

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JAMES ARDOIN,
Appellant,
vs.
THE CITY OF RENO, NEVADA, BY
AND THROUGH THE RENO POLICE
DEPARTMENT,
Respondent.

No. 62737

FILED

MAR 26 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court judgment in a forfeiture action. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

On appeal, appellant argues that the district court erred by denying his motion to dismiss the forfeiture complaint on the basis that the forfeiture action violated the terms of an agreement that the parties reached in a separate criminal action, under which appellant agreed to plead guilty to one count of felon-in-possession of a firearm in exchange for the dismissal of a controlled substances charge. Appellant contends that the plea agreement as well as double jeopardy and res judicata principles precluded respondent from seeking forfeiture in the separate underlying civil action because requiring him to forfeit the currency found on him at the time of arrest was a second punishment for the same offense to which he pleaded guilty in the criminal case. Appellant further asserts that he rebutted the statutory presumption that the forfeited currency was traceable to an exchange for controlled substances because (1) the controlled substances-related charge in the criminal action was dismissed,

and (2) he demonstrated with the requisite quantum of proof that the money had non-criminal origins and was not traceable to an exchange for controlled substances.

Having considered the parties' arguments¹ and the record, we perceive no reversible error in the district court's judgment. This court has held that Nevada's forfeiture statutes are intended to be civil in nature, and nothing in the record indicates that the forfeiture proceeding here was so punitive in fact that it could not be legitimately viewed as civil. *See Livingston v. Washoe Cnty.*, 114 Nev. 306, 310-11, 956 P.2d 84, 87 (1998) (applying the two-part test outlined in *United States v. Ursery*, 518 U.S. 267 (1996), in determining that (1) Nevada's forfeiture statutes were intended to create civil in rem proceedings, not criminal punitive proceedings, and (2) there was no "clear proof" that the proceedings resulting in forfeiture of the Livingstons' house were "so punitive in form and effect as to render them criminal despite the legislative intent to the contrary"). Although appellant contends that he rebutted the NRS 453.301(9) presumption that the seized currency was traceable to an exchange for controlled substances, the district court found that both appellant's witness's testimony and appellant's testimony, which conflicted with his answer to the complaint, lacked credibility as to issues concerning the money's origin and time of its transfer to appellant.

¹To the extent that appellant's July 2, 2014, response and September 11, 2014, supplement thereto properly replied to respondent's answer in this appeal, they were considered in this disposition. Any new arguments contained therein that were not first raised in appellant's appeal statement were not considered. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (this court need not consider issues raised for the first time in an appellant's reply brief).

Beverly Enters. v. Globe Land Corp., 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974) (holding that the trier of fact's witness credibility determinations are not reviewable on appeal). Because appellant fails to point to any evidence other than those testimonies, which the district court expressly found not credible, appellant has not shown that the district court erred by applying the presumption and ordering the currency forfeited. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, C.J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Lidia Stiglich, District Judge
John James Ardoin
Reno City Attorney
Washoe District Court Clerk