

IN THE COURT OF APPEALS OF IOWA

No. 1-617 / 09-1394
Filed September 8, 2011

**IN THE MATTER OF PROPERTY
SEIZED FOR FORFEITURE FROM
SHAWN D. HOOSMAN,**

SHAWN D. HOOSMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Shawn Hoosman appeals from the order forfeiting certain property.

AFFIRMED.

Shawn D. Hoosman, Newton, pro se.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

SACKETT, C.J.

Shawn Hoosman appeals from the district court order forfeiting money related to drug dealing that was seized from his person, an apartment, and his childhood home. He contends the judge should have recused himself because he is a relative. He also contends the court erred in denying his motion for a continuance because the court used the wrong hearing date to determine the motion was untimely and Hoosman did not appear for the hearing. We affirm.

Background. In 2006 Hoosman was arrested and charged with possession of a controlled substance with the intent to deliver. Certain property was seized from his person, from the apartment where he was staying, and from his childhood bedroom in his parents' home. Hoosman was convicted and his conviction was affirmed on appeal. See *State v. Hoosman*, No. 09-0067 (Iowa Ct. App. April 21, 2010). The State sought forfeiture of seized property. At issue in this appeal is the forfeiture of cash in the amount of \$10,260. The forfeiture hearing was continued about fifteen times between 2006 and July of 2009, mostly at the request of the State.

On May 7, 2009, in response to the State's request for a continuance, the court ordered the scheduled May 6 hearing rescheduled to July 1 at 1:30 p.m. On June 26, Hoosman, who was then incarcerated at the Newton Correctional Facility, signed a motion for continuance of the July 1 hearing, stating in support of his motion that he did not have a lawyer, he could prove his innocence, his criminal case was on appeal, and he was in the process of changing lawyers. The motion was file-stamped at 10:15 a.m. on July 1, just hours before the

scheduled hearing at 1:30. Hoosman did not call in, appear personally at the hearing, or appear by counsel.

On July 2, the court issued its order, providing in relevant part:

Objection to forfeiture was scheduled to come before the court on June 30, 2009. At the appointed time defendant-claimant Shawn Hoosman failed to call in nor did he appear by counsel.

On July 1, 2009, Mr. Hoosman filed a motion for continuance. However the motion is late.

Based on a failure to litigate the claimant Shawn Hoosman's objections to forfeiture [are] overruled as being unlitigated.

The items seized are ordered forfeited to the State of Iowa.

On July 23, Hoosman filed what appears to be a motion to set aside the forfeiture, alleging:

Not only was a continuance filed in a timely manner. Judge Stigler based his ruling off of a wrong date and has recused himself on numerous occasions due to the fact that he is a relative of the defendant-claimant.

On August 11, the court denied Hoosman's "application for reconsideration" without hearing, again stating the motion to continue was filed after the time the hearing was scheduled.

Scope of Review. A district court's denial of a motion for continuance is reviewed for an abuse of discretion. *State v. Artzer*, 609 N.W.2d 526, 529 (Iowa 2000). A court's decision "to recuse or not to recuse itself" is reviewed for an abuse of discretion. *Taylor v. State*, 632 N.W.2d 891, 893 (Iowa 2001). To the extent the claimant raises constitutional issues, our review is de novo. See *State v. Hutton*, 796 N.W.2d 898, 901 (Iowa 2011).

Merits. Hoosman contends the district court judge erred in not disqualifying himself "in the proceeding in which the judge's impartiality might

reasonably be question[ed].” He also contends the court abused its discretion in ruling on his motion for continuance.

Recusal. Hoosman argues Judge Stigler “ruled on a case when he should have disqualified himself from presiding over it like he has done on previous occasions being a relative of the defendant.” We find no motion for recusal in the file; the claim is that the judge should have recused himself *sua sponte*.

Iowa’s Code of Judicial Conduct provides for disqualification of a judge “in any proceeding in which the judge’s impartiality might reasonably be questioned,” which includes the circumstance in which “a person within the third degree of relationship” to the judge or the judge’s spouse is “a party to the proceeding.” Iowa Code of Judicial Conduct Rule 51:2.11(A)(2)(a). The test is objective, “not whether the judge self-questions his own impartiality, but whether a reasonable person would question it.” *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994). “There is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is.” *Id.* (quoting *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987)).

