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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2014-2015

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Fernando Ruiz

v.

City of Montgomery

**Appeal from Montgomery Circuit Court
(CV-14-900556)**

THOMPSON, Presiding Judge.

Fernando Ruiz appeals from a summary judgment of the Montgomery Circuit Court ("the trial court") entered in favor of the City of Montgomery ("the City"). The facts of this case are undisputed; however, the parties dispute proper

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application of Alabama law to those facts. Because the procedural time line of the case is crucial to the parties' arguments, we briefly set forth the pertinent facts in conjunction with the procedural time line of the case.

On March 13, 2014, Montgomery Police Department ("MPD") officers seized \$382,289 in United States currency ("the currency") from Ruiz's vehicle pursuant to a traffic stop and the subsequent arrest of Ruiz. MPD officers used the currency to purchase a cashier's check and delivered the check into the custody of United States marshals on March 20, 2014. On or around April 15, 2014, the United States Drug Enforcement Administration ("DEA") commenced federal forfeiture proceedings against the currency in the United States District Court for the Middle District of Alabama ("the federal district court"). Ruiz was served with notice of the federal forfeiture proceedings and instructions for contesting the forfeiture.

On March 30, 2014, 10 days after federal agents received the cashier's check but approximately 16 days before the commencement of the federal forfeiture proceedings, Ruiz filed in the trial court a "complaint and motion" against the City

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seeking the return of the currency. The City filed a motion to dismiss Ruiz's complaint on the ground that Ruiz did not have standing to file the complaint and that, because Ruiz lacked standing, the trial court did not acquire subject-matter jurisdiction.¹

On May 22, 2014, Ruiz filed in the trial court a response to the City's motion to dismiss and a motion for a summary judgment. In his summary-judgment motion, Ruiz claimed that no forfeiture proceedings had been commenced against the currency in either federal court or state court.² Ruiz argued that Alabama law requires forfeiture proceedings to be instituted promptly and that, because approximately 10 weeks had passed since the currency had been seized, he was entitled to the return of the currency. The City filed a response to Ruiz's motion and reiterated its claim that Ruiz lacked

¹The basis for the City's argument that Ruiz lacked standing to seek the return of the currency was that Ruiz, while in custody of the MPD on March 13, 2014, had signed a "Voluntary Disclaimer of Interest and Ownership" of the currency. Thus, the City argued, without an interest in the currency, Ruiz had no standing to seek the return of the currency.

²As noted above, despite Ruiz's arguments to the contrary, federal forfeiture proceedings against the currency had already commenced when Ruiz filed his motion for a summary judgment.

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standing to seek the return of the currency and that, as a result, the trial court lacked subject-matter jurisdiction.

On July 31, 2014, the federal forfeiture proceedings were completed, and the City received 80% of the currency pursuant to "equitable sharing" of the seized currency. See Payne v. City of Decatur, 141 So. 3d 500, 502 n. 1 (Ala. Civ. App. 2013).

On August 18, 2014, the City filed a motion for a summary judgment in the action pending in the trial court, in which it again argued that Ruiz lacked standing to seek the return of the currency and that the trial court lacked subject-matter jurisdiction. The trial court heard arguments of counsel on August 25, 2014, and, on August 28, 2014, it entered a summary judgment in favor of the City. Ruiz filed a postjudgment motion, which the trial court denied. Ruiz timely appealed. Our supreme court transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

Before considering whether the summary judgment was proper, we must consider whether in rem jurisdiction over the currency first attached in the trial court or in the federal district court, an issue the parties argue extensively in

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their respective briefs to this court and one which may be dispositive of this appeal. It is well settled that "two courts cannot have concurrent in rem jurisdiction and that the first court to acquire in rem jurisdiction does so to the exclusion of all other courts." Green v. City of Montgomery, 55 So. 3d 256, 259 (Ala. Civ. App. 2009).

Ruiz argues that state jurisdiction attached when MPD officers seized the currency on March 13, 2014. Because state jurisdiction attached, Ruiz argues, on that date, the state court had exclusive jurisdiction over the currency and, as a result, the federal forfeiture proceedings, which commenced approximately one month later, were conducted without jurisdiction and, therefore, were invalid. On the other hand, the City argues that state jurisdiction did not attach until Ruiz filed his complaint in the trial court on March 30, 2014, and that, by that time, federal jurisdiction had already attached by virtue of the federal government's possession of the currency.

In support of his argument that state jurisdiction attached when MPD officers seized the currency, Ruiz cites Garrett v. State, 739 So. 2d 49 (Ala. Civ. App. 1999), and

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City of Gadsden v. Jordan, 760 So. 2d 873 (Ala. Civ. App. 1998). Ruiz argues that those cases stand for the proposition that in rem jurisdiction attaches in a state court at the moment when the res is seized by state officials and that no filing is required. The City argues, in the alternative, that Green, supra, provides that a state court does not acquire in rem jurisdiction until state officials have seized the property and an in rem action has been filed in the state court.

Despite Ruiz's arguments that Garrett and City of Gadsden hold that a state court acquires in rem jurisdiction when the res is seized, those cases did not involve competing in rem jurisdictional claims between a federal court and a state court. Furthermore, in both of those cases, in rem proceedings were filed in the respective state courts. Thus, as the federal district court noted in United States v. \$96,370 in United States Currency (Civil Action No. 3:14-cv-356-WHA, Nov. 12, 2014) (M.D. Ala. 2014) (not published in F. Supp. 3d), "[t]here is no indication in either City of Gadsden or Garrett that seizure itself is sufficient for state jurisdiction to attach. In both cases there was no issue of

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whether federal jurisdiction existed, and in both cases there were valid filings in state court."

