

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-18-1127

Appellant

Trial Court No. CR0201301070

v.

Xzavier Matthews

DECISION AND JUDGMENT

Appellee

Decided: July 12, 2019

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellant.

Timothy Young, Ohio Public Defender, and Patrick T. Clark,
Assistant State Public Defender, for appellee.

* * * * *

MAYLE, P.J.

{¶ 1} In a case of first impression, appellant, the state of Ohio, asks us to reverse the May 8, 2018 judgment of the Lucas County Court of Common Pleas that

posthumously granted appellee, Xzavier Matthews,¹ a new trial. Because the trial court lacked jurisdiction, we reverse.

I. Background and Facts

{¶ 2} In 2013, Matthews was indicted on felony counts of burglary, aggravated burglary, felonious assault, attempted murder, aggravated robbery, and grand theft of a motor vehicle, as well as several gun specifications. The matter was tried to the court in April 2014, and the trial court found Matthews guilty of all of the charges except attempted murder. The court sentenced Matthews to an aggregate prison term of 21 years. We affirmed the convictions and sentence on direct appeal. *State v. Matthews*, 6th Dist. Lucas No. L-14-1134, 2015-Ohio-3614.

{¶ 3} While his direct appeal was pending, Matthews filed a petition for postconviction relief. He argued that his constitutional rights were violated and that his convictions were void or voidable because, he claimed, the victim's identification of him as the perpetrator was the result of an unduly suggestive identification procedure, obtained in violation of state law, unreliable, and not independently verified. On May 8, 2018, following a hearing, the trial court granted Matthews's petition in part, vacated Matthews's "conviction," and found that "the matter is proper for a new trial." The trial court did so despite "being advised of [Matthews's] death."

¹ Although Matthews is deceased, he is still the nominal appellee in this case. Thus, we will refer to the appellee as "Matthews."

{¶ 4} On May 9, 2018, the day after the trial court issued its decision, the state filed a “Motion To Dismiss Pending Matters On Suggestion Of Death.” In the motion, the state claimed that Matthews’s father told a Toledo Police Department detective (who then told the prosecutor) that Matthews had died while incarcerated. The motion did not include any evidence—such as a death certificate, obituary, or even a date of death—supporting the state’s claim, presumably because the prison where Matthews had been incarcerated “failed to respond to the State’s repeated requests for information by phone.” The state asked the trial court to “dismiss[] all pending matter before it * * *.” The trial court did not rule on the motion.

{¶ 5} The state now appeals, raising three assignments of error:

I. The death of a defendant in a criminal case moots any pending motions, including a petition for postconviction relief, and the trial court lacks jurisdiction to grant a new trial after the death of a defendant.

II. Trial counsel may render effective assistance without the assistance of an expert in eyewitness identifications.

III. Even if trial counsel admits to a lack of familiarity with some aspect of Ohio’s statutory provisions regarding photo arrays, that lack of knowledge does not demonstrate that a defendant was prejudiced, particularly when the prosecution’s brief on suppression informed the court of the statutory requirements, the court acted as the trier of fact, and the array was not unduly suggestive.

II. Law and Analysis

A. The Trial Court Lacked Personal Jurisdiction over Matthews

{¶ 6} The state’s first assignment of error is dispositive of this appeal. In it, the state argues that the trial court lacked jurisdiction to order a new trial after Matthews’s death because the case had become moot and, further, that there is no mechanism for appointing a personal representative to try in Matthews’s stead. In response, Matthews claims that there is insufficient evidence in the record from which we can determine whether the case was moot at the time the trial court issued its decision and, in any event, that Matthews’s case involves “great public or general interest,” which allows us to determine the merits of the appeal even after it has become moot with respect to one of the parties. We do not reach the issue of mootness, however, because the May 8 judgment was issued without jurisdiction and was void ab initio.

{¶ 7} It is axiomatic that a court must have jurisdiction over the parties and the subject matter of a case to issue a valid judgment. *Mantho v. Bd. of Liquor Control*, 162 Ohio St. 37, 40, 120 N.E.2d 730 (1954). Any judgment entered without jurisdiction is void and must be vacated. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998) (“If a court acts without jurisdiction, then any proclamation by that court is void.”); *see also State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351, ¶ 42, quoting *Van DeRyt v. Van DeRyt*, 6 Ohio St.2d 31, 36, 215 N.E.2d 698 (1966) (recognizing that “[a] court has inherent power to vacate a void judgment

because such an order simply recognizes the fact that the judgment was always a nullity.’”).

{¶ 8} The Ohio Rules of Criminal Procedure do not contain a process to be followed when a criminal defendant dies while proceedings are pending in the trial court. Under Crim.R. 57(B), “[i]f no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.” That is, we are permitted to “look to the Rules of Civil Procedure for guidance when no applicable Rule of Criminal Procedure exists.” *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 10; *see also State v. McGettrick*, 31 Ohio St.3d 138, 141, 509 N.E.2d 378, fn. 5 (1987) (acknowledging that, if they were applicable to appeals, Crim.R. 57(B) and Civ.R. 25(A) would permit a substitution of parties when a criminal appellant died after he was convicted but before his direct appeal was decided).

