IN THE SUPREME COURT OF FLORIDA

IN RE: FORFEITURE OF:

ONE 1988 LINCOLN TOWN CAR VIN 1LNBM81F8JY612959 AND ONE 1986 LINCOLN TOWN CAR VIN 1LNBP96F7GY660841

JOSEPH T. DEGREGORIO

Petitioner,

vs.

WILLIAM F. BALKWILL, AS SHERIFF OF SARASOTA COUNTY

Respondent.

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Respondent's Answer Brief

On Review From The Second District Court of Appeal of Florida

Case No.: SC02-1161
LT No: 2D01-1249

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SUMMARY OF ARGUMENT

Legislative history, relevant case law, the plain language of the statute and general rules of statutory construction all support the position of the Sheriff in this appeal. The Florida Contraband Forfeiture Act, and in particular, Section 932.703(3), does not bar the seizing agency from filing a forfeiture action once the 45-day filing deadline has passed. Instead, that provision provides that a claimant may recovery his property through replevin or other action.

A property owner's due process rights are fully protected under this statutory scheme. When the Florida Legislature amended Section 932.703 in 1985, it gave claimants a window of time in which to file an action to recover seized property--after the deadline (now 45 days) had lapsed, but before the filing of a forfeiture action.

Section 932.703(3) fully addresses the due process concerns created by delays between the seizing of the property by the government and the filing of a forfeiture action. It strikes a balance between the rights of the property owner and the rights of the seizing agency. The property owner has a remedy should the government delay in filing. The government is not precluded from filing beyond the deadline, but it risks having to return the

property should the property owner seek recovery through replevin or other action.

Seventy-five years of case law support the Sheriff's position that the trial court had subject matter jurisdiction to hear this forfeiture matter. Florida courts have uniformly held that subject matter jurisdiction is the power of a court to hear a particular class of cases, not a particular case. Furthermore, under Florida jurisprudence, the "mandatory" nature of a statutory provision does not affect jurisdiction.

The Second District Court of Appeal, in the case now before the Court, found that Petitioner DeGregorio lacked standing to assert defenses and bring the motion for summary judgment in the forfeiture matter. As a result, unless this Court differs with that determination, DeGregorio cannot prevail on any other ground than jurisdiction.

If this Court finds that DeGregorio had standing to bring a motion to dismiss or motion for summary judgment based upon the late filing, dismissal would have been improper. A strict construction of S. 932.703(3) does not support dismissal as the penalty for a late filing. Instead, the statute provides a direct consequence if a deadline is missed, that being the claimant's ability to recover the property through replevin or other action.

ARGUMENT

I. The Florida Contraband Forfeiture Act does not bar the seizing agency from filing a forfeiture action once the 45-day deadline has passed.

A. The history and plain language of S.932.703, Fla. Stats., support the recovery of property through replevin or other action.

The Florida Supreme Court has recognized the substantial interests of the state in seizing and retaining property through the forfeiture process. See Dept. of Law Enforcement v. Real Property, 588 So. 2d 957, 964 (Fla. 1991). Forfeiture laws punish and deter crime, assure compliance with statutes, and compensate the state and society for the wrongs committed. See Id. Because forfeiture involves a deprivation of property, forfeiture statutes must comply with constitutional due process requirements, including adequate notice and an opportunity to be heard. See Art. I, S. 9, Fla. Const.; Amendment V, U.S. Const.; see also Real Property at 961-966. Due process rights are violated when there is an unreasonable and unexcused delay between the time the government seizes the property and the time it institutes forfeiture proceedings. See Lamar v. Universal Supply Co., Inc., 479 So. 2d 109 (Fla. 1985) (hereafter "Lamar II").

The Florida Legislature sought to assure due process protections when it amended Section 923.703, Fla. Stats., in 1985. The new language set a 90-day deadline for seizing agencies to file forfeiture actions once property had been seized. If forfeiture proceedings were not initiated within 90 days after the date of seizure, property owners (or "claimants") could file a replevin or other action to recover their interest in the property. See Real Property at 961, describing the step-by-step the process of forfeiture pursuant to the Act and noting specifically that a claimant may maintain an action to recover property if the 90-day deadline is missed.

