

**IN THE COURT OF APPEALS OF IOWA**

No. 9-451 / 08-1706

Filed July 22, 2009

**IN THE MATTER OF THE PROPERTY  
SEIZED FOR FORFEITURE FROM  
VIRGIL JUNIOR LAMAAK,**

**VIRGIL JUNIOR LAMAAK,**  
Appellant.

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Appeal from the Iowa District Court for Crawford County, James D. Scott,  
Judge.

Virgil Lamaak appeals from the district court's order denying his motion to  
dismiss and granting the State's motion for judgment on the pleadings.

**REVERSED AND REMANDED.**

William Bracker of Bracker Law Office, Council Bluffs for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney  
General, Michael Mundt, County Attorney, and Roger Knee, Assistant County  
Attorney for appellee State.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

After receiving information from a confidential informant that Virgil Lamaak was involved in drug dealing, deputies obtained a search warrant for Lamaak's residence. The warrant authorized deputies to search Lamaak's two houses, which were located on the same lot and shared the same address. On January 7, 2008, deputies searched the newer of the two homes and found marijuana, a water bong used to smoke marijuana or methamphetamine, a plastic baggie containing methamphetamine residue, coffee filters, a black book containing entries consistent with an illegal drug ledger, and several guns. Deputies discovered three bags containing a total of \$28,000 hidden behind a loose piece of trim in a door frame. They seized \$1143 from Lamaak's person. Deputies also searched the older of the two houses, which was essentially empty except for items consistent with a marijuana growth operation, including plant materials, grow lights, plant food, a digital scale, numerous chemicals, and a book titled "Marijuana Grower's Handbook."

On January 8, 2008, the State filed and served on Lamaak a notice informing him of the property seized and of his right to claim possession of the seized property pursuant to Iowa Code section 809.3 (2007). On January 9, 2008, the State served a notice of seizure for forfeiture on Lamaak, specifying the \$29,143 in cash found in the search.<sup>1</sup> On February 7, 2008, the State filed a notice of pending forfeiture with respect to \$19,143. An amended notice was

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<sup>1</sup> This document was file stamped by the sheriff's office, but not by the district court clerk. The notice is attached to a return of service with Lamaak's signature.

filed on February 11, 2008, listing the correct amount of \$29,143. Both notices informed Lamaak that he could file a claim for return of the money within thirty days. Lamaak filed a claim for the seized property on February 27, 2008. Lamaak's claim stated: (1) all of the \$29,143 was his property; (2) it was not used or acquired as a result of a drug-related offense; and (3) he was an innocent owner.

Hearing on Lamaak's claim was set for May 5, 2008. However, no hearing took place. On June 6, 2008, the State filed an in rem forfeiture complaint, seeking to forfeit the \$29,143, again alleging the cash was the result of drug trafficking. On June 23, 2008, Lamaak filed an answer that was identical to his claim for return of seized property filed on February 27, 2008. The court continued the hearing on the State's complaint until August 25, 2008, by agreement of the county attorney and Lamaak's defense counsel. The evidentiary hearing included the testimony of Lamaak and of law enforcement officers who executed the search warrant.

The court granted the parties additional time to file motions and briefs. On August 28, 2008, the State filed a motion for judgment on the pleadings and application for order of forfeiture, contending that Lamaak's answer to the in rem forfeiture complaint was insufficient as a matter of law. The State also filed a brief in support of the motion and application. On September 2, 2008, Lamaak filed a motion to dismiss, asserting the State failed to file its judicial forfeiture proceeding within the ninety-day limit provided in the code. Lamaak contended that this delay deprived the court of authority to hear the case and should result in the immediate return of his money.

The district court issued a ruling on September 24, 2008, granting the State's motion for judgment on the pleadings, denying Lamaak's motion to dismiss, and ruling that the State had proved the cash was the proceeds of drug trafficking. Lamaak filed a motion for new trial on October 3, 2008. The court denied the motion for new trial on October 14, 2008. Lamaak appeals, arguing the district court erred in: (1) denying Lamaak's motion to dismiss on the ground that his claim for seized property did not satisfy the statutory requirements; (2) granting the State's judgment on the pleadings; and (3) finding the evidence sufficient to order forfeiture of the property.

## **II. Standard of Review**

We review forfeiture proceedings for correction of errors at law. *In re Property Seized For Forfeiture From Williams*, 676 N.W.2d 607, 612 (Iowa 2004). "Forfeitures are not favored under the law"; therefore, we are to strictly construe statutes allowing forfeitures. *Id.* "[N]otice provisions and the time for notice provisions are mandatory." *Id.* We review a grant of judgment on the pleadings for corrections of errors at law. Iowa R. App. P. 6.4. When a court reaches a decision on the merits of a forfeiture complaint, we examine the evidence "in the light most favorable to the district court judgment, and the findings are construed liberally to support the district court's decision." *In re Property Seized From Williams*, 646 N.W.2d 861, 863 (Iowa Ct. App. 2002). "An order of forfeiture will not be reversed unless the evidence is utterly wanting to support the conclusion of the trial court." *In re Property Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996).

