Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-436

STATE OF LOUISIANA

versus

IAN JOSEPH FINCHER

IN RE STATE OF LOUISIANA
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LAUREN D. ROGERS, DIVISION "E", No. 96,981

TRUE COPY
LINDA TRAN
DEPUTY CLERK

November 24, 2026

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Stephen J. Windhorst

**WRIT GRANTED; JUDGMENT REVERSED;
MOTION TO STRIKE GRANTED; MATTER REMANDED**

Relator, the State of Louisiana, seeks review of the 29th Judicial District Court's August 18, 2026 ruling denying its Motion to Strike Claim and Application for Forfeiture.[1] For the following reasons, we grant the writ, reverse the trial court's judgment, grant the State's Motion to Strike, and remand the matter to the trial court for further proceedings.

On January 16, 2026, a 2003 Red Ford Mustang bearing VIN #1FAFP40423F81552 and a white iPhone in a clear case were confiscated along with various narcotics after what began as a traffic stop initiated by St. Charles Parish Sheriff's Office deputies after they observed a vehicle driving with an expired inspection sticker. The district court issued a seizure warrant on January 29, 2026. On February 2, 2026, Respondent, Ian Joseph Fincher, received Notice of Pending Forfeiture

[1] This Court has previously explained that the proper vehicle to challenge such a claim is a peremptory exception of no right of action pursuant to La. C.C.P. art. 927 versus a motion to strike under La. C.C.P. art. 964. *See State v. Junior*, 23-212, p. 5 (La. App. 5 Cir. 1/31/24), 380 So.3d 724, 728.

("Notice") which advised that he had "within thirty (30) days after" receipt of the Notice to file a claim by mailing the claim to the seizing agency and to the District Attorney "by Certified Mail, return receipt requested," pursuant to Louisiana Revised Statute 40:2601 *et seq*.

Respondent executed an Affidavit on March 3, 2026, attesting that he acquired the phone and vehicle on various dates, listed his home address, and that he filed the claim in accordance with La. R.S. 40:2605 requesting that his property be returned to him in its original condition. His counsel sent the affidavit along with a letter, also dated March 3, 2026, to the St. Charles Parish District Attorney's Office. Counsel used a stationery envelope from his law office; the certified mail sticker was affixed to the front of the envelope, and the Pitney Bowes mail meter stamp providing postage in the upper right corner was also dated March 3, 2026.

On May 5, 2026, the State filed its Motion to Strike Claim and Application for Forfeiture. The State alleged that Mr. Fincher's claim does not comply with La. R.S. 40:2610, and "is therefore invalid, and should be stricken" and requested that it be granted a Judgment of Forfeiture against the *in rem* Red Ford Mustang, the white phone with the clear case, and the drugs, of which Mr. Fincher and his co-defendant each denied ownership. Mr. Fincher countered in his Opposition that his claim was mailed on March 3, a day before the March 4, 2026 deadline, and the State's Notice provided that he had sixty (60) days upon receipt of the notice to request an extension. He argues that the State is equitably estopped from enforcing the 30-day deadline and his affidavit substantially complied with La. R.S. 40:2610(B).

At the end of the subsequent hearing on the State's motion, the court denied the motion to strike, and mentioned the March 3rd Pitney Bowes stamp, affidavit signature and counsel's statement that he mailed the affidavit that day. The judge also stated that the contents of the claims were sufficient to put the State on notice of which items Mr. Fincher challenged forfeiture.

In its application, the State urges that the district court erred when it found that Mr. Fincher's claim was timely sent, and his affidavit "has several substantive deficiencies that are fatal to its claim."

Forfeiture proceedings pursuant to the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989, La. R.S. 40:2601, *et seq*., are civil proceedings governed by the Louisiana Code of Civil Procedure except as otherwise provided by specific provisions of the Act. La. R.S. 40:2611(K); *State v. Junior*, 23-212, p. 3 (La. App. 5 Cir. 1/31/24), 380 So.3d 724, 727. For the Act to function as intended, courts must ensure that both the State and the owner or interest holder strictly follow each of the Act's detailed requirements for the various stages in the process. *Id.*, *citing State v. 2003 Infiniti G35 VIN No. JNKCV51E93MO24167*, 09-1193 (La. 1/20/10), 27 So.3d 824, 828.

