UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1857

September Term, 2014

DANIELA BOTTINI, ET AL.

v.

DEPARTMENT OF FINANCE,
MONTGOMERY COUNTY, MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.
Dissenting Opinion by Arthur, J.

Filed: November 10, 2015

This case is an appeal of a forfeiture action filed in the Circuit Court for Montgomery County. The sole issue in this case relates to the timeliness of the forfeiture action and hinges upon whether a bank account is characterized as "money" or as some other category of property under our laws governing forfeiture. The distinction is critical because the deadline for filing for a forfeiture action involving "money" differs from the deadline for filing a forfeiture action involving other property. The trial court found that the bank account was "money" and that the forfeiture action was timely filed. We shall affirm.

FACTS AND PROCEEDINGS

Gianpaolo Bottini ("Gianpaolo")[1] was arrested on April 13, 2012 and charged with various controlled dangerous substance ("CDS") offenses. Contraband CDS paraphernalia and currency in the amount of $5,610, which was found in close proximity to the CDS paraphernalia, were seized from Gianpaolo's home at the time of his arrest.[2] Following his arrest, Gianpaolo was released on bond. While free on bond, Gianpaolo withdrew the entire contents of his two bank accounts, totaling $64,388.33, in the form of cashier's checks payable to his sister, Daniela Bottini ("Daniela"). Daniela thereafter deposited $63,891.93 into a new Capital One bank account.[3]

[1] Because Gianpaolo Bottini and his sister, Daniela Bottini, share a surname, we shall refer to them by their first names for purposes of clarity and out of no disrespect.

[2] The seized currency was later the subject of a separate forfeiture action, which was not contested and is not at issue in this appeal.

[3] In her brief, Daniela asserts that she used the difference between the amount withdrawn from Gianpaolo's accounts and the amount deposited into the new account to pay Gianpaolo's criminal lawyer. The record does not establish what happened to the

(continued...)

After an investigation, officers determined that there was no legitimate income source for Gianpaolo to support the amount of money in his bank accounts. Officers traced the funds to the new account opened by Daniela and subsequently seized the Capital One bank account on April 19, 2012.

Gianpaolo's criminal charges were resolved on May 10, 2013, when he pled guilty to one count of possession of CDS with intent to distribute. On August 1, 2013, Montgomery County ("the County") filed its complaint for forfeiture of the Capital One bank account. Daniela filed an answer on September 27, 2013, and a preliminary hearing was held on November 18, 2013.[4] Daniela argued the issue raised in this appeal, asserting that the account was not "money" under the relevant statute and that, accordingly, the forfeiture action was not timely filed. The circuit court rejected Daniela's assertion, ruling as follows:

> Two issues before the Court. That wonderful [issue] of what is the definition of money. What constitutes money. And the second, definition as to whether the procedural requirements were, had been [met] with respect to the timing of the filing from the, under the statute, and the date of the complaint having been filed on August 1, 2013.
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> With respect to the first argument, it brings to mind that old Potter Stewart . . . line from . . . the Supreme Court decision of trying to define obscenity and Justice Stewart's comment that, I don't know how to define obscenity, but I sure know it

[3] (...continued)
approximately $500, and it is irrelevant to this appeal.

[4] Judge Michael J. Algeo presided over the November 18, 2013 hearing.

> when I see it.[5] I have the same application to money. I don't know, I don't know that I need the legislature to tell me what the definition of money is. I know that when I open on the screen an account and I look at my money, it may be in the bank, and I guess technically the bank's holding it for me, but it's money. It better be there, it's my money.
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> So, to suggest that an account in a bank is not money and therefore [there] would be a procedural defect in this case suggesti[ng] that we don't have (unintelligible) jurisdiction, this Court simply rejects. The amount that's in the account by anybody's definition, at least in this Court's definition, would constitute money.
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> Secondly, the procedural requirements with regard to when the complaint has been filed. The Complaint was filed on August 1st 2013, that is the date the Court looks to as to ascertain whether it was timely filed, it was, and the Motion to Dismiss is Denied.

The matter was scheduled for trial on April 2, 2014 before Judge Joseph M. Quirk of the Circuit Court for Montgomery County. At the close of the County's evidence, Daniela again argued that the Capital One account was not "money" and that the forfeiture action was untimely. The circuit court was again unpersuaded. The court explained:

> The Court, in this case, finds that the intent of the legislature was to treat the designation of money, not simply to be currency, meaning fungible cash, as argued by Defense counsel, but rather, proceeds which are in a liquid state in the sense that they are funds on deposit subject to the call of the owner of those funds.

[5] Judge Algeo was referring to Justice Stewart's concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964). Justice Stewart explained that although he believed that setting forth a precise definition of pornography was difficult or even impossible, he "kn[e]w it when [he] s[aw] it." *Id.*

> So, I'm making a determination that, in this case, the funds, which originally were deposited to two Bank of America accounts of Gianpaolo Bottini, which were cashed in on the morning of a court appearance of April 16, 2013, from Account No. 8612, in the amount of $56,009.78, and on Account ending in 5676 for $8,378.55 that those liquidations, which were then made into cashier's checks, which, ultimately, were deposited to a Bank of America account of Daniela Bottini, and then, ultimately, transferred to a Capital One account of Daniela Bottini, within a couple days of the termination of those accounts by Gianpaolo Bottini that those funds are money within the meaning of the statute. Therefore, the period of time for which the forfeiture must be filed is the 90 days after termination of the criminal action.

In addition to ruling on the issue relating to the timeliness of filing, Judge Quirk ruled that only Gianpaolo had any right, title, or interest in the account. Judge Quirk ruled that Daniela did not have a claim to the seized funds because she did "not have any interest in these funds." Judge Quirk emphasized, however, that Gianpaolo had one year from the date of his criminal conviction to file his own answer to the complaint for forfeiture. Thereafter, Gianpaolo filed a timely answer on May 8, 2014. The matter proceeded to trial on August 21, 2014, before Judge Paul A. McGuckian of the Circuit Court for Montgomery County. After hearing evidence presented by both the County and Gianpaolo, the circuit court found that the funds held within the account constituted proceeds from illegal CDS transactions and, therefore, the funds were subject to forfeiture. That factual finding is not at issue on appeal.[6]

[6] Gianpaolo filed a motion for new trial on August 29, 2014, based upon evidentiary (continued...)

Daniela and Gianpaolo Bottini (collectively, the Bottinis) noted this timely appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) governs our review of an action tried without a jury and provides as follows:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

The Court of Appeals has further explained the standard of review under Maryland Rule 8–131(c):

> [The appellate courts] give due regard to the trial court's role as fact-finder and will not set aside factual findings unless they are clearly erroneous. The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed. Questions of law, however, require our non-deferential review. When the trial court's decision involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct . . . . Where a case involves both issues of fact and questions of law, this Court will apply the appropriate standard to each issue. (Citations and internal quotation marks omitted.) (Ellipsis in original.)

Clickner v. Magothy River Ass'n Inc., 424 Md. 253, 266-67 (2012).

[6] (...continued)
issues not relevant to this appeal. The motion was denied on October 3, 2014.

DISCUSSION

The forfeiture law "is grounded in the legal fiction that an inanimate object can be guilty of a crime." *Prince George's Cnty. v. Blue Bird Cab Co.*, 263 Md. 655, 658 (1971). Our Court of Appeals has explained as follows, quoting from the United States Supreme Court:

> In *Various Items of Personal Property v. United States*, 282 U.S. 577, 581, 51 S.Ct. 282, 284, 75 L.Ed. 558, 561 (1931)[,] Mr. Justice Sutherland for the United States Supreme Court said:
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> > 'It is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient. In a criminal prosecution it is the wrongdoer in person who is proceeded against, convicted and punished. The forfeiture is no part of the punishment for the criminal offense.'

Blue Bird Cab Co., *supra*, 263 Md. at 658. Forfeiture is generally "a civil in rem action with the burden of proof necessary to sustain it, being a mere preponderance of the evidence and not proof beyond a reasonable doubt. Generally throughout the country the innocence of the owner is of no consequence." *Id.* at 659.

The forfeiture statute "is, and was intended to be, a harsh law." *Prince George's Cnty. v. Vieira*, 340 Md. 651, 658 (1995). The Court of Appeals has expressed, however, that although the law is harsh, "it has long been settled in this State that forfeitures are not favored in the law." *Id.* at 659. The Court further explained:

> It is well settled that forfeiture statutes are to be interpreted under a "strict constructionist theory." [*State v.*] *158 Gaming Devices*, 59 Md. App. [44,] 52, 474 A.2d [545, 549 (1984), *rev'd in part on other grounds*, 304 Md. 404, 499 A.2d 940 (1985)]. Therefore, although the petitioner's assertion that this statute is to be liberally interpreted and construed is correct, the forfeiting authority is still required to follow the procedures prescribed by the statute, and these procedures should be strictly imposed to provide post seizure due process protection to the defendant.

Vieira, *supra*, 340 Md. at 659-60.

In the present case, we are faced with the question of whether funds held within a bank account are "money" under the forfeiture statute. The deadlines for filing a forfeiture action are set forth in Md. Code (2001, 2008 Repl. Vol.), § 12-304 of the Criminal Procedure Article, ("CP"), which provides, in pertinent part:

> (a) Except as provided under subsections (b)[7] and (c) of this section, a complaint seeking forfeiture shall be filed within the earlier of:
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> (1) 90 days after the seizure; or
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> (2) 1 year after the final disposition of the criminal charge for the violation giving rise to the forfeiture.
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> * * *
>
> (c)(1) A proceeding about money shall be filed within 90 days after the final disposition of criminal proceedings that arise out of the Controlled Dangerous Substances law.

[7] Subsection (b) relates to forfeiture of motor vehicles.

In the present case, the forfeiture action was filed within 90 days of the final disposition of criminal proceedings, but over a year after the initial seizure. Accordingly, whether the bank account is properly characterized as money is of critical importance. If the seized property is "money," the action was timely filed. If the seized property is not properly characterized as "money," the forfeiture action was not timely filed and should not have been permitted to proceed.

When presented with an issue of statutory construction -- here, the definition of "money" under the forfeiture statute, we keep in mind the following principles:

> When interpreting statutes, we seek to ascertain and implement the will of the Legislature. *Williams v. Peninsula Reg'l Med. Ctr.*, 440 Md. 573, 580, 103 A.3d 658, 663 (2014); *Johnson v. Mayor & City Council of Baltimore City*, 387 Md. 1, 11, 874 A.2d 439, 445 (2005); *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002). Our first step toward that goal is to examine the text. "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Lockshin v. Semsker*, 412 Md. 257, 275, 987 A.2d 18, 28-29 (2010). If ambiguities are found, other indicia of legislative intent are consulted, including the relevant statute's legislative history, the context of the statute within the broader legislative scheme, and the relative rationality of competing constructions. *Witte*, 369 Md. at 525-26, 801 A.2d at 165.

Harrison-Solomon v. State, 442 Md. 254, 265-66 (2015).[8]

[8] In a footnote, the Court of Appeals acknowledged that it has, at times, looked beyond the plain language of the statute even when the text was unambiguous, and (continued...)

Turning to the statute at hand, we look to the definitions section of the forfeiture law. Section 12-101(m) of the Criminal Procedure Article defines "property" as follows:

> (1) "Property" includes:
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> (i) real property and anything growing on or attached to real property;
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> (ii) tangible and intangible personal property, including:
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> 1. securities;
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> 2. negotiable and nonnegotiable instruments;
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> 3. vehicles and conveyances of any type;
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> 4. privileges;
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> 5. interests;
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> 6. claims; and
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> 7. rights;
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> (iii) an item, object, tool, substance, device, or weapon used in connection with a crime under the Controlled Dangerous Substances law; and
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> (iv) money.

[8] (...continued)
explained that "looking to other evidence of legislative intent is appropriate, even if merely to ratify that our conclusion of the unambiguous meaning of the statute is correct." *Harrison-Solomon*, *supra*, 442 Md. at 266 n.6.

No separate definition is provided for the term "money." The statute provides that a broad range of property is subject to forfeiture, including "everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Controlled Dangerous Substances law, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate any violation of the Controlled Dangerous Substances law." CP § 12-102(a)(11). Surely, the funds within the account were subject to forfeiture because they were "proceeds traceable to the exchange" of CDS.

"Bank account" is not listed in one of the various categories in the definition of "property" set forth in CP § 12-101(m). This is logical because it is not the bank account itself which is property -- rather, the money held within the account constitutes property subject to forfeiture. The bank account itself has no value separate from the money held within it. Black's Law Dictionary defines "money" as:

> 1. The medium of exchange authorized or adopted by a government as part of its currency; esp., domestic currency <coins and currency are money>. UCC § 1-201(24). 2. Assets that can be easily converted to cash <demand deposits are money>. 3. Capital that is invested or traded as a commodity <the money market> 4. (*pl.*) Funds; sums of money <investment moneys>. — Also spelled (in sense 4) *monies*.

MONEY, BLACK'S LAW DICTIONARY (10th ed. 2014).

To be sure, currency fits under the definition of "money." However, currency is not the only category of property that fits within the definition. As the above definition provides,

assets which can easily be converted to cash are "money" as well. In our view, the definition of "money" under the statute is not so limited as to apply only to currency. Indeed, had the legislature intended to provide a different filing deadline only for currency, the legislature certainly could have used a more specific term. The legislature selected the term "money," which by definition applies to more than mere currency.

We are unpersuaded by the Bottinis' reliance upon CP § 12-202(b), which pertains to the photographing of contraband money. Section 12-102(b) of the Criminal Procedure Article specifically provides that money "found in close proximity to a contraband controlled dangerous substance" is subject to forfeiture, and Section 12-202(b) sets forth specific requirements for photographing the seized "coin[s] or currency." The Bottinis assert that because Section 12-202(b) refers to photographing "money," all uses of the term "money" must apply to physical currency, because money held within a bank account cannot be photographed. This argument is unavailing. Simply because the statute requires that all seized currency be photographed, we are unpersuaded that all uses of the term "money" refer only to currency.

