

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 1491 C.D. 2010
	:	
Akimo Moore,	:	Submitted: May 20, 2011
	:	
Appellant	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: August 11, 2011**

Akimo Moore, pro se, appeals from the June 30, 2010, Order of the Court of Common Pleas of Northampton County (trial court) that denied Mr. Moore’s December 10, 2009, Motion to Reopen the trial court’s Order of May 7, 2007, (December 2009 Motion) effecting the forfeiture of \$4,222.00 in United States currency (the Funds) pursuant to the Act commonly known as the Controlled Substances Forfeiture Act (Forfeiture Act), 42 Pa. C.S. §§ 6801-02. Mr. Moore argues that: he has never had an evidentiary hearing; the trial court erred in failing to identify an earlier, wrongly captioned appeal that he purported to have filed on June 23, 2009, and forward it to the civil division; and the trial court’s denial of his

December 2009 Motion was improperly based on this Court's procedural dismissal of a September 8, 2009, related appeal (September 2009 Appeal).<sup>1</sup>

We note that the present appeal of the June 30, 2010 Order is procedurally and substantively distinct from the September 2009 Appeal which sought to challenge the May 7, 2007, Forfeiture Order *nunc pro tunc*, which this Court ultimately dismissed for failure to comply with an order of this Court. We further note that, in reviewing this record, we have become aware of the existence of multiple orders on multiple dockets, which are not in the record before this Court, and which have complicated our review of the trial court's June 30, 2010 Order.<sup>2</sup>

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<sup>1</sup> The Northampton County District Attorney was precluded from filing a brief in this matter.

<sup>2</sup> Mr. Moore attached to his brief a June 8, 2009, Order denying a "Motion to Open Default Judgement [sic] and Vacate Forfeiture" and a "Petition for Return of Property." However, the docket in the matter presently before this Court contains no reference to such an Order, Motion, or Petition. Rather, the June 8, 2009, Order appears to have been filed in trial court docket numbers 1830-2007 and 1831-2007. Review of the Unified Judicial System of Pennsylvania web portal dockets reveals that the dockets numbered 1830-2007 and 1831-2007 relate to associated criminal proceedings against Mr. Moore. Additionally, we refer to the docket of our sister court, the Superior Court, as Mr. Moore filed a related appeal to that court. We reference these dockets, which are public records, only for the limited purpose of listing orders and pleadings that appear to be related to the civil forfeiture of the Funds. A court may take judicial notice of information in dockets if one of the parties refers to docket entries, as long as this does not deprive the other party of an opportunity to contest that information. See Commonwealth v. Hess, 570 Pa. 610, 618, 810 A.2d 1249, 1254 (2002) (looking to docket entries to help determine whether an appellant had actually received a court order to which he did not timely reply); id. at 621, 810 A.2d at 1256 (Saylor, J., concurring) ("I believe that we can take judicial notice [of docket entries] . . . ; indeed, the contrary approach would seem to have wider and troubling implications concerning the effectiveness of court docketing."); Deyarmin v. Consolidated Rail Corp., 931 A.2d 1, 15 n.10 (Pa. Super. 2007) ("Even in the absence of the trial court's effort to supplement the certified record . . . we take judicial notice of the publicly-available dockets."). But cf. Richner v. McCance, 13 A.3d 950, 956-57 n.2 (Pa. Super. 2011) ("[T]his Court will not ordinarily take judicial notice 'of records in another case, even when the case arose in the same court and the contents of the records are known to the court.'"). Here, Mr. (Continued...)

For the following reasons, we are constrained to vacate the June 30, 2010 Order and remand this matter to the trial court so that it can review its own dockets and orders involving this forfeiture and issue a new determination on the December 2009 Motion.

