

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1433

STATE OF LOUISIANA

VERSUS

MOHAMED M. NAGI AND \$24,402.27 U.S. CURRENCY  
AND \$4,084.97 U.S. CURRENCY

Judgment Rendered: JUN 02 2017

\* \* \* \* \*

APPEALED FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF TERREBONNE  
STATE OF LOUISIANA  
DOCKET NUMBER 177835, DIVISION A

HONORABLE GEORGE J. LARKE, JR., JUDGE

\* \* \* \* \*

Joseph L. Waitz, Jr.  
District Attorney  
and  
Jason P. Lyons  
Ellen D. Doskey  
Assistant District Attorneys  
Houma, Louisiana

Attorneys for Plaintiff/Appellee  
State of Louisiana

Mark D. Plaisance  
Thibodaux, Louisiana

Attorney for Defendant/Appellant  
Mohamed M. Nagi and \$24,402.27  
U.S. Currency and \$4,084.97 U.S.  
Currency

**BEFORE: PETTIGREW, McDONALD, and PENZATO, JJ.**



**McDONALD, J.**

In this appeal, a defendant in a civil forfeiture action challenges a judgment against him and against funds in two bank accounts, asserting that the State of Louisiana did not serve him with notice of the pending forfeiture as required by the Seizure and Controlled Dangerous Substances Property Forfeiture Act, LSA-R.S. 40:2601, et seq. We annul the judgment and remand.

**FACTUAL AND PROCEDURAL BACKGROUND**

In 2011, the Terrebonne Parish Narcotics Task Force (TPNTF) began an investigation into the alleged distribution of synthetic marijuana from Kee Food, Inc. a/k/a Exxon Jubilee, a convenience store located in Houma, Louisiana. During the investigation, Mohamed M. Nagi was identified as one of the persons knowing about and/or involved in the illegal distributions. In 2013, TPNTF agents executed a seizure warrant on two bank accounts in Mr. Nagi's name with balances of \$24,402.27 and \$4,084.97.

In 2016, the State, through the Terrebonne Parish District Attorney, filed an application for judgment of forfeiture against Mr. Nagi and the funds, asserting the funds were proceeds derived from the illegal distribution of controlled dangerous substances. The State attached several documents to the application, including: (1) TPNTF Agent Danielle LeBoeuf's affidavit setting forth the facts of the investigation; (2) the State's letter to the TPNTF designating it as the authorized seizing agency; (3) the State's application for a seizure warrant; (4) the trial court's seizure warrant; (5) a notice of pending forfeiture; (6) TPNTF Agent LeBoeuf's statement setting forth the conduct giving rise to the forfeiture; and, (7) TPNTF Agent LeBoeuf's July 17 affidavit of proof of service.

On August 17, 2016, the trial court signed a judgment against Mr. Nagi and the funds in the two bank accounts ordering that the funds be paid to certain agencies. Mr. Nagi appeals from the adverse judgment.

**DISCUSSION**

The Seizure and Controlled Dangerous Substances Property Forfeiture Act allows law enforcement officials to seize illegal drugs and property constituting the proceeds of any drug-related conduct punishable by confinement for more than one year under LSA-R.S. 40:961, et seq., whether or not there is a prosecution or conviction related to the act or omission. *See*

LSA-R.S. 40:2603, 2604, and 2606. *State v. Prop. Seized from Terrance Martin*, 09-1417 (La. App. 1 Cir. 3/30/10), 37 So.3d 1021, 1025. When a district attorney intends to forfeit property under the Act, he shall serve a notice of pending forfeiture within 120 days after the property has been seized for forfeiture. LSA-R.S. 40:2608(1)(a); *State v. 1987 Ford*, 94-0803 (La. App. 1 Cir. 3/3/95), 652 So.2d 633, 634. If the owner's name and current address are known, notice of a pending forfeiture may be made by personal service or certified mail to that address. LSA-R.S. 40:2608(3)(a). If the owner's current address is unknown, but the owner's name and address are required by law to be recorded with a parish clerk of court, the Department of Public Safety and Corrections motor vehicle division, or another state or federal agency, to perfect an interest in the property, notice of pending forfeiture may be given by sending it certified mail, return receipt requested, to any address of record with any of the described agencies. LSA-R.S. 40:2608(3)(b). Alternatively, if the owner is unknown, or his address is unknown and is not on record as provided in LSA-R.S. 40:2608(3)(b), notice of pending forfeiture may be given by publication in one issue of the official journal in the parish in which the seizure occurs. LSA-R.S. 40:2608(3)(c). A forfeiture judgment rendered against a defendant who has not been served with process as required by law, and who has not waived objection to jurisdiction, is null under LSA-C.C.P. art. 2002(A)(2). *See 1987 Ford*, 652 So.2d at 635.

The record contains an Affidavit of Proof of Service in which TPNTF Agent LeBoeuf attests that she was unable to personally serve Mr. Nagi with notice of the pending forfeiture because he was out of the country. The record contains no evidence that the State served Mr. Nagi by any of the Act's alternative means of service. Further, in its appellate brief, the State agrees that notice to Mr. Nagi was deficient, and this matter should be remanded for further proceedings. Thus, we annul the judgment accordingly.

### **CONCLUSION**

For the above reasons, we annul the August 17, 2016 forfeiture judgment and remand this matter for further proceedings consistent with this opinion. We assess costs of the appeal totaling \$816.50 to the Terrebonne Parish District Attorney.

**JUDGMENT ANNULLED.**