Prior to the amendment, replevin actions could not be used to recover seized property, even if the agency delayed in filing its forfeiture action. Lamar II at 111. Seizing agencies were required to "promptly proceed" in the filing of a forfeiture action once property had been seized, but this term was not specifically defined by statute. Id. at 110. Florida courts were left to determine whether an agency had in fact promptly proceeded in any given case. See, e.g., In re Forfeiture of 1975 Chevrolet Corvette v. City of Oviedo, 424 So. 2d 152, 153 (Fla. 5th DCA 1982).

As the Second District Court of Appeal explained in In re Forfeiture of $7,750 v. City of Largo, 546 So. 2d 1128 (2d DCA 1989), the 1983 Forfeiture Act had been held unconstitutional by the Fifth District Court of

Appeal because it prohibited any action for recovery of seized property. Id. at 1130, citing to Lamar v. Universal Supply, Inc., 452 So. 2d 627, 632 (Fla. 5th DCA 1984)(hereafter "Lamar I".) While the Fifth District case was pending before the Florida Supreme Court, the Florida Legislature modified the Act, setting the specific filing deadline (originally 90 days, now 45 days) and adding the language allowing replevin actions. The provision plainly states, and Florida case law makes clear, that the replevin remedy is available only if the seizing agency misses the deadline. See, e.g., City of Miami v. Barclay, 563 So. 2d 203, 204 (Fla. 3d DCA 1990).

According to the staff analysis for this legislation, the Legislature's intent was to insure that property owners received adequate due process protection. In re Forfeiture of $7,750 at 1130. (citations omitted). Lamar I had set the scene for the amendment: A claimant had filed a writ of replevin after his property had been seized but before a forfeiture action had been filed. The Fifth District held that the prohibition against replevin actions was unconstitutional on due process grounds because seizing agencies had no set time limit to initiate an action. Lamar I at 632. Before that decision could be reversed by the Florida Supreme Court (Lamar II), the Legislature amended the statute to allow replevin actions if the deadline lapsed.

Under the newly written statute, seizing agencies would be encouraged to meet the statutory deadline to avoid having to defend themselves in replevin actions. Likely recognizing that seizing agencies could, on occasion, have legitimate reasons for delay, the Legislature did not bar untimely filings. See Lamar II at 110 (Purpose of replevin prohibition was to give state time to investigate and prepare case). The provision contains no consequence for late filing other than allowing claimants to file actions to recover property.

The provision, later codified as S.932.703(3), Fla. Stat. (1999), is completely silent regarding jurisdiction. It contains no language that could be construed to strip a court of the right to hear the case should the filing deadline lapse. Its language is in stark contrast to that of S.194.171(6), Fla. Stat. (1999), which expressly states that missing a deadline for contesting a tax assessment is jurisdictional, and that "(n)o court shall have jurisdiction" in such cases until after such requirements are met.

The Second District, reviewing the legislative history and interpreting the provision in In re Forfeiture of $7,750, a case of first impression, came to this same conclusion--that the provision does not bar untimely claims. "While the statute does not bar the state from filing for forfeiture beyond the ninety-day period, if the state has not filed a petition during that time, the defendant may seek recovery in another court of competent jurisdiction."

Id.(emphasis added) Consistently, the Second District, in the decision now before this court, found that "the 45- or 60-day time periods operate only as a temporary prohibition or limitation on replevin actions and other claims by third parties and not as a jurisdictional bar." In re Forfeiture of One 1988 Lincoln Town Car v. DeGregorio, 27 Fla. L. Weekly D979 (May 2002).

As in the matter before this Court, In re Forfeiture of $7,750 involved a civil forfeiture that was commenced after the deadline set by the statute. Before the forfeiture action had been filed, the property owner sought and received a verbal order from a criminal court judge requiring the return of his property. The city then filed its forfeiture action and persuaded the judge to vacate the criminal order. The Second District reversed. Id. at 1131. In re Forfeiture of $7,750 stands for the proposition--central to this case--that a property owner can seek the return of his property through a separate proceeding (replevin or "other action") if the seizing agency fails to file a timely forfeiture action.