### III. Statutory Requirements of Claim

Lamaak argues the State's failure to comply with statutory time limits requires reversal of the district court's order of forfeiture. Iowa Code section 809A.8(1)(a) states:

Property seized for forfeiture shall be released on the request of an owner . . . to the owner's . . . custody, as custodian for the court, pending further proceedings pursuant to this chapter if the prosecuting attorney fails to . . . :

. . . .  
 (2) File a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11.

The district court found that Lamaak's argument regarding the State's duty to file a timely judicial forfeiture proceeding was moot because Lamaak's claim for return of the cash was deficient. Iowa Code section 809A.11 establishes the procedure by which an interest holder can make a claim for property at issue. Section 809A.11(3) states in relevant part:

The claim or petition . . . shall set forth all of the following:

. . . .  
*d.* The date, the identity of the transferor, and the circumstances of the claimant's or petitioner's acquisition of the interest in the property.

*e.* The specific provision of law relied on in asserting that the property is not subject to forfeiture.

*f.* All essential facts supporting each assertion.

The State asserts Lamaak's claim does not comply with these requirements.<sup>2</sup> Lamaak's claim is supported by the following statements: (1) "all of the [\$29,143] is the property of the claimant"; (2) "the [money] so seized was

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<sup>2</sup> The State concedes Lamaak's claim and answer were timely filed and correctly included all other information required by sections 809A.11(3) and 809.13(4) .

not used or acquired as a result of a drug related offense”; and (3) “Claimant is an innocent owner.”

When a proper claim or a proper answer is not timely filed in an action in rem, the State may apply for an order of forfeiture pursuant to the default judgment procedure provided in Iowa Code section 809A.16(3). However, the State did not use this procedure to challenge the adequacy of Lamaak’s claim. The State chose instead to file its in rem forfeiture complaint under section 809A.8 and to proceed to trial on the disputed facts generated by its complaint and the timely filed answer. The State did not use the discovery provisions provided in section 809A.13(6) to learn more specific details of Lamaak’s claim to the property. Nor did the State file its motion for judgment on the pleadings and application for order of forfeiture under 809A.16 until the time of trial, after it had missed the ninety-day deadline for filing a judicial forfeiture proceeding pursuant to section 809A.8(1)(a)(2).

The “Forfeiture Reform Act” found in Iowa Code chapter 809A prescribes two sequential ninety-day deadlines in which the State must file its notice of pending forfeiture (section 809A.8(1)(a)(1)) and a subsequent judicial forfeiture proceeding (section 809A.8(1)(a)(2)). In a case involving the ninety-day deadline for filing a notice of pending forfeiture in 809A.8(1)(a)(1), our supreme court found the State’s failure to comply to be fatal to its request for forfeiture. *Williams*, 676 N.W.2d at 613. The court found the time period is a “special statutory limitation,” which is an element of the State’s right to apply for forfeiture. *Id.* The failure of the claimant in *Williams* to file a claim under 809A.11 did not

defeat her motion to dismiss, where she had filed a document titled “response” to notice of pending forfeiture. The *Williams* court ruled:

Section 809A.8(1)(a)(1)’s requirement that notice of pending forfeiture be filed within ninety days is a special statutory limitation. It creates the State’s right to forfeit the property in rem if an owner has requested the release of the property. In order to exercise its right of forfeiture under these circumstances, the State must comply with the time limits contained in the statute . . . .

*Id.*

We find the reasoning in *Williams* applies equally to the ninety-day deadline in section 809A.8(1)(a)(2). Because the State failed to comply with the mandatory ninety-day deadline of Iowa Code section 809A.8(1)(a)(2), the district court erred in denying Lamaak’s motion to dismiss. Any deficiencies in Lamaak’s timely claim do not render the claim improper, where Lamaak asserts innocent ownership and denies the conclusory allegations in the State’s pleadings. The State’s late filing under the statutory scheme is fatal to its request for forfeiture. The cash must be returned to Lamaak.

We reverse the district court’s order forfeiting the currency and granting the State’s motion for judgment on the pleadings. We remand to the district court for dismissal of the State’s forfeiture proceeding and application for forfeiture and for entry of an order returning the \$29,143 to Lamaak in accordance with section 809A.8(1)(a).

**REVERSED AND REMANDED.**