**Affirmed and Memorandum Opinion filed November 14, 2017.**

**In The**

# Fourteenth Court of Appeals

**NO. 14-16-00944-CV**

**JESSICA ANNIE BEAVERS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

**On Appeal from the 263rd District Court**
**Harris County, Texas**
**Trial Court Cause No. 1516008**

## M E M O R A N D U M  O P I N I O N

This appeal arises from a default judgment entered against appellant Jessica Annie Beavers. We affirm.

### BACKGROUND

The State of Texas petitioned for forfeiture of gambling devices, equipment, and proceeds that were seized from a business located at 15370 S. Brentwood, Channelview, Harris County, Texas. The game room from which the property was

seized was owned by Roger Boutee, who was convicted of keeping a gambling place, a Class A misdemeanor offense. *See* Tex. Penal Code § 47.04. The petition sought forfeiture pursuant to article 18.18(b) of the Texas Code of Criminal Procedure and alleged the property was seized from appellant. *See* Tex. Code Crim. Proc. art. 18.18(b). The petition was filed on July 5, 2016, in the 263rd Criminal District Court of Harris County.

Notice was sent by certified mail to appellant at two addresses: (1) 15370 S. Brentwood, Channelview, Texas; and (2) 16005 Cathy Lane, Channelview, Texas. The notice sent to Brentwood was signed for on July 8, 2016; the signature is illegible and no name is printed below. On July 12, 2016, appellant signed the receipt for the notice sent to her at Cathy Lane.

On July 29, 2016, the judge of the 263rd Criminal District Court signed a default judgment of forfeiture. The judgment recites that appellant was served by certified mail on July 8, 2016, and appellant made no answer or appearance.

On August 15, 2016, appellant filed a motion for new trial and motion to set aside judgment. Appellant contended she was entitled to a new trial pursuant to *Craddock v. Sunshine Bus Line, Inc.*, 133 S.W.2d 125, 126 (Tex. 1939). Regarding the first requirement of *Craddock* — that the defendant demonstrate the failure to answer was due to mistake or accident — appellant claimed she thought the Motion to Return Seized Property filed by Boutee protected the property from forfeiture. Appellant also alleged that she relied on statements made by the assistant district attorney ("ADA") that a petition would be filed, and that her attorney contacted the District Attorney's Office on several occasions regarding return of the property. Appellant attached an affidavit to her motion to satisfy the second *Craddock* requirement —that the defendant set up a meritorious defense. The affidavit recites that a motion to return seized property had been filed by Boutee's attorney and on

the hearing date of that motion the ADA informed Boutee's attorney that a petition would be filed. The affidavit asserts Boutee and his attorney were not aware that a petition had already been filed. Appellant states "I was not aware that I needed to appear in Court on July 29, 2016, as I thought that Roger would be properly served with notice."[1] Lastly, appellant's motion alleges the third *Craddock* requisite — that a defendant demonstrate that granting a new trial will not cause delay or otherwise injury the plaintiff — is satisfied because she is ready for trial.

The State responded to the motion on September 28, 2016. The trial court denied the motion by written order on October 5, 2016. Appellant subsequently filed a motion to reconsider, on November 3, 2016, asserting "a criminal court does not have jurisdiction to hear forfeiture cases."[2] The trial court also denied that motion by written order. This appeal ensued.

## ANALYSIS

Appellant's sole issue claims the trial court abused its discretion "when it held a hearing and signed a Final Judgment of Forfeiture." Appellant raises two challenges to the trial court's judgment. First, that the trial court lacked jurisdiction to render it. Second, that the judgment was rendered without proper notice and hearing.

Appellant contends the trial court lacked jurisdiction to render the judgment because: (1) only the court of conviction against Boutee had jurisdiction to order the forfeiture; and (2) as a criminal court the 263rd District Court does not have statutory jurisdiction to hear a civil forfeiture. *See* Tex. Code Crim. Proc. art. 18.18(a), (b).

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[1] Thus the affidavit does not allege facts that constitute a defense to the State's cause of action. *See Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 391 (Tex. 1993).

[2] Appellant further stated "the named Defendant is not the Defendant in the underlying cause," referring to Boutee's criminal case but no similar argument appears in appellant's brief.

Because jurisdiction may be raised for the first time on appeal, we address these arguments.

Appellant argues that only the court that rendered the judgment of conviction has jurisdiction to order forfeiture of the seized property. Appellant relies upon article 18.18(a) of the Texas Code of Criminal Procedure, which states:

> (a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, . . . the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, . . . be destroyed or forfeited to the state.

Appellant contends that because the final conviction against Boutee was rendered by County Court at Law No. 16, the 263rd District court lacked jurisdiction to order the forfeiture.

The State's petition was filed under subsection (b), providing, in pertinent part:

> (b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, . . . to show cause why the property seized should not be destroyed or the proceeds forfeited.

Neither appellant nor Boutee was convicted of possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia. *See* Tex. Penal Code § 47.06. Boutee was convicted of "Keeping a Gambling Place." Tex. Penal Code § 47.04. None of the elements of that offense involve possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia. *Id.* Thus subsection (a) is inapplicable to the case at bar. *See Burnom v. State*, 55 S.W.3d 752, 753 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (following *State v. Dugar*,

553 S.W.2d 102, 104 (Tex. 1977), and concluding that article 18.18(a) is not applicable when no person has been convicted of one of the specific, enumerated offenses in article 18.18(a)).

Appellant further asserts that as a criminal court the 263rd District Court does not have statutory jurisdiction to hear a civil forfeiture brought under article 18.18(b). Forfeiture proceedings of seized property are civil in nature. *See* Tex. Code Crim. Proc. art. 59.05. And under the Texas Constitution, district courts have jurisdiction over both civil and criminal cases. Tex. Const. art. V, § 8; *State v. Landry,* 793 S.W.2d 281, 284 (Tex. App.—Houston [14th Dist.] 1990, orig. proceeding) (citing *Lord v. Clayton,* 163 Tex. 62, 352 S.W.2d 718, 721–22 (1961), and *Reasonover v. Reasonover,* 122 Tex. 512, 58 S.W.2d 817 (1933)). Thus the 263rd District Court is not constitutionally a "criminal court." Rather, the 263rd District Court generally hears criminal cases pursuant to local rule, not by constitutional or statutory decree. HARRIS COUNTY DIST. JUDGES ADMIN. R. 9.1.3 (assigning the 263rd District Court to the "criminal division"); *see also* Tex. Gov't Code § 24.440(b) (providing that "[t]he 263rd District Court shall give preference to criminal cases."). We therefore conclude the 263rd District Court did not lack jurisdiction. *See Ryan v. Rosenthal*, 314 S.W.3d 136, 138 n.2 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

Appellant further complains that she was not given proper notice and an opportunity to be heard. *See* Tex. Code Crim. Proc. art. 18.18(c) (d), (e). Specifically, she contends that notice was not sent in accordance with articles 18.18(c) and (d) and the hearing was not conducted pursuant to article 18.18(e). *Id.*

As a prerequisite to this court's review, the record must show that appellant raised the matter complained of to the trial court in the form of a timely request,

objection, or motion. Tex. R. App. P. 33.1(a); *Evans v. Linares*, 14-14-00468-CV, 2015 WL 1874232, at *2 (Tex. App.—Houston [14th Dist.] Apr. 23, 2015, pet. dism'd w.o.j.) (mem. op.). The record reflects these complaints were not presented to the trial court. Accordingly, they are waived. *Id.; see also Williams v. Bayview-Realty Associates*, 420 S.W.3d 358, 364 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Appellant's issue is overruled. The judgment of the trial court is affirmed.

/s/ John Donovan
Justice

Panel consists of Justices Jamison, Busby and Donovan.