SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1253-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ONE RESIDENCE AND PROPERTY AT 289 SEAMAN STREET, NEW BRUNSWICK, NEW JERSEY, TAX LOT 9, TAX BLOCK 166, ONE 1993 PONTIAC SUNBIRD, ONE 2006 BMW 650, and THREE THOUSAND ONE HUNDRED EIGHTY-ONE DOLLARS ($3,181.00),

Defendants.

CLAIMANT – DEREK FUQUA ($1,775.00, VEHICLES AND RESIDENCE),

Appellant.

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Submitted January 19, 2022 – Decided November 23, 2022

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-3136-16.

Derek Fuqua, appellant pro se.

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Susan L. Berkow, Special Assistant Prosecutor, of counsel and on the brief).

The opinion of the court was delivered by

DeALMEIDA, J.A.D.

Claimant Derek Fuqua appeals from three orders of the Law Division in this civil forfeiture matter: (1) the January 3, 2020 order vacating the dismissal of plaintiff State of New Jersey's complaint; (2) the October 16, 2020 order granting the State's motion for summary judgment; and (3) the December 4, 2020 order denying Fuqua's motion for reconsideration. We affirm.

I.

On February 18, 2016, the State executed search warrants for Fuqua and his New Brunswick residence as part of its ongoing investigation of his distribution of controlled dangerous substances from the home. Detectives recovered over 100 decks of heroin in the residence. In Fuqua's bedroom, they found respirator masks, latex gloves, plastic baggies, a deck of heroin, numerous cell phones, and $1,775 in cash. One thousand dollars, comprised of $20 bills

held together with a rubber band, was stored in a safe, and $775, which included thirty-two $20 bills, was found in the pocket of a pair of jeans on the floor.

During the investigation, police saw Fuqua and other residents of the house entering a Pontiac Sunbird parked across the street. The State obtained a warrant to search the vehicle. Inside the car, detectives found 15 bricks of heroin, 75 grams of uncut heroin, 3,600 unused wax folds used to package heroin, over 400 rounds of ammunition, including hollow point bullets, and other contraband.

On the day the warrants were executed, Fuqua waived his Miranda rights and gave a recorded statement to police. He admitted buying, possessing, and selling heroin and conceded that the heroin found in his bedroom belonged to him. He also admitted he stored heroin in the trunk of the Sunbird and that he owned everything recovered in the car. In 2018, after Fuqua entered a guilty plea to first-degree manufacturing or operating a controlled dangerous substance production facility, N.J.S.A. 2C:35-4, the court entered a judgment of conviction sentencing him to a ten-year term of imprisonment.[1]

[1] Fuqua was sentenced to imprisonment on two other drug-related charges on the same day. This may explain an incorrect statement in the State's trial court moving papers, repeated in the court's written statement of reasons on a summary judgment motion and elsewhere, that Fuqua was convicted of first-

On May 18, 2016, the State filed a complaint in the Law Division seeking civil forfeiture of, among other things, the residence, the contraband found during execution of the warrants, and the Sunbird, which the State alleged were the proceeds of illegal activity and/or intended to be used to perpetrate, facilitate and/or finance illegal activities. See N.J.S.A. 2C:64-1 and -3. The complaint included a demand for the forfeiture of the $1,775 found in Fuqua's bedroom.

On December 6, 2016, the trial court dismissed the complaint for lack of prosecution pursuant to Rule 1:13-7. The dismissal was based on the State's failure to serve the complaint on Fuqua.

On January 17, 2019, the State served the complaint on Fuqua at the prison at which he was incarcerated. Fuqua did not file an answer.

On October 31, 2019, the State moved to vacate the order dismissing the complaint, and to enter default against the $1,775. In its moving papers, the State explained that the mortgagee of the residence instituted foreclosure proceedings after the complaint was filed, which resulted in the sale of the house for less than the outstanding balance on the mortgage, effectively extinguishing the State's claim to that property. The State further averred that its claims

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degree leader of a narcotics trafficking network, N.J.S.A. 2C:35-3, with respect to the contraband at issue here.

against all property listed in the complaint other than the $1,775 had been resolved.

On November 22, 2019, the court issued an order reinstating the complaint and entered default against Fuqua as to the $1,775. The court noted that the motion was unopposed.

On December 9, 2019, Fuqua submitted a letter to the court stating he opposed the State's motion in a response filed on November 25, 2019. He argued the late response should be considered by the court because it was delayed by his limited access to the prison library.

Substantively, Fuqua argued the State failed to satisfy the requirement of Rule 1:13-7 for reinstatement of the complaint because it waited more than two years to effectuate service after its dismissal and did not establish exceptional circumstances justifying the delay. He also argued that when the State served him with the complaint it was accompanied by a summons dated 2016, which he considered to be a defect in service. On December 10, 2019, the State moved for entry of final judgment against Fuqua.

