

RENDERED: OCTOBER 12, 2001; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001049-MR

JOHN K. HAGAN

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT  
HONORABLE TOMMY W. CHANDLER, JUDGE  
ACTION NO. 99-CR-00005

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER  
DISMISSING APPEAL  
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BEFORE: BARBER, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: John K. Hagan has appealed from an order entered by the Union Circuit Court on March 29, 2000, which ordered that a motor vehicle owned by his wife, Lisa G. Hagan, be forfeited to the Union County Sheriff pursuant to KRS<sup>1</sup> Chapter 218A. Having concluded that this appeal has not been prosecuted in the name of

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<sup>1</sup>Kentucky Revised Statutes.

the real party in interest as required by CR<sup>2</sup> 17.01, we must dismiss the appeal.

On August 10, 1999, John Hagan entered a guilty plea in the Union Circuit Court to the charge of complicity to trafficking in methamphetamine.<sup>3</sup> The plea was pursuant to the Commonwealth's recommendation that Hagan receive a five-year prison sentence.<sup>4</sup>

On August 18, 1999, the Commonwealth's Attorney filed a "Notice and Motion for Forfeiture," wherein it moved the trial court to forfeit a "1994 Chevrolet Lumina, Vin. # 2G1WP14X5R9120861" "on the grounds that the defendant has plead [sic] guilty to complicity to trafficking in methamphetamine and said property was possessed in violation of KRS 218A." The motion was noticed for a hearing on September 13, 1999, and a copy was mailed to John Hagan's attorney and to Lisa Hagan. In orders entered on September 16, 1999, December 15, 1999, and January 13, 2000, the trial court rescheduled the forfeiture hearing. None of these orders indicated that Lisa Hagan was served with a copy.

On March 29, 2000, the trial court entered an "Order of Vehicle Forfeiture," which stated in pertinent part:

Motion having been made, the Court and the parties being sufficiently advised, and

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<sup>2</sup>Kentucky Rules of Civil Procedure.

<sup>3</sup>KRS 218A.1432 and KRS 502.020.

<sup>4</sup>On November 10, 1999, following a sentencing hearing, the trial court sentenced Hagan to prison for a five-year term.

the Court having found that the forfeiture provisions of KRS 218A.410 and 218A.415 have been met and complied with,

IT IS HEREBY ORDERED that the above-named Defendant, John K. Hagan, having been found guilty of complicity to trafficking in methamphetamine and Lisa G. Hagan, the owner of the hereinafter described vehicle, having been present during the commission of an offense of KRS Chapter 218A, and hereby forfeits, pursuant to KRS 218A, the following property: 1994 Chevrolet Lumina, Vin. #2G1WP14X5R9120861.

IT IS FURTHER ORDERED that the above-mentioned property be released to the Union County Sheriff to be retained for official use. Should the Union County Sheriff dispose of the vehicle, proceeds of that sale are also to be held by that agency for use pursuant to KRS 218A.

On April 27, 2000, John Hagan filed a notice of appeal pertaining to the Order of Vehicle Forfeiture. John Hagan has pursued this appeal even though he had argued before the trial court that Lisa Hagan was the sole owner of the vehicle and that he had no interest in the vehicle.<sup>5</sup>

We agree with the Commonwealth's argument that John Hagan "has no standing to raise the claimed violations of the rights of his wife, Lisa Hagan, in this appeal." John Hagan in his reply brief failed to respond to this argument.

CR 17.01 provides that "[e]very action shall be prosecuted in the name of the real party in interest." "The

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<sup>5</sup>The issues raised on appeal are: (1) whether Lisa Hagan, as the legal owner of the vehicle, received proper notice of the forfeiture hearing by registered mail as required by KRS 218A.460(3); and (2) whether the evidence was sufficient to prove that the vehicle was subject to forfeiture under KRS 218A.410(1)(h) and KRS 218A.460(4).

'real party in interest' is one who has an actual and substantial interest in the subject matter as distinguished from one who has only nominal interest therein."<sup>6</sup> The former Court of Appeals in McDowell Memorial Hospital v. McCoy,<sup>7</sup> noted that the real party in interest had been "declared to be one entitled to the benefits of action upon the successful termination thereof."<sup>8</sup> We believe the case sub judice is analogous to Lampkin v. Mobile & Ohio Railroad Co.,<sup>9</sup> where the party who actually owned the hogs which had died was not a party to the appeal; and the former Court of Appeals dismissed the appeal because it had not been brought by the real party in interest.

Having concluded that Lisa Hagan, and not John Hagan, is the real party in interest in this appeal, it is hereby ordered that this appeal is DISMISSED.

ALL CONCUR.

Entered: October 12, 2001

/s/ Rick A. Johnson  
JUDGE, COURT OF APPEALS

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<sup>6</sup>Gay v. Jackson County Board of Education, 205 Ky. 277, 278, 265 S.W. 772 (1924) (citing Taylor v. Hurst, 186 Ky. 71, 216 S.W. 95 (1919)).

<sup>7</sup>Ky., 407 S.W.2d 716, 717 (1966).

<sup>8</sup>Id. (citing Commonwealth v. Farmer's Bank of Kentucky, 191 Ky. 547, 551, 231 S.W. 25 (1921)).

<sup>9</sup>146 Ky. 514, 142 S.W. 1037 (1912).

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