

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 160505-U

NO. 4-16-0505

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 19, 2017
Carla Bender
4th District Appellate
Court, IL

In re: FORFEITURE OF 2006 HARLEY DAVIDSON)	Appeal from
SPORTSTER, VIN NO. 1HD1CGP1X6K468039 AND)	Circuit Court of
\$2,947)	McLean County
(The People of the State of Illinois,)	No. 14MR477
Plaintiff-Appellee,)	
v.)	Honorable
Dustin Pulliam,)	Paul G. Lawrence,
Defendant-Appellant).)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to comply with the procedural requirements to challenge the propriety of a declaration of forfeiture of his personal property.

¶ 2 Defendant, Dustin Pulliam, claims he was not notified of the hearing at which the declaration of forfeiture of cash and a motorcycle was entered. Defendant filed a motion to vacate default judgment, which the circuit court denied. He appeals the court’s order denying his motion to reconsider the order denying his motion to vacate default judgment. He claims the court abused its discretion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 10, 2014, Detective Timothy Tyler of the McLean County sheriff’s department was involved in the surveillance of defendant based on information of an incoming

package of cannabis shipped from California to defendant. Tyler saw a package on the porch of the residence in question and spoke with the residents. They admitted they were to be paid \$800 by defendant to receive the package. According to the residents, defendant was going to pick up the package at the address later in the day. The residents gave Tyler the package, which contained three pounds of cannabis. When defendant arrived at the residence on his motorcycle, he was arrested. Pursuant to the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/1 to 14 (West 2012)), Tyler seized the following property from defendant: (1) \$2,497 in United States currency and (2) a 2006 Harley Davidson Sportster motorcycle. Tyler issued defendant a written notice of seizure.

¶ 5 On July 22, 2014, Tyler filed an affidavit in support of forfeiture stating the above facts. The same day, the circuit court entered an order, finding “probable cause that the property may be subject to forfeiture,” and “the property be held within the jurisdiction and not destroyed.” Because he was in custody, defendant filed a copy of an “inmate request form” dated July 22, 2014, wherein he requested the assistance of inmate services. He indicated he “need[ed] to go to court for [his] seized property!!!” The staff responded in writing as follows: “This is a legal matter that we cannot assist with.” Also on July 22, 2014, defendant completed an “inmate request form” and submitted the same to a correctional officer. Defendant posed the following question: “When is my next court date? I have a notice of seizure for forfeiture and want to make sure I’m there for my stuff.” A correctional officer responded: “Friday, 7/25 @ 10 am.”

¶ 6 On August 25, 2014, a notice of pending forfeiture was given to defendant in open court. The statutory 45-day period for responding to the notice had passed without a claim filed by defendant. On October 15, 2014, an assistant State’s Attorney signed a declaration of forfeiture of the above-mentioned property.

¶ 7 On November 14, 2014, defendant, through counsel, filed a “motion to vacate default judgment” pursuant to section 2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301 (West 2012)). In the motion, defendant claimed he “was provided no notice nor a copy of the complaint for [the] miscellaneous[-]remedy” case that had been filed. He further claimed he had a valid defense to the forfeiture, but he did not state the nature of that defense.

¶ 8 On December 21, 2015, the circuit court conducted a hearing on defendant’s motion. The record before us does not include a transcript of the proceeding, a bystander’s report, or an agreed statement of facts regarding the hearing. According to the December 21, 2015, docket entry, the motion was argued and denied.

¶ 9 On January 20, 2016, defendant filed a *pro se* motion to reconsider, claiming his attorney “took the wrong course and failed to follow section 6 and section 14 of the [Forfeiture Act].” The circuit court conducted a hearing on June 3, 2016. Again, the record before us does not include a transcript of the proceeding, a bystander’s report, or an agreed statement of facts regarding the hearing. According to the June 3, 2016, docket entry, the motion was argued and denied.

¶ 10 This appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 Defendant argues, in the interest of “substantial justice,” his “default judgment” should be vacated. He claims he was not notified of any hearing prior to the circuit court’s entry of the October 15, 2014, declaration of forfeiture. For the following reasons, defendant’s requested relief on appeal is denied.

¶ 13 First, the record before us does not include anything to review pertaining to the circuit court proceedings conducted on defendant’s “motion to vacate default judgment” or his motion to reconsider.

“To determine whether a claimed error occurred, a court of review must have before it a record of the proceedings below. [Citation.] The appellant bears the burden to present a sufficiently complete record, and this court will resolve any doubts that arise from an incomplete record against the appellant. [Citation.] Absent a sufficient record on appeal, ‘it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.’ ” *Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (1999) (quoting *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391 (1984)).

¶ 14 Here, defendant challenges the propriety of the circuit court’s order denying his “motion to vacate default judgment,” or more appropriately, the order denying his motion to reconsider. Pursuant to the docket entries from both hearings, we are able to discern only that defendant’s motions were argued and denied. However, we have no way to discern what arguments were presented or the bases for the court’s decisions. Therefore, we have no basis to conclude the court’s orders were in error. Rather, we presume the court’s rulings were appropriate. *Webster*, 309 Ill. App. 3d at 460.

¶ 15 Second, the circuit court did not enter a default judgment, and, therefore, defendant’s “motion to vacate the default judgment” sought inappropriate or inapplicable relief. In fact, no judgment was entered against defendant. Instead, as required by statute, an assistant State’s Attorney signed and filed the declaration of forfeiture. See 725 ILCS 150/6(D) (West 2012) (if no claim is filed, the State’s Attorney shall declare the property forfeited).

¶ 16 Third, in order for defendant to challenge the forfeiture after receiving notice, he was required to timely file a claim pursuant to the statutory procedure. See 725 ILCS 150/14 (West 2012) (owner of property may file a claim and a cost bond within 30 days of declaration of forfeiture to contest the forfeiture). Section 6(C)(1) of the Forfeiture Act requires that a claim set forth the following:

“(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(v) the name and address of all other persons known to have an interest in the property;

(vi) the specific provision of law relied on in asserting the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the relief sought.” 725 ILCS 150/6(C)(1) (West 2012)

¶ 17 Defendant failed to file a claim as required to contest the forfeiture under the Forfeiture Act (725 ILCS 150/6(C) (West 2012)). Defendant's motion to vacate default judgment cannot be construed, even in the most liberal interpretation, as a claim challenging the declaration of forfeiture since it contained none of the above-required information. Further, in his motion, he failed to provide any of the required information that would be necessary to challenge

the declaration of forfeiture. See 725 ILCS 150/14 (West 2012). In sum, defendant failed to avail himself of any procedure that could be construed as a valid challenge to the forfeiture proceedings. In fact, in his motion to reconsider, he admitted he or his attorney had followed the incorrect procedure. Therefore, on this record, we cannot say defendant was wrongfully deprived of an opportunity to contest the forfeiture of his personal property.

¶ 18

III. CONCLUSION

¶ 19

For the reasons stated, we affirm the trial court's judgment.

¶ 20

Affirmed.