

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

VICKY SUE MODEL,

Defendant-Appellee.

UNPUBLISHED

March 11, 1997

No. 187932

Oakland Circuit Court

LC No. 94-DA6215-AR

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

By leave granted, the prosecution appeals the circuit court's order: (1) affirming the district court's determination that the district court had jurisdiction to order return of forfeited property, and (2) finding that the district court did not abuse its discretion in refusing to set aside the order to return the forfeited property. We reverse the circuit court and remand.

On December 10, 1993, police executed a search warrant at defendant's residence (which she shared with her co-defendant), and seized among other things, eight bags of marijuana, \$115 in cash, a television and a VCR. That same day, her co-defendant was charged with possession with intent to deliver marijuana, and on December 20, 1993, defendant was charged with possession of marijuana. The co-defendant later pleaded guilty to possession of all the marijuana seized, and the charge against defendant was dismissed.

On December 10, 1993, a "Notice of Seizure and Intention to Forfeit and Dispose of Property" was sent to defendant. Pursuant to MCL 333.7523(1)(c)(d); MSA 14.15 (7523)(1)(c)(d) (hereafter "§ 7523"), the notice stated that anyone claiming an interest in the property and desiring to challenge the forfeiture must file a written claim with the seizing agency within twenty days after receipt of the notice, and post a bond.¹ The notice also stated that failure to file a claim within the twenty days would result in the property being declared forfeited.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant did not file a claim or bond within twenty days as required by § 7523. However, five months later, on June 1, 1994, she filed a motion for return of property in the district court.² At the subsequent hearing, no prosecutor appeared, and the district court granted defendant's motion, and agreed to enter a default order, requiring the TV and VCR to be returned to defendant. The circuit judge eventually affirmed the district judge's ruling.

DISCUSSION

The prosecutor argues that the district court lacked jurisdiction to order the return of the property forfeited under the controlled substance act. We agree.

Defendant's failure to file a claim within twenty days is fatal to her case, in light of *In re Return of Forfeited Goods*, 452 Mich 659, 665-668; 550 NW2d 782 (1996). There, after discussing the statute and concluding that the claimant must file a claim within twenty days, the Court stated:

In the present case, defendant never filed a claim or posted bond. His failure activated the automatic forfeiture clause of MCL 333.7523(1)(d); MSA 14.15(7523)(1)(d); "If no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state *shall declare the property forfeited, and shall dispose of the property. . . .*" (Emphasis added.) As a matter of law, the property was ceded to St. Clair County on the twentieth day following service of the sheriff's notice of intent to forfeit property on defendant. In the present case, the prosecuting attorney declared the property forfeited and sent defendant a notice of forfeiture. Because an administrative forfeiture had been declared, the circuit court did not have jurisdiction to *review* the matter. MCL 333.7523; MSA 14.15(7523). Accordingly, the court did not have the authority to order the return of the forfeited cash and jewelry. [Emphasis in original; footnotes omitted.]

Here, the property was seized without process, and the day following the seizure, defendant was sent a "Notice of Seizure and Intention to Forfeit and Dispose of Property." Defendant's failure to file a claim or bond within the applicable time period activated the automatic forfeiture clause of § 7523(1)(d), and the property was administratively forfeited. When defendant filed a motion in district court for return of the property, *five months* after the property was administratively forfeited, the district court held a hearing. However, as in *In re Return of Forfeited Goods*, because defendant failed to comply with the notice requirement contained in §7523(1)(c), and an administrative forfeiture had been declared under the controlled substances act, the district court (even if it did have jurisdiction under the controlled substances act, which we do not address) was without jurisdiction to *review* the matter. Accordingly, the district court did not have authority to order the return of the forfeited television and VCR. Hence, the circuit court erred in affirming the district court's decision.

We need not address the prosecution's claim that the district court abused its discretion in refusing to set aside the order of default.

Reversed and remanded for proceedings consistent with this opinion.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz

¹ MCL 333.7523(1); MSA 14.15 (7523)(1), provides:

(c) Any person claiming an interest in property which is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property.

* * *

(d) If no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state shall declare the property forfeited and shall dispose of the property as provided under section 7524.

² In her motion for return of the property, she argued that: (1) except for the marijuana, none of the items seized were specified in the search warrant, and (2) the television and VCR were not subject to forfeiture because they were not furnished or intended to be furnished in exchange for a controlled substance, and they were not used to facilitate violation of the controlled substances act.