Louisiana Revised Statute 40:2610 prescribes the necessary form an owner or interest holder in property seized must file to set forth a claim, and the statute provides the content of the averments with unambiguous specificity. *State v. Manilla*, 25-0376, pp. 5–6 (La. App. 1 Cir. 6/16/26), 437 So.3d 56, 61–62, *reh'g denied* (9/21/2026). The owner or interest holder in the property must take affirmative steps to preserve his interest in the property by filing a claim under La. R.S. 40:2610, which reads as follows:

A. Only an owner of or interest holder in property seized for forfeiture may file a claim and shall do so in the manner provided in this Section**. The claim shall be mailed to the seizing agency and to the district attorney by certified mail, return receipt requested, within thirty days after Notice of Pending Forfeiture**. The court may grant an extension of time for the filing of a claim pursuant to this Section for good cause shown. Incarceration of an owner or interest holder during the original thirty-day period shall create a rebuttable presumption of good cause as to the owner or interest holder. A motion requesting an extension shall be filed within sixty days after receipt of the Notice of Pending Forfeiture.

B. The claim shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury or false swearing and shall set forth all of the following:

(1) The caption of the proceedings as set forth on the Notice of Pending Forfeiture or petition and the name of the claimant.
(2) The address where the claimant will accept mail.
(3) The nature and extent of the claimant's interest in the property.
(4) The date, identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property.
(5) The specific provision of this Chapter relied on in asserting that the property is not subject to forfeiture.
(6) All essential facts supporting each assertion.
(7) The specific relief sought.

(Emphasis added).

We have previously found that, absent a showing that "the allegations being challenged are so unrelated to a plaintiff's claims as to be unworthy of any consideration and that their presence in the pleading would be prejudicial to the moving party," the proper way to move to dismiss a claim such as Mr. Fincher's is via a peremptory exception of no right of action under La. C.C.P. art. 927 versus a motion to strike pursuant to La. C.C.P. art. 964. *See State v. Junior*, 23-212, p. 5 (La. App. 5 Cir. 1/31/24), 380 So.3d 724, 728. However, we will consider the State's pleading's "substance rather than its caption." *See Singleton v. Singleton*, 540 So.2d 612, 613 (La. App. 5 Cir. 1989).

Here, although the Pitney Bowes stamp was dated March 3, 2026, the official United States Postal Service (USPS) postmark was dated March 5, 2026; the USPS postmark controls. A postage meter date is considered a valid postmark date provided it does not conflict with a legible United States Postal Service postmark date. If the dates conflict, the United States Postal Service date shall override the meter date. *Cf. Crosby v. Cantrelle*, 20-252, p. 6 (La. App. 5 Cir. 8/10/20), 301 So.3d 1234, 1239, *writ denied,* 20-00996 (La. 8/14/20), 300 So.3d 876, *citing* La. Admin. Code Title 61, Part 1, § 4911 (finding a candidate's tax returns were filed as of the date of the affixed USPS postmark). Thus, Mr. Fincher's claim was not timely sent.

Further, we agree with the State regarding the deficiencies of Respondent's affidavit; Respondent did not satisfy the requirements of La. R.S. 40:2610(B)(4) – (6) regarding specific details of when and how his property interest in the items requested came to be. *See 2003 Infiniti G35,* 27 So.3d at 835. Compliance with each requirement of La. R.S. 40:2610 is mandatory and failure to fulfill any of these requirements "precludes the owner or interest holder from further participation in the forfeiture proceeding" and results in dismissal of the claim. *State v. Chisholm*, 16-63, p. 8 (La. App. 5 Cir. 4/28/16), 191 So.3d 1161, 1166.

Accordingly, the writ application is granted, the trial court's judgment is reversed, the State's Motion to Strike is granted, and the matter is remanded to the trial court for further proceedings.

Gretna, Louisiana, this 24th day of November, 2026.

MEJ
JGG
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **11/24/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-C-436

E-NOTIFIED
29th Judicial District Court (Clerk)
Honorable Lauren D. Rogers (DISTRICT JUDGE)
Mark A. Marino (Respondent)

MAILED
Honorable Joel T. Chaisson, II (Relator)
Juan A. Byrd (Relator)
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