[Cite as *State v. Langston*, 2012-Ohio-6249.]

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

State of Ohio — Court of Appeals No. L-12-1014

Appellee — Trial Court No. CR0201001795(A)

v.

Odell Langston — **DECISION AND JUDGMENT**

Appellant — Decided: December 31, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Jerome Phillips and Tim A. Dugan, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Odell Langston, appeals from a judgment of the Lucas County Court of Common Pleas ordering the forfeiture of $25,865 in United States currency that was seized in connection with his arrest for aggravated trafficking in drugs. For the following reasons, we dismiss the appeal sua sponte for lack of standing.

{¶ 2} Appellant was arrested on February 12, 2010, for drug trafficking. The arrest was made after a confidential informant completed the last of three controlled purchases of Oxycontin from appellant. At the time of the arrest, police seized $875 from appellant, which included $100 of marked "buy money" that police had provided to the informant. Later that day, police executed a search warrant at 4414 Vermaas Avenue, Toledo, Ohio, where appellant purportedly lived with his then girlfriend, now wife, Rishon Williams-Langston. During that search, police located and seized, among other things, three bound stacks of cash totaling $24,990. One of the stacks, totaling $5,000, was found inside a dresser drawer in the second floor bedroom; the other two stacks, totaling $19,990, were found behind a panel in the wall of a basement closet.

{¶ 3} On February 26, 2010, the state commenced a civil forfeiture action against appellant pursuant to R.C. 2981.05, alleging that the seized currency was forfeitable as proceeds derived from or acquired through the commission of a felony drug offense. The complaint was personally served upon appellant at the Lucas County Corrections Center and sent by certified mail to 4414 Vermaas Avenue, where it was signed for by Rishon Williams. Appellant filed his answer to the petition for forfeiture on March 9, 2010, denying that the funds were subject to forfeiture. Notice of the action was published in the Toledo Blade on April 28 and May 4, 2010.

{¶ 4} On June 2, 2010, the trial court consolidated the forfeiture action with appellant's criminal case.[1] On November 18, 2010, in response to interrogatories propounded by the state, appellant identified Rishon Williams and her father, Terrence Williams, as persons who may claim ownership of the seized funds. The state deposed Rishon and Terrence on February 28, 2011, and the matter of forfeiture proceeded to hearing on March 3, 2011. Rishon and Terrence attended the hearing and were called by the state as hostile witnesses. Rishon asserted that she owned the $5,000 found in the bedroom and Terrence claimed ownership of the $19,990 found in the basement.

{¶ 5} In a judgment entry date-stamped December 19, 2011, the trial court ordered that the seized currency is forfeited to the state as "proceeds derived from or acquired through the commission of an offense." Concomitantly, the trial court concluded that "[n]either Rishon's belated claim for the $5,000 found in the dresser drawer * * * nor [Terrence] Williams' claim for the $19,990 found in the basement is credible." The court also found:

> Respondent [Odell Langston] did not appear at the forfeiture hearing and has not made any claim that he legally acquired any of the seized money. Instead, Respondent's wife Rishon Langston, fka Rishon Williams (Rishon) and her father Terrence Williams (Williams) claim an ownership

[1] On May 6, 2010, appellant was indicted on three counts of aggravated trafficking in drugs. He initially entered a plea of not guilty on all counts, but changed his plea to no contest on the third count in exchange for the state's dismissal of the remaining counts. On October 14, 2010, appellant was convicted and sentenced on one count of aggravated drug trafficking in violation of R.C. 2925.03(A)(2) and (C)(1)(c), a third-degree felony.

interest in the currency seized at 4414 Vermaas. However, neither Rishon nor Williams has sought to intervene as a party to this action or filed any petition or other formal pleading asserting a claim to the currency and seeking its release, as provided for in R.C. 2981.05(C).

{¶ 6} Appellant now appeals from this judgment, asserting three assignments of error:

I. The trial court erred in imposing a burden on the claimants in violation of Ohio Revised Code Section 2981, et seq.

II. The trial court erred in ordering the forfeiture of seized property where the state did not meet its burden of proof.

III. The order of forfeiture is against the manifest weight of the evidence.

{¶ 7} Before we can consider appellant's assignments of error, we must first determine if he has standing to raise them. The issue of standing is jurisdictional and may be raised by the court sua sponte. *In re Foreclosure of Parcel of Land Encumbered with Delinquent Tax Liens*, 11th Dist. No. 2007-L-002, 2007-Ohio-4377, ¶ 8*; In re Forfeiture of John Deere Tractor*, 4th Dist. No. 05CA26, 2006-Ohio-388, ¶ 10.

{¶ 8} "[A]n appeal lies only on behalf of an aggrieved party who must demonstrate that he has a present interest in the litigation and is prejudiced by the judgment appealed from." *Natl. Health Trust, Ltd. v. Gill*, 6th Dist. No. E-91-769, 1992 WL 245551, *1 (Sept. 30, 1992). *See also In re Guardianship of Santrucek*, 120 Ohio

St.3d 67, 2008-Ohio-4915, 896 N.E.2d 683, ¶ 5. Under the statute, only "a person with an interest in the property subject to forfeiture" may petition or file a claim for the release of the property. R.C. 2981.05(C) and 2981.03(D). "Moreover, it is axiomatic, as a prudential standing limitation, that a party is limited to asserting his or her own legal rights and interests, and not those of a third party." *State v. Yirga*, 3d Dist. No. 16-01-24, 2002-Ohio-2832, ¶ 38.

