's automobile was seized by Respondents after Respondents searched it and found contraband therein. Respondents instituted forfeiture proceedings. Although Petitioner contested the forfeiture contending that she had loaned the automobile to friends and had no knowledge of its use to transport drugs, the trial judge entered a judgment of forfeiture. Petitioner appealed the judgment of forfeiture and the district court reversed holding that Petitioner neither knew nor should have known of the illegal use of the automobile. Wheeler v. State, 472 So.2d 847 (Fla. 1st DCA 1985).

Thereafter, Petitioner filed a complaint against Respondents requesting damages for negligent storage of the automobile resulting in substantial damage to the automobile and damages for loss of use for the period of time of the seizure and for the time of repair. (R:1-6). Respondents filed a Motion to Dismiss. (R:9-10). The trial court denied the motion as to the negligent storage claim and granted the motion in respect to Petitioner's claim for loss of use, holding that Respondents were immune from claims for loss of use. (R:16-17).

Petitioner then appealed the lower court's ruling to the First District Court of Appeal. The appellate court affirmed the ruling of the trial judgment

on the authority of Morton v. Gardner, 513 So.2d 725 (Fla. 3d DCA 1987). The District Court, however, certified the following question pursuant to Florida Rule of Appellate Procedure 9.030(2)(v) as a question of great public importance:

Is a governmental agency liable to an owner for loss of use of his vehicle during forfeiture proceedings when the forfeiture is held to be unlawful upon appellate review.

Petitioner timely filed her notice of intent to invoke the discretionary jurisdiction of this Court seeking review of the certified question.

SUMMARY OF ARGUMENT

Actions against governmental agencies have been allowed automobile owners who successfully defended forfeiture actions for damages resulting from improper towing, storage or negligent care of automobiles. Moreover, courts have recognized an owner's right to recover damages for depreciation of property where forfeiture is unsuccessful. Similarly, an owner who successfully defends a forfeiture action should be entitled to recovery for loss of use of their property during the pendency of the forfeiture proceedings or until such time as the property is returned to the owner in the same or similar condition as the time of seizure.

ARGUMENT

A GOVERNMENTAL AGENCY SHOULD BE LIABLE TO AN OWNER FOR LOSS OF USE OF HIS VEHICLE DURING FORFEITURE PROCEEDINGS WHEN THE FORFEITURE IS HELD TO BE UNLAWFUL UPON APPELLATE REVIEW.

It is well-settled law that a governmental agency is liable to the owner for damages to a vehicle resulting from improper storage, towing or negligent care where the owner successfully defends a forfeiture suit. State, ex rel, City of Pompano Beach v. Washington, 352 So.2d 138 (Fla. 4th DCA 1971); Morton v. Gardner, 513 So.2d 725 (Fla. 3d DCA 1987). Moreover, it has been recognized that an agency may be liable for destruction of property during an unlawful detention. Lowther v. United States, 480 F.2d 1031 (10th Cir. 1973); Jaekel v. United States, 304 F.Supp 993 (S.D.N.Y. 1969).

In United States v. One 1965 Chevrolet Impala Convertible, 475 F.2d 882 (6th Cir. 1973), the Court ordered reimbursement to owners of automobiles for the depreciation of automobiles unlawfully forfeited. The Court determined the owner in such cases to be entitled to the value of depreciation from the time of seizure to the date of sale or return to the owner. Id.

In the case at bar, Petitioner seeks damages for the loss of use of her automobile due to the unlawful seizure. The trial judge ruled that the seizing agency, a governmental agency, was immune from such action and the appellate court affirmed. The decisions of the courts below leave Petitioner in the vulnerable position of having been unlawfully injured and denied an opportunity for redress.

In City of Miami Beach v. Bules, 479 So.2d 205 (Fla. 3d DCA 1985), the court allowed damages for loss of use following an unsuccessful appeal from

denial of forfeiture. The court reasoned that the owner was entitled to loss of use damages as same were contemplated by the order of the trial court in granting a stay during the forfeiture appeal. Id. In any event, the court recognized the legitimacy of the claim for loss of use and that the harm was real in cases involving wrongful seizure and detention of property.


Likewise, in the instant case, Petitioner was successful on appeal in defending an action for forfeiture of her property and suffered the loss of use of her automobile due to the unlawful seizure by Respondents. Thus, the decision of the lower court should be reversed and this cause remanded to allow Petitioner an opportunity to seek damages for the loss of use of her vehicle during the forfeiture proceedings.

CONCLUSION

Based on the foregoing arguments, reasoning, and citations of authority, the decisions of the District Court and the trial court should be reversed and this cause remanded for determination of the amount of damages to be awarded Petitioner.

Respectfully submitted,

DANIEL, KOMAREK & MARTINEC
Chartered

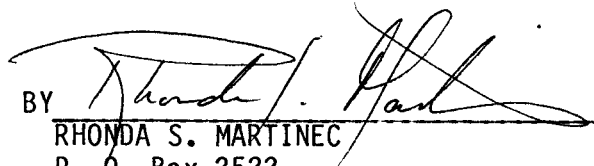
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been delivered by mail to H. HENTZ McCLELLAN, Attorney for Respondents, 119 River Street, Blountstown, Florida 32424, on this 19th day of September, 1988.

DANIEL, KOMAREK & MARTINEC,
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