

POLICE

Police: Forfeiture

DeGregorio v. Balkwill,
853 So. 2d 371 (Fla. 2003)

A state agency that seizes property must file a forfeiture complaint within forty-five days of the seizure of property. If the seizing agency files a forfeiture complaint after the forty-five-day period expires, the action may be dismissed by a motion from a claimant of the property seized.

FACTS AND PROCEDURAL HISTORY

The Sarasota County Sheriff's Office seized two automobiles located on the property of Joseph T. DeGregorio after an investigation into possible criminal activity involving the automobiles. The County filed a forfeiture complaint under the Florida Contraband Forfeiture Act (FCFA), Florida Statutes Sections 932.701 through 732.707 (1999). The complaint was filed almost four months after the County seized the automobiles.

DeGregorio filed a claim to both automobiles and moved for summary judgment on grounds that the FCFA required the County to file its forfeiture complaint within forty-five days of the seizure. The circuit court granted DeGregorio's motion, and the County appealed to the Second District Court of Appeal.

The Second District reversed the circuit court's order as to one of the automobiles, holding that the FCFA did not prohibit the County from initiating a forfeiture action more than forty-five days after the seizure. Instead, the Second District interpreted the FCFA as prohibiting claimants to the property from filing replevin actions and other claims during the first forty-five days after the seizure.

The Second District certified conflict between its holding in this case and the holding in *In re Forfeiture of One 1994 Honda Prelude*, 730 So. 2d 334 (Fla. 5th Dist. App. 1999), in which the Fifth District Court of Appeal held that the FCFA prohibited a seizing agency from filing a forfeiture action after the forty-five day period had expired. DeGregorio appealed to the Florida Su-

preme Court, which had discretionary jurisdiction to review the case because of the conflict between the two districts.

The Court quashed the Second District's ruling in this case and approved the Fifth District's holding that the FCFA required a seizing agency to bring a forfeiture action within forty-five days of the seizure.

ANALYSIS

The FCFA contains three provisions addressing the time for a seizing state agency to file a forfeiture claim. First, a seizing agency "shall promptly proceed" against the property seized by filing a complaint in circuit court. Fla. Stat. § 932.704(4) (1999). The FCFA defines "promptly proceed" as requiring the complaint to be filed within forty-five days of seizure. *Id.* at § 932.701(2)(c). In a provision addressing exceptions to forfeiture and claimants actions to reclaim property, the FCFA states that no replevin or any other action can be brought except under the FCFA, unless forfeiture actions are not initiated within forty-five days after the date of seizure. Florida Statutes Section 932.703(3) also allows for an extension of the forty-five days to sixty days, after a showing of good cause by the seizing agency.

The dispute in *DeGregorio* revolved around whether the FCFA imposes a mandatory forty-five day period after seizure in which forfeiture actions must be brought against the property seized. The Court analyzed the issue as a statutory-construction problem and considered the plain language of the statute, the legislative intent behind the statute, and the consistency of its holding with other states having similar forfeiture statutes. The Court found that all of these factors led to the conclusion that the FCFA does impose a mandatory forty-five-day period in which forfeiture actions must be initiated.

In looking at the plain language of the statute and considering whether "shall" has a mandatory connotation, as it does in its literal meaning, the Court explained that, when a statute involves a potential deprivation of a substantive right, such as the property right in this case, the word "shall" is given its literal meaning. Therefore, the Court concluded that the plain language of the statute imposed a mandatory forty-five day period.

The Court also determined that legislative intent indicated that the provision was mandatory. A previous version of the FCFA had been challenged in *Department of Law Enforcement v.*

Real Property, 588 So. 2d 957 (Fla. 1991). There, the Florida Supreme Court "held the [FCFA] constitutional only because [the Court] read into it certain procedures necessary to protect due process rights." *DeGregorio*, 853 So. 2d at 375. In reaction to *Real Property*, the Florida Legislature made substantial changes to the FCFA, incorporating the procedures the Court had found necessary and including the current definition of "promptly proceed." These amendments to the FCFA provided a more structured framework for forfeiture actions, and the Court determined that the Legislature intended the seizing agency's obligation to file a forfeiture complaint within forty-five days to be mandatory.

Finally, the Court looked to holdings in other states having forfeiture statutes with similar language, and found that Montana, Virginia, and Wisconsin all held that the timely filing of a forfeiture action was mandatory.

