

[Cite as *Primm v. Stammitti*, 2018-Ohio-2586.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SAMSON PRIMM

Appellant

v.

PHIL R. STAMMITTI, et al.

Appellees

C.A. No. 17CA011153

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 16CV189156

DECISION AND JOURNAL ENTRY

Dated: June 29, 2018

CARR, Judge.

{¶1} Appellant, Samson Primm, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} This matter stems from a traffic stop of Primm’s vehicle on March 20, 2016. Lorain police stopped Primm’s vehicle on a suspected window tint violation. During the course of the stop, police confiscated several bags from Primm’s vehicle that contained an extremely large amount of U.S. Currency. Soon thereafter the funds were turned over to the United States Drug Enforcement Administration (“DEA”).

{¶3} On March 31, 2016, Primm filed a motion for return of property in the Lorain County Court of Common Pleas. In support of his motion, Primm cited both R.C. 2981.03(A)(2) & 2981.03(A)(4) as well as Crim.R. 12(C)(3). The named defendants in the action were Phil Stammitti, in his capacity as the Lorain County Sheriff, Jim Widmer, in his capacity as Deputy

Detective Sheriff, and two John Doe defendants. Stammitti and Widmer filed a motion to dismiss the action. The trial court issued an order converting the motion to dismiss into a motion for summary judgment and the parties submitted briefs accordingly. With leave of court, Primm filed an amended petition where he named Lorain Police Chief Cel Rivera and Officer James Ventura as defendants, in addition to Sheriff Stammitti and Detective Widmer.

{¶4} On July 7, 2016, the trial court issued a journal entry granting summary judgment in favor of the defendants associated with the Lorain County Sheriff's Department. The trial court noted in its entry that the matter remained pending as to the defendants associated with the Lorain Police Department.

{¶5} Thereafter, Chief Rivera and Officer Ventura filed a motion to strike the amended petition, a motion to dismiss the amended petition, and a motion for a definite statement pursuant to Civ.R. 12(E). Primm filed a brief in opposition to the defendants' motions. The trial court denied the motion to strike and the motion to dismiss, but granted the motion for a definite statement. Specifically, the trial court ordered Primm "to amend his petition to include those attachments from the initial petition which were not attached to the petition filed against the current defendants" and "to show his interest in the property alleged to have been seized[.]"

{¶6} On February 6, 2017, Primm filed a second amended petition for return of property, again naming as defendants Sheriff Stammitti and Detective Widmer from the Lorain County Sheriff's Department and Chief Rivera and Officer Ventura from the Lorain Police Department. The defendants filed a joint motion to dismiss for lack of subject matter jurisdiction. In support of their motion, the defendants stressed that the funds in question were forfeited pursuant to a federal court forfeiture order issued on April 3, 2017. Primm filed a brief in opposition to the motion to dismiss.

{¶7} On May 26, 2017, the trial court issued a journal entry granting the motion to dismiss. In support of its ruling, the trial court found that it did not have jurisdiction over the case because the funds in question were the subject of a civil forfeiture action in federal court. The trial court stated that the federal court had “ordered the funds forfeited in an entry dated April 3, 2017 and [its] order indicates that ‘no right, title or interest shall exist in any other party’ aside from the United States.”

{¶8} Primm filed a timely notice of appeal. Now before this Court, Primm raises one assignment of error.

II.

ASSIGNMENT OF ERROR

GIVEN THE PREDICATE BASIS FOR THE COURT BELOW’S RULING DISMISSING THE CASE, THIS APPEAL IS DESTINED TO BE REVERSED, IT INEXORABLY FOLLOWS THE RULING HERE BEING APPEALED CANNOT SURVIVE MEANINGFUL SCRUTINY AND SHOULD BE REVERSED.

{¶9} In his sole assignment of error, Primm contends that the trial court erred by granting the motion to dismiss for lack jurisdiction. This Court disagrees.

