

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 11, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-3131  
STATE OF WISCONSIN**

Cir. Ct. No. 01 CV 1834

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**PETER J. LONG AND ONE 1998  
DODGE TRUCK VIN  
3B7KF22Z7WG138332,**

**DEFENDANTS-APPELLANTS,**

**JEREMIAH M. CURTIN,**

**DEFENDANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MAXINE A. WHITE, Judge. *Affirmed.*

¶1 SCHUDSON, J.<sup>1</sup> Peter J. Long and One 1998 Dodge Truck (collectively, “Long”) appeal from the circuit court order for judgment of forfeiture divesting Long and Jeremiah M. Curtin of all rights, title, and interest in the 1998 Dodge Truck (bearing the vehicle identification number 3B7KF22Z7WG138332), and forfeiting the truck to the State of Wisconsin. Long argues that the court erred in denying his motion to dismiss the forfeiture action. This court affirms.

¶2 The facts relevant to resolution of this appeal are undisputed. On November 11, 1999, Long was convicted of operating a motor vehicle while under the influence of an intoxicant, fourth offense. The sentencing court ordered seizure of “a motor vehicle” owned by Long, pursuant to WIS. STAT. § 346.65(6)(a)2.

¶3 On December 2, 1999, the circuit court signed the order for seizure of Long’s truck, the vehicle that had been used in the offense. Stemming from the same intoxicated-driving conviction, however, it also signed orders for seizure of Long’s other vehicles: on May 30, 2000, for a Ford Probe and a Buick Regal; and on December 7, 2000, for a Suzuki motorcycle.

¶4 According to the Wisconsin Department of Transportation records referred to in the forfeiture complaint, although the truck had been titled and registered in Long’s name at the time of Long’s offense and sentencing, an application for title and registration of the truck in the name of Jeremiah M. Curtin was processed on March 20, 2000. Long does not dispute the State’s assertion, on

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise indicated.

appeal, that, for some time, the police were “unable to seize the 1998 Dodge Truck because Long appeared to have transferred the title before seizure could be made.” Police, in fact, did not seize the truck until February 10, 2001, after a second order directing its seizure had been filed on February 1, 2001.

¶5 On May 2, 2001, Long moved to dismiss the State’s complaint seeking forfeiture of the truck. Asserting that the State had previously filed a forfeiture action stemming from the same intoxicated-driving conviction, seeking forfeiture of his three other vehicles, his motion contended that the law allowed the State to seize only *a* motor vehicle.<sup>2</sup> Further, his motion maintained that “disposition of ... the first forfeiture action[] will be *res adjudicata* [sic] of the forfeiture order of the court’s sentence” in the intoxicated-driving case. Arguing in support of the motion, counsel for Long also contended that dismissal was required under WIS. STAT. § 802.06(2)(a)10, which allows for a motion to claim as a defense “[a]nother action pending between the same parties for the same cause.”

¶6 The circuit court denied Long’s motion and, following a subsequent hearing, ordered forfeiture of the truck; at the same time, however, the court vacated the orders with respect to the forfeiture of Long’s other three vehicles and dismissed the underlying action for their forfeiture. Subsequently, the court stayed the order for forfeiture of the truck, pending appeal.

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<sup>2</sup> WISCONSIN STAT. § 346.65(6) (1995-96), in effect at the time of Long’s offense and sentencing, permitted the sentencing court to order seizure of “a motor vehicle.” Subsequently, the statute was amended to permit a sentencing court to order seizure of “the motor vehicle used in the violation.” WIS. STAT. § 346.65(6)(a)1 (1999-2000).

¶7 On appeal, Long renews his argument that WIS. STAT. § 802.06(2)(a)10 requires dismissal of the action for forfeiture of the truck because the action for forfeiture of his other three vehicles was “a previous action between the same parties for the same cause.” See WIS. STAT. § 802.06(2)(a)10. He contends that “[i]t stands to reason ... that the basis for the statute is the doctrine of *res judicata*.”

¶8 This court has explained:

The application of the doctrine of *res judicata* is a question of law, to which we apply an independent standard of review.

Once a final judgment is entered in a case, the doctrine of *res judicata* bars all subsequent actions between the parties on claims which were or could have been litigated in the original proceeding. This rule prevents repetitive litigation. Application of the doctrine requires both identity of parties ... and identity of claims.

*Post v. Schwall*, 157 Wis. 2d 652, 658, 460 N.W.2d 794 (Ct. App. 1990) (citations omitted). Denying Long’s motion to dismiss, the circuit court concluded that the two forfeiture cases constituted “an incomplete action with four vehicles, one of which is subject to a seizure.”

¶9 The parties argue whether there was an identity of parties or an identity of claims in the forfeiture actions. This court need not resolve this dispute, however, because the circuit court vacated the orders with respect to all the vehicles except the truck. Indeed, once the court did so, Long did not dispute the court’s authority to order forfeiture of the truck.

¶10 At the hearing of August 29, 2001, the State asked the circuit court to order forfeiture of the truck. As summarized by the court, however, counsel for Long countered that “the [S]tate should not be permitted to do this because [it has] already done it three times.” Counsel went on, however, to explain that the

forfeiture case involving the other three vehicles also was before the court “for a forfeiture hearing,” and he asked the court to enter judgment on that case, and to order forfeiture of one of those three vehicles. Attempting to avoid seizure of the truck—apparently the most valuable of the four vehicles—counsel asked for entry of judgment “in sort of a chronological fashion, first vehicle seized ... is the one to be forfeited.”

¶11 The circuit court, pegging the chronological order to the date of the seizure *order* rather than to the date of the actual *seizure*, stated:

I agree with [Long’s counsel] that since ... [the sentencing court] had already forfeited [the Dodge truck,] ... the Ford Probe, the Suzuki Cycle and Buick Regal Coupe were not subject to seizure based on the same case facts.

Therefore, under the facts of both of these [forfeiture] cases, I conclude that ... those orders [regarding forfeiture of the Ford, Suzuki, and Buick] are appropriately vacated and dismissed, and ... the statutory requirements have been complied with by the state, and therefore, the court so order[s] the forfeiture of the ’98 Dodge Pickup truck ....

Counsel for Long never objected to the manner in which the circuit court determined the chronological order and designated the truck for forfeiture. He merely requested that the other vehicles “be released without Mr. Long paying any storage fees.”

¶12 Likewise, on appeal, Long offers no argument against the manner in which the circuit court determined the chronological order of seizure/forfeiture and the ultimate designation of the truck for forfeiture. Thus, this appeal presents the curious circumstance of an appellant who prevailed in the circuit court on his underlying legal argument regarding entry of judgment in chronological order and, in the circuit court and on appeal, has never challenged the effectuation of the legal premise he successfully presented. Thus, this court concludes, Long has

failed to present any basis on which to reverse the circuit court's order for judgment of forfeiture.<sup>3</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

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<sup>3</sup> This court also notes that Long offers no reply to the State's argument that he has "artfully avoid[ed] the question of how he can appeal the forfeiture of a vehicle in [sic] which he allegedly transferred ownership." See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted). Indeed, at the hearing of July 30, 2001, counsel for Long declared: "[T]hat truck is titled in the name of Jeremiah M. Curtain, and so it ... doesn't belong to Peter Long." Shortly thereafter, the following exchange occurred:

THE COURT: I just don't see that your client, Mr. Long, has [] standing to defend Jeremiah Curtain's position.

[COUNSEL FOR LONG]: He doesn't.