A dissent in this case interpreted the FCFA as giving the seizing agency forty-five days to prepare a forfeiture action without the claimant of the property being able to initiate litigation. The dissent explained that the forty-five day provision is not a mandatory time requirement on the seizing agency in which to file a forfeiture action, but instead is a mandatory period of time in which the claimant is delayed from filing an action to reclaim the property seized.

SIGNIFICANCE

The issue in *DeGregorio* was whether the FCFA requires a seizing agency to file a forfeiture action within forty-five days of seizing property. This case is significant because the Florida Supreme Court concluded that filing a forfeiture action within the forty-five days after seizing property is mandatory. If a seizing agency's action is initiated after the forty-five-day period, a motion by the claimant will result in dismissal of the action. Further, if no complaint is filed, the claimant may file a replevin action to recover the property after the forty-five-day period expires.

RESEARCH REFERENCES

- 14A Fla. Jur. 2d *Criminal Law* § 875 (1996 & Supp. 2003).
- 36 Am. Jur. 2d *Forfeitures and Penalties* § 8 (1995 & Supp. 2003).

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Police: Forfeiture

Office of State Attorney v. Jimenez,
845 So. 2d 914 (Fla. 3d Dist. App. 2003)

A claimant has standing to assert ownership of seized property subject to a civil forfeiture when he or she can demonstrate an ownership interest in the property through possession, control, title, or financial stake in the property.

FACTS AND PROCEDURAL HISTORY

As part of an investigation into money laundering and illegal drugs, officers followed a suspect who delivered a suitcase to another suspect's car. A subsequent search of the suitcase revealed that it contained \$200,000 in cash. Both suspects denied ownership of the money; however, the individual who delivered the suitcase said that he had delivered it based on the instructions from Adolfo Jimenez.

The State of Florida filed a civil forfeiture action against the \$200,000 and provided notice of the action to Jimenez, who responded with an answer claiming ownership of the \$200,000. The State filed a motion to strike the answer, in part on grounds that Jimenez did not have standing to bring a claim for the property. In an amended answer, Jimenez alleged that he was a Latin-American cattle rancher who had purchased \$300,000 worth of cattle to be paid for with \$100,000 of Venezuela currency and \$200,000 of United States currency. The \$200,000 in the suitcase was to be delivered to the cattle seller to settle the debt. When Jimenez learned that the \$200,000 had not been credited to his account by the cattle seller, he made a claim for the money.

In a hearing on the Motion to Strike, the circuit court found that Jimenez had standing to claim the property. On appeal, the Third District Court of Appeal affirmed the trial court's decision.

ANALYSIS

To establish standing to claim property seized in a civil forfeiture, a claimant must assert an ownership interest in the property by possession, control, title or financial stake. In addition, either: (1) the claimant must set forth the factual basis of the claim in a sworn statement, or (2) the government must admit the claimant has a relationship to the seized property. The claimant

does not need to prove the merits of his claim, but rather must assert only an ownership interest.

If the claimant attempts to establish standing by setting forth the factual basis of his claim in a sworn statement, then the seizing agency can rebut the assertion by setting forth facts in its own sworn statement to refute the claimant's facts.

In *Jimenez*, the Third District found that the claimant asserted ownership by title and financial stake in his amended answer, which served as a sworn statement. The court also found that the State admitted that the claimant had a relationship to the property in its complaint by alleging that Jimenez's employee told officers he was delivering the suitcase at Jimenez's request. The court further explained that, for the State to overcome Jimenez's assertion of ownership and thus to disaffirm Jimenez's standing, the seizing agent must have filed a sworn statement setting forth facts that refuted Jimenez's ownership interest. In *Jimenez*, the State failed to file such a statement, and as a result, the claimant was able to establish standing.

SIGNIFICANCE

Jimenez addresses the issue of standing to claim seized property subject to civil forfeiture. The Third District's opinion clarifies that, to establish standing, a claimant does not need to prove the merits of his or her claim, but rather needs to assert only an ownership interest in the seized property and set forth the facts establishing the ownership in a sworn statement. A mere assertion, combined with an admission by the seizing agent that the claimant has a relationship to the property, can also establish standing. If the ownership interest is asserted and the claimant sets out facts establishing the interest in a sworn statement, then the seizing agent has the burden to provide facts that refute the claimant's ownership interest.

RESEARCH REFERENCES

- 37 C.J.S. *Forfeitures* § 18 (1997).
- Kelly McClure, Student Author, *Federal Civil Forfeiture of Assets: How It Works and Why It Must*, 11 U. Bridgeport L. Rev. 419 (1991).

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