

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2007

JOHN DISMUKE,

Appellant,

v.

Case No. 5D06-2236

OFFICE OF THE STATE ATTORNEY,  
NINTH, ETC.,

Appellee.

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Opinion filed February 23, 2007

Appeal from the Circuit Court  
for Orange County,  
Jose R. Rodriguez, Judge.

John Dismuke, Chatahoochee, pro se.

Bill McCollum, Attorney General,  
Tallahassee, and Anthony J. Golden,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Dismuke filed a writ of replevin seeking the return of three items of jewelry allegedly taken from him after his arrest on violation of probation charges. The trial court treated Dismuke's writ of replevin as a motion for return of property. The trial court properly dismissed Dismuke's motion because of its failure to allege that the jewelry was not the fruit of criminal activity. *Scott v. State*, 922 So. 2d 1024, 1026 (Fla. 5th DCA 2006).

We find this order is an appealable interlocutory order because it determined the right to immediate possession of property. Fla. R. App. P. 9.130(a)(3)(C)(ii); see *also Eight Hundred, Inc. v. State*, 781 So. 2d 1187 (Fla. 5th DCA 2001). The trial court's dismissal of Dismuke's motion was without prejudice. Therefore, we affirm the trial court's decision. Such affirmance is without prejudice to Dismuke filing an amended motion in the circuit court.

AFFIRMED.

PLEUS, C.J., SAWAYA and EVANDER, JJ., concur.