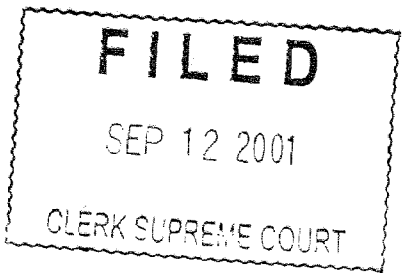
IN THE COURT OF APPEALS OF IOWA

No. 1-456 / 00-1475
Filed September 12, 2001



IN THE MATTER OF PROPERTY SEIZED FROM RONALD RUSSELL SCARBERRY,

RONALD RUSSELL SCARBERRY,
Appellant.

Appeal from the Iowa District Court for Warren County, Richard D. Morr, District Associate Judge.

The defendant appeals from a district court order dismissing his claim for the return of seized property. **APPEAL DISMISSED**.

Ronald R. Scarberry, Newton, pro se.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Kevin Parker, County Attorney, and Gary Kendall, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HECHT, J.

Ronald Scarberry appeals from a district court order dismissing his claim for the return of seized property. Scarberry contends the court improperly refused to return property seized from him as proceeds or instrumentalities of illegal conduct. The State responds Scarberry has failed to preserve this issue for review. We dismiss for lack of subject matter jurisdiction.

I. Factual Background and Proceedings. On June 22, 1998, a state trooper stopped Scarberry and his companion, Randy Frye, for a traffic violation. The state trooper obtained consent to search Scarberry and the car he was driving. During the search, the state trooper found approximately $1690 in cash and methamphetamine on Scarberry's person. Additionally, the state trooper located several items commonly associated with the drug trade inside the car. Scarberry was subsequently arrested on several drug charges,[1] and the property found in the search was seized.

Following the seizure, Scarberry was personally served with a notice of pending forfeiture on June 29, 1998. Scarberry responded by filing a claim for seized property on July 21, 1998. The court entered its declaration of forfeiture on January 14, 1999.

On November 30, 1999, Scarberry filed a second claim for seized property, and followed his claim with a motion for summary judgment on

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[1] Following his arrest, Scarberry was convicted of one count of conspiracy to manufacture more than five grams of methamphetamine, one count of possession of pseudoephedrine with the intent to use it as an illegal precursor, and one count of possession of methamphetamine, in violation of Iowa Code sections 124.401(1)(b)(7), 124.401(4), and 124.401(5) (1997).

December 23, 1999. The State resisted the motion on January 13, 2000. Scarberry's motion for summary judgment was overruled by an order of the court on January 18, 2000. Scarberry's request for reconsideration of the ruling was summarily denied on January 27, 2000.

On February 2, 2000, the State filed joint motions, one to reconsider a portion of the order on summary judgment and one to dismiss Scarberry's claim. The court granted the motion to dismiss and overruled the motion to reconsider by an order filed February 16, 2000. On August 15, 2000, Scarberry filed an action to reinstate the dismissed claim. The motion was denied without hearing on August 29, 2000. Scarberry appeals.

II. Standard of Review. We review rulings on motions to dismiss for corrections of errors at law. Iowa R. App. P. 4; *Barnes v. State*, 611 N.W.2d 290, 292 (Iowa 2000) (citing *Ritz v. Wapello County Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999)). We will affirm a dismissal only if the petition shows no right of recovery under any state of facts. *Wapello*, 595 N.W.2d at 789.

III. Merits. A party must file a notice of appeal within thirty days of the district court's entry of an order, judgment, or decree. Iowa R. App. P. 5(a). Such appeal must generally be from a final judgment or decision. Iowa R. App. P. 1. An untimely appeal deprives the court of subject matter jurisdiction. *Madyun v. Iowa Dist. Ct.*, 544 N.W.2d 441, 443 (Iowa 1996).

Scarberry contends (1) the State failed to pursue his claim for seized property in a timely fashion, and (2) the State's motion to dismiss falsely alleged

he had not filed a claim for seized property. The State asserts Scarberry has not properly preserved these issues for review.

Scarberry's petition to reclaim his seized property was originally dismissed by an order of the court on February 16, 2000. Scarberry failed to file an appeal within the thirty-day time limit to preserve his claim for review, but instead filed an action to reinstate his dismissed claim on August 15, 2000, almost six months after the court's order. Despite the fact Scarberry is proceeding pro se, "we do not utilize a deferential standard when persons choose to represent themselves." *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000); *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995). We conclude Scarberry failed to file a timely notice of appeal, and we therefore have no subject matter jurisdiction in this appeal.

APPEAL DISMISSED.