From Mr. Moore's brief and attachments, and our review of the file, we have compiled the following factual background. Mr. Moore was arrested in October 2006 on a drug charge. (Petition for Forfeiture of Property ¶ 7, R. Item 1 at 4-5; Mr. Moore's Br. at 4.) Police seized a small quantity of marijuana and the Funds. (Petition for Forfeiture of Property ¶ 7, R. Item 1 at 5; Mr. Moore's Br. at 4, 12.) Although the Northampton County District Attorney (District Attorney) did not proceed to trial on the criminal charges, he filed a Petition for Forfeiture of Property, appending an account of the seizure of the Funds that was certified on February 16, 2007, by the arresting officer. (Petition for Forfeiture of Property, R. Item 1 at 3-6, and Verification, R. Item 1 at 7.) On March 8, 2007, the trial court issued a Rule to Show Cause requiring an answer within thirty days. (Rule to Show Cause, R. Item 1 at 1.)

Mr. Moore did not answer the Rule to Show Cause. (Motion for Order of Forfeiture ¶ 4, R. Item 2 at 2.) On May 4, 2007, the District Attorney filed a Motion for Order of Forfeiture asserting that "[t]he time for answering the Notice and Rule to Show Cause . . . expired without an answer being filed," and appending a certified letter of notification to Mr. Moore with a signed receipt.

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Moore attached the very document that brought the other docket numbers to this Court's attention.

(Motion for Order of Forfeiture ¶ 4, R. Item 2 at 2-4.) However, Mr. Moore now states that the signature on the receipt is not his. (Mr. Moore's Br. at 12.) The trial court issued the Forfeiture Order under the Forfeiture Act. (Forfeiture Order, R. Item 2 at 1.)<sup>3</sup>

Mr. Moore states that on October 23, 2008, about six weeks after his criminal case was *nolle prossed*, he inquired about the Funds and learned of the Forfeiture Order. (Mr. Moore's Br. at 4.) Mr. Moore avers that he did not receive timely notice of the 2007 forfeiture proceedings because he did not reside at the address where notice was sent. (Mr. Moore's Br. at 7, 12.) On May 12, 2009, Mr. Moore filed a Motion to Reopen Default Judgment and Vacate Forfeiture (May 2009 Motion). (Criminal Docket CP-48-CR-0001831-2007 (1831 Criminal Docket) at 10).<sup>4</sup> He also petitioned the trial court for return of the Funds on the same date. (1831 Criminal Docket at 10; Mr. Moore's Br. at 4.) The trial court denied both motions by Order of June 8, 2009. (Criminal Docket CP-48-CR-0001830-2007 (1830 Criminal Docket) at 11.) *Instead of appealing the June 8, 2009, Order*, Mr. Moore filed an appeal of the Forfeiture Order with the Superior Court on June 18, 2009, (Superior Court Docket No. 1855 E.D.A. 2009 (Superior Court Docket) at 2), and notified the trial court of that appeal, (1831 Criminal

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<sup>3</sup> The Forfeiture Order was issued by default because Mr. Moore did not contest it at the time. (Motion for Order of Forfeiture ¶ 4, R. Item 2 at 2.)

<sup>4</sup> To avoid confusion in this matter, where there are multiple dockets, documents that are not contained in the certified record for this matter will be cited here to include their respective dockets. As of January 2008, Mr. Moore already had an irregular pro se request pending before the trial court, titled "Civil Torts Claims, Writ of Habeas Corpus." (Criminal Docket CP-48-CR-0001830-2007 (1830 Criminal Docket) at 7, 1831 Criminal Docket at 7.) This claim was denied on February 9, 2009. (1830 Criminal Docket at 11, 1831 Criminal Docket at 10.)

Docket at 10). In response, *and notwithstanding its June 8, 2009, denial of the appeal*, the trial court on July 8, 2009, ordered Mr. Moore to file “a Statement of the Matters Complained of on Appeal.” (1831 Criminal Docket at 10.) This order also appears on the civil docket for the forfeiture action. (R. Item 19.) Mr. Moore did not immediately comply with the order.

