IN THE

SUPREME COURT OF FLORIDA

CASE NO.: 74,751

IN RE: Forfeiture of 1976 Kenworth Tractor Trailer Truck, Altered VIN 243340M)

STATE OF FLORIDA, EX REL., FLORIDA HIGHWAY PATROL,)

Petitioner,)

vs.)

HUBERT HALES AND BRENDA G. HALES,)

Respondents.)

ANSWER BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

A. HISTORY

The history of the case as set forth by the Petitioner, absent the argument addressed thereto, is substantially accurate. It can be reduced to the following, however:

(a) October **1983** a forfeiture action was instituted the Florida Highway Patrol (FHP].

(b) On **7** December **1984** final judgment of forfeiture of the vehicle was entered.

(c) Timely appeal was filed.

(d) On **28** April **1986** the appeals court reversed the forfeiture and mandate issued to the trial court on **13** May **1986.**

(e) On **22** July **1986** the trial court ordered the motor vehicle returned to the Respondent Brenda Hales (R. **19).**

(f) The vehicle was not returned and the Petitioner filed a response on **11** May **1987** to the order to return the property and sought to add a third party, the Florida Department of Transportation [DOT] (R. **20).** The latter was allowed on **24** July **1987** (R. **27).**

(g) With the continued refusal to return the vehicle, the Respondent Hales filed a motion to compensate her for the failure to return the vehicle (R. **34-35).**

(h) On **11** April **1988** the trial court struck the Respondent Hales' motion for damages. The DOT was ordered to return the Respondent's vehicle to her and she was permitted to set an evidentiary hearing to determine the value of the truck

so as to permit the court to award interest from the earlier order directing the return of her vehicle (R. **77-78**); the DOT moved for equitable relief from the return of the vehicle (R. **81-87**). The latter was denied on **12** May **1988** but the court deleted the Respondent's claim for interest (R. **101-102**). The DOT appealed but later voluntarily dismissed that appeal and returned the vehicle to Respondent.

The Respondent appealed her denial of damages and interest for the wilful withholding of her vehicle for th two years after the entry of the order requiring the Petitioner to return that vehicle to her. On **24** August **1989** the appeals court entered the order and judgment including the certified question sought to be reviewed by this proceeding.

B. FACTS

The vehicle (a Kenworth Tractor) involved herein was seized from the Respondent in **1983**. A forfeiture action was taken against the vehicle and the Respondent made claim to the vehicle.

On **7** December **1984** the trial court ordered the vehicle forfe ted. The Respondent, being dissatisfied with the judgment of forfeiture, appealed and gave the proper notice of that appeal.

Notwithstanding the appeal, the Petitioner, the [FHP] transferred the vehicle to the [DOT] and required the latter pay the storage on the vehicle. The latter also made some modifications to the vehicle.

The appeal initiated by the Respondent Hales resulted

in a reversal of the forfeiture. Hales v. State, 487 So. 2d 100 (Fla. 4 DCA 1986).

The Respondent moved the trial court to order the Petitioner to return her vehicle. FHP did not return the vehicle and made known it was sold and transferred to the DOT who had made some monetary investments therein. And, the Petitioner FHP sought to join DOT in the proceedings. It was allowed. Both FHP and DOT failed and refused to return the vehicle to Petitioner until ultimately some two years later DOT delivered the vehicle over to the Respondent Hales. Neither FHP nor DOT had any lawful right to defy the order of the court returning the vehicle to the Respondent; in effect a wilful contempt existed.

The Respondent sought her damages for the depreciation and loss of use of the vehicle while it was contemptuously withheld from her together with lawful interest on that sum and an attorney's fee for the litigation necessitated by the wilful and contemptuous actions of the Petitioner defying the lawful order of the court to return the vehicle to the Respondent.

The Petitioner urged that the Respondent's only recourse was to file a new and different action pursuant to Fla. Stats. 768.28; that action requires written notice and is effectively beyond the statute of limitations. The Respondent assumed the position that the trial court has the power to enforce its orders and judgments including contempt powers adequate to order the payment of the sums sought by Respondent.

On appeal the court agreed with the Respondent and ordered accordingly; at the same time the appeals court entered

the certified question involved herein, to-wit:

> "May a party in a civil forfeiture proceeding present a claim for incidental damages based upon a violation of a trial court order directing return of the confiscated property?"

In Re: Forfeiture of 1976 Kenworth Tractor Trailer Truck, 546 So. 2d 1083 (Fla. 4 DCA 1989).

SUMMARY OF THE ARGUMENT

A trial court has power to enforce its orders and judgments including awarding damages incidental to the violation of its lawful orders.

ARGUMENT

A COURT HAS THE POWER TO ENFORCE ITS ORDERS AND JUDGMENTS, INCLUDING ORDERING THE PAYMENT OF INCIDENTAL DAMAGES FOR THE VIOLATION AND LONG DELAY IN COMPLYING WITH AN ORDER TO RETURN CONFISCATED PROPERTY.

The Constitution of Florida, 1968, Article 5, Section 5 establishes the powers of the circuit courts, to-wit:

> "(b) Jurisdiction - The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs; necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law."

As stated in Dade County v. Richter's Jewelry Co., Inc., 223 So. 2d 375 (Fla. 3 DCA 1969):

> "Without the need for an express reser-

> vation, jurisdiction remains in the trial court (inherently and by Art. V, Sec. 6(3) Fla. Const., F.S.A.) to make such orders as may be necessary to enforce its judgment. (At p. 376, Emphasis added).