{¶ 9} Accordingly, if a defendant claims no interest in the seized property or claims that another person is the true owner of the property, the defendant has no standing to contest or appeal the forfeiture. *State v. Crumpler*, 9th Dist. Nos. 26098, 26118, 2012-Ohio-2601, ¶ 21; *State v. Henry*, 2d Dist. No. 10CA116, 2012-Ohio-420, ¶ 11; *Elyria v. Mudge*, 9th Dist. Nos. 10CA009838-10CA009847, 2011-Ohio-2199, ¶ 11; *State v. Jamison*, 2d Dist. No. 23211, 2010-Ohio-965, ¶ 31; *In re 1995 Mercedes C280*, 1st Dist. No. C-050433, 2006-Ohio-1565; *State v. Heintz*, 9th Dist. No. 02CA007997, 2003-Ohio-242, ¶ 8-9; *Yirga*, 2002-Ohio-2832 at ¶ 38.

{¶ 10} Here, appellant is not claiming an interest in any of the seized currency; nor did he claim such an interest during the proceedings in the trial court. Instead, in his brief to this court, appellant asserts that the disputed portion of the seized currency belongs to "Claimants Rishon Langston and Terrence Williams" and requests that "this Court * * * issue an Order returning the $24,990.00 in U.S. currency seized by law enforcement officers on February 12, 2010 to the Claimants." Thus, appellant lacks standing to appeal the order of forfeiture.

{¶ 11} Appellant also proclaims in his brief that "Claimants Rishon Langston and Terrence Williams * * * appeal the trial court's Opinion and Judgment Entry." However, neither Rishon nor Terrence are designated as appellants in the notice of appeal. The notice of appeal specifies that "defendant/appellant, Odell Langston, hereby appeals * * * from the Judgment granting forfeiture."

{¶ 12} We recognize that when a notice of appeals fulfills its basic purpose of informing the court and opposing parties of a party's intent to appeal a judgment, justice is best served by an attitude of judicial tolerance toward any minor or technical error made in good faith. *Natl. Mut. Ins. Co. v. Papenhagen*, 30 Ohio St.3d 14, 16, 505 N.E.2d 980 (1987). Thus, the failure to specifically name one or more of multiple party appellants in a notice of appeal is not a fatal defect as to unspecified parties who are fairly described in the notice by the use of a plural term such as "et al." *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 322-323, 649 N.E.2d 1229 (1995). But there is no plural term or other language in the present notice of appeal that can be fairly construed as denoting more than a single party appellant. The notice is captioned "State of Ohio, Plaintiff/Appellee v. Odell Langston, Defendant/Appellant"; it specifies only that "defendant/appellant, Odell Langston, hereby appeals"; and it is signed by "Attorney for Defendant/Appellant." Moreover, since appellant has no interest in this litigation, he has no standing to file an amended notice of appeal. We cannot allow new parties to be amended into a notice of appeal that was insufficient to invoke the court's jurisdiction in

the first place. *See Ambrosia Coal & Constr. Co. v. C.B.G., Inc.*, 7th Dist. No. 00 C.A. 101, 2001 WL 1123901 (Sept. 14, 2001).

{¶ 13} Rishon and Terrence would not have standing to bring this appeal in any event. It is well-established that a person must be an actual party to the case, or at least have filed a motion to intervene in the case, in order to have standing to appeal from an adverse judgment. *See State ex rel. Sawicki v. Court of Common Pleas of Lucas County*, 121 Ohio St.3d 507, 2009-Ohio-1523, 905 N.E.2d 1192, ¶ 18-21; *In re Guardianship of Santrucek*, 120 Ohio St.3d 67, 2008-Ohio-4915, 896 N.E.2d 683; *In re Estate of Johnson*, 178 Ohio App.3d 594, 2008-Ohio-5328, 899 N.E.2d 198, ¶ 74 (5th Dist.); *Ohio Dept. of Taxation v. Lomaz*, 177 Ohio App.3d 284, 2008-Ohio-3733, 894 N.E.2d 392, ¶ 13 (11th Dist.); *Eaton Natl. Bank & Trust. Co. v. LNG Resources, LLC*, 10th Dist. No. 08AP-829, 2009-Ohio-1186, ¶ 5; *Murphy v. Jones*, 6th Dist. No. E-98-084, 1999 WL 334506, *2 (May 28, 1999).

{¶ 14} R.C. Chapter 2981 sets forth a comprehensive scheme for the disposition of property seized and held by law enforcement, including the procedural rights and obligations of third parties who claim ownership of such property. *See In re $449 U.S. Currency*, 1st Dist. No. C-110176, 2012-Ohio-1701, ¶ 21: *State v. Clark*, 173 Ohio App.3d 719, 2007-Ohio-6235, 880 N.E.2d 150, ¶ 14 (3d Dist.). As pertinent here, R.C. 2981.05(C), governing civil forfeiture actions, provides:

> A person with an interest in the property subject to forfeiture may petition the court to release the property pursuant to division (D) of section

2981.03 of the Revised Code. The court shall consider the petition as provided in that section. If a timely petition for pretrial hardship release is not filed, or if a petition is filed but not granted, the person may file a claim for the release of the property under the Rules of Civil Procedure. The court shall dispose of any petitions timely filed under this division.

{¶ 15} In this case, the prosecutor provided notice of the action pursuant to R.C. 2981.05(B). In addition, both Rishon and Terrence had actual knowledge of the proceedings and engaged the services of appellant's attorney to obtain release of the funds well in advance of the hearing date. However, neither of them followed the proper procedure for becoming a party to the case. Thus, neither would have standing to appeal the forfeiture decision.

{¶ 16} For the foregoing reasons, the appeal is dismissed. Appellant is liable for the costs of this appeal pursuant to App.R. 24(A)(1).

Appeal dismissed.

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

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE