

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

CITY OF PORTLAND,
Plaintiff-Respondent,

v.

JUSTIN LOUIS DIAZ,
Defendant,
and

RELIABLE CREDIT ASSOCIATION, INC.,
Intervenor-Appellant.

Multnomah County Circuit Court
15PK42190; A161433

Benjamin S. Johnston, Judge pro tempore.

Argued and submitted March 16, 2017.

Kimberley Hanks McGair argued the cause for appellant. With her on the briefs was Farleigh Wada Witt.

Julia Glick argued the cause and filed the brief for respondent.

Before Ortega, Presiding Judge, and Lagesen, Judge, and Wilson, Senior Judge.

LAGESEN, J.

Appeal dismissed.

LAGESSEN, J.

In this parking violation case arising from the City of Portland, intervenor Reliable Credit Association, Inc. (Reliable), appeals an order denying its motion under Multnomah Circuit Court Supplementary Local Rule (SLR) 17.035(3) for release of an impounded car in which it claims a security interest. But the order that Reliable appeals is not appealable under ORS 19.205. We therefore must dismiss the appeal.

By supplementary local rule, Multnomah County has created a process by which the city may obtain a court order authorizing the towing and impoundment of a vehicle for unpaid parking citations. SLR 17.035(1) (effective Feb 1, 2016).¹ The rule also provides mechanisms to obtain the release of impounded cars, including a special mechanism available to a “subsequent bona fide purchaser for value” of an impounded car:

“A subsequent bona fide purchaser for value of a vehicle that is towed and impounded under an order of the court for unpaid financial obligations which all relate to the prior owner of the vehicle, other than citations incident to the towing, may request an *ex parte* hearing to apply for an order for the release of the vehicle from the impoundment order without complying with the requirement of section (2) of this rule [that the person post the total amount of unpaid financial obligations associated with unpaid parking citations].”

SLR 17.035(3)(a). Whether to grant any such request for release is discretionary with the trial court: “Following the hearing [required by the rule], the court *may* release the vehicle to the subsequent bona fide purchaser for value without requiring payment of the outstanding financial obligations by the prior registered owner arising from unpaid parking citations owed on the vehicle.” SLR 17.035(3)(b)

¹ Unless otherwise indicated, all references to the Multnomah Circuit Court Supplementary Local Rules are to the version in effect as of February 1, 2016. Subsequently, the Multnomah County Circuit Court amended the rules significantly. As a result, the rules now address the specific situation that Reliable encountered here, and would appear to provide helpful clarity to future parties facing the circumstances that Reliable faced here. *See* SLR 17.995 (effective Feb 1, 2017).

(emphasis added). If the court denies a request for release under SLR 17.035(3), “then the person may only proceed under section (2) of this rule for a hearing.” SLR 17.035(3)(b). SLR 17.035(2), in turn, provides:

“Requests for a court hearing on the validity of a parking citation after receipt of an impoundment notice, or after impoundment, must be made personally at the Multnomah County Courthouse. All requests must include the posting of the total amount of the financial obligations against the vehicle for parking citations that are unpaid in full or in part applicable at the time of the request, unless waived by the judge.”

Thus, a person who has failed to persuade the trial court to release an impounded vehicle under SLR 17.035(3) must then request a hearing under SLR 17.035(2) and first post the amount of unpaid financial obligations, unless the court agrees to waive that requirement.

In this case, defendant Diaz, who has not appeared on appeal, accrued a large number of parking tickets but did not pay them. This resulted in a large number of parking violation cases against him, including the instant case, which led to the city obtaining a court order to impound Diaz’s car. After the trial court entered a default judgment against Diaz and the city impounded the car, Reliable, which claims a security interest in the car, intervened² by filing a motion under SLR 17.035(3) for release of the car. Reliable asserted that it was a “subsequent bona fide purchaser for value” under the terms of that provision, entitling it to release of the car without having to pay the fine and fees incurred by defendant. The trial court denied the motion by order. Reliable appealed that order, asserting that this court has jurisdiction under ORS 19.205(2) and assigning error to the court’s denial of its motion. The city responds that the order that Reliable appealed is not one that is subject to appeal under ORS 19.205(2) and that, therefore, we lack jurisdiction over this appeal.