In the instant case, there is no question that the result of the initial appeal was to reverse the order of forfeiture whereby the Petitioner, FHP, held the Respondent's vehicle. Hales v. State, 487 So. 2d 100 (Fla. 4 DCA 1986). Pursuant to that decision the Respondent was fully entitled to the immediate return of her vehicle. The circuit court upon remand and pursuant to the mandate, so ordered in July 1986. The Petitioner refused to comply with the order and did not return it to the Respondent for approximately two years. No lawful cause is made to appear for that refusal to adhere to the lawful order of the trial court.

The Respondent Hales sought incidental damages for the period the vehicle was wrongfully and unlawfully withheld from her following the entry of the order requiring the Petitioner to return the vehicle to Respondent. the Respondent did not seek any damage for the period following initial seizure to the time the vehicle was ordered returned to her. The latter is precluded by Wheeler v. Corbin, 546 So. 2d 723 (Fla. 1989).

The Petitioner asserts it was prevented from returning the tractor to the Respondent since it had conveyed the vehicle to DOT who in turn paid storage on the vehicle and made certain changes to it. However, the Petitioner conveyed the vehicle after a notice of appeal was duly filed and served upon Petitioner

and while the appeal was pending. The Petitioner had to know the appeal included the potential of a reversal and the consequent return of the vehicle to the Respondent. By selling it to DOT, FHP gambled the judgment of the lower court would be affirmed and not reversed. That gamble failed.

The Petitioner wholly misconceives the thrust of the decision below and asserts the Respondent seeks "tort damages" against a state agency. The state agency, FHP, violated a valid court order without lawful cause resulting in damaging the Respondent and the Respondent seeks incidental damages occasioned by reason of FHP having violated the court order not by initiating a forfeiture. The state agency made itself a party to this cause by filing the forfeiture action, this is not an instance of the Respondent having initiated an action against the state agency. The actions of FHP have offended "due process" and the orderly processes of the court; the court possesses the power to enforce its judgments including doing so over a state agency.

The Petitioner asserts the Respondent at best wins a chance to file a new and different suit against the state agency pursuant to the prescriptions and proscriptions of Fla. Stats. 768.28. That statute requires notice according to 768.28(6)(a) within 3 years after such action accrues and that claim need be denied by the Department of Insurance after they possess the notice some six months. The FHP transferred and disposed of the tractor involved on 24 July 1985 when they transferred the same to DOT. The Statute of Limitations would have expired as well as would the requirements of the notice provision. Just why no-

tice would have to be given the agency when their wilful act is involved is difficult to ponder.

The Petitioner asserts an "inability" to comply with the court's order to return the vehicle. It presents no situation of inability, for all FHP need have done was to to repurchase the vehicle from DOT, a very simple process. A reverse of what FHP had done when it so unwisely sold the property in litigation to DOT.

Petitioner below relied heavily upon Morton vs. Gardner, 513 So. 2d 725 (Fla. 3 DCA 1987). That was for a claimed damages for the loss of use of a boat during forfeiture proceedings which were ultimately resolved in the favor of the claimant; it was & a claim for damages because the detaining authority unlawfully refused to return the property when ordered to do so by the court exercising jurisdiction over the subject of the forfeiture. However, even the Morton, case (See: footnote 9, p. 729) recognizes the validity of Lowther v. United States, 480 F. 2d 1031 (10th Cir. 1973) which held the owners of the vessel seized were entitled to damages where the property was found not to have been used in violation of the law but after the finding was destroyed by federal authorities. Such is closely akin to the instant case but instead of the vehicle being destroyed it was disposed of and not returned pursuant to court order. That court spoke to "loss of use" claims and determined the same were not compensable in condemnation or seizure cases in the absence of bad faith. Here the wilful failure to comply with the lawful order of the court is surely a "bad faith" instance.

The authority cited by the court of appeals in this case, City of Miami Beach v. Bules, 479 So. 2d 205 (Fla. 3 DCA 1985) is good and adequate authority to support the decision below. See also: Forfeiture of Datsun v. State, 475 So. 2d 1007 (Fla. 2 DCA 1985).

Attorney's fees are appropriate pursuant to Fla. Stats. 57.111. It is provided in those instances where the litigation was instituted by a state agency. In this case, instead of returning the property pursuant to court order the FHP together with DOT initiated a protracted litigation, unmeritorious as it appears in an effort to thwart or circumvent the order of the court to restore the property of the Respondent to her as forfeiture did not lie.

CONCLUSION

The decision of the appeals court below ought be AFFIRMED and the certified question answered in the AFFIRMATIVE.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail to Enoch J. Whitney, General Counsel, Attention: Judson Chapman, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Neil Kirkman Building, A432, Tallahassee, Florida, 32399-0504, this 15 November 1989.

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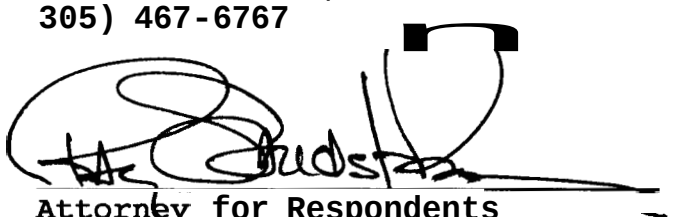

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