

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 1650

STATE OF LOUISIANA

VERSUS

2016 CHEVROLET CAMARO, VIN: 1G1FH1R73G0174821, 2016
CHEVROLET CAMARO VIN: 1G1FH1R78G0167508, ONE
HUNDRED THIRTY FOUR THOUSAND NINE HUNDRED AND
NINETY-EIGHT (\$134,998.00) DOLLARS IN U.S. CURRENCY,
FORT KNOX SAFE, 2007 HARLEY DAVIDSON FLHTC VIN:
1HD1FC4117Y619451, AND A 2015 FORD F-250 VIN:
1FT7W2BT4FEA07478

DATE OF JUDGMENT: SEP 21 2018

ON APPEAL FROM THE TWENTY FIRST JUDICIAL DISTRICT COURT
NUMBER 2016-0002477, DIVISION F, PARISH OF TANGIPAOHA
STATE OF LOUISIANA

HONORABLE ELIZABETH WOLFE, JUDGE

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: APPEAL MAINTAINED. JUDGMENT AFFIRMED.

PETTIGREW, J. Concurs

CHUTZ, J.

Claimant-appellant, Roxanne Hammond, appeals the trial court's judgment, striking her claim of ownership in property seized in conjunction with alleged criminal activity. For the following reasons, we maintain the appeal and affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On July 26, 2016, Sgt. Jacob Schwebel of the Tangipahoa Parish Sheriff Office assisted the Livingston Parish Sheriff Office in executing a search warrant for the residence and vehicles of Roger "David" Hammond and his wife, Roxanne. Suspecting that \$134,998.00 in currency, two 2016 Chevrolet Camaro vehicles, and a 2007 Harley Davidson motorcycle were used by David and Roxanne to facilitate illegal narcotic activity, or were proceeds derived therefrom, the Tangipahoa Parish Sheriff Office seized the property.¹

Although she had signed a disclaimer of ownership of currency or property on July 27, 2016, Roxanne nevertheless filed a claim asserting ownership in the seized property on August 20, 2016. On December 12, 2016, a hearing was held on the State's motion to strike her claim. On January 30, 2017, the trial court signed a judgment, striking Roxanne's claim. She appealed.

SHOW-CAUSE RULING

On December 4, 2017, this court issued a show-cause order, questioning the propriety of the appeal. First, Roxanne's motion for appeal contained language suggesting that the appeal was taken from the trial court's reasons for judgment. Second, it appeared that the appeal may have been premature due to the failure of the trial court to rule on an outstanding motion for rehearing.

¹ Other items seized by the Tangipahoa Parish Sheriff Office included a Fort Knox Safe and a 2015 Ford F-250, but Roxanne has not claimed an ownership interest in these items.

Insofar as the language contained in the motion for appeal, Roxanne noted that: (1) judgment was rendered on January 30, 2017; (2) David subsequently filed an alternative motion seeking either reasons for judgment or a rehearing, which was heard on May 30, 2017; and (3) the trial judge rendered reasons for judgment “on May 30, 2017, from which [Roxanne] now [wishes] to appeal and request[s] a return date be set.” According to the order the trial court signed Roxanne’s “motion for [a]ppeal is granted.”

In their briefs, both the State and Roxanne raised issues arising out of the January 30, 2017 judgment; the State acknowledges that the language utilized in the motion for appeal appears to have been a typographical error; and the only judgment referenced in Roxanne’s motion which supports the trial court’s grant of an appeal is the January 30, 2017 judgment. Mindful that appeals are favored in the law, the appeal is maintained. See *Phi Iota Alpha Fraternity, Inc. v. Schedler*, 2014-1620 (La. App. 1st Cir. 9/21/15), 182 So.3d 998, 1001-02 (appeal of a later judgment maintained despite a misstatement or error in referencing the date of an earlier judgment in the motion of appeal). In reaching this conclusion, we note that the record is devoid of issuance of notice of judgment for the January 30, 2017 judgment and, therefore, Roxanne’s appeal delays never commenced.

We also conclude that the appeal is not premature. Our review shows that only David filed the alternative motion for rehearing, requesting a determination of the reasons for judgment, or alternatively, a rehearing. Moreover, David did not file his own appeal of the trial court’s grant of the State’s motion to strike his claim. Accordingly, Roxanne’s appeal of the January 30, 2017 judgment, for which notice of judgment did not issue, is not premature, and we maintain the appeal.

DISCUSSION

On appeal, Roxanne maintains the trial court erred in concluding that she failed to comply with the requisite statutory requirements to assert a claim. Among the provisions of the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989,² La. R.S. 40:2610 sets forth the perimeters for asserting a claim of ownership in seized property, stating:

A. Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this Section. The claim shall be mailed to the seizing agency and to the district attorney by certified mail, return receipt requested, within thirty days after Notice of Pending Forfeiture. No extension of time for the filing of a claim shall be granted.

B. The claim shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury or false swearing and shall set forth all of the following:

- (1) The caption of the proceedings as set forth on the Notice of Pending Forfeiture or petition and the name of the claimant.
- (2) The address where the claimant will accept mail.
- (3) The nature and extent of the claimant's interest in the property.
- (4) The date, identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property.
- (5) The specific provision of this Chapter relied on in asserting that the property is not subject to forfeiture.
- (6) All essential facts supporting each assertion.
- (7) The specific relief sought.

In her affidavit, Roxanne claimed she was "an innocent third party" who had no knowledge of any of the allegations set forth in the State's Notice of Pending Forfeiture. Although she claimed that the seized property was exempt from forfeiture under La. R.S. 40:2605, which provides that a property interest is exempt from forfeiture under particular circumstances, Roxanne provided no facts

² See La. R.S. 40:2601-2622.

detailing the exemption's applicability as required under La. R.S. 40:2610B(6). See *State v. \$144,320.00*, 2012-0466 (La. 12/4/12), 105 So.3d 694, 703.

Likewise, Roxanne's affidavit failed to articulate the date, the identity of the transferor, and the circumstances of the acquisition of her interest in any of the property. See *State v. \$144,320.00*, 105 So.3d at 703. Her barebones conclusion that "[t]he property in question is community property and/or heir property" is insufficient to comport with La. R.S. 40:2610B(4). To the extent that Roxanne relied on her husband's affidavit stating the he had "contacted the landowner in an effort to return currency [that he found] and was told, 'I do not know anything about any money there,'" to assert a community property interest in the seized money and vehicles, we find David's affidavit failed to comply with La. R.S. 40:2610B(6). Specifically, David did not provide essential facts such as the identity of the landowner, the date of the conversation, the particulars of explaining where and when he found the currency, and other pertinent information to support his assertion. Insofar as Roxanne's suggestion that she inherited the property, she failed to include the name of the decedent, the date of death, the value of the estate, the will or intestate laws establishing her interest, and any other relevant details demonstrating her ownership interest in the seized property. Accordingly, because Roxanne failed to comply with La. R.S. 40:2610, we find no error in the trial court's grant of the State's motion to strike her claim.

DECREE

For these reasons, we maintain the appeal and affirm the trial court's judgment. Appeal costs are assessed against claimant-appellant, Roxanne Hammond.

APPEAL MAINTAINED; JUDGMENT AFFIRMED.