

No. 29999 -- Pamela Jean Games-Neely, Prosecuting Attorney of Berkeley County, West Virginia, on behalf of the West Virginia State Police v. Real Property, including a brick ranch house and garage, commonly known as 1175 Sam Mason Road located in Millcreek District of Berkeley County, WV Map 13, Parcel 32, Libre 237, Folio and Book 635

Maynard, Justice, dissenting:

FILED

May 21, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

May 22, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I agree with the majority that the circuit court's order denying the appellant's motion for relief from judgment should be reversed. The language of W.Va. Code § 60A-7-705(d), which directs the circuit court to enter default judgment against a party who files an untimely answer to a forfeiture petition, is mandatory. Nevertheless, the circuit court retains discretion under Rule of Civil Procedure 60(b) to set aside the default judgment.

However, I disagree with the majority that the State's failure to effect service of the forfeiture petition upon all the owners of the subject property should result in the dismissal of the forfeiture proceeding against the appellant who *was* properly served. The majority holds that even though the appellant was properly and timely served with a copy of the petition for forfeiture in accordance with W.Va. Code § 60A-7-705(b), the State's failure to properly serve Ms. Aquino, a joint owner of the property, renders the forfeiture action *against the appellant* void. This simply does not make sense.

The obvious purpose of W.Va. Code § 60A-7-705(b) is to ensure that all

property owners whose rights may be affected by forfeiture are timely served with process and provided an opportunity to be heard as required by the due process provisions of our State and Federal Constitutions. That Ms. Aquino was not properly served does not at all affect the appellant's opportunity to answer and contest the forfeiture of her ownership interest in her property.

Therefore, I would have remanded this case to the circuit court for reconsideration of the appellant's motion for relief from default judgment. If, in its discretion, the circuit court set aside the default judgment, the appellant would then be given an opportunity to contest the forfeiture of her property.

Accordingly, for the reason stated above, I dissent.