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See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 7th Cir. Rule 32.1.

United States Court of Appeals, Seventh Circuit.

Chermane SMITH, Edmanuel Perez, Tyhesha Brunston, Michelle Waldo, Kirk Yunker, and Tony Williams, Plaintiffs–Appellants,

v.

CITY OF CHICAGO, Philip J. Cline, Superintendent of Police, and Richard Devine, Cook County States Attorney, Defendants–Appellees.

No. 07–1599

|

Feb. 12, 2010.

Synopsis

Background: Property owners brought § 1983 action against city, and city and state officials, alleging that they were entitled to a probable cause hearing after their property was seized under the Illinois Drug Asset Forfeiture Procedure Act. The United States District Court for the Northern District of Illinois, Elaine E. Bucklo, J., dismissed action, and owners appealed. The Court of Appeals, 524 F.3d 834, reversed and remanded. Defendants petitioned for writ of certiorari. While petition was pending, all seized property was returned to owners. The Supreme Court, 558 U.S. 87, 130 S.Ct. 576, 175 L.Ed.2d 447, vacated judgment of the Court of Appeals and remanded with instructions to dismiss.

On remand, the Court of Appeals, held that remand to district court was appropriate for consideration of due process claim that was not rendered moot by return of seized property.

Remanded.

Procedural Posture(s): Motion to Dismiss.

*21 Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 06 C

6423. Elaine E. Bucklo, Judge.

Attorneys and Law Firms

Thomas Peters, Chicago, IL, for Plaintiffs–Appellants.

Julian Henriques, Kerrie Maloney Laytin, Benna R. Solomon, Office of the Corporation Counsel, Paul A. Castiglione, John P. Heil, Jr., Chicago, IL, for Defendants–Appellees.

Before WILLIAM J. BAUER, Circuit Judge, RICHARD A. POSNER, Circuit Judge and TERENCE T. EVANS, Circuit Judge.

ORDER

The district court, relying on *Jones v. Takaki*, 38 F.3d 321 (7th Cir.1994), dismissed the plaintiffs' complaint in this case. On appeal, we overruled *Jones*, explaining, "[O]ur fresh look at this issue causes us to conclude that given the length of time which can result between the seizure of property and the opportunity for an owner to contest the seizure under the DAFPA, some sort of mechanism to test the validity of the retention of the property is required." *Smith v. City of Chicago*, 524 F.3d 834, 838 (7th Cir.2008).

We remanded the case to the district court to "fashion appropriate procedural relief consistent with this opinion." *Id.* Our opinion, because it overruled *Jones*, was circulated among all active members of the court pursuant to Circuit Rule 40(e). None of the judges voted to rehear the case en banc. The case was not moot when we entered our judgment reversing the district court.

Subsequently, the Supreme Court granted the defendants' petition for a writ of certiorari. But then, prior to oral arguments, the last of the named plaintiffs' seized property was returned to her. The Supreme Court therefore held that the case (and thus the appeal) was moot. It vacated our judgment and remanded the case to us with instructions to dismiss. *Alvarez v. Smith*, 558 U.S. 87, 130 S.Ct. 576, 175 L.Ed.2d 447 (2009). The Court cited *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S.Ct. 104, 95 L.Ed. 36 (1950), as precedent for the vacatur order. *Alvarez*, 130 S.Ct. at 578, 581–83. The

Court did not address the merits of the plaintiffs' due process claim. Thus, neither the plaintiffs nor the defendants had the benefit of a full and final review of the due process issue that is at the core of this case.

When parties to a controversy cannot secure final review of the merits because the case became moot before the Supreme Court could address the merits, the appropriate relief, it seems, is an order vacating all prior judgments, without prejudice to any party's right to proceed or defend. See *Munsingwear*, 340 U.S. at 40, 71 S.Ct. 104. When, through happenstance, a case becomes moot before final review is possible, vacatur is necessary to clear "the path for future relitigation of the issues between the parties, preserving the rights of all parties, while prejudicing none by a decision which ... was only preliminary." *Alvarez*, 130 S.Ct. at 581 (quoting *Munsingwear*, 340 U.S. at 40, 71 S.Ct. 104) *22 (internal quotations omitted). Considerations of "equity and fairness," *Alvarez*, 130 S.Ct. at 582 (quoting *U.S. Bancorp*

Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 25–26, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994) (internal quotations omitted)), dictate that the parties start over, without prejudice, when final review is not possible through no fault of the parties themselves.

For these reasons, we believe the best course of action for us to take at this time is to vacate our judgment and to remand the case to the district court for consideration, or reconsideration, of issues that are not moot.

SO ORDERED.

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