

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

\$10,306 U.S. CURRENCY,

Defendant,

and

ELAINE ABERNATHY,

Claimant-Appellant,

and

GARY ABERNATHY,

Defendant.

UNPUBLISHED

September 15, 1998

No. 202146

Wayne Circuit Court

LC No. 96-649076 CF

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Claimant appeals as of right from a bench trial which resulted in the forfeiture of \$10,306. We affirm.

Gary Abernathy was arrested on February 11, 1996, for a non-drug related offense, and was found to be carrying \$10,306. The money was set up for a dog search and there was a strong positive indication by the dog of narcotics on the money. It was determined by a computer search that Gary had been recently arrested for a violation of the controlled substances act. Gary was informed that the money was being seized as suspected narcotic proceeds and he responded, “[s]o what if it’s dope money, I’m holding it for someone else, you can have it.” Gary filed an affidavit of indigence and a

notice of claim for the return of all the money seized from his person by the Detroit Police Department on February 11, 1996. Gary, however, failed to pursue the case, and the trial court entered a judgment of default against him. Approximately one month later, claimant commenced proceedings challenging the forfeiture.

Claimant argues that the trial court erred in finding that she did not have standing to challenge the forfeiture. We disagree. This Court reviews de novo issues of standing to determine if the claimant has a sufficient property interest in the money to challenge the forfeiture. See *In re Forfeiture of \$11,800*, 174 Mich App 727; 436 NW2d 449 (1989). In order for a claimant to have standing to challenge a forfeiture, the claimant must have a recognizable interest in the property. MCL 333.7523(1)(c); MSA 14.15(7523)(1)(c); *In re Forfeiture of \$53*, 178 Mich App 480, 494; 444 NW2d 182 (1989). United States currency is normally considered to be a bearer instrument. *In re Forfeiture of \$19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995). Possession of such property is prima facie evidence of ownership, and the burden of producing evidence regarding ownership rests upon the person disputing such ownership. *Id.*

Claimant's only evidence that she possessed an interest in the seized money was her testimony that she had saved the money over many years and then loaned it to her son, Gary, so that he could hire an attorney. The trial court found this testimony to be incredible and unbelievable. Although our review of the trial court's decision is de novo, we nonetheless recognize that trial court occupies a superior position for assessing the credibility of witnesses. See *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996). Considering the apparent lack of credible evidence, we agree with the trial court that claimant failed to overcome the presumption that the money belonged to its possessor, Gary. Without evidence to show that she has an interest in the seized money, claimant does not have standing to challenge the forfeiture. MCL 333.7523(1)(c); MSA 14.15(7523)(1)(c); *In re Forfeiture of \$53*, *supra* at 494.

Having found that claimant does not have standing to challenge the forfeiture, we need not address her remaining issue.

Affirmed.

/s/ William B. Murphy

/s/ Roman S. Gibbs

/s/ Hilda R. Gage