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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0795

STATE OF LOUISIANA

VERSUS

KEE FOOD, INC., KASSIM NAGI, TAWFIQ ALI
ALMANSOOB, MOHAMED NAGI, SOUTHLA, LLC

Judgment Rendered: MAY 11 2020

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On Appeal from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Trial Court No. 170,587

The Honorable David W. Arceneaux, Judge Presiding

* * * * *

Marcus J. Plaisance	Attorneys for Defendants/
Mark D. Plaisance	Appellants, Kee Food, Inc.,
Prairieville, Louisiana	Mohamed Nagi, and
	Southla, LLC

Joseph L. Waitz, Jr.	Attorneys for Plaintiff/
District Attorney	Appellee, State of
Ellen Daigle Doskey	Louisiana
Assistant District Attorney	
Houma, Louisiana	

* * * * *

BEFORE: HIGGINBOTHAM, PENZATO, AND
LANIER, JJ.

PENZATO, J.

Appellants, Kee Food, Inc. (Kee Food), Mohamed Nagi, and Southla, LLC (Southla), appeal a trial court judgment granting Appellee, the State of Louisiana (State), the right of forfeiture against Appellants. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

The matter arises out of civil forfeiture proceedings instituted by the State under La. R.S. 40:2601, *et seq.* Kassim Nagi and Tawfiq Ali Almansoob were arrested in June of 2013 as a result of an investigation into the sale of synthetic cannabinoids on the premises of Kee Food, a convenience store.¹ The State instituted forfeiture proceedings against Almansoob, Kassim, his father Mohamed Nagi, and the two entities owned by them, Kee Food and Southla. The State alleged that the assets sought to be seized were generated from the sale of illegal substances and commingled with the proceeds of legitimate sales. The State seized cash, banking accounts, and a piece of commercial real

¹ Almansoob eventually entered into a release and consent judgment with the State. Kassim was found guilty by a jury of violations of racketeering, money laundering, distribution of synthetic cannabinoids, and possession with intent to distribute synthetic cannabinoids. His convictions were affirmed by this court and the Louisiana Supreme Court. *State v. Nagi*, 2017-1257 (La. App. 1st Cir. 4/9/18), 2018 WL 1704253, *writ denied*, 2018-0739 (La. 3/25/19), 267 So. 3d 602.

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estate, all of which was owned by either the Nagis or Almansoob or all three of them.

In response to the State's petition, through counsel, Kee Food, Kassim, Mohamed, and Southla (hereinafter referred to collectively as the defendants) answered and asserted claims pursuant to La. R.S. 40:2610, seeking immediate release of the seized property and termination of any forfeiture proceedings. The defendants maintained that certain seized funds were from the sale of legitimate merchandise and were not derived from or connected to any illegal activity. Kassim appeared on behalf of Kee Food to assert its claims, and in doing so, Kassim stated that he is the agent, manager, and part owner of Kee Food. Kassim, through a power of attorney executed by Mohamed, asserted individual claims on behalf of Mohamed. Kassim also asserted claims on behalf of Southla, asserting that he was the agent and attorney-in-fact for Southla pursuant to the power of attorney executed by Mohamed and a resolution of Southla.

Prior to trial, the State filed a motion for summary judgment, contending that the admissions, depositions, and records from the criminal matter proved that no genuine issue of material fact remained. The trial court granted the motion for summary judgment and ordered the seizure of all the assets. Defendants appealed the judgment granting the motion for summary judgment. This court affirmed the judgment as to Kassim, individually, but reversed the judgment as to Mohamed, Kee Food, and Southla due to improper service of the petition on these parties. *State v. Kee*

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Food, Inc., 2017-0127 (La. App. 1st Cir. 9/21/17), 232 So. 3d 29, 35, *writ denied*, 2017-1780 (La. 12/5/17), 231 So. 3d 632.

The State subsequently moved to have the trial court appoint an attorney ad hoc for Mohamed, Kee Food, and Southla. The trial court appointed Dustin Pellegrin and set the trial for September 24, 2018. Prior to the trial, the State filed a pleading entitled, “Motion and Order for Writ of Habeas Corpus Ad Prosequendum” to have Kassim, who was in the custody of Raymond Laborde Correctional Center, appear as a witness at the trial, which the trial court signed.

