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Ferguson v. Las Vegas Metropolitan Police Dept., 131 Nev. Adv. Op. 94 (Dec. 31, 2015)

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FORFEITURE LAW: FUNDS PROPERLY SUBJECTED TO FORFEITURE AND
STANDING IN FORFEITURE ACTIONS

Summary

The Court determined (1) the district court erred in granting summary judgment to the State because the State failed to present evidence demonstrating no genuine issue of material fact existed as to whether the funds it seized from petitioner's bank accounts were subject to forfeiture as proceeds attributable to the petitioner's commission of a felony; (2) the State's forfeiture of funds seized from a bank account will not stand without evidence connecting the funds to criminal activity; and (3) NRS § 179.1173(4) requires the State to prove by clear and convincing evidence the property is subject to forfeiture.

The Court further held (1) Nevada does not require constitutional standing where the Legislature has provided a statutory right to sue; and (2) under Nevada's forfeiture law, only a claim to any right, title, or interest of record is necessary for a plaintiff to establish standing.

Background

The petitioner, Bryan Ferguson, was convicted of burglary, possession of stolen property, conspiracy to possess stolen property and/or to commit burglary, possession of burglary tools, and larceny. During the investigation in advance of Ferguson's conviction, the State located and seized approximately \$125,000 from Ferguson's bank accounts. In the complaint it filed against the seized money, the State alleged the money represented proceeds attributable to the commission or attempted commission of a felony. The action against the seized funds was stayed in the district court pending the outcome of the criminal proceedings against Ferguson.

After the Nevada Supreme Court affirmed Ferguson's criminal convictions, the district court lifted the stay in the forfeiture proceedings. The State moved for summary judgment, which the district court granted. The district court relied on Ferguson's criminal convictions as conclusive evidence showing all elements of the forfeiture complaint were satisfied, meaning no genuine issue of material fact existed in the case, and further stated that the funds seized from Ferguson's bank account were proceeds from illegal activities.

Discussion

Ferguson appealed the district court's grant of summary judgment. On appeal, the State argued (1) Ferguson's convictions for burglary, larceny, and possession of stolen property provided conclusive evidence sufficient to satisfy its summary judgment burden because the facts from Ferguson's preceding criminal conviction supported the State's alleged cause of action under NRS § 179.1164(1)² in the forfeiture proceeding; (2) the Supreme Court's opinion affirming Ferguson's criminal convictions underlying the forfeiture proceeding precluded

¹ By Lena Rieke.

² NRS § 179.1164(1) provides "[a]ny proceeds attributable to the commission or attempted commission of any felony [are property] subject to the seizure and forfeiture in a proceeding for forfeiture." NEV. REV. STAT. § 179.1164(1)(a).

Ferguson from contending that no evidence connected his convictions to the seized funds; (3) Ferguson's conspiracy conviction raised the notion that he was jointly and severally liable for forfeited proceeds of the conspiracy; and (4) Ferguson lacked standing in the forfeiture action because he failed to describe his interest in the seized bank funds in his answer.

After reviewing *Schoka v. Sheriff, Washoe County*³, the Court determined that Nevada forfeiture law requires evidence that links the funds seized from a bank account to criminal activity. The Court further determined that NRS § 179.1173(4) "requires the State to 'establish proof by clear and convincing evidence that the property is subject to forfeiture,'" and that this burden of proof applies to each element of the claim. The Court concluded that, as applied to this case, the aforementioned determinations required the State to establish by clear and convincing evidence (1) that a felony was committed or attempted, and (2) that the funds seized from Ferguson's bank account are attributable to or derived directly or indirectly from the commission or attempt, and cited relevant sections of the NRS to support its conclusion.⁴

Regarding the State's first argument, that Ferguson's convictions for burglary, larceny, and possession of stolen property provided conclusive evidence sufficient to satisfy its summary judgment burden in the forfeiture proceeding, the Court determined the State did not "demonstrate that the source of funds in Ferguson's bank account was 'necessary to sustain' his convictions as required by NRS § 179.1173(6)."⁵ To support its conclusion, the Court distinguished the facts and elements underlying the crimes Ferguson was convicted of in a separate proceeding from the requirements of this forfeiture proceeding. Specifically, the Court stated (1) burglary bears no proceeds as a matter of law because "it concerns the act of unlawful entry and does not require the acquisition of money or property;" (2) possession of stolen property, without more, does not establish the funds in Ferguson's bank accounts were proceeds of that crime; and (3) the State did not present the district court with any evidence suggesting the money allegedly included in Ferguson's larceny charge concerned property stolen and converted to money via sale.

The Court also rejected the State's second argument, that the Supreme Court's opinion affirming Ferguson's criminal convictions underlying the forfeiture proceeding precluded Ferguson from contending that no evidence connected his convictions to the seized funds. Here, the Court found Ferguson's bank account was not relevant to the crimes he was charged with. Further, after reviewing *Dictor v. Creative Management Services*⁶, the court found its order in the criminal proceedings against Ferguson did not make Ferguson's bank account relevant to these charges because it merely described information about the bank account, and made no disposition about the funds contained in that account.