Petitioner DeGregorio submits that the replevin provision "does not have any effect on the mandatory duty of the seizing agency to timely file a forfeiture complaint." (IB at 19) This assertion not only defies the provision's legislative history and relevant case law, it ignores the plain language of the statute and general rules of statutory construction. If one accepts Petitioner

DeGregorio's position that failure to file an action within 45 days operates as a complete bar, the replevin provision is stripped of meaning. A claimant would have no reason to file a replevin or other action to recover seized property once the 45 days have lapsed if the seizing agency is barred from bringing such action in the first place, or if the forfeiture action will be dismissed and the property returned.

B. A bar is unnecessary because the process set forth in the statute for recovering property protects a property owner's due process rights.

In amending Section 932.703, the legislature gave claimants a window of time in which to file an action to recover seized property--after the deadline (now 45 days) had lapsed, but before the filing of a forfeiture action. If a claimant seeks recovery during this window of time, he would appear likely to prevail. The last sentence in S. 932.703(3) gives a court authority to grant a government an additional 15 days to file an action upon a showing of "good cause;" but requests for additional time beyond that would likely be denied based upon the limits set forth in the statute. In such a scenario, the court would likely require the government to abandon the seizure and return the property. See Morton v. Gardner, 513 So. 2d 725, 730(Fla. 3d DCA 1987) (In post-seizure, pre-forfeiture matters, court limited

to requiring government to return property or promptly institute forfeiture action).

At a minimum, filing a replevin action would likely spark the government to file, or request permission to file, a forfeiture action, thus curing the problem of continued delay. The potential for unchecked delay was a major concern in the debate surrounding the Lamar cases and the passage of the amended statute. As Chief Justice Boyd wrote in his dissent in Lamar II: The safeguard relied upon by the Court, of a 'reasonably prompt filing of a forfeiture action,' is no safeguard at all because, under the court's holding, there is no procedure available by which a rightful owner of wrongfully seized property can compel the prompt initiation of such proceedings." Id. at 112 (Boyd, J., dissenting).

Once a forfeiture action is filed, a claimant would have the right to defend himself and assert ownership rights in that action. See Real Property at 961. The claimant could even seek damages if he prevailed and established that the agency's delay was in bad faith. (See Morton at 730-31.)

If a replevin action is not filed, and a forfeiture action has commenced, the forfeiture proceeding becomes the exclusive avenue of recovery. See Morton at 730. See also City of Miami v. Barclay, 563 So. 2d 203, 204 (Fla. 3d DCA 1990)(denying return of vehicle while forfeiture proceeding

pending); City of Coral Gables v. Rodriguez, 568 So. 2d 1302 (Fla. 3d DCA 1990) (motion for return of property premature while forfeiture action pending).

The property owner's due process rights are enhanced, not diminished, by this process. The longer the seizing agency takes to file its forfeiture action, the longer the property owner has to file and prosecute a replevin action. As for the seizing agency, if it misses the deadline, it does so at its own risk. As was the case in In re Forfeiture of $7,750, a property owner could be awarded the return of his property (through a replevin action or criminal court action) if the seizing agency fails to timely commence a forfeiture action.

Because due process concerns were addressed by the amended replevin statute, two cases cited by Petitioner involving due process notice violations are inapplicable. In Fullwood v. Osceola Cty. Investigative Bureau, 672 So. 2d 614, 616 (Fla. 5th DCA 1996), the claimant had not received any notice of the forfeiture action, an obvious and major due process problem. City of Fort Lauderdale v. Baruch, 718 So. 2d 843, 846 (Fla. 4th DCA 1998), simply asserts that a person with standing under the act is entitled to notice. There is no allegation in the appeal before this court that the claimant received insufficient notice.

In summary, Section 932.703(3) addresses the problem created when a government seizes property but delays in filing a forfeiture action. The provision strikes an appropriate balance between the rights of the property owner and the rights of the seizing agency. The property owner is no longer without a remedy should the government delay in filing. The government is not precluded from a late filing but risks having to return the property should the property owner seek recovery through replevin or other action.

