

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY BARATTA,

Plaintiff-Appellant,

V

CITY OF HAMTRAMCK and HAMTRAMCK
POLICE DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED
January 15, 2015

No. 318749
Wayne Circuit Court
LC No. 13-004360-CF

Before: DONOFRIO, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying plaintiff's motion for summary disposition and granting defendants' motion for summary disposition. Because the trial court did not have jurisdiction to hear plaintiff's claim, we affirm.

Plaintiff argues that the trial court erred in granting summary disposition to defendants because plaintiff was not provided notices of seizure and forfeiture for the \$12,561 and \$29,250 that was seized from plaintiff.

At the outset, defendants argue that "the judiciary lacks jurisdiction over this action." To the extent that defendants' argument includes the position that *this Court* lacks jurisdiction, in addition to the trial court, that argument is without merit. The trial court entered its order denying plaintiff's motion for summary disposition and granting defendants' motion for summary disposition. Because the order is a final order, this Court has jurisdiction to hear the appeal pursuant to MCR 7.203(A).

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NWd 520 (2012). "Summary disposition under MCR 2.116(C)(4) is proper when the trial court lacks jurisdiction of the subject matter in a case. This Court examines whether the pleadings, affidavits, depositions, admissions, and documents in the case show that the trial court lacked subject matter jurisdiction." *Wyoming Chiropractic Health Clinic, PC v Auto-Owners Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 317876, issued December 9, 2014), slip op, p 3 (citations and quotation marks omitted).

MCL 333.7523 provides, in part:

(1) If property is seized pursuant to section [MCL 333.7522], forfeiture proceedings shall be instituted promptly. If the property is seized without process as provided under [MCL 333.7522], and the total value of the property seized does not exceed \$50,000.00, the following procedure shall be used:

(a) The local unit of government that seized the property . . . shall notify the owner of the property that the property has been seized, and that the local unit of government . . . intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail.

* * *

(c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the 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. Upon the filing of the claim and the giving of a bond to the local unit of government or the state in the amount of 10% of the value of the claimed property, but not less than \$250.00 or greater than \$5,000.00, with sureties approved by the local unit of government or the state containing the condition that if the property is ordered forfeited by the court the obligor shall pay all costs and expenses of the forfeiture proceedings. The local unit of government . . . shall transmit the claim and bond with a list and description of the property seized to the . . . prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period.

(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 [MCL 333.7524].

(2) Property taken or detained under this article shall not be subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and judgment of the court having jurisdiction over the forfeiture proceedings.

The *only* means by which the statute confers jurisdiction on the trial court is when a claim is filed and the prosecuting attorney commences forfeiture proceedings at the expiration of the 20-day period. *In re Return of Forfeited Goods*, 452 Mich 659, 667; 550 NW2d 782 (1996). This Court in *Hollins v City of Detroit Police Dept*, 225 Mich App 341, 347; 571 NW2d 729 (1997), stated that

if the [the local government unit] gives proper notice to the owners of [seized] property and no claim is filed within twenty days of its receipt, the property may be deemed forfeited. *The trial court no longer has jurisdiction.* However, where the government gives improper notice to the property's owner and the property is forfeited by administrative proceedings, the trial court has jurisdiction to order its return. [Emphasis added.]

Plaintiff claims that defendants failed to provide him with the required notices of seizure and intent to forfeit for the \$12,561 and \$29,250 that was seized, which would mean that no 20-day period ever started. However, while he made this argument to the trial court, he never provided any evidence to support this assertion. In support of his motion for summary disposition, he submitted two police reports, an affidavit, and two signed releases of liability. But none of these pieces of evidence supports his assertion. In his affidavit, plaintiff made several assertions, but none related to failing to receive any such notices. More importantly, the other documents that plaintiff relied on did in fact show that he received the notices. The two police reports plaintiff submitted stated that plaintiff was served with "Hamtramck notice and intent to forfeit" forms. Additionally, the two releases of liability agreements that plaintiff signed each provided that he received the notices of seizure and intent to forfeit. In short, looking at the evidence in a light most favorable to plaintiff, there is no question of fact that he received the notices.

Plaintiff contends that the releases of liability agreements should be void because he was coerced into signing them. However, in his affidavit, he failed to provide any details or facts to support this assertion. His cursory statement that he was "coerced until I waived my rights" is insufficient to create a question of fact. See *Hamade v Sunoco Inc (R & M)*, 271 Mich App 145, 163; 721 NW2d 233 (2006) ("[M]ere conclusory allegations within an affidavit that are devoid of detail are insufficient to create a question of fact."). Moreover, even if the releases were disregarded as being void, the other documentary evidence submitted to the trial court established that plaintiff received the notices.

Therefore, because plaintiff received notices of seizure and intent to forfeit for the seized property and did not file a claim within 20 days of receipt of such notices, the trial court did not have jurisdiction to order return of the seized property to plaintiff. Accordingly, the trial court properly granted summary disposition in favor of defendants on this issue. Given the resolution of this issue, we need not address plaintiff's remaining claims.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens