

**IN THE COURT OF APPEALS OF IOWA**

No. 8-549 / 06-0354  
Filed October 1, 2008

**IN THE MATTER OF PROPERTY SEIZED  
FOR FORFEITURE FROM JULIE MILLER  
AND DOUGLAS DEBRUIN,**

**DOUGLAS DEBRUIN,  
Respondent-Appellant.**

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Appeal from the Iowa District Court for Jackson County, Nancy Tabor,  
Judge.

Respondent appeals the district court's decision in forfeiture proceedings.

**AFFIRMED.**

Douglas DeBruin, Fort Madison, appellant pro se.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, and Phil Tabor, Jackson County Attorney, for appellee.

Considered by Sackett, C.J., and Miller, J., and Nelson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**NELSON, S.J.****I. Background Facts & Proceedings**

Douglas DeBruin was charged with first-degree murder for killing Gregory May, and first-degree theft for taking May's property. Several items were seized during the investigation of these crimes, including a Ford truck, several firearms, \$12,000 cash, and a yellow rope.

On November 15, 2005, the State instituted in rem forfeiture proceedings, under Iowa Code chapter 809A (2005), for the items that had been seized. The record shows DeBruin was personally served in federal prison on November 22, 2005. DeBruin filed a claim on December 8, 2005, for the return of the property, raising several procedural defects. He also filed a motion to dismiss. In addition, relatives of Gregory May – Donald May and Shannon May – filed a claim for the property under section 809.3.

After a hearing, the district court addressed these issues in a ruling on February 6, 2006. The court found: (1) it had personal and subject matter jurisdiction over the proceeding; (2) this forfeiture action was separate and distinct from a previous forfeiture action which was dismissed without prejudice; (3) DeBruin was served notice in this action; (4) the forfeiture action was timely; and (5) the parties agreed the forfeiture action included more items than those specifically listed in the forfeiture notice. The court concluded Donald May and Shannon May were entitled to most of the items seized by the State. Legal documents and personal records of DeBruin were to be returned to him.

Evidence needed by the State was to be retained by the State. DeBruin has appealed the decision of the district court.

## **II. Standard of Review**

Forfeiture is a civil proceeding. *In re Prop. Seized from Aronson*, 440 N.W.2d 394, 397 (Iowa 1989). Generally, we review forfeiture proceedings for the correction of errors at law. *In re Prop. Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996). On constitutional issues, our review is de novo. *In re Prop. Seized from Terrell*, 639 N.W.2d 18, 21 (Iowa 2002).

## **III. Merits**

**A.** The district court decision references an earlier forfeiture proceeding, SPCV 025670.<sup>1</sup> The court reviewed the file, and determined DeBruin had been served with notice on May 19, 2005. The court went on to note that any issue regarding lack of notice in SPCV 025670 was moot because it was dismissed without prejudice on November 8, 2005. The court noted the order granted the State permission to recommence an action for forfeiture. The court concluded the current forfeiture action was separate and distinct from the first action.

On appeal, DeBruin argues that he was not properly served with notice in the earlier action, that this action is a continuation of that action, and due to the lack of notice, this action should be dismissed. Furthermore, he claims the prosecutor engaged in misconduct by not properly serving him with notice in SPCV 025670. We determine that whether DeBruin was adequately served with notice in the earlier action is completely irrelevant to the present action. The

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<sup>1</sup> The court file for SPCV 025670 was not included in the record on appeal.

previous dismissal was without prejudice. The State could properly commence a new action, as was done here on November 15, 2005. See *Venard v. Winter*, 524 N.W.2d 163, 167 (Iowa 1994) (noting dismissal without prejudice is not a bar to a new action between the parties). The record shows DeBruin was personally served notice of the forfeiture proceedings on November 22, 2005. We conclude the district court did not err by denying DeBruin's motion to dismiss.

On appeal, DeBruin's claims regarding lack of notice are also raised within the context of due process. The issue of due process, however, was not discussed by the district court, and DeBruin did not file any post-trial motions. We conclude he has failed to preserve this issue for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002) (noting that where the district court has not addressed an issue, a party must draw the court's attention to the issue through a post-trial motion).

**B.** DeBruin questions whether the Mays have a superior claim to the property. The Mays' application was filed pursuant to section 809.3(1), which provides "[a]ny person claiming a right to immediate possession of seized property may make application for its return . . . ." Under this section, any property seized by the State may be subject to a claim by a person asserting the right to possess it. *State ex rel. Pillers v. Maniccia*, 343 N.W.2d 834, 835 (Iowa 1984).

Section 809.5(2) provides:

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.

The district court may “make orders appropriate to the final disposition of the property . . . .” Iowa Code § 809.5(3).

In this case, there was a forfeiture notice on file, and in the same proceeding the district court determined DeBruin’s interest in the property was subject to forfeiture under chapter 809A. Thus, the forfeiture proceedings were not disposed of in favor of DeBruin. Because DeBruin’s interest in the property had been forfeited under chapter 809A, the property could not be returned to him based on section 809.5(2)(b). The district court then made appropriate orders concerning the final disposition of the property. See Iowa Code § 809.5(3).

**C.** DeBruin raises several other claims in his pro se brief. His claims are not properly supported by citation of authority. “Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.” Iowa R. App. P. 6.14(1)(c). Even if there had been a proper citation of authority, however, the issues were not raised before the district court. In forfeiture actions, we do not consider issues which were not first raised before the district court. *In re Prop. Seized from Williams*, 676 N.W.2d 607, 612 (Iowa 2004).

We affirm the decision of the district court.

**AFFIRMED.**