IN THE COURT OF APPEALS OF IOWA

No. 8-106 / 07-0552
Filed May 14, 2008

IN THE MATTER OF 1972 EUCLID AVENUE,

MARK DEBOWER,
Claimant-Appellant.

Appeal from the Iowa District Court for Bremer County, Paul Riffel, Judge.

The claimant appeals following the denial of his request for the return of trees that were seized from him pursuant to a search warrant. **REVERSED AND REMANDED.**

Bruce Toenjes of Nelson & Toenjes, Shell Rock, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, and Kasey E. Wadding, County Attorney, for appellee State.

Heard by Vogel, P.J., and Zimmer and Baker, JJ.

BAKER, J.

The claimant, Mark DeBower, appeals following the denial of his request for the return of trees and pots that were seized from him pursuant to a search warrant. He requests a return of the items, or in the alternative, an accounting for them. We reverse and remand.

Background Facts and Proceedings.

On June 17, 2005, Deputy Dennis L. Miller had a phone conversation with Earl Burkle. Burkle related that approximately three weeks earlier he had several evergreen trees and one maple tree stolen from his property and that he had recently observed the trees at the residence of Mark DeBower. Later that day, deputies from the Bremer County Sheriff's Department obtained and executed a search warrant at DeBower's residence, a rural acreage in Bremer County. The warrant sought "34 evergreen trees about 2 feet tall and in plastic pots, a 12-15 foot veirgated (sic) maple tree that is not in a pot sitting in the yard at the above address." The deputies seized forty-five two-foot tall evergreen trees, a twelve to fifteen-foot maple tree, and a number of plastic pots. The trees and pots were loaded in Burkle's truck and taken to his property.

DeBower was prosecuted for the theft of the trees and pots, but he was acquitted following a jury trial. DeBower's son, Zach, was also prosecuted for the theft in a juvenile action. The delinquency petition was dismissed, however, after the court found the State failed to establish beyond a reasonable doubt that Zach had taken possession or control of the trees.

On May 26, 2006, DeBower filed an application for the return of the seized trees, claiming to be the owner of the property. At that time, the trees were not in

the possession of the Bremer County Sheriff's Department, but rather were still in the possession of Earl Burkle. Following a hearing on August 2, 2006, the district court entered an order denying DeBower's request for a return of the trees. It concluded he had "failed in his burden under § 809.3 of proving by a preponderance of the evidence that he has a lawful right to possession of the property . . . ."

Scope of Review.

To the extent this appeal involves statutory interpretation, we review this action for the correction of errors at law. Iowa R. App. P. 6.4. However, to the extent it involves constitutional matters, our review is de novo. We review constitutional claims de novo. *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 258 (Iowa 2007).

Analysis.

DeBower first claims the State had no standing to assert that Earl Burkle, and not DeBower, was the owner of the trees. He further asserts that because there was no standing to assert Burkle's rights, the State's evidence of his claim of possession was irrelevant. Next he claims the district court's hearing was untimely. Finally, DeBower claims the court erred in concluding he failed to prove his right to possession.

As an initial matter, we lay out the statutory scheme under which actions for the return of seized property are governed. Iowa Code section 809.3 (2005) sets forth the requirements for an application for the return of seized property.

> 1. Any person claiming a right to immediate possession of seized property may make application for its return in the

> office of the clerk of court for the county in which the property was seized.
> 2. The application for the return of seized property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property immediately returned. Mere ownership is insufficient as grounds for immediate return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set out in the application for immediate return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If no specific grounds are set out in the application for return, or the grounds set out are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

Iowa Code § 809.3.

Section 809.5 sets forth the requirements for the disposition of seized property. In pertinent part, it provides

> 1. Seized property which is no longer required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law and there is no forfeiture claim filed on behalf of the state.
> . . . .
> 2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:
> a. The possession of the property by the claimant is prohibited by law.
> b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.
> c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.
> 3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

Standing to Assert Burkle's Right. We first address DeBower's claim that the "district court erred by improperly considering an interest asserted by the State on behalf of a person who did not make a claim to possession and thus had no standing." In resolving this question, we must analyze whether the statute provides "standing," or authority, for the State to appear and argue in the manner in which it did.

The State argues "it appears elementary that the State, as custodian of the property, had the right, and so standing, to contest any claim for return which would violate the requirement of Chapter 809." However, the State makes this assertion without any citation to authority under chapter 809. And, as will be mentioned shortly, nor do we find any statutory authority for the State's position.

Chapter 809 sets forth a comprehensive scheme by which claims may be made, and competing claims adjudicated, for the return of seized property. Pursuant to the statute, the State only has an interest in the seized property under a very limited and defined set of circumstances. Those situations are when (1) possession of the property by claimant would be prohibited by law, (2) there is a forfeiture notice on file, and (3) the property is still needed in a criminal investigation or prosecution. Iowa Code § 809.5(2)(a). Thus, when and only when, these circumstances are allegedly present, does the statute allow the State to make argument and present evidence in contradiction to the claimant's claim of possession. Here, the State made no claims that any of the three prerequisites to its involvement in the case were at issue. There is no claim it would be illegal for DeBower to possess the trees, that the trees were still needed for investigation or prosecution, or that a forfeiture action had been filed.

Moreover, chapter 809 clearly provides that any individual, not just the individual from whom the property was seized, may make a claim for its return. Section 809.3 allows "[a]ny person claiming a right to immediate possession of seized property" to make a claim. This, of course, means Burkle, on his own, could have filed a claim for possession of the trees and pots.

The statute also contemplates that more than one individual may make a claim for certain property, and it provides for a mechanism by which those competing claims may be adjudicated. Section 809.4 provides that "*all* claims to the same property shall be heard in one proceeding . . . ." (Emphasis added.) Like the "interpleader," an ancient equitable remedy which recognizes the right of a disinterested stakeholder, from whom several persons claim the same debt, to have conflicting claimants litigate the matter among themselves without embroiling the stakeholder in their controversy, the State, absent one of three enumerated exceptions, is a mere stakeholder.

Section 809.5(2) allows an action "[i]n the event that there is more than one party who may assert a right to possession or ownership of the property . . . ." Thus, even though DeBower had made the first claim, Burkle also clearly had the right to respond with his own claim; however, he did not avail himself of this route. Conversely, nothing in the chapter gives the State the right or even opportunity to advocate on the behalf of a claimant who has not made application for possession of the seized property.

In a similar case addressing a forfeiture action under then-chapter 809 (1987), our supreme court held that the defendants, who had elected to stand on their Fifth Amendment rights not to testify at the forfeiture hearing and had

declined to identify their interests in the seized property, lacked standing to assert claims for the property in question. *Matter of Aronson*, 440 N.W.2d 394, 398 (Iowa 1989). The court reasoned that in order to have standing to contest a forfeiture, one must be a "claimant." *Id.* (citing *Baker v. United States*, 722 F.2d 517 (9th Cir. 1983)). Likewise, we conclude the State here is not a "claimant" under chapter 809 because it has alleged no specific property interest in the seized items and did not file the statutory prerequisites to allege such a claim. *See* Iowa Code § 809.3 ("Any person claiming a right to immediate possession of seized property may make application for its return . . . ."). Accordingly, chapter 809 did not provide the State standing to present argument and evidence on behalf of Burkle.

Accordingly, we conclude the court erred in allowing the State to advocate on behalf of Burkle's right to possession. Because we have resolved the matter under this ground, we need not address DeBower's additional claims. We therefore reverse and remand for an accounting and further proceedings consistent with this opinion.

REVERSED AND REMANDED.