{¶10} While Primm clearly takes issue with the trial court’s ruling in this case, he also advances a general critique of the state of forfeiture law in our country. For example, during his summary of arguments, Primm cites to a concurring opinion in a decision from the Supreme Court of the United States denying a petition for a writ of certiorari, wherein Justice Thomas raised a myriad of concerns with modern civil forfeiture proceedings. *See Lenard v. Texas*, 137 S.Ct. 847, 847-850 (2017) (Thomas, J., concurring). In support of his underlying position, Primm argues that the trial court erred by granting the motion to dismiss because the legal basis for the federal forfeiture order was invalid.

{¶11} “A motion to dismiss for lack of subject matter jurisdiction raises questions of law that we review de novo.” *Jackson v. Ohio Dept. of Edn.*, 9th Dist. Summit No. 27686, 2016-Ohio-2818, ¶ 9. Under a de novo standard of review, this Court does not give deference to the trial court’s decision. *Syverson v. Syverson*, 9th Dist. Lorain No. 09CA009527, 2009-Ohio-6701, ¶ 7.

{¶12} “When the federal government takes possession of state-seized assets to seek forfeiture, the federal government’s subsequent seizure of the property relates back to the moment when the state authorities initially seized it.” *Harris v. Mayfield Hts.*, 8th Dist. Cuyahoga No. 98993, 2013-Ohio-2464, ¶ 10, citing *United States v. Alston*, 717 F.Supp. 378, 380 (M.D.N.C. 1989). In a mandamus action dealing with former R.C. 2933.43, the Supreme Court of Ohio held that it was “immaterial” whether the state forfeiture statute was applicable when the seized funds had already been forfeited under federal law. *State ex rel. Chandler v. Butler*, 61 Ohio St.3d 592, 593 (1991). The high court noted that a claim for the funds under such circumstances is properly made against the federal government. *Id; compare State v. Ford*, 9th Dist. Lorain No. 91CA005186, 1992 Ohio App. LEXIS 2487, *4 (May 13, 1992) (Under circumstances where the trial court exercised in personam jurisdiction over Ford’s criminal prosecution but did not exercise in rem jurisdiction over the property in question, this Court determined that “because the DEA asserted in rem jurisdiction over the property, the trial court was without jurisdiction to hear Ford’s motion [for return of property].”).

{¶13} Primm’s argument is without merit. As an initial matter, we note that the record is devoid of any indication that the State attempted to exercise jurisdiction over the funds by initiating forfeiture proceedings. *See State v. McCoy*, 6th Dist. Wood No. WD-00-028, 2001 Ohio App. LEXIS 126, *6 (Jan. 19, 2001). The money found in Primm’s vehicle was turned

over to the DEA after it was seized by Lorain police. “[T]he doctrine of adoptive forfeitures was well-established at common law and has been incorporated into American jurisprudence[.]” *Harris* at ¶ 16, citing *Taylor v. United States*, 44 U.S. 197, 205 (1845). In their motion to dismiss, the defendants produced a copy of an order of forfeiture from the United States District Court for the Northern District of Ohio stating that the funds seized during the March 20, 2016 stop were “forfeited to the United States under 21 U.S.C. § 881(A)(6), and no right, title or interest shall exist in any other party[.]” While Primm focuses on the legitimacy of the federal forfeiture proceeding, the issue presented by this appeal is whether the state trial court erred by granting the motion to dismiss. “[A]n adoptive forfeiture creates the fiction that that the federal government ‘adopts’ the initial seizure by the police as though it had been done by federal, not state, agents. Once the city turned the money over to the federal government, its involvement in the case terminated and it was no longer responsible for the money.” *Harris* at ¶ 24. Here, as the funds in question were the subject of a federal forfeiture proceeding, Primm’s remedy does not lie in state court and the trial court did not err in granting the motion to dismiss for lack of jurisdiction. *See generally Chandler* at 593.

{¶14} The assignment of error is overruled.

III.

{¶15} Primm’s assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

TEODOSIO, P. J.
CALLAHAN, J.
CONCUR.

APPEARANCES:

JAMES R. WILLIS, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and CHRIS A. PYANOWSKI, Assistant Prosecuting Attorney, for Appellee.

PATRICK D. RILES and JOSEPH LAVECK, Attorneys at Law,