On January 3, 2020, the court denied the State's motion for entry of final judgment, vacated the November 22, 2019 order entering default against Fuqua,

and gave Fuqua sixty days to respond to the complaint.[2] Fuqua subsequently filed an answer.

In response to interrogatories, Fuqua admitted that he was not employed and had no source of income from 2014 to 2020 and that he had not filed income tax returns for those years. In addition, he stated that in July 2015, his uncle, and in July and September 2015, his mother, gave him a portion of their proceeds from a settlement with a pharmaceutical company. Fuqua produced no documents relating to the settlement, alleging that any such documents were in the possession of his mother, who was deceased. He identified six people with the last name Fuqua, who he claimed were parties to the suit against the pharmaceutical company, and their law firm, as having information or knowledge relating to the settlement. Fuqua did not specifically state in response to interrogatories that the $1,775 was a portion of the settlement proceeds given to him by his uncle and mother.

The State subsequently moved for summary judgment, arguing that there was no genuine dispute that the $1,775 in cash found in Fuqua's bedroom was

[2] Although the January 3, 2020 order states that it is vacating the November 22, 2019 order in its entirety, it is clear that it did so only to the extent it entered default against Fuqua. This is so because the court gave Fuqua sixty days to respond to the complaint, which makes sense only if the court did not vacate the provisions of the November 22, 2019 order reinstating the complaint.

the proceeds of his drug distribution operation. This is so, the State argued, because Fuqua, who admitted to drug distribution from his home, produced no evidence establishing he obtained the wads of $20 bills found during the search of his bedroom from any source other than his illegal activities.

Fuqua opposed the motion. He submitted a certification that the $1,775 was "derivative from a lawsuit settlement" obtained by his uncle and mother, who collectively gave him $8,000. Fuqua produced no evidence supporting this allegation, arguing that the State's delay in serving the complaint prejudiced his ability to obtain such proof. He alleged he has been incarcerated since January 18, 2018, and that his mother passed away on February 23, 2019, shortly after the State served the complaint. Fuqua argued that at the time of her death, his mother was not in possession of any papers relating to the settlement and he could find no family members with relevant documents. He also argued that he was unable to call the law firm that represented his mother from prison "collect" and doubts doing so would be fruitful, in light of the attorney-client privilege. Fuqua claims that had the State timely served the complaint, he would have been able to obtain proof of the settlement from his mother prior to her death.

On October 16, 2020, the trial court entered an order granting summary judgment to the State. In a written statement of reasons accompanying the order,

the court found that the $1,775 was derivative contraband pursuant to N.J.S.A. 2C:64-1(a)(4) as the proceeds of illegal activities. The court found that the form of the cash, a roll of $20 bills totaling $1,000, wrapped in a rubber band and stored in a safe, along with another roll almost entirely comprised of $20 totaling $775 in the pocket of pants on the floor, was indicative of the proceeds of criminal activity. In addition, the court noted the cash was found in a room containing heroin, and numerous other objects associated with a drug distribution operation, criminal activity for which Fuqua entered a guilty plea. In light of this evidence, the court concluded, the State was entitled to a presumption that the money was utilized in the furtherance of unlawful activity. See N.J.S.A. 2C:64-3(j).

The court also found that Fuqua did not produce evidence sufficient to overcome the presumption. The court noted that despite multiple opportunities to produce evidence that the seized funds were a gift from his uncle and mother, he failed to do so. The court found that Fuqua did not prove that his mother received a settlement or that she gave him a gift of cash from the settlement proceeds. Fuqua produced no documentary evidence reflecting the settlement or the alleged gift, or any explanation of how the proceeds of the gift could be distinguished from the proceeds of his admitted drug distribution operation. The

court characterized Fuqua's submissions as "vague, self-serving certifications that are insufficient to raise a triable issue of material fact."

Fuqua subsequently moved for reconsideration. On December 4, 2020, the trial court entered an order denying the motion.

This appeal follows. Fuqua raises the following arguments.

> POINT ONE
>
> THE TRIAL COURT ERRED BY NOT REQUIRING THE STATE TO PROVIDE GOOD CAUSE FOR ITS EXCESSIVE DELAY IN SERVICE PRIOR TO REINSTATEMENT.
>
> POINT TWO
>
> THE STATE'S INEXCUSBLE DELAY VIOLATED THE LAW AND PREJUDICED THE APPELLANT.
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> A. TRIAL COURT'S FAILURE TO EXPLORE THE GOOD CAUSE QUESTION FOR [THE] STATE'S EXCESSIVE DELAY IN SERVICE, CONTRARY TO N.J.S.A. 2C:64-3[(c)] AND R. 1:13-7(d), CONSTITUTES AN ABUSE OF DISCRETION.
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> B. THE RESULT OF THE STATE'S DELAY IN SERVICE OPENED THE WINDOW FOR EXPLOITATION OF SUMMARY JUDGMENT, WHICH PREJUDICED APPELLANT.

