STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2021AP1849

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TROY ALLEN LANNING,

Defendant-Appellant.

APPEAL FROM THE DECISION OF THE
BURNETT COUNTY CIRCUIT COURT,
THE HONORABLE MELISSIA R. MOGEN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

In 2017, the Wisconsin Legislature enacted amendments to the forfeiture procedures under the Uniform Controlled Substances Act in order to provide additional protections for property owners. But the circuit court in this case interpreted those amendments in a way that actually reduces property owner protections and prevents the State from remedying unjustified forfeitures. Specifically, the circuit court interpreted the provisions as eliminating its authority to dismiss an action, even where both parties are requesting dismissal. This Court should reverse, finding that the circuit court retained authority to dismiss the forfeiture action in this case.

ISSUES PRESENTED

1. Where both parties request dismissal, does a circuit court retain competency and/or inherent authority to dismiss the case despite statutory language adjourning proceedings?

The circuit court did not directly answer this question, but its decision impliedly answered: No.

This Court should answer: Yes

2. Do the 2017 amendments to Wis. Stat. § 961.555(2)(a) affect the ruling in *State v. One 2000 Lincoln Navigator*, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, regarding the loss of competency in forfeiture cases?

The circuit court answered: Yes.

This Court should answer: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication.

STATEMENT OF FACTS

On June 11, 2020, the Assistant District Attorney for Burnett County filed a forfeiture complaint against Troy Lanning and a house he owned in the Village of Siren. (R. 2.) The forfeiture action was brought pursuant to the Uniform Controlled Substances Act. (R. 2.) The forfeiture action accompanied felony drug charges that were filed against Lanning in Burnett County Case No. 20CF153.

Lanning answered the forfeiture complaint on June 29, 2020. (R. 6.) The State and Lanning came to a plea deal on the drug charges that involved dismissal of the forfeiture action; but on April 20, 2021, the trial court rejected the deal, finding that the State was obligated to proceed with the forfeiture action. (R. 11:23.) Nothing else happened on the forfeiture action until August 6, 2021, when the district attorney moved to dismiss the forfeiture action outright, arguing that the trial court had lost competency over the action because a hearing had not been held within 60 days of the answer. (R. 15.)

The circuit court denied the motion to dismiss, finding that it did not have authority to dismiss the forfeiture action because the action was automatically adjourned until convictions in Lanning's criminal case are entered. (R. 20:4—7; 21.) The circuit court also found that the holding in the *State v. One 2000 Lincoln Navigator*[1] case, which held that the court loses competency over a forfeiture action is a

[1] *State v. One 2000 Lincoln Navigator*, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375.

hearing is not held within 60 days of the answer, is no longer good law in light of the 2017 amendments to the statute.

Lanning asked this Court for leave to file an interlocutory appeal, the State joined the defendant's request, and this Court granted it. In its order, this Court has asked the parties to address how a change in the statutory language of Wis. Stat. § 961.555(2)(a) affects the ruling in *State v. One 2000 Lincoln Navigator*, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, regarding the loss of competency in forfeiture cases.

STANDARDS OF REVIEW

Statutory interpretation presents a question of law that this Court reviews de novo. *State v. Stewart*, 2018 WI App 41, ¶ 18, 383 Wis. 2d 546, 916 N.W.2d 188. Similarly, the issues of judicial authority and competency are a questions of law that this Court reviews independently. *State v. Schwind*, 2019 WI 48, ¶ 11, 386 Wis. 2d 526, 926 N.W.2d 742; *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 7, 273 Wis. 2d 76 (2004).

ARGUMENT

Wisconsin Stat. § 961.555(2)(a) does not affect a trial court's competency or authority to dismiss a civil forfeiture action.

A. Wisconsin Stat. § 961.555(2)(a) and its amendments.

Wisconsin Stat. § 961.555(2)(a) sets forth the procedures for commencing a forfeiture action under the Uniform Controlled Substances Act. The statute requires the district attorney to commence a forfeiture proceeding within 30 days of seizing property. Wis. Stat. § 961.555(2)(a). But the statute then directs that "the forfeiture proceedings shall be adjourned until after the defendant is convicted of any

charge concerning a crime which was the basis for the seizure of the property." Wis. Stat. § 961.555(2)(a).

Wisconsin Stat. § 961.555(2)(a) was amended by 2017 WI Act 211. Specifically, the 2017 amendments revised the provision adjourning forfeiture proceedings pending criminal convictions. Prior to that amendment, adjournment was not mandated unless the property owner asked for it. The 2017 amendments revised the statute as follows:

> **SECTION 21.** 961.555 (2) (a) of the statutes is amended to read: 961.555 **(2)** (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, ~~except that the defendant may request that~~ and the forfeiture proceedings shall be adjourned until after ~~adjudication~~ the defendant is convicted of any charge concerning a crime which was the basis for the seizure of the property. ~~The request shall be granted~~ If property is seized, a charge shall be issued within 6 months after the seizure, except that an unlimited number of 6-month extensions may be granted if, for each extension, a judge determines probable cause is shown and the additional time is warranted. If no charge is issued within 6 months after the seizure, or a 6-month extension is not granted, the seized property shall be returned to the owner. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

2017 WI Act 211.

Subsection (b) of Wis. Stat. § 961.555(2) is also relevant to this case. It states that, "Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties." Wis. Stat. § 961.555(2)(b).

And finally, back in 2007, this Court expressly held that "[t]he sixty-day limit in Wis. Stat. § 961.555(2)(b) is mandatory and a forfeiture petition must be dismissed unless the requisite hearing is held within the sixty-day period." *One 2000 Lincoln Navigator*, 301 Wis. 2d 714, ¶ 3.

B. Competency and inherent authority

This case requires us to discuss both competency and inherent authority. A court's competency is its ability to exercise its subject matter jurisdiction. "[T]he subject matter jurisdiction of the circuit courts cannot be curtailed by state statute." *Village of Trempealeau*, 273 Wis. 2d 76, ¶ 8. And while "a circuit court's ability to exercise the subject matter jurisdiction vested in it by the constitution may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction in individual cases," the court does not lose jurisdiction. *Id.* ¶ 9. Instead, "a failure to comply with a statutory mandate pertaining to the exercise of subject matter jurisdiction may result in a loss of the circuit court's competency to adjudicate the particular case before the court." *Id.*

Notably, however, "[m]any errors in statutory procedure have no effect on the circuit court's competency." *Id.* ¶ 10. And "[o]nly when the failure to abide by a statutory mandate is 'central to the statutory scheme' of which it is a part will the circuit court's competency to proceed be implicated." *Id.* (citation omitted).

In addition to competency, circuit courts have inherent authority to make certain rulings, including the authority to dismiss a case, in the orderly administration of justice. *See State v. Braunsdorf*, 98 Wis. 2d 569, 580, 297 N.W.2d 808 (1980) ("general control of the judicial business before it is essential to the court if it is to function"); *see also City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 749–50, 595 N.W.2d 635 (1999) (explaining that courts have inherent authority to ensure "that the court functions efficiently and effectively to provide the fair administration of justice.")

And circuit courts have independent authority to review exercises of prosecutorial discretion. Tt has been well and long established that "[p]rosecutorial discretion to terminate a pending prosecution in Wisconsin is subject to the independent authority of the trial court to grant or refuse a motion to dismiss 'in the public interest.'" *Braunsdorf*, 98 Wis. 2d at 574 (*quoting State v. Kenyon*, 85 Wis. 2d 36, 45, 270 N.W.2d 160 (1978)).

C. The circuit court retained both competency and inherent authority to dismiss the forfeiture action in this case.

While this Court has asked the parties to address how the 2017 statutory amendments to Wis. Stat. § 961.555(2)(a) affect this Court's holding in *Lincoln Navigator*, this Court does not need to reach that issue to resolve this case. Courts "should decide cases on the narrowest grounds possible." *State v. Nieves*, 2017 WI 69, ¶ 82, 376 Wis. 2d 300, 897 N.W.2d 363. Here, this Court need only decide whether the mandatory adjournment provision in Wis. Stat. § 961.555(2)(a) strips a trial court of its authority to dismiss a civil forfeiture action where both parties request it.

As an initial matter, the State acknowledges that the issue of competency was only raised below from the angle of whether the court loses competency to adjudicate forfeiture actions if the 60-day hearing deadline is missed. The parties did not specifically address whether the 2017 amendments to the statute strip the court of competency to dismiss an action once adjourned. But this issue was triggered by the circuit court's oral ruling on the State's motion to dismiss. (R. 20:4.) It was in that ruling that the court interpreted the statute as, not only mandating adjournment, but eliminating the court's authority to entertain dismissal. (R. 20:4.) The State believes that this aspect of the oral ruling needs to be addressed by this Court and asks that any forfeiture be excused. *See State v. Ndina*, 2009 WI 21, ¶ 38, 315 Wis. 2d 653, 761 N.W.2d 612 (explaining that the Court can address the merits of a forfeited claim where the values protected by the forfeiture rule are not at risk from excusing the forfeiture).