Further, the Court rejected the State's third argument, that Ferguson's conspiracy conviction raised the notion that he was jointly and severally liable for forfeited proceeds of the conspiracy. It found Ferguson's conspiracy conviction was based on his agreement to commit burglary and/or possess stolen property, and reasoned the analysis that governed the State's first

³ 108 Nev. 89, 91, 824 P.2d 290, 291-92 (1992).

⁴ NEV. REV. STAT. §§ 179.1161, 179.1164(1)(a), 179.1173(4).

⁵ NEV. REV. STAT. § 179.1173(6).

⁶ 126 Nev. 41, 44, 223 P.3d 332, 334 (2010).

argument also governed this argument. Additionally, the Court found that proceeds attributable to Ferguson's conspiracy charge could not be a predicate for forfeiture because, under the NRS, conspiracy is a gross misdemeanor⁷, and NRS § 179.1164, the relevant forfeiture statute, requires a felony. Further, the Court found the State offered no evidence that Ferguson's bank account contained proceeds of any person's criminal activity, which was a required element under the authority the State cited in its argument.

After finding the State had failed to show it satisfied its summary judgment burden through Ferguson's criminal convictions or the Court's affirmation of those convictions, the Court further determined the State failed to establish it was entitled to summary judgment because it did not present evidence in the district court sufficient to allow a reasonable jury to find it highly probable that the money seized from Ferguson's bank account was related to a felony. To support this conclusion, the Court reviewed the only evidence the State presented in the district court proceedings: the grand jury and trial testimony from the girlfriend of Ferguson's co-defendant. The Court found neither the attached grand jury testimony nor the trial testimony referred to Ferguson or his bank account. Additionally, the Court reviewed *Schoka v. Sheriff, Washoe County*⁸, *Dobyne v. State*⁹, and *Ivy v. State*¹⁰ in support of this determination. Further, the Court rejected the State's argument under *United States v. Thomas*, that "certain factors have been held 'suggestive of proceeds of criminal activity,' including possession of quantities of chase that vastly exceed income, because (1) the State presented no such evidence at the district court; and (2) *Thomas* was governed by a statutory scheme that was abrogated by the federal Civil Asset Forfeiture Reform Act in 2000.

Regarding Ferguson's standing in the case, the Court rejected the State's argument that Ferguson lacked standing in the case because he failed to describe his interest in the seized bank funds in his answer. The Court stated Nevada does not require constitutional standing where the Legislature has provided a statutory right to sue, but rather looks to the language of the statute itself to determine a party's qualification. The Court reviewed its decision in *Citizens for Cold Springs v. City of Reno*, finding that "Nevada has a long-standing history of recognizing statutory rights that are broader than those afforded to citizens by constitutional standing."¹¹ The Court applied this standard to the present case and found only a claim to any right, title, or interest of record is necessary to establish standing under Nevada's forfeiture law.

The Court reviewed sections of the NRS to determine that Ferguson was a claimant in the present case because he was a person claiming to have a right, title, or interest of record in the funds subject to forfeiture.¹² The Court rejected the State's contention that Ferguson lacked standing because he failed to strictly comply with NRS § 179.1171(6), concluding state courts are "free to reject procedural [standing] frustrations in favor of just and expeditious determination on the ultimate merits." The Court also found NRS § 179.1171(6) mirrors NRCP 8(a)¹³ in requiring a short and plain statement of the claim, which the Court has construed

⁷ See NEV. REV. STAT. § 205.080.

⁸ 108 Nev. at 90–91, 824 P.2d at 291.

⁹ 4 So.3d 506, 512 (Ala. Civ. App. 2008).

¹⁰ 847 N.E.2d 963, 967 (Ind. Ct. App. 2006).

¹¹ 125 Nev. 625, 633, 218 P.3d 847, 852 (2009).

¹² See NEV. REV. STAT. §§ 179.1171(7), 179.1158(1).

¹³ NEV. R. CIV. PRO. 8(a).

liberally so as to only required the adverse party have notice of the claims being pleaded. The Court found that, because it seized the funds from Ferguson's bank account, the State was on notice that Ferguson claimed an interest in the funds. Additionally, the Court further found the State conceded Ferguson was a claimant in the case because it named him as such in its complaint and served him with the forfeiture complaint. The Court reviewed Ninth Circuit precedent, *United States v. 17 Coon Creek Road*¹⁴, in support of its conclusion and found that court "noted that courts may 'overlook' the failure to comply with similar pleading requirements in federal forfeiture law."

Conclusion

The district court erred in granting summary judgment to the State because the State failed to present evidence sufficient to satisfy its burden of proof at summary judgment. Specifically, the State failed to present evidence demonstrating no genuine issue of material fact existed as to whether the funds it seized from petitioner's bank accounts were subject to forfeiture as proceeds attributable to the petitioner's commission of a felony. Further, in order for a forfeiture of funds to stand, the State must present clear and convincing evidence linking those funds to criminal activity. Lastly, Nevada does not require constitutional standing where the Legislature has provided a statutory right to sue, and under Nevada's forfeiture law, only a claim to any right, title, or interest of record is necessary for a plaintiff to establish standing.

¹⁴ 787 F.3d 968, 974 (9th Cir. 2015).