

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

AKRON MUNICIPAL COURT

Appellee

v.

DEWITT RUCKER, III,

Appellee

C.A. No. 24867

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO

CASE Nos. 08TR15831
 08CR13414
 08CR11746

DECISION AND JOURNAL ENTRY

Dated: March 31, 2010

WHITMORE, Judge.

{¶1} Appellants, Joseph R. Wilson and Wilson Towing and Crane Service, Inc. (collectively “Wilson Towing”), appeal from the judgment of the Akron Municipal Court. This Court vacates the court’s judgment.

I

{¶2} Dewitt Rucker III agreed to purchase Sharree Weaver’s 2000 Ford Excursion in 2008 and paid her a portion of the purchase price. Weaver kept the Excursion titled in her own name pending final payment, but allowed Rucker to drive it and to display her license plates. On September 10, 2008, officers from the Akron Police Department (“APD”) stopped Rucker while he was driving the Excursion. The stop generated three cases in the Akron Municipal Court. In Traffic Case No. 08TRD15831, Rucker was charged with: (1) failing to display a driver’s license, in violation of Akron Municipal Code (“AMC”) Section 71.03; and (2) using tinted glass, in violation of AMC Section 74.47. In Criminal Case No. 08CRB11746, he was charged

with: (1) operating a sound amplifying device, in violation of AMC Section 132.16; (2) possessing drug paraphernalia, in violation of AMC Section 138.28; and (3) attempted drug abuse, in violation of AMC Section 130.101(C)(3). In Criminal Case No. 08CRB13414, he was charged with operating a sound amplifying device, in violation of AMC Section 132.16. APD impounded the Excursion and inventoried its contents.

{¶3} Subsequently, Wilson Towing towed the Excursion to its property. The LEADS print out that APD generated listed Weaver as the Excursion's owner, so APD sent Weaver a certified mail notification that Wilson's Towing had physical possession of her Excursion. The certified mail was returned "not deliverable" with no forwarding address. After the certified mail notification failed, Wilson Towing sought to take title to the Excursion. On October 22, 2008, Wilson Towing filed an unclaimed and abandoned junk motor vehicle affidavit in which APD certified that Weaver had been notified of the Excursion's impoundment in accordance with R.C. 4513.60, R.C. 4513.61, and R.C. 4513.63. Wilson Towing obtained a salvage title for the Excursion the same day.

{¶4} On November 3, 2008, Rucker resolved all of the charges in his three separate cases. The same day, the court issued an order in Criminal Case No. 08CRB11744, indicating "Vechicle (sic) should be released to owner *** Weaver – is owner[.]" On November 5, 2008, the court issued another order in the same case, ordering Wilson Towing to release the Excursion to Weaver. Nevertheless, on November 7, 2008, the court issued the following order in Criminal Case No. 08CRB11744 and Traffic Case No. 08TRD15831:

"For good cause shown, it is hereby ordered, adjudged, and decreed that the title to the 2000 Ford Excursion *** is not to be transferred. It is also ordered that the [Excursion] not be altered in any way and that it be kept at Wilson Towing, Inc. until further order of this Court."

Wilson Towing retained possession of the Excursion as a result of the order.

{¶5} On June 16, 2009, Wilson Towing filed a “motion for hearing for clarification and instruction.” The same month, Rucker filed a motion seeking the return of the Excursion. The court held a hearing on July 17, 2009. On July 20, 2009, the court issued an order in all three of Rucker’s cases that provided as follows:

“This matter came before the Court for an Oral Hearing on July 17, 2009. Case *** has been ruled on in favor of Defendant and therefore any and all property *** inside vehicle as well as the 2000 Excursion SUV, which is being held in tow at Wilsons shall be released immediately to the rightful owner(s) [] Weaver and/or her representative upon payment for storage has been paid, in the amount of \$2,500.00. IT IS SO ORDERED.”

Wilson Towing appealed from the court’s order and sought a stay in the trial court. The court did not rule on the motion to stay, but inexplicably issued another entry on August 25, 2009, ordering “the vehicle returned to Ms. Weaver upon the payment of \$2,500.00 as towing, costs, and storage fees.” This Court conditionally granted Wilson Towing a stay on appeal.

{¶6} Weaver filed a motion to intervene in the instant appeal, and this Court granted her motion. Wilson Towing raises seven assignments of error for this Court to review. We consolidate the assignments of error.