To be sure, the legislature could have been more artful in its drafting of the forfeiture statute, and could have more clearly referred to "currency" rather than "money" in appropriate contexts. We believe, however, that a broader definition of the term "money" applies when determining whether the forfeiture action in the present case was timely filed pursuant to CP § 12-304(c)(1). We emphasize that all parties concede that the $63,891.93

held in Daniela's account was the proceeds of illegal CDS transactions otherwise subject to forfeiture, but for the timing of the filing of this action.

The $63,891.93 did not transform into a different category of property under the forfeiture law simply because it was deposited into a bank account. Accordingly, we hold that the funds held within the Capital One account were "money" under the forfeiture statute, and the action was timely filed. As such, we affirm.[9]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[9] The circuit court found that Daniela did not have a claim to the seized funds under CP § 12-101(k)(1) and (2), and did not permit Daniela's challenge to the forfeiture to proceed. Gianpaolo subsequently filed his own answer and challenged the forfeiture action. The circuit court's ruling that Daniela did not have a claim to the seized funds was erroneous but ultimately has no affect on our disposition of this appeal.

Section 12-101(k) of the Criminal Procedure Article defines a "owner" as a person who has a "legal, equitable, or possessory interest in property." As the named account holder, Daniela had legal title to the Capital One account. Daniela and Gianpaolo agree that Gianpaolo is the sole equitable owner of the money held in the account. Both equitable and legal title holders are "owners" pursuant to CP § 12-101(k), and therefore both Daniela and Gianpaolo were entitled to challenge the foreclosure action.

Nonetheless, the trial court's error in determining that Daniela did not have a claim to the account is of no relevance to our holding and disposition of this appeal, given that both Bottinis were represented by the same counsel and presented the same substantive arguments before the circuit court.

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Dissenting Opinion by Arthur, J.

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I respectfully dissent, because I do not agree that a bank account is "money" within the meaning of Title 12 of the Criminal Procedure Article ("Crim. Proc.").

In colloquial terms, a bank account contains "money," and a person can certainly obtain "money" from the bank where he or she has an account. The account itself, however, is simply the "detailed statement of the mutual demands in the nature of debit and credit," *Black's Law Dictionary* 17 (5th ed. 1979), between the bank and its depositor. The account measures the value of the depositor's intangible, contractual right to require the bank to repay his or her deposits, upon demand, with interest (if the bank has so agreed), subject to whatever fees the depositor has agreed to pay for the bank's services. The account itself, however, is not "money."

I have trouble with the majority's contrary conclusion in part because a bank account is functionally indistinguishable from other types of accounts that, in my view, clearly would not fall within the definition of "money." Many investment banks and brokerages offer money market funds, in which investors make deposits, earn interest, and have the ability to write checks and make withdrawals against the account balance. Many mutual funds have similar check-writing features. Had Daniella Bottini deposited her brother's ill-gotten gains into a money market or a mutual fund account, she would own a "security" within the meaning of Crim. Proc. § 12-101(m)(1), because the accounts are regulated by the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1–80a-64. But she could obtain "money" from the securities account in exactly the

same way in which she could obtain it from a bank account. Is the securities account "money"? If not, how is the bank account different?

It is not unusual or surprising that the nature of Gianpaolo Bottini's property could change as it moved from his bank account, to his sister's hands, and on to her account. When the property was in his account, it was, in my view, "intangible personal property" within the meaning of § 12-101(m)(1)(ii) – a contractual "interest," "claim," or "right" against the bank under § 12-101(m)(1)(ii)(5)-(7). When he withdrew the balance of the account and used it to obtain a cashier's check, the property became a negotiable instrument within the meaning of § 12-101(m)(1)(ii)(2). By contrast, had he taken out cash rather than obtained a cashier's check, the property would (temporarily) have become "money." Nonetheless, when his sister made the deposit into her own account, the property reacquired the status of "intangible personal property."

If we concluded that the bank account is not "money" within the meaning of Title 12, we would not prohibit the government from seizing and securing the forfeiture of the intangible proceeds of the sale of controlled dangerous substances. The government could still proceed against those intangible assets, provided that it acted within the time constraints in § 12-304(a) – *i.e.*, provided that it acted "within *the earlier of* (1) 90 days after the seizure; or (2) 1 year after the final disposition of the criminal charge for the violation giving rise to the forfeiture." (Emphasis added.) The government would be precluded only from waiting until "90 days after the final disposition of criminal proceedings," as it can when it sets out

to obtain the forfeiture of "money." Crim. Proc. § 12-304(c)(1). Because Montgomery County failed to act within what I regard as the applicable time period in this case, I would reverse the judgment.