On the date of the trial when counsel was asked to make their appearances, Kassim stood and asserted that he was there on behalf of himself, Kee Food, Mohamed, and Southla. The trial court noted that Kassim had previously been a party to the proceedings, but that the trial court had granted the State’s motion for summary judgment as to Kassim, which was affirmed by this court. Abdul Nagi, the brother of Kassim and son of Mohamed, also asserted that he was present as a representative of Kee Food, Mohamed, and Southla. Counsel for Appellants explained to the trial court that Abdul was attempting to stand in as agent for the three parties on trial that were appointed ad hoc counsel. Counsel advised the trial court that Abdul did not have any paperwork to reflect same. The record contains no like request for Kassim to act as agent. The trial court noted that Abdul was not a party to the proceedings and could not sit at counsel table, since

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Pellegrin was the attorney ad hoc appointed to represent Kee Food, Mohamed, and Southla.

Two other attorneys present were Baron Whipple and Mark Plaisance. Whipple informed the court that he had been retained to attempt to negotiate a settlement between the State and Appellants. However, he was not appearing in a representative capacity for Appellants at the civil forfeiture trial. Plaisance, who is currently representing Appellants in this appeal, had previously represented Appellants for the first appeal and was at the trial to preserve his motion for attorney's fees.

Subsequently, Kassim asked the trial court for a continuance to allow Whipple to resolve the matter. The trial court explained to Kassim that he was present as a witness and had no capacity to request a continuance. The trial court further indicated that Kassim's part of the civil trial was completed, and the current matter involved the other entities, Mohamed, Kee Food, and Southla. Kassim then asked if he could represent his father to request a continuance. The trial court responded that since Kassim was not an attorney neither he nor Abdul could represent their father in the proceedings. The colloquy between the trial court, counsel, and Kassim evidences that the trial court denied Kassim the opportunity to move for a continuance on behalf of Mohamed, as counsel had been appointed. Pellegrin then moved for a continuance of the trial on behalf of Kee Food, Mohamed, and Southla, which the trial court denied.

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Thereafter, the trial court inquired of counsel as to the proper procedural handling of the case and noted that Pellegrin was representing the three parties on trial, Kee Food, Mohamed, and Southla. No request was made by Pellegrin for Kassim to act as agent for the parties on trial. Counsel for the State asked the trial court if Kassim should be removed from the courtroom for security reasons. Initially, Pellegrin requested that the witnesses be sequestered, but he withdrew that request, noting the relationship of the one potential witness for the State to the parties. Counsel for the State reiterated that he did not see any reason for Kassim to stay in the courtroom. The trial court then determined that there was no reason for Kassim to remain in the courtroom and that Kassim's presence created a security issue. Again, at this time, no request was made for Kassim to remain in the courtroom to act as an agent of Appellants at the trial. Therefore, the trial court ordered Kassim to be returned to jail until he was called as a witness. Pellegrin did not object to Kassim's removal. During the trial, the State called Kassim as a witness, who invoked his Fifth Amendment right against self-incrimination after initially requesting to speak with his criminal attorney. Following his testimony, Kassim made no request to remain in the courtroom.

After considering all the evidence, the trial court concluded that all of the Appellants knew that synthetic marijuana was being distributed from the convenience store. The trial court noted that all the claims in regard to Kassim had previously been adjudicated.

Therefore, it ordered that judgment be rendered against Kee Food, Mohamed, and Southla forfeiting to the State all of the items of property claimed in the civil forfeiture proceeding. The trial court signed a judgment in accordance with its oral ruling on October 5, 2018, dismissing all claims. It is from this judgment that Appellants appeal.

ASSIGNMENT OF ERROR

The only assignment of error by Appellants is that the trial court erred in removing Kassim from the courtroom, claiming he has a constitutional right to be present as the mandatory of Appellants in order to assist the ad hoc counsel, Pellegrin, regardless of his status as a prisoner.

LAW AND DISCUSSION

Appellants argue that Kassim was conferred general power of attorney by Mohamed with the specific authority to represent him in judicial proceedings. The power of attorney names Mohamed as principal and Kassim as agent. The relevant provisions of the power of attorney are as follows:

1. BUSINESS AND AFFAIRS. To conduct, manage, and transact __ [sic] business and personal financial matters of Principal, of every nature and kind and without any exception whatsoever.

* * *

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4. JUDICIAL PROCEEDINGS. To appear before all courts and to prosecute, defend, or compromise and settle by agreement, arbitration, or otherwise; to sign all pleadings and do all things necessary to obtain writs of attachment, sequestration and injunction[,] and to take appeals and, in any such instances, to furnish the requisite security and bonds.

* * *

6. GENERAL. To do and perform each and every other act, matter, or thing whatsoever as may be appropriate in Agent's discretion as if such act, matter or thing were or had been particularly stated herein.