II

Assignment of Error Number One

“DEWITT RUCKER LACKED STANDING TO SEEK THE RETURN OF THE MOTOR VEHICLE.”

Assignment of Error Number Two

“THE TRIAL COURT IMPROPERLY PERMITTED AND AIDED THE PRACTICE OF LAW BY A NON-ATTORNEY.”

Assignment of Error Number Three

“THE APPELLANTS ARE THE TITLE OWNER OF THE MOTOR VEHICLE.”

Assignment of Error Number Four

“THE MANDATES OF OHIO REVISED CODE § 4513.61 WERE FOLLOWED.”

Assignment of Error Number Five

“THE TRIAL COURT LACKED JURISDICTION OVER THE APPELLANTS.”

Assignment of Error Number Six

“THE COURT’S ORDER OF JULY 20, 2009 DOES NOT PROPERLY IDENTIFY THE APPELLANTS.”

Assignment of Error Number Seven

“THE ORDER OF JULY 20, 2009 DOES NOT PROPERLY IDENTIFY THE PLAINTIFF.”

{¶7} Wilson Towing conceded at oral argument that its primary argument on appeal is that the trial court lacked jurisdiction. For the reasons set forth below, we conclude that the trial court lacked jurisdiction to hold a hearing and issue orders with regard to the Excursion in the possession of Wilson Towing.

{¶8} Jurisdiction is a question of law, which this Court reviews de novo. *CommuniCare Health Servs., Inc. v. Murvine*, 9th Dist. No. 23557, 2007-Ohio-4651, at ¶13. “A de novo review requires an independent review of the trial court’s decision without any deference to the trial court’s determination.” *State v. Consilio*, 9th Dist. No. 22761, 2006-Ohio-649, at ¶4.

{¶9} The record reflects that the Excursion at issue was never subject to a forfeiture specification. Moreover, the issue of ownership with regard to the Excursion was not before the court as a result of a replevin action or a declaratory judgment action. Compare *Comm Star Community Star Credit Union v. Nickson*, 9th Dist. Nos. 07CA009075 & 07CA009112, 2007-Ohio-7036 (considering propriety of vehicle re-titling in appeal from replevin action); *Labay v.*

Caltrider, 9th Dist. No. 22233, 2005-Ohio-1282 (considering ownership dispute between registered owner and towing company in appeal from declaratory judgment action); *Thorp Credit, Inc. of Ohio v. Johnny's Auto & Truck Towing, Inc.* (Apr. 27, 1983), 9th Dist. No. 10921 (determining lien superiority with regard to impounded vehicle in appeal from replevin action); *BancOhio Nat. Bank v. Wilson Towing Services, Inc.* (1983), 7 Ohio App.3d 194 (involving dispute between secured creditor and towing company in appeal from consolidated replevin actions); *Motors Insurance Corp. v. Bougher* (Dec. 16, 1981), 9th Dist. No. 1077 (considering towing company's interest in vehicle in appeal from replevin action). The trial court only had Rucker's two criminal cases and one traffic case before it, all of which were resolved on November 3, 2008. Neither Rucker's criminal cases, nor his traffic case vested the court with subject matter jurisdiction over matters involving the ownership or forfeiture of the Excursion. Nevertheless, the court entertained motions from nonparties, held a hearing, and issued orders pertaining to the forfeiture of the Excursion, which were purportedly binding upon nonparties. In doing so, the court exceeded its authority.

{¶10} Wilson Towing's argument that the court lacked subject matter jurisdiction has merit. The orders that the trial court issued on and after November 3, 2008 with regard to the Excursion, including its July 20, 2009 judgment entry, are vacated pursuant to that determination. To the extent that Wilson Towing's captioned assignments of error address matters beyond the scope of the trial court's subject matter jurisdiction, they are moot and we decline to address them. App.R. 12(A)(1)(c).

III

{¶11} Wilson Towing's argument that the trial court lacked subject matter jurisdiction is sustained and its remaining arguments are moot. The judgment of the Akron Municipal Court is vacated.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

BETH WHITMORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

THOMAS C. LOEPP, Attorney at Law, for Appellants.

DAVID M. WATSON, Attorney at Law, for Appellee.

DEWITT RUCKER, pro se, Appellee.

CHERI CUNNINGHAM, Director of Law, for Appellee.