

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

(MYRON NASH)

\$6,030.00 IN U.S. CURRENCY;
\$5,915.00 IN U.S. CURRENCY;
\$9,490.00 IN U.S. CURRENCY

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. Patricia A. Delaney, J.

Case No's. 2009-CA-00272;
2009-CA-00273;
2009-CA-00274

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2008-MI-00059,
2008-MI-00284, and 2001-MI-00147

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 24, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO ,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

BY: GERARD T. YOST
Assistant Prosecuting Attorney
Civil Division
110 Central Plaza, South
Canton, Ohio 44702

MYRON NASH, PRO SE
Reg. No. 35705-060
F.C.I. Elkton
P.O. Box 10
Lisbon, Ohio 44432

Hoffman, J.

{¶1} Appellant Myron Nash appeals three judgment entries entered by the Stark County Court of Common Pleas denying his various motions to reimburse monies ordered forfeited to Appellee State of Ohio.

STATEMENT OF THE CASES

Case Number 2009-CA-00272

{¶2} On August 5, 2007, the Canton City Police Department seized \$6,030.00 in U.S. currency following the arrest of Appellant Myron Nash.

{¶3} On February 8, 2008, the State of Ohio filed a complaint for forfeiture of the monies pursuant to R.C. 2981.05. Appellant was served with the complaint via certified mail on February 14, 2008, personally signing for the delivery. Notice was also published of the pending litigation in a publication of general circulation.

{¶4} Appellant did not file an answer to the complaint. On May 19, 2008, the State filed a motion for default judgment. The trial court granted the motion via Judgment Entry of March 26, 2008.

{¶5} On September 3, 2008, Appellant filed a motion for return of the forfeited monies. On September 21, 2009, via Judgment Entry, the trial court overruled the motion finding the same moot and untimely.

Case Number 2009-CA-00273

{¶6} On July 2, 2008, the Canton City Police Department seized \$5,915.00 in U.S. currency following the arrest of Appellant Myron Nash.

{¶7} On July 14, 2008, the State of Ohio filed a complaint for forfeiture of the monies pursuant to R.C. 2981.05. Appellant was served with the complaint via Certified Mail at his address. His grandmother signed for the delivery. Notice was also published of the pending litigation in a publication of general circulation.

{¶8} Appellant did not file an answer to the complaint. On August 15, 2008, the State moved the trial court for default judgment. On August 19, 2008, the trial court granted the State's motion for default judgment. On August 20, 2008, Appellant, without leave of Court, filed a response to the State's motion for default judgment. On September 26, 2008, the trial court, via Judgment Entry, acknowledged its previous August 19, 2008 Judgment Entry granting default judgment in favor of the State of Ohio, and indicated that in as much as Appellant's response could to be considered a Rule 60(B) motion to vacate, the motion was denied.

{¶9} On September 3, 2009, Appellant moved the trial court for return of the forfeited monies. Via Judgment Entry of September 21, 2009, the trial court denied the motion, finding the same moot and untimely.

Case Number 2009-Ohio-00274

{¶10} On May 5, 2001, the Canton City Police Department seized \$9,490.00 in U.S. currency incident to the arrest of Appellant Myron Nash.

{¶11} On July 17, 2001, the State filed a complaint for forfeiture pursuant to R.C. 2925.43. Certified mail service of the complaint was returned "unclaimed." Service was then attempted via regular U.S. Mail, which was returned marked "moved left no forwarding address." A new address was obtained through the Stark County Probation

Department. The State attempted to serve Appellant via certified mail at the new address, but the service was returned "unclaimed." Therefore, the State served Appellant via regular U.S. mail at the new address on February 12, 2001. Notice was also published in the Press News on August 30, 2001, and again on September 6, 2001.

{¶12} Appellant did not file an answer to the complaint. On March 31, 2003, the State moved the trial court for default judgment. Via Judgment Entry of March 31, 2003, the trial court granted default judgment in favor of the State.

{¶13} On September 3, 2009, Appellant moved the trial court for return of the forfeited monies. Via Judgment Entry of September 21, 2009, the trial court denied the motion, finding the same untimely and moot.

{¶14} Appellant now appeals the three separate September 21, 2009 judgment entries denying return of the forfeited monies, assigning as error:

{¶15} "I. WHETHER APPELLANT WAS DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW WHEN THE COURT BELOW FORFEITED \$9,490.00 \$5,915.00 AND \$6,030.00 VIOLATING OHIO'S AND THE UNITED STATES CONSTITUTION."

{¶16} Initially, we note, Appellant did not file a direct appeal from the trial court's order of forfeiture in the above cases. Rather, after substantial delay, in each case Appellant filed a motion for return of the monies forfeited. A motion for return of the forfeited monies does not serve as a substitute for a direct appeal from the trial court's prior orders of forfeiture.

{¶17} Under the doctrine of res judicata, “ ‘[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.’” *State ex rel. Denton v. Bedinghaus*, 98 Ohio St.3d 298, 301, 2003-Ohio-861, 784 N.E.2d 99, quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus. The doctrine bars defense or any claimed lack of due process that was raised or could have been raised at trial, resulting in the judgment, or any appeal from the judgment. *State v. Svecyk* (1996), 77 Ohio St.3d 93. Thus, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action or the direct appeal from that action. *Trojanski v. George*, Cuyahoga App. No. 83472, 2004-Ohio-2414. Moreover, the doctrine of res judicata prohibits a collateral attack on an otherwise final judgment. *Southridge Civic Assn. v. Parma*, Cuyahoga App. No. 80230, 2002-Ohio-2748.

{¶18} Accordingly, in each case, Appellant's motion for return of monies is barred pursuant to the doctrine of res judicata, and the trial court did not err in denying the motions.

{¶19} The three separate September 21, 2009 judgment entries of the Stark County Court of Common Pleas are affirmed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

\$6,030 IN U.S. CURRENCY
(MYRON NASH)

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 2009-CA-00272

For the reason stated in our accompanying Opinion, the September 21, 2009 Judgment Entry of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

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STATE OF OHIO

-VS-

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JUDGMENT ENTRY

Case No. 2009-CA-00274

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY