

**IN THE COURT OF APPEALS OF IOWA**

No. 1-866 / 11-0540  
Filed December 21, 2011

**IN RE THE PROPERTY SEIZED FOR  
FORFEITURE FROM MOHAMMAD  
MIRZAI AND ALIYA MIRZAI,**

**ALIYA MIRZAI,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Richard G. Blane II (ruling on forfeiture claims) and Glenn E. Pille (ruling on attorney fees), Judges.

Aliya Mirzai appeals from the district court's order denying her attorney fees incurred in successfully proving the "innocent owner" exemption under Iowa's Forfeiture Reform Act. **REVERSED AND REMANDED.**

Gary D. Dickey of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Joe Crisp, Assistant County Attorney, for appellee.

Heard by Potterfield, P.J., and Doyle and Tabor, JJ.

**TABOR, J.**

The owner of a 2002 silver Jaguar appeals from an order denying her attorney fees incurred in successfully proving the “innocent owner” exemption under Iowa’s Forfeiture Reform Act. She relies on the fee-shifting provision at Iowa Code section 809A.12(7) (2009). The district court based its denial of the fees on Iowa Code section 809A.16(8)(c), which bars “suit or judgment” against the seizing agency or the prosecuting attorney if reasonable cause existed for the seizure for forfeiture. Because section 809A.12(7) does not cross reference section 809A.16(8)(c) and the latter provision appears in a division of the chapter dealing with disposition of forfeited property and not proof of exemptions, we find the claimant is entitled to reasonable attorney fees under section 809A.12(7). We remand for a determination of the amount of those fees.

***I. Background Facts and Proceedings***

On August 4, 2010, Windsor Heights police officer Trace Kendig stopped a silver 2002 Jaguar for speeding at the intersection of 63rd Street and University Avenue in the western suburb of Des Moines. Mohammad Mirzai was driving the car, though it was registered to his mother, Aliya Mirzai. Mohammad had two passengers, Philip Duncan and Dominique Williams.

The trio in the Jaguar had been on the police department’s “radar screen” for drug dealing, according to testimony from Officer Kendig at an October 29, 2010 hearing on claims for the property. In its findings of facts following that hearing, the district court noted that Aliya Mirzai was not known for any drug activity.

Officer Kendig discovered that Mohammad Mirzai's driver's license was suspended. Because Mohammad was not eligible to drive, the officer planned to do an inventory search before impounding the car. The officer also obtained Mohammad's consent to search the car. In the center console, Officer Kendig found two baggies of marijuana inside a rubber-banded roll of \$719 in cash. The officer discovered another \$2300 in cash, folded over, in the same compartment. Also in the console, the officer found Mohammad's wallet, which contained an additional \$340 in cash.

The officer called for a drug dog. The dog "hit"—that is indicated the presence of drugs—on the front driver and passenger doors of the Jaguar. The officers did not find drugs in those areas, but observed that the door liners were loose and appeared to have been tampered with, leading them to suspect that the car's occupants may have transported drugs inside the doors in the past.

Officer Kendig placed Mohammad in the back of his patrol car, and after reading the suspect his Miranda rights, asked him about the drugs and money found in the Jaguar. Mohammad denied knowledge of the marijuana, but said the money belonged to him, without differentiating among the three wads of cash. When interviewed further by a drug task force officer at the police station, Mohammad denied there was any "weed" in the car, but acknowledged the large amount of cash in the console. Mohammad ventured that someone else must have placed the marijuana inside the roll of bills. As for ownership of the Jaguar, Mohammad told officers that he paid for the car, but registered it in his mother's name so that his insurance would be more affordable.

The Windsor Heights Police Department filed a notice of seizure for forfeiture of the \$3359 in cash found in Mirzai's car. On August 11, 2010, the department filed notices of seizure for forfeiture of the silver 2002 Jaguar, estimated at a value of \$8000; one notice listed the claimant as Aliya Mirzai and the other listed Mohammad Mirzai.

On August 16, 2010, Gary Dickey, counsel<sup>1</sup> for Mohammad Mirzai, filed an application for immediate return of the seized property, including \$2649 in cash (which excluded the \$719 banded around the drugs) and for the Jaguar. The application asserted that Mohammad rightfully possessed the property and did not use it to facilitate a criminal offense. Mohammad also denied knowledge or ownership of the drugs and attached an affidavit from sixteen-year-old Mike Anyuon, attesting that he placed the drugs and cash in Mirzai's car while they were playing basketball.

On August 17, 2010, the county attorney filed an in rem forfeiture complaint seeking to forfeit the \$3359 in cash seized on August 4, 2010. The county attorney filed an amended complaint on August 24, 2010, adding the Jaguar to the property to be forfeited.

On September 3, 2010, Aliya Mirzai filed a claim for return of property, asserting that she was the rightful owner of the Jaguar, the car was not subject to forfeiture under Iowa Code section 809A.4, and the car was exempt from forfeiture under section 809A.5(1).

The district court held a forfeiture hearing on October 29, 2010. On December 30, 2010, the court issued its ruling, concluding that the Jaguar could

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<sup>1</sup> Attorney Dickey also represented Aliya Mirzai in the district court.

not be forfeited because Aliya had established the exemption under section 809A.5(1).<sup>2</sup> Pursuant to sections 809A.13(7) and (8), the court ordered the car returned to Aliya.

On January 21, 2011, attorney Dickey filed a motion for attorney fees on behalf of claimants Mohammad and Aliya Mirzai, requesting the court enter judgment against Polk County in the amount of \$2071.60. The motion alleged that as the prevailing party, the claimants were entitled to the fee award under section 809A.12(7). Attorney Dickey revised the requested amount to \$2680 on March 8, 2011.

The county attorney filed a resistance to the attorney fee request, contending that the court's January 21, 2010 forfeiture ruling "did not identify a prevailing party" and "did not include any mention of Iowa Code section 809A.12(7)." The resistance also requested that the court find reasonable cause existed for the forfeiture action under section 809A.16(8). The claimants filed a reply, asserting section 809A.16(8) did not limit the attorney fees available under section 809A.12(7) and that the "costs or damages" mentioned in section 809A.16(8)(b) was not the same as "attorney fees" referenced in section 809A.12(7). Alternatively, the claimants argued the State did not properly invoke section 809A.16(8). The parties submitted the matter to the district court without additional argument on March 9, 2011.

On March 11, 2011, the court denied claimant's motion for attorney fees. The court first found the State substantially complied with section 809A.16(8) by

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<sup>2</sup> The court also ordered that the \$340 cash found in Mohammad's wallet be returned to him.

requesting the court issue a reasonable-cause finding in its resistance to the application for attorney fees. The court then determined that reasonable cause existed for the seizure and forfeiture of the 2002 Jaguar,

based upon the amount of cash and drugs found in the car and a finding that Mohammad Mirzai told authorities the vehicle was his, that he paid for it, and that basically it was only in his mother's name for insurance purposes.

Finally, the court ruled "the prohibition of liability for suit or judgment" set out in section 809A.16(8)(c) precluded any award of attorney fees under 809A.12(7).

Claimant Aliya Mirzai filed this appeal.

## **II. Standard of Review**

We review forfeiture proceedings for correction of legal error. *In re Young*, 780 N.W.2d 726, 727 (Iowa 2010). We likewise apply an at-law review to questions of statutory interpretation. *State v. Allen*, 708 N.W.2d 361, 365 (Iowa 2006). Although our supreme court has said that it strictly construes statutes allowing forfeitures, *In re Property Seized from Williams*, 676 N.W.2d 607, 612 (Iowa 2004), section 809A.23 states: "The provisions of this chapter shall be liberally construed to effectuate its remedial purposes." Ultimately, our goal is to promote and give effect to the legislature's intent. *In re Property Seized from Williams*, 646 N.W.2d 861, 865 (Iowa Ct. App. 2002).

## **III. Analysis**

### **A. Procedural Pathway to Appeal**

As an initial matter, the State asserts that Aliya Mirzai did not have the right of direct appeal from the district court's March 11, 2011 order denying her motion for attorney fees. Relying on Iowa Code sections 801.1 and 814.6, the

State argues that because the claimant was not a criminal defendant, she did not have the right of direct appeal. See *Bousman v. Iowa Dist. Ct.*, 630 N.W.2d 789, 793 (Iowa 2001).

We find the claimant had the right of direct appeal from the order denying attorney fees. Iowa Code section 809A.12(16) applies the rules of civil procedure to proceedings under the forfeiture reform act. Under the rules of civil procedure, a final adjudication of any rights of the parties to an action is a judgment. Iowa R. Civ. P. 1.951. Where that judgment is an attorney fee order following final judgment in the underlying case—as is true here—the attorney fee order is separately appealable. See Iowa R. App. P. 6.103(2).

#### **B. Substantive Statutes at Issue**

This appeal involves two provisions of Iowa's Forfeiture Reform Act. Claimant Aliya Mirzai, who proved a forfeiture exemption under Iowa Code section 809A.5(1), relies on the following fee-shifting statute:

In any proceeding under this chapter, if a claim is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant. However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state must provide some evidence to negate the assertion of the exemption. The state's evidence must be substantial, though not necessarily rising to the level of a preponderance of the evidence, and more than a simple assertion of the claimant's interest in the property. *The agency or political subdivision bringing the forfeiture action shall pay the reasonable attorney fees and costs, as determined by the court, incurred by a claimant who prevails on a claim for exemption in a proceeding under this chapter.*

Iowa Code § 809A.12(7) (emphasis added).

The district court tried to reconcile Iowa Code section 809A.12(7) with section 809A.16(8). Addressing the issue of “reasonable cause” for the seizure for forfeiture, that provisions states:

8. Upon motion by the prosecuting attorney, if it appears after a hearing that reasonable cause existed for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall find all of the following:
  - a. That reasonable cause existed, or that the action was taken under a reasonable good faith belief that it was proper.
  - b. That the claimant is not entitled to costs or damages.
  - c. *That the person or seizing agency who made the seizure and the prosecuting attorney are not liable to suit or judgment for the seizure, suit, or prosecution.*

Iowa Code § 809A.16(8) (emphasis added).

The district court concluded that because reasonable cause existed for the seizure for forfeiture by the Windsor Heights police, section 809A.16(8)(c) precluded the award of attorney fees because such an award would constitute a “suit or judgment” against the seizing agency.<sup>3</sup>

Aliya contends on appeal that the district court’s conclusion is “flawed on multiple levels.” As her opening salvo, Aliya argues the prosecuting attorney failed to follow the procedure required by section 809A.16(8); the statutory language provides for a hearing on reasonable cause “upon motion of the prosecuting attorney.” The claimant advanced this same argument in the district court. The district court ruled that “although not presenting the same to the Court on a formal motion,” the prosecuting attorney raised the issue in its resistance to the claimant’s request for attorney fees.

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<sup>3</sup> The district court did not equate “attorney fees” with the “costs or damages” in section 809A.16(8)(b) and the State does not argue on appeal that subsection (b) would prevent Aliya from recovering attorney fees.

We opt to bypass the question whether the prosecuting attorney complied with the “motion” requirement in section 809A.16(8) by asking for a reasonable-cause finding in its resistance to the claimants’ motion for attorney fees. It is not essential to address that procedural issue because we agree with the claimant’s substantive argument that section 809A.16(8) “covers only situations in which a claimant files a subsequent action for damages” from the prosecuting attorney or the seizing officer or agency after disposition of the forfeited property.

Without dispute, Aliya prevailed on her claim for an exemption in a proceeding under chapter 809A. Given her success in proving an “innocent owner” exemption at section 809A.5(1), Aliya contends that section 809A.12(7) mandates that the agency or political subdivision bringing the forfeiture action pay “reasonable attorney fees and costs, as determined by the court.” She asserts that our analysis should end there as section 809A.12(7) does not cross reference section 809A.16(8) or provide any other limiting language.

We agree with Aliya’s analysis. Under the plain language of section 809A.12(7), the only prerequisite for a claimant to have his or her attorney fees and costs paid by the agency or political subdivision bringing the forfeiture action is to prevail on a claim for exemption in a proceeding under chapter 809A. Section 809A.12(7) does not mention reasonable cause nor does it cross reference section 809A.16(8). If the legislature had wanted to limit the availability of attorney fees only to those claimants who can establish an exemption *and* whose property was seized for forfeiture without reasonable cause, it could have easily done so by expressly incorporating both elements in section 809A.12(7) or

by referring to section 809A.16(8) in section 809A.12(7). But it did neither. The legislature's failure to restrict the availability of attorney fees to seizures for forfeiture lacking in reasonable cause suggests an intention that fee-shifting occur whenever a claimant successfully establishes a section 809A.5 exemption. *See State v. Sluyter*, 763 N.W.2d 575, 584 (Iowa 2009) (dividing legislative intent, in part, from lack of cross reference to another statute).

