

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE \$14,000 IN U.S. CURRENCY

No. 2 CA-CV 2014-0151  
Filed September 25, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

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Appeal from the Superior Court in Pinal County  
Nos. CV201400191 and CV201400242 (Consolidated)  
The Honorable Karen J. Stillwell, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Law Offices of Thomas E. Higgins, P.L.L.C.  
By Thomas E. Higgins, Tucson  
*Counsel for Appellant*

M. Lando Voyles, Pinal County Attorney  
By Craig Cameron, Deputy Pinal County Attorney, Florence  
*Counsel for Appellee*

**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Miller and Chief Judge Eckerstrom concurred.

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ESPINOSA, Judge:

¶1 In this in rem forfeiture action, appellant Hector Pacheco-Gastelum (Pacheco) challenges the trial court's ruling striking his verified claim and granting an order of forfeiture and allocation of property. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 We view the facts in the light most favorable to sustaining the trial court ruling. *In re 4030 W. Avocado*, 184 Ariz. 219, 219, 908 P.2d 33, 33 (App. 1995). According to Pinal County's initial filing in the action, on January 14, 2014, a sheriff's office deputy traveling on Interstate 10 stopped a Chevrolet Tahoe and spoke to its occupants. At some point, the passenger, Pacheco, told the officer he had \$14,000, but the men gave different stories about its intended use and where they were going, and the driver denied any interest in the money or vehicle. The officer then ran a drug detection canine on the vehicle and it alerted to currency in the backseat. Both currency and vehicle were seized for forfeiture pursuant to A.R.S. § 13-4305(A)(3)(a), and Pacheco was provided notice as required by A.R.S. § 13-4309(1).

¶3 On January 29, 2014, Pacheco filed a verified claim pursuant to A.R.S. § 13-4311(E) and (F), asserting ownership of the \$14,000.<sup>1</sup> The claim specified that the money had been acquired by the sale of two vehicles, a 2005 Honda sold on or about November 20, 2013, and a 2008 Chevrolet sold on January 13, 2014. Pacheco also filed a Motion for Return of Property, noting that the

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<sup>1</sup>The claim did not assert any interest in the vehicle.

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state had not initiated any formal proceedings for forfeiture and requesting a hearing pursuant to A.R.S. § 13-4310(B).

¶4 On April 3, 2014, the county filed a motion to strike Pacheco's claim, asserting it was "incomplete [because it] fail[ed] to establish he is the owner of the currency." Pacheco subsequently provided a Motor Vehicle Division (MVD) Record dated April 21, 2014, for a vehicle titled in the name of A.R., and pages 1 and 3 to a bank statement for Pacheco showing a high balance of \$5,020.45 (of which \$4,153.16 was due to a tax refund) and an ending balance of \$2,225.38. On August 25, the county filed a supplement to its motion to strike, asserting Pacheco "failed to provide any documentary support for [him] to maintain standing in this forfeiture proceeding," or to provide the source of his ownership interest in the currency, and requesting that the claim be stricken.

¶5 Following several continuances requested by Pacheco, the trial court heard the county's motion to strike his claim. At the hearing, Pacheco testified that the money "was [his] money," that he had told the officer so, and that a portion of it was from the sale of a 2008 Malibu, which he said he had sold for \$10,000 the day before the traffic stop. He stated the buyer had paid cash and he signed the title over to her. Pacheco further testified he bought and sold cars three or four times a year, usually exporting them to Mexico, and on the day in question he had been on his way to Phoenix to buy a car. He also asserted that at the time of the stop he had a printout of an internet search listing available cars with year, model, and phone number, which he alleged had been seized along with the currency. No such document, however, was introduced into evidence or, apparently requested from the state.

¶6 As for the remainder of the seized currency, Pacheco testified the \$4,000 came from an Internal Revenue Service refund that he had received "[a]round September." Under cross-examination, he acknowledged that his bank statement did not show a withdrawal of \$4,000 or even \$2,000.

¶7 The county argued Pacheco had not shown any significant cash withdrawal from his bank account and therefore had not established that the seized money came from that account.