The Superior Court dismissed the June 18, 2009, appeal of the Forfeiture Order on August 19, 2009, for failure to file a docketing statement. (Superior Court Docket at 2.) Mr. Moore then initiated an appeal of the Forfeiture Order itself with this Court in the September 2009 Appeal. (Commonwealth Court Docket, No. 1811 C.D. 2009 (Commonwealth Court Docket) at 2.) This Court initially dismissed the matter on November 30, 2009, for failure to serve the District Attorney pursuant to an order of this Court dated November 6, 2009. (Commonwealth Court Docket at 3.) Shortly thereafter, on December 2, 2009, the trial court ordered Mr. Moore to file a motion and “set forth in detail the basis for his request to reopen the forfeiture,” i.e., the December 2009 Motion. (Trial Court Order, December 2, 2009, R. Item 8.) The trial court was apparently acting *sua sponte* at this point, in view of this Court’s November 30, 2009, dismissal of Mr. Moore’s September 2009 Appeal of the forfeiture and in accord with its own order of July 8, 2009. Mr. Moore complied with the trial court’s December 2, 2009, order on December 10, 2009, by filing the December 2009 Motion. (Motion to Reopen Order Dated May 7, 2007, December 10, 2009, R. Item 9.) However, this Court reinstated the September 2009 Appeal on December 8, 2009. (Commonwealth Court Docket at 3.) Upon learning of the reinstatement, the trial court stayed its proceedings on the December 2009 Motion on December 18, 2009,

to await resolution of the September 2009 Appeal. (Trial Court Order, December 18, 2009, R. Item 10.)<sup>5</sup>

Mr. Moore's September 2009 Appeal to this Court was an appeal of the Forfeiture Order. This Court dismissed and reinstated the September 2009 Appeal twice on procedural grounds. It was ultimately dismissed on January 8, 2010, for failure to comply with a December 16, 2009, per curiam order directing Mr. Moore to explain why this Court should grant his petition for permission to appeal *nunc pro tunc*. (Commonwealth Court Docket at 3.) Mr. Moore avers that he did not receive the December 16, 2009, order because he was incarcerated at an institution other than the one to which that order was sent. (Mr. Moore's Br. at 6.)

After this Court dismissed the September 2009 Appeal on January 8, 2010, Mr. Moore filed a motion with the trial court on April 30, 2010, to lift the stay of proceedings on his December 2009 Motion, and he renewed the December 2009 Motion. (Motion to Lift Stay and Act on Motion to Reopen, R. Item 13.) The trial court denied the December 2009 Motion on June 30, 2010. (Trial Court Order, June 30, 2010, R. Item 17.) The reason for the denial is that “[*t*]his matter and related matters were Dismissed by the Commonwealth Court by an Order dated January 8, 2010.” (Trial Court Order, June 30, 2010, R. Item 17 (emphasis

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<sup>5</sup> Although it appears that Mr. Moore did not immediately comply with the trial court's July 8, 2009, order for a concise statement, he did so after the order of December 2, 2009. (Trial Court Order, December 2, 2009, R. Item 8.) Mr. Moore then applied for reconsideration by the trial court. (Motion to Reopen Order Dated May 7, 2007, December 10, 2009, R. Item 9.) That application, filed on December 10, 2009, was untimely with respect to the July 8, 2009, order, but not with respect to the order of December 2, 2009.

added).) Mr. Moore now appeals the June 2010 Order denying his December 2009 Motion.