{¶ 9} The death of a party divests the trial court of personal jurisdiction over the dead litigant. *Third Fed. Sav. & Loan Assn. of Cleveland v. Doles*, 11th Dist. Geauga No. 2014-G-3180, 2014-Ohio-5181, ¶ 14-16 (the trial court’s jurisdiction over a litigant abates when the litigant dies; thus, a judgment issued after the litigant died was void for lack of personal jurisdiction even though the trial court was unaware of the litigant’s death). Personal jurisdiction is regained when a proper substitution of parties is filed. *Id.* at ¶ 15.

{¶ 10} Under Civ.R. 25(A)(1), “[i]f a party dies *and the claim is not thereby extinguished*, the court shall, upon motion, order substitution of the proper parties.” (Emphasis added.) The rule also requires that a motion for substitution must be filed within 90 days “after the death is suggested upon the record by service of a statement of the fact of the death * * *.” *Id.* If no motion for substitution is filed, “the action *shall* be dismissed as to the deceased party.” (Emphasis added.) *Id.*

{¶ 11} A cause of action is extinguished by death unless the action survived at common law or is for mesne profits, personal injury, property injury, deceit, or fraud. R.C. 2305.21; *Loveman v. Hamilton*, 66 Ohio St.2d 183, 184, 420 N.E.2d 1007 (1981). A criminal action brought by the state against a defendant is not an action for mesne profits, personal injury, property injury, deceit, or fraud. Nor would a criminal action have survived at common law. Under the common law, actions ex delicto did not survive a party’s death. *Loveman* at 184. An action “ex delicto” is one “[a]rising from a crime or tort.” *Black’s Law Dictionary* 688 (10th Ed.2014).²

² We also note that reality dictates that a criminal action be extinguished by a defendant’s death. In this case, for example, the remedy the trial court granted—i.e., a new trial—was impossible to implement because Matthews is no longer subject to punishment or deterrence through the criminal justice system and is not physically available to be tried. *See State v. Cupp*, 156 Ohio St.3d 207, 2018-Ohio-5211, ¶ 29 (“The penal consequence of [the defendant’s] criminal conviction ceased when he died.” (Kennedy, J., dissenting)); Crim.R. 43 (providing that “the defendant must be physically present at every stage of the criminal proceeding and trial * * *” unless video arraignment rules are followed or the defendant is removed for disruptive conduct); *Baker v. McKnight*, 4 Ohio St.3d 125, 127, 447 N.E.2d 104 (1983) (“one deceased cannot be a party to an action * * *.” (Internal quotations omitted.)).

{¶ 12} Here, we find that the trial court did not have personal jurisdiction over Matthews when it issued its May 8 decision. The court lost personal jurisdiction when Matthews died. Furthermore, the jurisdictional issue could not be cured by substituting a personal representative for Matthews because the criminal action was extinguished by Matthews's death.³ Because a criminal action does not survive death, Civ.R. 25(A)(1) is inapplicable, and the trial court in this case could not regain jurisdiction through a substitution of parties after Matthews's death.

{¶ 13} Regardless, if we were to assume that a criminal action survives the defendant's death, neither party in this case filed a motion for substitution after the state filed a "statement of the fact of the death" in the form of its May 9, 2018 motion to dismiss.⁴ Under the rule, if a motion to substitute is not filed within 90 days, the case must be dismissed unless the moving party seeks an extension of time to file a motion to substitute. *See Smith v. Daniel*, 1st Dist. Hamilton No. C-140428, 2015-Ohio-776, ¶ 9.

Although the state filed a suggestion of death on May 9, neither the state nor Matthews's

³ In the context of a direct appeal from a criminal conviction, the Supreme Court has recognized that, in some cases, the estate of a convicted criminal who dies before his direct appeal is finished may have a pecuniary interest in the outcome of the appeal due to the estate's potential liability for financial sanctions or costs imposed on the defendant. *McGettrick*, 31 Ohio St.3d at 141, 509 N.E.2d 378, fn. 4. This is a different matter, and neither party (nor Matthews's estate) has raised any such issue in this case.

⁴ There are no requirements in Civ.R. 25(A) (beyond the manner of service) for the form and substance of a statement of the fact of the death. Thus, even though the state's notice lacked details and supporting evidence, we find that it was sufficient to satisfy the requirements of the rule.

counsel ever filed a motion to substitute. Without a request to substitute a personal representative for Matthews, the trial court could not regain personal jurisdiction over Matthews and, consequently, was required to dismiss the case.

{¶ 14} In short, we find that the trial court lost personal jurisdiction over Matthews when he died, so the trial court's May 8, 2018 decision was void at the time it was issued. Accordingly, the trial court should have vacated its decision when Matthews's death was suggested on the record. The state's first assignment of error is well-taken.

B. The State's Remaining Assignments of Error are Moot

{¶ 15} Given our disposition of the state's first assignment of error, we find that the state's second and third assignments of error are moot and are not well-taken.

III. Conclusion

{¶ 16} Based on the foregoing, the May 8, 2018 judgment of the Lucas County Court of Common Pleas is reversed and vacated. The costs of this appeal are waived.

Judgment reversed and vacated.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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