II. The trial court had subject matter jurisdiction to hear the forfeiture matter.

A. The trial court had authority to hear this class of case.

Florida courts have uniformly held that subject matter jurisdiction is the power of a court to hear a particular class of cases, not a particular case. In a long line of cases stemming from Malone v. Meres, 109 So. 677 (Fla. 1926), Florida courts have confirmed that subject matter jurisdiction does not depend upon there being a sufficient cause of action. "It is the 'power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case.'" Malone at 725 (citation omitted). Jurisdiction does not involve the rights of the parties as

between each other, but the power of the court to act upon the general, abstract question. Id.

"The question thus becomes, what is the class of case involved in this appeal?" Beach Park Dev. Corp. v. Remhof, 673 So. 2d 912, 914 (Fla. 2d DCA 1996). The answer in Beach Park was an action resulting from an unpaid loan, a matter in which circuit courts clearly have subject matter jurisdiction. Id. The "class" of cases is that broad, general category of cases to which the particular case belongs. For example, in VL Orlando Building Corp. v. AGD Hospitality Design & Purchasing, Inc., 762 So. 2d 956, 957 (Fla. 4th DCA 2000), the class of cases was construction lien foreclosures. In Covert v. Hall, 467 So. 2d 372, 374 (Fla. 2d DCA 1985), it was worker's compensation claims. In Florida Power & Light Co. v. Canal Authority, 423 So. 2d 421, 425 (Fla. 5th DCA 1982), it was condemnation actions; and in Cunningham v. Standard Guaranty Ins. Co., 630 So. 2d 179, 181 (Fla. 1994), it was bad faith claims against insurers.

Subject matter jurisdiction is "not a narrow concept," explained the First District Court of Appeal in Provident Capital Indemnity, Ltd. V. State, 677 So. 2d 363, 364 (Fla. 1st DCA 1996), recognizing the jurisdiction of the court to hear a Department of Insurance delinquency proceeding against an alien insurer. A court even has jurisdiction to award attorney's fees when

there exists no basis in law or contract, although such action may constitute judicial error. South Seas Marine, Inc. v. Saab, 585 So. 2d 959 (Fla. 4th DCA 1991).

To have subject matter jurisdiction in a forfeiture matter, which is an in rem proceeding, a court must have both authority to hear the class of cases to which the case belongs, and jurisdictional authority over the property that is the subject of the controversy. Ruth v. Dept. of Legal Affairs, 684 So. 2d 181, 185 (Fla. 1996). In the case at hand, there is no question that the circuit court had authority to hear forfeiture matters generally, and no question regarding the location of the property.

B. Under Florida jurisprudence, the "mandatory" nature of a statutory provision does not affect jurisdiction.

A Florida court has subject matter jurisdiction even if a case is subject to dismissal for failing to meet mandatory provisions of a particular statute. In Ingersoll v. Hoffman, 589 So. 2d 223 (Fla. 1991) and in Hospital Corp. of America v. Lindberg, 571 So. 2d 446 (Fla. 1990), jurisdiction was found to exist even if the plaintiffs had failed to comply with statutory pre-litigation requirements. Similarly, in Florida Power & Light the circuit court had

jurisdiction to hear a condemnation suit even if a pleading did not contain a statutorily required government resolution. Florida Power & Light at 425.

The out-of-state cases cited by Petitioner DeGregorio, in which courts found that mandatory provisions were jurisdictional, are not persuasive for two reasons. First, unlike Florida, these states may have had no other means of enforcing the filing deadline. The forfeiture laws construed by these courts do not appear to contain replevin provisions similar to Florida's Forfeiture Act. Without such a provision, property owners could be subjected to delays without recourse.

Secondly, unlike Florida, the jurisprudence in these states may have supported a finding that a missed statutory deadline strips a court of subject matter jurisdiction. A Florida court would have to discard 75 years of jurisprudence to make such a finding.

In two of the cases cited by Petitioner where jurisdiction was found to be lacking, State v. $1970, 648 A. 2d 917 (Conn. Super. 1994), and State v. Hampton, 817 S.W. 2d 470 (Mo. App. 1991), the courts focused on the issue of whether the provisions were "mandatory" or "directory" in nature. In both cases, the seizing agencies argued that the provisions were directory despite the use of mandatory language. The agencies argued for more time to

file the forfeiture actions, even though the laws at issue were explicit about deadlines.