II.

We review the trial court's decision on the reinstatement motion for abuse of discretion. Ghandi v. Cespedes, 390 N.J. Super. 193, 196 (App. Div. 2007).

An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. I.N.S., 779 F.2d 1260, 1265 (7th Cir. 1985)).

The State seeks forfeiture of the $1,775 as "derivative contraband" pursuant to N.J.S.A. 2C:64-1 to -13. "Any interest in the following shall be subject to forfeiture and no property right shall exist in them: (1) [c]ontrolled dangerous substances . . . (4) [p]roceeds of illegal activities, including, but not limited to . . . money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1) . . . ." N.J.S.A. 2C:64-1(a).

A complaint seeking forfeiture of derivative contraband must be filed within ninety days after the seizure and "[n]otice of the action shall be given to any person known to have a property interest in the [contraband.]" N.J.S.A. 2C:64-3(a) and (c). When seeking forfeiture, the State is required to follow the court rules concerning notice for an in rem action. N.J.S.A. 2C:64-3(c). The State must make service of process on the interested parties in accordance with court rules. See R. 4:4-4 to -5. Proof of service shall be filed promptly after service is effectuated. R. 4:4-7.

Except in cases not applicable here, "whenever an action has been pending for four months . . . without a required proceeding having been taken therein[,]" R. 1:13-7(a), including "proof of service [being] filed with the court," R. 1:13-7(b)(1), "the court shall issue written notice to the plaintiff advising that the action as to any or all defendants will be dismissed without prejudice 60 days following the date of the notice" if the required proceeding is not taken during that time. R. 1:13-7(a). Such a notice was issued in the present case because the State did not effectuate service on Fuqua or file proof of service for at least four months after filing the complaint.

During the sixty days after issuance of the court's notice, the State did not effectuate service on Fuqua or file a proof of service. In those circumstances, "the court shall enter an order of dismissal without prejudice as to any named defendant" not served. Ibid. On December 6, 2016, the court entered an order dismissing the complaint without prejudice.

More than two years later, the State served the complaint on Fuqua and filed a proof of service. Fuqua did not file an answer because he did not consider the service of the complaint to be legitimate. According to Rule 1:13-7(a),

> [a]fter dismissal, reinstatement of an action against a single defendant may be permitted on submission of a consent order vacating the dismissal and allowing the dismissed defendant to file an answer . . . . If the

> defendant has been properly served but declines to execute a consent order, plaintiff shall move on good cause shown for vacation of the dismissal.[3]

Unable to secure Fuqua's consent, the State moved for reinstatement on good cause shown.

> "Good cause" is an amorphous term, that is, it "is difficult of precise delineation. Its application requires the exercise of sound discretion in light of the facts and circumstances of the particular case considered in the context of the purposes of the Court Rule being applied." Rule 1:13-7(a) is an administrative rule "designed to clear the docket of cases that cannot, for various reasons, be prosecuted to completion." Dismissals under the rule are "without prejudice." R. 1:13-7(a). Accordingly, the right to "reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to the dismissal even if the application is made many months later."

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[3] We view this matter to be a single-defendant action subject to the good cause standard because: (1) the State abandoned its claim to all of the contraband listed in the complaint, other than the $1,775; (2) Fuqua is the only claimant to allege ownership of the $1,775; and (3) at least one defendant has not been properly served. See R. 1:13-7(a) (applying exceptional circumstances standard to applications, made more than ninety days after dismissal, to reinstate a multi-defendant complaint where at least one defendant has been properly served); Baskett v. Cheung, 422 N.J. Super. 377, 383-84 (App. Div. 2011) (recognizing distinction in Rule 1:13-7(a) between standards applicable to motions to reinstate single-defendant and multi-defendant actions). Fuqua relies on Rule 1:13-7(d) for his argument the State was required to show "good cause for the delay in making service and due diligence in attempting to serve the summons and complaint." That subsection of the rule, however, applies only to "an action filed in the Special Civil Part . . . ." R. 1:13-7(d). The State filed the present complaint in the Law Division.

> . . . . Notwithstanding the adoption of the good cause standard, we are satisfied that, absent a finding of fault by the plaintiff and prejudice to the defendant, a motion to restore under the rule should be viewed with great liberality.
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> [Weber v. Mayan Palace Hotel & Resorts, 397 N.J. Super. 257, 262 (App. Div. 2007) (quoting Ghandi, 390 N.J. Super. at 196-97 (citations omitted)).]