As we stated earlier, the State filed a "Motion and Order for Writ of Habeas Corpus Ad Prosequendum"² to have Kassim transported from prison to the court on the date of the trial to appear as a witness. Prior to the start of the trial, the trial court indicated that Kassim was present only as a witness. In connection with a discussion regarding whether the witnesses were going to

² A writ of *habeas corpus ad prosequendum* is defined as "[a] writ which issues when it is necessary to remove a prisoner in order to *prosecute* in the proper jurisdiction wherein the fact was committed." *State v. Terry*, 458 So. 2d 97, 99 n.2 (La. 1984) (quoting Black's Law Dictionary 837 (4th ed. 1968) (Emphasis in the original.)). A writ of *habeas corpus ad testificandum* is the means for parties who are incarcerated to be present in court in civil litigation. *Ardoin v. Bourgeois*, 2004-1663 (La. App. 3rd Cir. 11/2/05), 916 So. 2d 329, 332-33. Although the styling of the pleading filed by the State may be technically incorrect, Kassim was transported to the courthouse and his appearance is not at issue in this appeal.

be sequestered, which request was subsequently withdrawn, the trial court determined there was no reason for Kassim to remain in the courtroom due to security issues. Neither Pellegrin nor Kassim requested that Kassim remain in the courtroom or assist in the defense as agent of the parties and there was no objection to his removal. Kassim was returned to the jail until he was called to testify as a witness. Appellants maintain that the trial court abused its discretion by removing Kassim from the courtroom, which prevented him from assisting the attorney ad hoc, Pellegrin.

The determination of whether a prisoner-party in a civil action should appear personally in court for the trial of the action rests in the discretion of the trial court. As explained in *Wells v. Criminal Dist. Court of Orleans Par.*, 2016-0181 (La. App. 4th Cir. 8/24/16), 198 So. 3d 283, 285,

A prisoner has a right of access to state and federal civil courts. However, this right does not necessarily include the right to be physically present at the trial of a civil suit. Generally, prisoners who bring civil actions have no right to be personally present in court at any stage of the action. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, among which is the right of a prisoner to plead and manage his action in court personally.

Wells, 198 So. 3d at 285-86 (quoting *Leeper v. Leeper*, 44,777 (La. App. 2nd Cir. 9/23/09), 21 So. 3d 1006, 1010 (internal citations omitted)).

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However, in the instant case, no request was made for Kassim to remain in the courtroom or to act as an agent for Appellants during the trial. Therefore, Kassim did not assert any rights that may have been afforded under the power of attorney. There was also no objection to the trial court's order removing Kassim from the courtroom for security reasons. Failure to object timely constitutes a waiver of that objection, and an appellant may not raise the issue for the first time on appeal. *Travis v. Spitale's Bar, Inc.*, 2012-1366 (La. App. 1st Cir. 8/14/13), 122 So.3d 1118, 1134, *writs denied*, 2013-2409, 2013-2447 (La. 1/10/14), 130 So. 3d 327, 329. Having failed to specifically object to the procedure utilized by the trial court, Appellants are precluded from raising this issue for the first time on appeal. See *Haney v. Lewis*, 2015-1173 (La. App. 1st Cir. 6/3/16), 2016 WL 3127254, at *9 (unpublished), *writs denied*, 2016-1252, 2016-1254 (La. 10/28/16), 208 So. 3d 888, 889 (failing to object to jury selection process precluded raising issue for first time on appeal); see also *Kirsch v. Kirsch*, 2015-0281 (La. App. 1st Cir. 7/29/15), 180 So. 3d 417, 421, *writ denied*, 2015-1626 (La. 9/18/15), 178 So. 3d 153 (failing to object to the qualifications of an expert precluded raising the issue on appeal). As a general rule, appellate courts will not consider issues that were not raised in the pleadings, were not addressed by the trial court, or are raised for the first time on appeal. *Johnson v. Montoya*, 2013-1951 (La. App. 1 Cir. 5/2/14), 145 So. 3d 418, 422; see also Uniform Rules—Courts of Appeal, Rule 1-3. We need not determine if the trial court abused its discretion in having Kassim removed from the courtroom, as

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no one objected to his removal during the trial. Therefore, Appellants only assignment of error is without merit.

CONCLUSION

For the above and foregoing reasons, we affirm the trial court's October 5, 2018 judgment ordering that certain assets and property be forfeited to the State of Louisiana. All costs of this appeal are assessed to Kee Food, Inc., Mohamed Nagi, and Southla, LLC.

AFFIRMED.

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STATE OF LOUISIANA * 32ND JUDICIAL
VS. NO. 170,587 * DISTRICT COURT
KEE FOOD, INC., PARISH OF
KASSIM NAGI, TAWFIQ TERREBONNE
ALI ALMANSOOB, STATE OF LOUISIANA
MOHAMED NAGI,
SOUTHLA, LLC *

JUDGMENT

This matter came up for a trial on the merits on September 24, 2018 pursuant to a previous fixing.

