

Cite as 2011 Ark. App. 371

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA10-970

RUTH MACON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** MAY 18, 2011APPEAL FROM THE CLARK  
COUNTY CIRCUIT COURT  
[NO. CV-2008-150]HONORABLE ROBERT E.  
MCCALLUM, JUDGE

AFFIRMED

**CLIFF HOOFFMAN, Judge**

Appellant Ruth Macon appeals from the denial of her motion to intervene in a civil forfeiture action brought by the State against her son. She argues that she should have been allowed to intervene and that she did not waive her claim. We find no error and affirm.

On September 26, 2008, the prosecuting attorney for the ninth judicial district filed an in rem complaint for the forfeiture of a 1999 Chevy Tahoe seized from Bobby Macon. The complaint alleged that the Tahoe was used or intended for use by Bobby for delivery of a controlled substance. Bobby was served with the complaint, and on November 4, 2008, he filed an answer denying the allegations in the complaint and stating that the Tahoe was the property of him and his mother, Ruth Macon. Also on November 4, Ruth Macon, represented by the same attorney as her son, filed a motion to intervene in the forfeiture

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proceeding, claiming that the seized Tahoe was the property of both her and her son. The motion stated that Ruth's interest would not be protected by the existing parties and that she enjoyed an intervention by right and should be admitted as an intervening party. Ruth attached to her motion a vehicle-registration certificate listing the owners of the Tahoe as "Ruth Macon or Bobby Macon."

On March 2, 2009, Bobby pled guilty in his criminal case and agreed to withdraw his answer and to consent to forfeiture of the Tahoe. On April 20, 2009, the trial court entered a judgment and order of forfeiture, which noted that Bobby had consented to the forfeiture pursuant to his plea agreement. On April 28, 2009, the trial court entered a first amended order to retain forfeited property for official use. On June 23, 2009, a summons was filed for Ruth Macon; however, there is no indication that she was ever served with the summons or complaint.

On July 20, 2009, Ruth filed a motion to dismiss and a countercomplaint through a new attorney. She alleged that the State had failed to file a complaint against her as required by the forfeiture statutes, that a summons was not issued to her within the 120-day time limit, and that the State failed to attach a copy of the confiscation report to its complaint. Ruth claimed she was entitled to be compensated for the loss of use of the vehicle until it was returned to her, for wear and tear caused by the State's use of the vehicle, and for the immediate return of the vehicle in its preseizure condition. The State filed a motion to strike Ruth's pleadings because she was not a party to the action. A hearing was eventually held on

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the motions, and on June 24, 2010, the trial court entered an order denying Ruth's motions to intervene and dismiss and dismissing her countercomplaint. The trial court found that Ruth had notice of the in rem complaint since an attorney timely filed the motion to intervene on her behalf. The trial court found that at the time of Bobby's consent to the forfeiture, her attorney failed to object to the forfeiture on behalf of Ruth or request a ruling on her motion to intervene. The trial court ruled that this effectively waived any claims that Ruth had as a joint owner of the vehicle. Since the motion to intervene was never ruled upon, the trial court found that Ruth was not a party to the litigation at the time of the judgment and order of forfeiture. Ruth filed a timely notice of appeal.

\_\_\_\_\_Ruth argues that she could not have waived her claim to the Tahoe as her interest was never mentioned in the hearing for her son's criminal case in which he agreed to the forfeiture. Ruth also argues that there was no hearing where she failed to object or request a ruling on her motion to intervene. She argues that she met the requirements under Arkansas Rule of Civil Procedure 24 for intervention as a matter of right. She also claims that she was denied due process because the State failed to comply with Arkansas Code Annotated section 5-64-505(g)(1)(A) (Supp. 2009), which requires a complaint to be filed against all known owners of the seized property, and section 5-64-505(g)(2)(A), which requires the complaint to include a copy of the confiscation report.

Ruth Macon's rights as co-owner of the Tahoe were not unfairly compromised by Bobby's waiver of his opposition to the in rem complaint and the subsequent forfeiture

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order. Title to the Tahoe was held by “Ruth Macon or Bobby Macon.” In *Carter v. State*, this court held that title in the names of “Zachary Colt Carter or Sherron M. Carter” meant that either owner could transfer title and divest the other. 2009 Ark. App. 342, 309 S.W.3d 210. We held that Zachary could have sold the vehicle without his mother’s consent or involvement. *Id.* The parties stipulated to Zachary’s burglary and theft convictions and his use of the vehicle in these crimes; thus, we held that Zachary’s actions divested his mother’s interest in the vehicle just as if he had sold it. *Id.* Here, Bobby consented to the forfeiture of the Tahoe, and this divested Ruth’s interest in it before the court was asked to rule in the forfeiture action. Therefore, despite the State’s failure to name Ruth in the in rem complaint, we must affirm.

\_\_\_\_\_ Affirmed. \_\_\_\_\_

GRUBER and GLOVER, JJ., agree.