We are also persuaded by Aliya's argument that section 809A.16, by its own title, is concerned with the "disposition of property" after declaration of forfeiture. It would be odd to place the reasonable-cause provision at the end of the subsections related to the disposition of forfeited property if the legislature intended the liability restriction to curtail the fee-shifting provision in section 809A.12. *See State v. Iowa Dist. Ct.*, 630 N.W.2d 778, 781–82 (Iowa 2001) (finding that section heading appearing in the Code indicated legislature's intent to address limited subject).

The State contends that section 809A.16(8) is the more specific of the two statutes at issue and, accordingly, it should control over the more general provisions of section 809A.12(7). *See State v. Lee*, 561 N.W.2d 353, 354–55 (Iowa 1997). While the rule of statutory construction cited by the State is sound, we do not think that it supports the district court's denial of attorney fees. First, it is arguable that section 809A.12(7) is actually the more specific statute. Its reach is limited to attorney fees and costs "incurred by a claimant who prevails on a claim for exemption." The only exemptions in the chapter are described in section 809A.5(1)(a) and (b). But even if we were to view section 809A.16(8) as

the more specific statute, its specificity relates to the ability of prosecuting attorneys to seek a hearing on reasonable cause to shield themselves from liability for “suit or judgment for the seizure, suit or prosecution” after disposition of the forfeited property, not when claimants are proving exemptions.

The history of Iowa’s civil asset forfeiture law also bolsters our interpretation. The legislature enacted chapter 809A in 1996. It replaced the former forfeiture statutes located in chapter 809.<sup>4</sup> Chapter 809 did not contain an independent provision for recouping attorney fees, but courts could award attorney fees accrued during a successful resistance to the State’s forfeiture proceeding under Iowa Code section 625.29. *See In re Property Seized from McIntyre*, 550 N.W.2d 457, 459 (Iowa 1996) (noting that a party seeking relief under section 625.29(1) could recover attorney fees from the State only if the State’s case was not supported by substantial evidence). Section 625.29—designated as Iowa’s Equal Access to Justice Act—drew criticism from commentators who found that its substantial evidence standard did not serve the statute’s remedial purpose. *See, e.g., Leslie Greffenius, Awarding Attorneys’ Fees When the State’s Position is Not Supported by Substantial Evidence: Equal Access to Justice in Iowa?*, 71 Iowa L. Rev. 1553, 1567–58 (July 1986) (advocating for “substantially justified” standard from federal act to replace “substantial evidence” standard in Iowa law); Samuel A. Thumma & Barbara J. Dawson, *The Iowa Equal Access to Justice Act: Is Recovery Available?*, 39 Drake L. Rev. 431, 457 (1989–90) (describing substantial evidence as “an

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<sup>4</sup> The legislature amended chapter 809 and retitled it “Disposition of Seized Property.”

extremely low standard for the state to meet” and noting just one award of fees during six years since EAJA enactment).

Our legislature’s decision to include the specific fee-shifting provision in Iowa’s Forfeiture Reform Act can reasonably be interpreted as an effort to expand access to legal counsel in civil forfeiture proceedings. See *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 459–60 (Iowa 2008) (relying on legislative and jurisprudential trends among sister jurisdictions to determine legislative intent). In an analysis of the federal Civil Asset Forfeiture Reform Act of 2000 (CAFRA), one legal scholar explained that before CAFRA, successful litigants were entitled to attorney’s fees under the federal Equal Access to Justice Act, but “attorney fees were almost never awarded.” Louis S. Ruilli, *The Long Term Impact of CAFRA: Expanding Access to Counsel and Encouraging Greater Use of Criminal Forfeiture*, 14 Fed. Sent. Rep. 87, 90 (2001). Professor Ruilli reasoned that the adoption of a specific fee-shifting provision<sup>5</sup> provided a “needed incentive for private lawyers to become more involved in civil forfeiture cases.” *Id.* By construing our fee-shifting provision to be uninhibited by section 809A.16(8)(c), we are effectuating the intent of the legislature to reduce the financial hurdle faced by an “innocent owner” who wishes to challenge the State’s seizure of their property for forfeiture.

The State argues that should we find the district court erred in denying attorney fees, the appropriate outcome would be to remand for a determination of

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<sup>5</sup> 28 U.S.C.A. § 2465 (providing that “in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for . . . reasonable attorney fees and other litigation costs reasonably incurred by the claimant . . .”).

reasonable attorney fees related to the representation of Aliya. We agree with this alternative resolution and remand the case for a hearing on the proper amount of fees.

**REVERSED AND REMANDED.**