Present were:

- 1) Jason Lyons, on behalf of the State of Louisiana;
- 2) William F. Dodd, on behalf of Jerry Larpenter, individually and as the Terrebonne Parish Sheriff and the Terrebonne Parish Sheriff's Office; and
- 3) Dustin Pellegrin, ad hoc counsel for Kee Food, Inc., Southla, LLC, and Mohamed Nagi.

After considering the evidence and applicable law, for reasons orally assigned in open court on September 26, 2018, the Court issues the following judgment:

Whereas, by written Judgment in this matter dated September 21, 2018, the Court granted Pedestal Bank's Motion for Summary Judgment and ordered that Pedestal Bank be paid \$201,207.66 and other

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amounts from the funds seized from various Pedestal Bank accounts at issue in these proceedings;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the State of Louisiana and against the defendants, Kee Food, Inc, Southla, LLC and Mohamed Nagi forfeiting the following funds, less the amounts owed to Pedestal Bank pursuant to this Court's Judgment of September 21, 2018, to wit:

1. \$29,580.54 seized from Coastal Commerce Bank Account No. 125641 in the name of Kee Food, Inc.;
2. \$12,131.62 seized from Coastal Commerce Bank Account No. 179747 in the name of Kee Food, Inc.;
3. \$348,302.92 seized from Coastal Commerce Bank Account No. 1078757 in the name of Southla, LLC; and
4. \$1,021.42 seized from Coastal Commerce Bank Account No. 350538 in the name of Mohamed Nagi and Kassim Nagi.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, the \$95,890.92 cash seized from inside the Kee Food Store premises located at 6957 West Park Avenue, Houma, Louisiana is hereby forfeited, in its entirety, to the State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to R.S. 40:2616, all proceeds forfeited to the State of Louisiana in this Judgment be

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paid and allocated as follows, after first making payment to the Clerk of Court for the court costs incurred in these proceedings, subject to a credit in the amount of any court costs paid by the defendants and/or Pedestal Bank:

- 1) 1% to DART;
- 2) 1% to the Terrebonne Parish District Attorney's Office for all proper expenses; and
- 3) The balance thereof to be paid and allocated as follows:
 - A. Terrebonne Parish Sheriff's Office – Narcotics Division 60%
 - B. Criminal Court Fund, 32nd Judicial District 20%
 - C. Terrebonne Parish District Attorney's Office 20%

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the property and improvements located at 6957 West Park Avenue in Houma, Louisiana owned by Southla, LLC, which property is more particularly described on Exhibit "A" attached hereto and made a part hereof, is hereby forfeited to the State of Louisiana;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the reconventional demands and any other incidental demand filed in this matter by Kee Food, Inc, Southla, LLC and/or Mohamed Nagi against Jerry Larperter, individually and as the Terrebonne Parish Sheriff and the Terrebonne Parish Sheriff's

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Office, the State of Louisiana and/or the Terrebonne Parish District Attorney be and the same are dismissed, with prejudice.

JUDGMENT RENDERED in Open Court on September 26, 2018 and read and signed in Chambers on this 5 day of October, 2018.

/s/ David W. Arceneaux
HON. DAVID W. ARCENEAUX –
JUDGE

RULE 9.5 CERTIFICATE

I certify that I circulated this proposed judgment/order to counsel for all parties by email on September 30, 2018, and that all parties approved the form and substance of the judgment.

Certified this 1st day of October, 2018

/s/ Jason Lyons
JASON LYONS –
BAR ROLL #14155
Assistant District Attorney
32nd Judicial District Court
7856 Main Street
Courthouse Annex, suite 220
Houma, LA 70360
Telephone: (985) 873-6500

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Madam Clerk:

Please serve notice of the executed
Judgment on Kassim Nagi,
Mohamed Nagi, Southla, LLC and
Kee Food Inc. through their counsel of record
Dustin Pellegrin
275 Gabasse St.
Houma, LA. 70360

The Supreme Court of the State of Louisiana

KEE FOOD, INC., KASSIM
NAGI, TAWFIQ ALI
ALMANSOOB, MOHAMED
NAGI, SOUTHLA, LLC

IN RE: Kee Food, Inc. – Applicant Defendant; Mohamed Nagi – Applicant Defendant; Southla, LLC – Applicant Defendant; Applying For Writ Of Certiorari, Parish of Terrebonne, 32nd Judicial District Court Number(s) 170,587, 1st Circuit Court of Appeal, Number(s) 2019 CA 0795;

September 29, 2020

Writ application denied.

JTG
BJJ
JDH
SJC
WJC
JHB

Weimer, J., recused.

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Supreme Court of Louisiana
September 29, 2020

Clerk of Court
For the Court
