IN THE COURT OF APPEALS OF IOWA

FILED
DEC 28 2001
CLERK SUPREME COURT

No. 1-539 / 00-1498
Filed December 28, 2001

IN THE MATTER OF PROPERTY SEIZED FROM MICHAEL ALLEN LIPPERT

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Wapello County, Dan F. Morrison, Judge.

The State appeals the district court's dismissal of its in rem complaint seeking the forfeiture of the appellee's property. **AFFIRMED.**

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Victoria Siegel, County Attorney, and Edward Harvey, Special Prosecutor, Ottumwa, for appellant.

Kenneth A. Duker of Johnson, Hester, Walter & Breckenridge, L.L.P., Ottumwa, for appellee.

Heard by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

The State appeals the district court order dismissing its forfeiture complaint under Iowa Code chapter 809A. We find the court properly dismissed the forfeiture complaint as untimely, and therefore affirm the district court order.

Background Facts and Proceedings.

On May 19, 1999, members of the Southeast Iowa Inter-Agency Drug Task Force executed a search warrant at Michael Lippert's residence. Based on items seized during the search, the State charged Lippert with possession with intent to deliver marijuana, possession with intent to deliver cocaine, and two counts of failure to affix a drug tax stamp. The court subsequently granted Lippert's motion to suppress, concluding there was no probable cause to support the search warrant's issuance. It suppressed all evidence of the items gathered in the search and statements made by Lippert during the search. The State did not seek review of the motion to suppress and consequently dismissed all criminal charges against Lippert.

On March 24, 2000, the State filed an in rem forfeiture complaint under Iowa Code chapter 890A in which it sought forfeiture of various items listed in a six-page attachment, all of which were seized during the execution of the search warrant. Lippert filed an answer on April 12, 2000, and a motion to dismiss the forfeiture complaint on June 22, 2000. He alleged that because more than sixty days had passed since service of the forfeiture complaint, the matter should be dismissed as untimely under the provisions of Iowa Code section 809A.13(7) (1999), which requires that a hearing be held within sixty days after service of the complaint unless continued for good cause. Following a July 27 hearing, the district court dismissed the forfeiture complaint. It first concluded the petition should be dismissed because no hearing had been held within sixty days and the

State had shown no good cause for the failure to do so. Second, the court found the petition should also be dismissed as a result of the order granting the motion to suppress in that the State may not rely on evidence obtained in violation of the Fourth Amendment in forfeiture proceedings. On appeal, the State contends the court erred in both of these conclusions.

Scope of Review.

Our review of forfeiture proceedings is for correction of errors at law. *In re Property Seized from DeCamp*, 511 N.W.2d 616, 619 (Iowa 1994). Likewise, our review of matters of statutory interpretation is for errors at law. *State v. Orozco*, 573 N.W.2d 22, 24 (Iowa 1997).

Discussion.

Iowa Code section 809A.13(7) provides that a forfeiture hearing "shall be held within sixty days after service of the complaint unless continued for good cause." The hearing in this case was held much beyond the sixty-day limit; in fact, the hearing took place 118 days after the service of the complaint. On appeal, the State contends the district court erred in concluding the violation of this time frame precluded its forfeiture of the seized items. Among other things, it argues the sixty-day requirement is directory not mandatory and that this requirement is not jurisdictional.

In *In re Property Seized from Sopoci*, 467 N.W.2d 799 (Iowa 1991), the supreme court analyzed Iowa Code section 809.10 (2) (1989), the predecessor to section 809A.13(7), which provided that a hearing must be held no sooner than five days and no later than thirty days after service of the complaint. Unlike current section 890A.13(7), that provision did not contain language regarding continuances for good cause. The *Sopoci* court found that the thirty-day hearing requirement was not intended to be jurisdictional and that failure to abide by the time requirement was not fatal to the State's effort to forfeit the property. *Id.* at

800. It reasoned that the requirement was not "essential to accomplishing the purpose of the statutes relating to forfeiture of property" and that, therefore, it was directory in nature, rather than mandatory. *Id.* In the present case, the State would have the court analyze section 809A.13(7) under this same directory-mandatory dichotomy and find that the new section is simply a codification of the supreme court's decision in *Sopoci*.

We find it unnecessary to engage in the analysis the State urges. We believe the district court merely concluded there was not good cause for the delay in holding the hearing and not that the provisions of section 809A.13(7) were jurisdictional in nature. In this regard, the district court stated, "[h]earing in this case was set beyond the sixty days and there is nothing in the record to indicate good cause for the failure to set the hearing in a timely ma[nn]er."

The State clearly failed to carry its burden in this case. A review of the record discloses that prior to the forfeiture hearing, the State never moved to continue the time of that hearing. Further, at the hearing on the motion to dismiss, the State did not request an extension and made virtually no argument as to why good cause existed for continuing the hearing beyond the sixty-day time frame allowed in section 809A.13(7). The motion to dismiss, in addition to very specific statements made by Lippert's counsel during the hearing, certainly apprised the State that timeliness was at issue, yet it failed to address the matter. Upon the record developed at the hearing, the State offered virtually nothing for the court to balance in its task to determine whether good cause existed to hold the forfeiture hearing beyond the time limit. Additionally, nothing indicates that the failure to hold the hearing in a timely manner was in any way attributable to Lippert. The district court correctly applied section 809A.13(7) in dismissing the complaint.

The State also attacks the district court's determination that the forfeiture complaint must be dismissed because the State may not rely on evidence obtained in violation of the Fourth Amendment when seeking a forfeiture. Again, we find it unnecessary to address this contention because the district court correctly dismissed the action as being untimely and not continued for good cause. The district court therefore was not required to proceed to an evidentiary hearing to address an issue that was untimely according to statute. Accordingly, we affirm the district court order dismissing the forfeiture complaint.

AFFIRMED.