The courts were understandably reluctant to construe the provisions to provide for extensions of time. In essence, such a determination would have required them to rewrite the legislation. From this vantage point, it is more understandable how these courts came to the conclusion that missing the deadline deprived the court of jurisdiction.

Even though it was unnecessary, the Fifth District Court of Appeal appears to have followed this same line of reasoning in deciding In re Forfeiture of One 1994 Honda Prelude v. Dept. of Hwy. Safety, 730 So. 2d 334 (Fla. 5th DCA 1999), the case with which conflict has been certified. In Honda Prelude, the seizing agency was some 10-and-a-half months late in filing its forfeiture action. When the action was finally filed, the claimant sought to have it dismissed, arguing that the filing deadline was mandatory and the court lacked jurisdiction to hear the matter. The trial court denied the dismissal. The Fifth District reversed by issuing a writ of prohibition.

The truism, "bad facts make bad law," seems to apply to Honda Prelude. The delay in filing had been extreme, and unlike the case at hand (R. 212), there was no explanation for the delay in the record--a point specifically and repeatedly made by the Fifth District. Id. at 336. As in the Connecticut

and Missouri cases, there was a futile attempt by the seizing agency to argue around the express deadline, and a counter argument by the claimant's attorney that the filing deadline was mandatory and jurisdictional. Id.

Like the trial court in the case at hand, the Fifth District did not consider the available remedy of replevin. Had the claimant in Honda Prelude filed a replevin action at some point during the 10-and-a-half months prior to the filing of the forfeiture action, his property could very well have been returned. The same might be said of Petitioner DeGregorio, who may have been able to recover his property had he filed a replevin action during the two-month delay (although the question of ownership resulting from lack of title may well have precluded recovery).

Instead, DeGregorio attempted to defend his ownership claim in the forfeiture action, where his participation was challenged on grounds that he lacked standing. This lack of standing caused the Second District to reverse the trial court's order granting summary judgment.

The standing issue is important to this appeal because it prevents DeGregorio from prevailing on grounds other than jurisdiction. In other words, even if the Court finds that the Honda Prelude court was correct in dismissing the late-filed forfeiture action (on grounds other than jurisdiction), such a finding would not change the outcome for Petitioner DeGregorio. He

still would face the insurmountable, threshold issue of standing. As the Second District found, DeGregorio had no standing to defend a forfeiture action and, thus, he could not assert a motion for summary judgment. In re Forfeiture of One 1988 Lincoln Town Car v. DeGregorio, 27 Fla. L. Weekly D979 (May 1, 2002). DeGregorio failed to pursue a replevin action, which was his only possible avenue of recovery.

In summary, courts in other states that have dismissed forfeiture actions for lack of jurisdiction have based their decisions on the mandatory nature of the statutory deadline. In Florida, the mandatory nature of a provision does not affect a court's authority to hear the matter.

III. Dismissal of the forfeiture matter for late filing is not supported by a "strict construction" analysis.

Florida's Forfeiture Act has never been a model of clarity. See Real Property at 966 (citations omitted). Incomplete and murky provisions have made it difficult for Florida courts to determine procedures and penalties. See Id. The result is that courts have been less than uniform in their decisions. Cases cited by Petitioner in support of his position show that the courts do not analyze cases in the same way.

For example, one question raised by State Dept. of Hwy. Safety v. Metiver, 684 So. 2d 204 (Fla. 4th DCA 1996), and Cochran v. Harris, 654 So. 2d 969, 971 (Fla. 4th DCA 1995)--two cases decided by the same District Court only six months apart--is whether any violation of the 10-day rule for setting a probable cause hearing should result in dismissal of the forfeiture action. Cochran found that a 23-day delay constituted a violation of the claimant's rights to due process. Id. Metiver, on the other hand, appeared to rely upon a strict construction analysis to dismiss a forfeiture case in which the state had been just five days late in seeking a hearing.

While it cited to Cochran, Metiver did not engage in a due process analysis, which presumably would have required the court to consider whether the delay was reasonable or excusable and whether the claimant suffered prejudice or loss as a result. See Metiver at 205-06. (Considering the draconian result, it is surprising that the court appeared unwilling to consider possibly legitimate reasons for the delay, including such "excuses" as "the time it takes to transmit files from Tallahassee, to draft a complaint, and to obtain signatures." See Metiver at 205, n.1.)