We are hampered in our review of the January 3, 2020 order by the absence of findings of fact and conclusions of law by the trial court. On November 22, 2019, the court issued an order reinstating the complaint on what it then considered to be an unopposed application. The order merely states that the application was granted "for good cause shown" with no further explanation of the court's decision. The January 3, 2020 order purports to vacate the November 22, 2019 order reinstating the complaint, but directs Fuqua to file an answer within sixty days. The obvious import of the January 3, 2020 order is to maintain the reinstatement of the complaint. Again, the court did not issue findings of fact or conclusions of law explaining the January 3, 2020 order, merely stating that it was granted "for good cause being shown."

Because the January 3, 2020 order was not appealable as of right, the trial court was not required by Rule 1:7-4(a) to issue findings of fact and conclusions of law. It is evident the trial court did not determine that an explanation of its

decision was "either necessary or appropriate." See R. 1:6-2(f). Nor did the court amplify its reasoning for entry of the January 3, 2020 order after Fuqua filed his notice of appeal. See R. 2:5-1(d).

We have, however, carefully reviewed the record. Although we find an absence of justification for the State's failure to prosecute its claims in a timely fashion, we conclude Fuqua's failure to establish he was meaningfully prejudiced as a result of the State's delays supports the trial court's order reinstating the complaint. In its application to reinstate the complaint, the State argued that because Fuqua was properly served with the complaint and failed to file an answer to it there was good cause to reinstate the matter. This argument offers no explanation for the State's initial failure to effectuate service in a timely fashion, its failure to act during the sixty-day period after the initial Rule 1:13-7 notice, its more than two-year delay in effectuating service after the complaint was dismissed, or its more than ten-month delay between service of the complaint and its application to reinstate. Nothing in the record indicates Fuqua was evading service or could not be located after the complaint was filed. In fact, as of January 2018, Fuqua was incarcerated by the State on charges that ultimately lead to his conviction. Yet, the State did not effectuate service on

him for another year and waited an additional ten months, without explanation, to apply for reinstatement.

In addition, the fact that Fuqua had not filed an answer at the time of the State's application to reinstate was immaterial to the good cause analysis. It has long been established that where a dismissed complaint has been served on a defendant, "[t]he defendant's time to answer will not begin to run until the complaint has been reinstated." Weber, 397 N.J. Super. at 264 (citing Stanley v. Great Gorge Country Club, 353 N.J. Super. 475, 485 (Law Div. 2002)).

We also note that in Weber, we held that "if a plaintiff serves a defendant with a complaint that has been dismissed pursuant to Rule 1:13-7(a), the plaintiff must so notify the defendant when serving the complaint, and must promptly file a reinstatement motion." Ibid. There is no evidence in the record that the State provided such a notice to Fuqua when it served the complaint on him and the State did not promptly file its reinstatement motion. These unexplained failures by the State are troubling.

Fuqua, however, produced no convincing evidence he was prejudiced by the State's delays. He argues that had the State promptly effectuated service, he would have been able to obtain from his mother documentation proving that she obtained a settlement shortly before execution of the warrants. He offers no

evidence supporting this assertion. According to hearsay evidence submitted by Fuqua, the person who took responsibility for his mother's affairs after her death found no documents relating to the settlement in her belongings. He produced no proof of when she discarded whatever documents relating to the settlement she may have retained. In fact, there is no proof in the record that she retained any meaningful documents relating to the settlement. Moreover, Fuqua's mother passed away a month after service of the complaint was effectuated on Fuqua. Assuming she was in possession of documents relating to the settlement at that time, they were available to him prior to her death.

Also, Fuqua's mother's receipt of settlement proceeds is not at issue. It is Fuqua's claim that his mother gave him a portion of those proceeds that is the foundation of his defense to the forfeiture claim. Presumably, Fuqua would be in possession of his own records relating to his receipt of those proceeds, and his handling of those funds between the time the gift was given, which Fuqua does not specify, and the day the warrants were executed.

In addition, Fuqua offered no explanation for the improbable proposition that by February 2016 his mother's gift had taken the form of a roll of $20 bills totaling $1,000 held together with a rubber band and a wad of $775, also mostly comprised of $20 bills, stashed along with heroin, respirator masks, latex gloves,

plastic baggies, and other trappings of his narcotics distribution operation. Nor does Fuqua offer any explanation, let alone one that is plausible, for how he maintained a separation between the cash proceeds of his admitted drug dealing operation and the wads of $20 bills he purportedly received from his mother. Thus, even if Fuqua could have obtained documents establishing that his mother gave him settlement proceeds five months before the $1,775 was found in his bedroom, he makes no convincing argument that he would have been able to prove that the $1,775 was not derivative contraband. In light of the absence of evidence that Fuqua was harmed by the State's delay in prosecuting its claims, we affirm the January 3, 2020 order.

To the extent we have not specifically addressed any of Fuqua's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.