The applicable case affecting the disposition of this appeal is Green, which did involve competing in rem jurisdictional claims between a federal court and a state court. In Green, MPD officers seized, pursuant to a traffic stop, approximately \$30,000 in United States currency from a vehicle occupied by Green and two other individuals ("the claimants"). Pursuant to the doctrine of "adoptive seizure," the City sought to transfer the currency to the federal government for federal forfeiture proceedings. While the federal government was reviewing the City's request, the claimants filed in state court a complaint seeking the return of their property. Later, the DEA adopted the seizure, and United States marshals took custody of the property. Thus, on appeal, this court had to determine whether federal in rem jurisdiction or state in rem jurisdiction had attached first because the first court to acquire jurisdiction would have done so to the exclusion of the jurisdiction of the other court. Green, 55 So. 3d at 259.

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The claimants' argument in Green, as is Ruiz's argument in the present case, was that the initial seizure by MPD officers brought the res within the jurisdiction of the state court. However, this court held that Alabama law requires a two-step process before state jurisdiction attaches: possession and the filing of an in rem action. Green, 55 So. 3d at 263. Federal jurisdiction, on the other hand, "begins the moment the res is controlled by federal agents," id., "[s]o long as the state court has not exercised in rem jurisdiction" Id. In Green, we held that the federal government controls property when that property is in the "actual possession" of United States marshals. Green, 55 So. 3d at 264. Because United States marshals did not have actual possession of the res in Green until after the claimants filed their complaint in the state court, we held that state jurisdiction had attached first, and, accordingly, we reversed the summary judgment in that case and remanded the action.

In this case, however, United States marshals had actual possession of the currency before Ruiz filed his complaint in the trial court. Thus, on the authority of Green, we hold that federal jurisdiction attached first, and, as a result,

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the trial court had no jurisdiction to entertain Ruiz's complaint or to enter a judgment pursuant to it.

Although Ruiz acknowledges the two-step process articulated in Green, he suggests that the discussion of that process in Green was "mere dicta," that the two-step process contradicts the law as set out in Garrett and City of Gadsden, and that this court should take this opportunity to clarify whether Green requires the filing of an in rem action in a state court to vest that court with in rem jurisdiction. We are not persuaded by Ruiz's arguments. To the contrary, the two-step process discussed in Green, as opposed to being dictum, was crucial to the determination of whether federal or state in rem jurisdiction had attached first.

In \$96,370, the federal district court was faced with the same argument that Ruiz makes here, i.e., that the discussion of the two-step process articulated in Green was dictum. In disposing of that case, the federal district court stated:

"Contrary to Grant's arguments, the description of the 'two-step process' by which the state court acquires jurisdiction in cases such as these was not dictum in the Green decision. ... If, as Grant claims ..., state court jurisdiction attached upon the seizure of the currency, the Green decision would have required less analysis. Instead, the court there had to engage in an in-depth examination

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of relevant events to determine when jurisdiction attached at either the state or federal level. The filing of an action in state court ... was the critical moment at which state court jurisdiction attached and precluded any exercise of federal jurisdiction over the defendant currency."

Furthermore, as we noted above, the two-step process discussed in Green, contrary to Ruiz's argument, is not contradictory to Garrett and City of Gadsden, a holding the federal district court endorsed in \$96,370.

"City of Gadsden and Garrett are both consistent with the Green decision.

"...In both cases there was no issue of whether federal jurisdiction existed, and in both cases there were valid filings in state court. Grant makes much of the statement from both decisions that '[a] court acquires jurisdiction over the property in an in rem proceeding when the res is validly seized and brought within the control of the court.' Garrett, 739 So. 2d at 52 (quoting City of Gadsden, 760 So. 2d at 875) (emphasis added). The upshot of all of this case law is that seizure itself is distinct from the step in which the property is 'brought within the control of the court.' Green explains that to be 'brought within the control of the court,' there must be some kind of filing or process in the state court itself.'...

"For these reasons, the Green decision is entirely compatible with both City of Gadsden and Garrett, and is an accurate statement of Alabama law."

\$96,370. Furthermore, lest there be any confusion, we reiterate that current Alabama law, under Green, requires a

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two-step process for state in rem jurisdiction to attach: possession of the seized property and the filing of an in rem action. In this case, because no in rem action was filed in the trial court until after federal in rem jurisdiction attached, the trial court did not have in rem jurisdiction over the currency, and, as a result, it did not have jurisdiction to enter the summary judgment.

"A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment." Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008). Because the summary judgment entered by the trial court will not support an appeal, we cannot consider the other issues Ruiz attempts to raise on appeal. However, we do note that any challenges to the federal district court's authority to exercise jurisdiction over the currency would be properly raised in the federal district court and not the trial court. See Ervin v. City of Birmingham, 137 So. 3d 901, 904-05 (Ala. 2013).

The trial court's summary judgment in favor of the City was entered without subject-matter jurisdiction. Thus, we

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dismiss the appeal, albeit with instructions to the trial court to vacate its August 28, 2014, summary judgment.

APPEAL DISMISSED WITH INSTRUCTIONS.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.