Metiver suggested that to hold any other way would have "neutralized" the law's 10-day requirement. Metiver at 205. Yet at least one court has found it necessary to consider possible reasons for a delay in filing a

forfeiture case. See Clark v. Lake City Police Dept., 723 So. 2d 901, 902 (Fla. 1st DCA 1999) (summary judgment improper when triable issues existed regarding reason for delay). Courts typically have discretion to excuse or extend mandatory filing deadlines. See Fla. R. Civ. P. 1.090(b) (allowing extensions of time to file certain pleadings and motions upon a showing of excusable neglect).

While forfeitures are matters in which due process concerns figure prominently, they are arguably not so different as to operate under a totally different set of rules than other statutes. Dismissal is a harsh penalty not expressly called for in the forfeiture statutes, and it would appear that a court would thus have authority to waive a deadline--even a "mandatory" deadline--in certain circumstances in order to hear a case on the merits.

In essence, Petitioner DeGregorio argues that strict construction requires strict enforcement--something not expressly called for by the statute. A strict construction analysis simply mandates that a court look only to the express language, and that no inferences be made. See In re Forfeiture v. Brandon, III, 426 So. 2d 44 (Fla. 2d DCA 1983). Brandon provides an example of how this legal principle should be applied. There, the plain language of the statute referred to actual use of a vehicle, not attempted or

intended use. As the court stated, "We must not broaden the scope of legislative enactments where the language of the statute is clear." Id.

While forfeiture statutes are to be strictly construed in favor of the party against whom the penalty is sought, strict construction does not require that the law be extended to favor that party. In Leon Cty. V. Aloi-Wms. Bonding Agency, 652 So. 2d 464, 465 (Fla. 5th DCA 1995), the court reversed an order granting the return of the full amount of a forfeited bond because the forfeiture statutes required that only 50 percent of the amount be returned. As the court stated, the legislature had "plainly and clearly addressed the general parameters within which the court can order reimbursement." Id. Accordingly, the trial court exceeded its authority in remitting 100 percent of the bond. Id. See also Cabrera v. Dept. of Natural Resources, 478 So. 2d 454, 456 (Fla. 3rd DCA 1985) (Legislative intent must be clearly reflected by the language of statute before forfeiture will lie). In the case at hand, the intent of the legislation is clear. Dismissal cannot be inferred as the proper remedy for a late filing because the statute expressly provides for a different consequence upon the missing of the deadline. See S. 932.703(3).

In summary, S. 932.703(3) provides a direct consequence if a deadline is missed, that being the claimant's ability to recover the property through

replevin or other action. As such, dismissal is not mandated by a "strict construction" analysis. In fact, a strict rendering of the statute leads to the conclusion that failure to meet the statutory filing deadline allows a claimant to bring a replevin action or other action to recover the property.

Conclusion

The plain language of S. 932.703(3), Fla. Stat. (1999), its legislative history and relevant case law compel this Court to affirm the Second District's Lincoln Town Car decision. That provision allows a claimant to file a replevin or other action to recover property if a seizing agency delays in filing a forfeiture action. DeGregorio did not file a replevin action. No language in the statute mandated dismissal of the forfeiture action. In fact, the statute's allowance of a replevin action is the consequence of a late filing.

The trial court was not divested of subject matter jurisdiction simply because the Sheriff missed the 45-day filing deadline. It had full authority to hear the forfeiture case regardless of the facts of this particular matter. The Fifth District's apparent finding of a jurisdictional defect in Honda Prelude does not comport with established Florida law.

Additionally and importantly, the trial court erred in granting DeGregorio summary judgment as he had no standing to contest the forfeiture. The Second District decision should, in all respects, be affirmed.

Certificate of Service

I certify that a true and correct copy of this Answer Brief has been sent by U.S. Mail, postage prepaid, to Susan J. Silverman, Esq., 3400 S. Tamiami Trail, Second Floor, Sarasota, Florida 34239, this _____day of August, 2002.

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Certificate of Compliance

I HEREBY CERTIFY that this Answer Brief satisfies the requirements of Rule 9.210, Florida Rules of Appellate Procedure.

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