² We use the word “intervened” loosely. Reliable did not formally intervene in the case. Instead, it appeared in the case simply by filing a motion under Multnomah County SLR 17.035 for release of the vehicle. We express no opinion as to whether that is the procedure contemplated by the rule.

The city is correct. Appeals in parking violation proceedings are governed by ORS chapter 19. ORS 153.121. For that reason, we look to ORS 19.205 to determine whether the order denying Reliable's motion is appealable. That statute provides, in relevant part:

“(1) Unless otherwise provided by law, a limited judgment, general judgment or supplemental judgment, as those terms are defined by ORS 18.005, may be appealed as provided in this chapter. A judgment corrected under ORCP 71 may be appealed only as provided in ORS 18.107 and 18.112.

“(2) An order in an action that affects a substantial right, and that effectively determines the action so as to prevent a judgment in the action, may be appealed in the same manner as provided in this chapter for judgments.

“(3) An order that is made in the action after a general judgment is entered and that affects a substantial right, including an order granting a new trial, may be appealed in the same manner as provided in this chapter for judgments.”

Although the parties both focus on ORS 19.205(2), they appear to have overlooked the fact that the order on appeal was entered *after* judgment was entered in this case. That means that ORS 19.205(3) is the only provision that plausibly could authorize the appeal of the order at issue. The order is not a judgment of any sort; thus, it is not appealable under ORS 19.205(1). It also is not an order that “prevent[ed] a judgment in the action,” because the court entered the order after entering a default judgment against Diaz. For that reason, the order is not appealable under ORS 19.205(2).

ORS 19.205(3), on the other hand, does authorize appeals from an order entered after judgment. However, it does so only when the order at issue “affects a substantial right.” That is not the case here because, under the process established by SLR 17.035, the order denying Reliable's motion for release of the car does not represent a final determination of whether to release the car to Reliable. Rather, it simply means that Reliable is required to seek a further hearing on the issue under the procedures outlined in SLR

17.035(2): “If the court denies relief under [SLR 17.035(3)], then the person may only proceed under section (2) of this rule for a hearing.” SLR 17.035(2). Thus, the order does not affect Reliable’s rights except to require additional process to adjudicate them.

Reliable nonetheless urges us to conclude that the order denying its motion does affect its substantial rights because, as a result, it may be required to post the amount of Diaz’s unpaid parking citations to obtain a further hearing on its right to release.³ We are not persuaded. As we understand the terms of SLR 17.035(2), Reliable is required only to *post* the amount of Diaz’s unpaid financial obligations to obtain further hearing. SLR 17.035(2). The terms of the rule do not require Reliable to *pay* those obligations to obtain the release of the car. *Id.* Presumably, if Reliable were to demonstrate at that hearing, as it contends, that it is a party entitled to release of the car without paying Diaz’s financial obligations, the posted amount would be returned to Reliable. Moreover, SLR 17.035 permits Reliable to request a waiver of that posting obligation, meaning that Reliable may not be required to post any amount at all. Thus, the trial court’s order means merely that Reliable might be called upon to pay a refundable amount to obtain further hearing on whether it is entitled to the release of the car. That speculative consequence of the trial court’s order, which may or may not transpire, is not an effect on Reliable’s substantial rights for purposes of ORS 19.205(3).

Appeal dismissed.

³ Reliable also suggested at oral argument that the denial of its motion affected its substantial rights because the terms of SLR 17.035(2) suggest that the issue at a hearing under that provision is whether the parking citations are valid, not whether a person is someone entitled to release of an impounded vehicle without paying any unpaid parking citations or judgments. Thus, Reliable suggested that it might not be entitled to raise the issue that it wants to raise at a hearing under SLR 17.035(2). Although we acknowledge that SLR 17.035 as a whole contains some ambiguities, given that the terms of SLR 17.035(3) expressly require a party in Reliable’s circumstances to seek a hearing under SLR 17.035(2), we construe the rule to mean that Reliable can reraise the issue of whether it is entitled to release of the car without payment of Diaz’s unpaid parking citations at the hearing under SLR 17.035(2); otherwise, that requirement would serve no purpose.