The circuit court's decision in this case erroneously limited its own competency and ignored its own inherent authority. The circuit court found that the 2017 amendments to Wis. Stat. § 961.555(2)(a), which require adjournment of forfeiture actions pending convictions on the underlying crimes, prohibited the court from dismissing the forfeiture action until Lanning is convicted criminally. (R. 20:7.) The trial court read the section (a) amendments as conflicting with the section (b) requirement that a hearing be held within 60 days of the service of the answer. (R. 20:5—7.) The court concluded that the mandatory adjournment language in subsection (a) is "superior" to the mandatory hearing limit in subsection (b). (R. 20:5—7.) The court, therefore, held that the mandatory adjournment precludes dismissal under section (b). (R. 20:7.)

While the court did not specifically address its competency as it related to its authority to dismiss the adjourned action, or its inherent authority, the court implicated both doctrines by limiting its own authority to act on the motion to dismiss.

Here, a forfeiture hearing was not held within 60 days of the defendant's answer, in violation of Wis. Stat. § 961.555(2)(b), but the trial court concluded that it did not lose competency over the action because the 2017 amendments to the statute (mandating adjournment) came after the *Lincoln Navigator* case. (R. 19:4—8.) In other words, the court found that *Lincoln Navigator's* holding (that a court loses competency over an action if the 60-day hearing deadline is missed) was not triggered because the case was adjourned under the new statutory language. (R. 19: 4—8.)

But the trial court then went a step beyond that conclusion and held that, because the case was adjourned, it could not entertain the motion to dismiss, even though both parties supported the motion. (R. 19:5.) And it is this aspect of the trial court's decision that erroneously limited its own competency and ignored its own inherent authority.

Regardless of how the mandatory adjournment provision in subsection (a) affects the hearing limit in subsection (b) and the rule of *Lincoln Navigator*, the adjournment provision does not deprive the trial court of authority to dismiss the civil forfeiture action in this case. The court concluded that it did not lose competency under *Lincoln Navigator,* so it should not have limited its authority to adjudicate the motion to dismiss. And the trial court also retained its inherent authority to grant the State's motion to dismiss. *See Braunsdorf*, 98 Wis. 2d at 580.

The circuit court's interpretation of the statute is also at odds with its independent authority to grant an exercise of prosecutorial discretion. The State has discretion to terminate a pending prosecution. *Braunsdorf*, 98 Wis. 2d at 574. And the circuit court has independent authority to grant or refuse a motion to dismiss in the public interest. *Id*. Prosecutorial discretion was raised at the trial court, but the court held that the mandatory adjournment provision eliminated that discretion. (R. 19:9.)

As a practical matter, the circuit court's interpretation of Wis. Stat. § 961.555(2)(a) is unreasonable because, by freezing in place a faulty forfeiture action, it strips both the prosecution of its discretion, and the trial court of its independent authority. A forfeiture action is only commenced after the property is seized (Wis. Stat, § 961.555(2)(a)), so the circuit court's interpretation of the amended statute would result in a defendant's property being taken and held for an indefinite period of time, with no way for either the defendant or the State to resolve or terminate the forfeiture action before the criminal charges are resolved. In a case like this one, where the property seized includes a house, that result is both unjust and unworkable. Taking possession of real property involves significant liability and cost on behalf of the State. The 2017 amendments should not be interpreted in a way that deprives the prosecution of its discretion to terminate a forfeiture action, or the court's inherent authority to fairly administer justice.

Finally, the circuit court's interpretation extends the scope of the statutory language beyond what was intended. The statute mandates adjournment of "the forfeiture proceedings." Wis. Stat. § 961.555(2)(a). But the State's motion to dismiss an improperly filed forfeiture action is not part of "the forfeiture proceedings" codified in Wis. Stat. § 961.555. And even though the State's motion was based on its view that dismissal was mandated due to a

violation of the 60-day hearing limit (which itself is unarguably part of "the forfeiture proceedings"), the circuit court retained the authority to entertain a motion to dismiss generally. (R. 15.) In other words, while the State's failure to hold a hearing may not have mandated dismissal (because "the forfeiture proceedings" were adjourned regardless of Lanning's filing of an answer), the court still had authority to dismiss based on the public interest, especially where both parties asked for dismissal. *See Braunsdorf*, 98 Wis. 2d at 574.