This Court reviews a trial court's decision not to open a default judgment for "an error of law or a manifest abuse of discretion." McFarland v. Whitham, 518 Pa. 496, 498, 544 A.2d 929, 930 (1988).<sup>6</sup> The reason proffered by the trial court for denying the December 2009 Motion is that this Court dismissed "[t]his matter and related matters" in its January 8, 2010, order. If this Court had addressed the December 2009 Motion, then the doctrine of res judicata would preclude further proceedings. We appreciate how confusing this case has become. However, what this Court dismissed was the September 2009 Appeal. We did so on procedural grounds, specifically because Mr. Moore failed to comply with the December 16, 2009 order directing him to explain why he was entitled to *nunc pro tunc* relief.<sup>7</sup> The dismissal of the September 2009 Appeal does not necessarily affect the December 2009 Motion, especially since we did not reach the merits.

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<sup>6</sup> It is within the trial court's discretion whether to grant a petition to open a judgment on default, and "a reviewing court will not reverse a trial court's decision on the matter unless there was an error of law or a manifest abuse of discretion." McFarland 518 Pa. at 498, 544 A.2d at 930 (quoting Kennedy v. Black, 492 Pa. 397, 401, 424 A.2d 1250, 1252 (1981)). When a petition to reopen a default judgment avers that no service was made on a petitioner, the trial court's initial obligation is to determine whether that averment is credible because a court has no jurisdiction over a party who has not been validly served. Cintas Corporation v. Lee's Cleaning Services, Inc., 549 Pa. 84, 91, 700 A.2d 915, 917-18 (1997) ("[T]he rules concerning service of process must be strictly followed" because service is the "mechanism by which a court obtains jurisdiction of a defendant.") The question of reopening a forfeiture judgment based on an alleged lack of receipt of service has been addressed by this Court in Commonwealth v. 1997 Mitsubishi Diamante, 950 A.2d 1114 (Pa. Cmwlth. 2008).

<sup>7</sup> We note that Mr. Moore did not reply to the original 2007 Rule to Show Cause, (Motion for Order of Forfeiture ¶ 4, R. Item 2 at 2; R. Item 19), and that no tribunal has heard the merits of either the Forfeiture Order or the September 2009 Appeal of the Forfeiture Order.

For these reasons, it was an error of law for the trial court to rely upon this Court's January 8, 2010, order as the basis for dismissing the December 2009 Motion. Therefore, we must vacate the trial court's June 10, 2010, Order and remand the matter to the trial court for a new determination on the December 2009 Motion.

In making that determination, we note the following for the trial court's consideration. As described above, it is apparent that there are multiple dockets involved in this matter, all of which contain filings, pleadings, and court orders related to the civil forfeiture proceeding at issue. Given our unfamiliarity with the trial court's dockets and the fact that the actual documents are not in the record before this Court, we conclude that the trial court is in the best position to discern the impact and interrelationship of filings in these various dockets. For example, an examination of the dockets may resolve certain questions, including whether this matter is procedurally barred for reasons other than this Court's January 8, 2010, order, or whether Mr. Moore acted to contest the forfeiture within a reasonable time after he learned of it. He avers that he filed timely challenges to the forfeiture, but did so under the wrong caption. (Mr. Moore's Br. at 9.) Moreover, the civil docket indicates that a Rule to Show Cause was issued on March 8, 2007, (see R. Item 1), but Mr. Moore states that he did not receive it. (Motion to Reopen Order ¶ 4, R. Item 9.) If the trial court concludes that this matter is not otherwise procedurally barred, it should proceed to consider the merits of the December 2009 Motion.



Accordingly, we vacate the trial court's June 2010 Order and remand the matter to the trial court for further proceedings in accordance with this opinion.

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**RENÉE COHN JUBELIRER, Judge**

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Commonwealth of Pennsylvania	:	
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v.	:	No. 1491 C.D. 2010
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	:	
Appellant	:	

**ORDER**

**NOW**, August 11, 2011, the Order of the Court of Common Pleas of Northampton County, dated June 30, 2010, dismissing Akimo Moore's Motion to Reopen is hereby **VACATED** and this matter is **REMANDED** in accordance with the foregoing opinion.

Jurisdiction relinquished.

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**RENÉE COHN JUBELIRER, Judge**