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It also maintained “[a]s to the Motor Vehicle document that they had, there is nothing that shows Mr. Pacheco is associated with the vehicle, and it’s just simply somebody owns a car.” Pacheco’s counsel argued that the documentation the county sought “doesn’t exist.” In a private party car sale, he stated, “[p]eople give you money, [and you] sign the title over” . . . “[t]hat’s the type of documentation [provided].” He further noted “[t]here is no other person claiming” the money.

¶8 In its ruling, the court pointed out that Pacheco’s notice of claim stated he had obtained his interest in the property by selling two vehicles, a 2005 Honda and a 2008 Chevrolet, and there was “no mention of a \$4,000 tax return.” Further, the “documentation indicate[d] that the tax return was received in September 2013,” whereas the traffic stop was in January 2014. When asked for findings and conclusions as to why it did not find Pacheco’s ownership of \$10,000 of the \$14,000, the court stated “it hasn’t been established” that Pacheco was the owner of the 2008 Malibu. The court concluded Pacheco “ha[d] not met the burden to show that he has ownership” and ordered the county to file an application with an affidavit from the seizing officer.

¶9 On October 21, 2014, the trial court ordered the \$14,000 forfeited to the state and the Chevrolet Tahoe forfeited to the Pinal County Sheriff’s Office. We have jurisdiction over Pacheco’s appeal pursuant to A.R.S. § 12-2101(A)(3).<sup>2</sup>

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<sup>2</sup>An appeal may be taken to this court from “any order affecting a substantial right made in any action when the order in effect determines the action and prevents judgment from which an appeal might be taken.” § 12-2101(A)(3). Once the court struck his claim, Pacheco no longer had standing to litigate issues in the forfeiture action. See *In re \$70,269.91 U.S. Currency*, 172 Ariz. 15, 20, 833 P.2d 32, 37 (App. 1991). Pacheco therefore may properly appeal the court’s ruling.

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**Discussion**

¶10 Pacheco contends the trial court erred in finding he had not established ownership of the seized funds for purposes of standing in the forfeiture proceeding, § 13-4310, and consequently abused its discretion by striking his verified claim. We review a trial court's application of the forfeiture statutes de novo, but will uphold its ruling if supported by any reasonable evidence. *In re \$2,390 U.S. Currency*, 229 Ariz. 514, ¶ 5, 277 P.3d 219, 221 (App. 2012). And "[w]e accept the court's factual findings unless they are clearly erroneous." *Id.*

¶11 Pursuant to § 13-4305(A)(3)(a), "[p]roperty subject to forfeiture" may be seized for forfeiture without court process if it was "seized incident to an arrest or search." Only a party with standing may oppose a forfeiture action. *See In re \$70,269.91 U.S. Currency*, 172 Ariz. 15, 19, 833 P.2d 32, 36 (App. 1991). "In a civil forfeiture action, one acquires standing by alleging an interest in the property." *Id.* An owner or interest holder in property subject to forfeiture alleges an interest by filing a claim against the property pursuant to § 13-4311(E), which requires the claimant to describe "[t]he nature and extent of the claimant's interest in the property" and "[t]he date, the identity of the transferor and the circumstances of the claimant's acquisition of the interest in the property." If a claim fails to conform with § 13-4311(E), the trial court may properly strike it. *In re \$70,269.91*, 172 Ariz. at 20, 22, 833 P.2d at 37, 39. Once a claim is struck, the claimant no longer has standing to litigate issues in the forfeiture action. *Id.*

¶12 Upon filing a proper claim, an owner or interest holder becomes a "claimant," but pursuant to § 13-4310(D) and (J), at a hearing the "claimant must establish by a preponderance of the evidence that he is an owner of or interest holder in the property seized for forfeiture before other evidence is taken." § 13-4310(D). The next sentence of the statute provides: "The burden of proving the standing of the claimant . . . is on the claimant . . ." *Id.* Whether a claimant has done so is a question of fact. *See In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 9, 18 P.3d 85, 89 (App. 2000). And we defer to the trial court's factual findings unless they are clearly erroneous. *Id.* "[W]e do not reweigh conflicting evidence or

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redetermine the preponderance of the evidence, but examine the record only to determine whether substantial evidence exists to support the trial court's action.'" *Id.* ¶ 10, quoting *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999). "And the trial court, not this court, assesses credibility." *Id.*; see also *State v. Garcia*, 187 Ariz. 527, 529 n.2, 931 P.2d 427, 429 n.2 (App. 1996) (credibility of witnesses primarily a matter for trial court's determination).