Here, where both parties jointly requested dismissal of the forfeiture action, the circuit court retained the authority to dismiss this case, despite the adjournment language in Wis. Stat. § 961.555(2)(a). This Court can reverse based on that narrow issue, and remand with direction to entertain the motion to dismiss.

D. Under Wis. Stat. § 961.555(2)(a), forfeiture actions are automatically adjourned until a criminal conviction is entered, and the 60-day hearing deadline cannot be triggered before that time.

In light of the fact that both parties supported the State's motion to dismiss this forfeiture action, the State believes that this case should be remanded for the trial court to exercise its discretion to dismiss. But the State also acknowledges that this Court has asked the parties to address how the 2017 amendments to Wis. Stat. § 961.555(2)(a) affect the provisions in subsection (b) and the rule of *Lincoln Navigator*. As to that issue, the State submits that the 2017 amendments do not affect the holding in *Lincoln Navigator,* but the plain language of the statute does adjourn all forfeiture proceedings until after the defendant is convicted of the underlying crime. So, even if a defendant answers while the case is adjourned, the 60-day hearing limit is not triggered until the conviction is entered.

As this Court is well-aware, the analytical framework for statutory interpretation starts with the "statute's language, and if the meaning is plain, the inquiry typically ends there." *State v. Williams*, 2014 WI 64, ¶¶ 17—18, 355 Wis. 2d 581, 852 N.W.2d 467. And "[i]n determining a statute's plain meaning, the scope, context, structure, and purpose are important." *Id.* "A reviewing court may consider the statutory history as part of the context analysis." *Id.* For example, there may be "times when statutory interpretation leads a court to conclude that the statute's meaning is plain but that plain meaning would produce an absurd result. On those few occasions, the court may consult legislative history to resolve the absurdity." *Id.*

The circuit court in this case strictly interpreted the current statutory language as mandating adjournment and foreclosing any additional process or proceedings on the forfeiture action pending a criminal conviction, regardless of the circumstances. This interpretation focuses on the amended language of subsection (a), which mandates adjournment of "the forfeiture proceedings" pending the criminal case "which was the basis for the seizure of the property." Wis. Stat. § 961.555(2)(a).

The State agrees that the statutory language, as amended, is clear and its plain meaning adjourns all forfeiture proceedings until a conviction is entered. Lanning's answer to the forfeiture petition was, therefore, invalid (because the case was adjourned), so it did not trigger the 60-day hearing deadline in subsection (b). Under the plain meaning of the 2017 amendments, the forfeiture action would recommence after the criminal conviction was entered, the answer would be entered at that time, and the 60-day hearing deadline would begin to run. And, pursuant to the rule of *Lincoln Navigator,* if the forfeiture hearing was not held within the 60 days, the trial court would lose competence to

adjudicate the forfeiture action. *One 2000 Lincoln Navigator*, 301 Wis. 2d 714, ¶ 3.

While this is the plaining meaning of the statute, it poses some problems. For example, even if the property owner wants the forfeiture action to continue in order to settle ownership of the property, the action must remain open and adjourned until the underlying criminal charges are resolved. This result is at odds with the intent behind the 60-day hearing deadline in subsection (b). The 60-day limit in Wis. Stat. § 961.555(2)(b) is designed to allow the property owner to trigger a hearing that will allow for "a prompt judicial assessment of whether forfeiture is justified." *One 2000 Lincoln Navigator*, 301 Wis. 2d 714, ¶ 3. And amended language of subsection (a) diminishes that protection.

In sum, the 2017 amendments do not make the statute ambiguous, but they do pose problems for property owners in certain cases. But, regardless, this case can be decided on narrower grounds. Both parties wanted the forfeiture action dismissed, and the circuit court erred in not exercising its discretion on the State's motion to dismiss.

CONCLUSION

For these reasons, the State respectfully requests that the Court overturn the circuit court's decision denying the State's motion to dismiss the forfeiture action in this case, remand, and direct the circuit court to exercise its authority to grant or deny the motion to dismiss.

Dated: July 19, 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3201 words.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 19th day of July 2022.

Electronically signed by:

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