Hoosman claims he is a relative of Judge Stigler and the judge has recused himself from proceedings involving the claimant on previous occasions. The record before us does not reveal what, if any, relationship exists between Hoosman and Judge Stigler. Nor does it contain any evidence, except Hoosman’s statement, that Judge Stigler has previously recused himself

because Hoosman was involved in the proceeding.¹ We conclude Hoosman has failed to prove any grounds for recusal or any basis for questioning the judge's impartiality. Consequently, we conclude the judge did not abuse its discretion in not recusing himself *sua sponte*.

Continuance. Hoosman argues the court erred in denying his motion to continue as untimely because the court cited an incorrect date for the scheduled hearing. He also argues the court made its ruling on the State's forfeiture application "prematurely, violating his due process right."

We agree with Hoosman that the court erred in concluding his motion for continuance was untimely and also that the court did not correct that conclusion when ruling on Hoosman's filing seeking to have the forfeiture set aside. The motion for continuance was filed prior to the forfeiture hearing. However, Hoosman did not call in at the scheduled time, appear personally, or appear by counsel at the forfeiture hearing in order to contest the State's application. He apparently assumed that filing the motion to continue was sufficient. We will not interfere with the court's ruling on a motion for continuance unless it results in injustice. See *Artzer*, 609 N.W.2d at 530.

Hoosman notes in his brief that he was proceeding *pro se* and implies that should change how we view his actions. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652, 654 (1972) ("We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to

¹ Hoosman's brief points to the judge's "stepping down from the bench during Hoosman's Post Conviction Relief back in 1998 and during his enhancement hearing held on November 18th 2008." There is no evidence concerning these proceedings in the record before us on appeal.

less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”).

Although we may give pro se pleadings a liberal construction, see *Munz v. State*, 382 N.W.2d 693, 697 (Iowa Ct. App. 1985), a pro se litigant undertakes the responsibility for litigating his case, and the trial court assumes no part of that responsibility. *Conkey v. Hoak Motors, Inc.*, 637 N.W.2d 170, 173 (Iowa 2001). Pro se parties receive no deferential treatment. See *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000). The law does not judge by two standards, one for lawyers and another for lay persons. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995). Rather, all are expected to act with equal competence. *Id.* If lay persons choose to proceed pro se, they do so at their own risk. *Id.* Hoosman properly filed a motion for continuance. Absent action by the court to grant the continuance before the scheduled hearing, Hoosman should have taken the necessary steps to appear at the hearing or be otherwise represented. He did not do so, and the court ordered the forfeiture of the money.

Hoosman contends the court failed to take into account the reasons he gave for requesting a continuance or the correct court date for the hearing. He argues the court “prematurely” decided the forfeiture issue without a hearing and the State failed to prove the property was subject to forfeiture. See Iowa Code § 809A.4 (2009) (listing property subject to forfeiture). However, section 809A.12(9) provides for a presumption that money found in close proximity to contraband, as was the situation in this case, was either the proceeds of or

intended to facilitate conduct giving rise to forfeiture. Thus there was a presumption the money was subject to forfeiture under section 809A.4(2)(a)(2) and 809A.4(3). Because Hoosman did not present any evidence to rebut the presumption, the court properly could order forfeiture of the money. Hoosman cannot demonstrate injustice resulting from the district court's denial of his motion to continue.

Conclusion. Because Hoosman has not provided evidence of any basis for the court to recuse itself, we affirm on his challenge to the court's participation in the proceedings. Although the court referred to an incorrect hearing date as a basis for denying Hoosman's motion for continuance as untimely, we affirm the denial of the motion because Hoosman has not demonstrated an injustice resulted. His failure to rebut the presumption the money was subject to forfeiture was the result of his failure to appear for the scheduled hearing, not the court's subsequent denial of his motion to continue.

AFFIRMED.