¶13 Here, although the currency was seized from Pacheco's possession, and he indicated to the officer it was his, the state's notice of forfeiture averred that the driver of the vehicle gave conflicting information about the intended use of the money and where the two were going. Then, at the hearing, Pacheco's explanation of how he had acquired a portion of the money changed from the sale of a 2005 Honda, as stated in his verified claim, to the receipt of a tax refund, which evidence itself was impeached. Moreover, although Pacheco testified that a substantial portion of the seized funds had been acquired from the sale of a 2008 Chevrolet Malibu, he had no supporting documentation of either his alleged ownership of the vehicle or the purported sale, and it is clear the trial court did not credit his testimony, expressly finding he had not established he had owned the vehicle. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (trial court best situated to "observe the parties, judge the credibility of witnesses, and make appropriate findings"); see also *Knapp v. Highway Dep't*, 56 Ariz. 54, 57, 104 P.2d 180, 181 (1940) (if anything in record tends to show evidence of witnesses either mistaken or false, trier of fact may disregard such testimony entirely); *Graham v. Vegetable Oil Prods. Co.*, 1 Ariz. App. 237, 241, 401 P.2d 242, 246 (1965) (prior inconsistent deposition statements suggesting later testimony at trial could have been mistaken or false justified trier of fact in disregarding such testimony); see also *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1059 (9th Cir. 2005) (long recognizing that person deemed unbelievable as to one material fact may be disbelieved in other respects).

¶14 In his reply brief, Pacheco relies on *In re \$315,900.00*, 183 Ariz. 208, 902 P.2d 351 (App. 1995) to argue the trial court erred in

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placing the burden of proof on him at the hearing.<sup>3</sup> But that case involved the state's burden to establish probable cause for forfeiture, not the threshold standing question ruled on by the trial court here, for which Pacheco clearly had the burden. *Id.* at 211, 902 P.2d at 354; *see also* § 13-4310(D). Pacheco also cites *Wohlstrom v. Buchanan*, 180 Ariz. 389, 884 P.2d 687 (1994), in which our supreme court reversed a forfeiture order and reinstated a claimant's standing when, according to Pacheco, the claimant had "made [a] colorable interest in [the] property seized." *Wohlstrom*, however, turned on the claimant having asserted his Fifth Amendment privilege against self-incrimination and the trial court having struck his claim before he had an opportunity to present evidence. *Id.* at 392, 395, 884 P.2d at 690, 693. Here, Pacheco did not assert that providing information under § 13-4311(E)(4) might incriminate him. To the contrary, he offered explanations regarding car sales and tax returns that the trial court could accept or reject.

¶15 Had the trial court come to the opposite conclusion about the conflicting evidence at the hearing, we would not disagree. *See In re \$26,980.00*, 199 Ariz. 291, ¶ 10, 18 P.3d at 89 (upholding trial court's determination of sufficient showing of ownership based on possession and claim of ownership in face of only general refutation by state). We cannot, however, say there was no substantial evidence to support the trial court's conclusion that Pacheco did not establish ownership of the currency, a factual determination that was well within the court's purview. *See id.* ¶ 9.

**Disposition**

¶16 For the foregoing reasons, the trial court's ruling and order of forfeiture are affirmed.

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<sup>3</sup>Pacheco makes this argument only in his reply brief but we exercise our discretion to nevertheless address it. *See Sun City Grand Cmty. Ass'n v. Maricopa Cty.*, 216 Ariz. 173, n.2, 164 P.3d 679, 681 n.2 (App. 2007) (appellate court ordinarily declines to consider arguments raised for first time in reply brief but is not bound by this procedural principle).