

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *EX REL.* : Case No. XX
XX, :
 :
Relator, :
 :
v. : MOTION OF REAL PARTY IN
 : INTEREST, XX,
 : TO INTERVENE
THE COURT OF APPEALS FOR THE :
EIGHTH APPELLATE DISTRICT, :
 :
Respondent. :

Elizabeth A. Well
No. 0087750
Ohio Crime Victim Justice Center
3976 North Hampton Drive
Powell, Ohio 43065
P: 614.848.8500
F: 614.848.8501
ewell@ocvjc.org

*Counsel for Real Party in Interest,
XX*

Erika B. Cunliffe
No. 0074480
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
P: 216.443.7583
ecunliffe@cuyahogacounty.us

Counsel for Relator

**MOTION TO INTERVENE OF
REAL PARTY IN INTEREST, MARY SEAWRIGHT**

I. Introduction

Now comes xx xx, Relator in the underlying matter, and respectfully requests that this Honorable Court permit her to intervene in the instant matter pursuant to Civ.R. 24. xx xx (hereinafter “Ms. xx”) is the real party in interest in this matter, and intervention is necessary to preserve her constitutional rights as set forth more fully below.

II. Facts and Procedural History

Ms. xx is a 73-year-old woman who believes in promoting the welfare of others and supporting those who do the same. Ms. xx met Relator at church. Relator informed Ms. xx that he needed office space to use for his prison outreach ministry. Relying on his promises and believing in his cause, Ms. xx offered Relator an office in her office building for use in his ministry. Relator indicated interest in the space and Ms. xx gave him a tour. On this tour, Ms. xx showed Relator the layout of the space, including the fact that his new space was connected, via a basement, to a space used by Ms. xx for her office. Ms. xx used her office space to store various items, including expensive tools Ms. xx and her husband used to repair their properties. Ms. xx told Relator that she would continue to use her office, and asked that Relator not allow anyone access to the basement to keep her office secure. Ms. xx kept the door between the basement and her own office locked, but Relator had access to the shared basement.

Relator used this opportunity to abuse Ms. xx’s trust by breaking into her property, causing damage¹ to the property in doing so, and stealing numerous items from Ms. xx,

¹ Ms. xx presented the trial court, through the State, with invoices for all repairs, totaling \$1,282.91.

including a firearm, various saws, drills, and tool attachments, and a bust of Dr. Martin Luther King, Jr., with a combined value of \$2,298.51².

On or about December 5, 2017, Relator was indicted for these violations of Revised Code Sections 2911.13(A) and 2913.02(A)(1). Importantly, Relator pled guilty to, and was convicted of, attempted breaking and entering and petty theft. Therefore, Ms. xx takes issue with any characterization by Relator of Ms. xx as an “alleged victim” or Relator’s crimes as having “allegedly” occurred.

On or about November 15, 2018, at the sentencing hearing, Ms. xx and the state, at the request of Ms. xx, provided the court with victim impact evidence, including receipts and estimates of the total damage to, and losses of, Ms. xx’s property, for restitution purposes. Despite the introduction of this competent, credible evidence, the trial court did not address Ms. xx’s documentation and did not order Relator to make full and timely restitution to Ms. xx, as required by Ohio Constitution, Article I, Section 10a(A)(7).

On December 6, 2018, Ms. xx timely sought appellate review from Respondent concerning this violation of her constitutional rights. On March 21, 2019, in the matter of *State v. Hughes*, Respondent held that, while victims cannot appeal violations of Ohio Constitution, Article I, Section 10a(A) (“Marsy’s Law”), “[a] victim may ‘petition’ the appropriate appellate court for relief. Appellate courts have original jurisdiction to hear actions in quo warranto, mandamus, habeas corpus, prohibition, procedendo, or ‘[i]n any cause on review as may be necessary to its complete determination.’ ” *State v. Hughes*, 8th Dist. Cuyahoga No. 107697, 2019-Ohio-1000, ¶ 28. Thereafter, Ms. xx immediately dismissed her appeal in favor of an

² Ms. xx presented evidence of these losses at the sentencing hearing.

original action in mandamus before Respondent, having no other plain and adequate remedy in the ordinary course of law.

The trial court, after having been served with Ms. xx's complaint in mandamus, set a restitution hearing to determine the amount of full and timely restitution owed to Ms. xx. Relator filed a Motion to Intervene in Ms. xx's original action in mandamus, while simultaneously filing a motion for a stay of the trial court's scheduled restitution hearing. Ms. xx and the trial court opposed Relator's intervention as Relator had no rights, constitutional or otherwise, at stake in the trial court's setting of a hearing. Meanwhile, the trial court denied Relator's motion for a stay. Relator then appealed the trial court's denial of the stay to Respondent. Within a week, Respondent properly dismissed Relator's appeal sua sponte for lack of a final, appealable order.

Subsequently, Respondent also properly denied Relator's Motion to Intervene in Ms. xx's mandamus action. Consequently, in response to the denial of his Motion to Intervene, Relator filed the instant action, while also filing an appeal before this Court of Respondent's dismissal of his appeal before Respondent (Supreme Court Case Number 2019-XXXX).

III. Law and Argument

Civil Rule 24 provides for intervention, as follows:

(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or

agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

This Court encourages liberal construction in favor of intervention. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 534, 1998-Ohio-190, 696 N.E.2d 1079.

Liberal construction is favored because it “serves judicial economy, by avoiding a multiplicity of actions.” *In re J.T.F.*, 2nd Dist. Greene No. 12-CA-03, 2012-Ohio-2105, ¶ 20, citing *Creter v. Council of City of Westlake*, 8th Dist. Cuyahoga No. 49848, 1985 Ohio App. LEXIS, 1985 WL 8577, *2 (Aug. 1, 1985).

Intervention is appropriate when the intervenor has “an interest relating to the property or transaction that is the subject of the action * * *.” *State ex rel. N.G. v. Cuyahoga Cnty. Court of Common Pleas*, 147 Ohio St.3d 432, 2016-Ohio-1519, 67 N.E.3d 728, ¶ 22. In addition, the motion to intervene must be timely filed. *See id.* at ¶ 23. Here, Ms. xx has a significant interest in the subject of the action—her constitutional rights to full and timely restitution and to prompt consideration and a prompt decision from the appellate court remedying those rights. Ohio Constitution, Article I, Section 10a(A)(7), 10a(B). Relator’s actions throughout the procedural history of this case are designed to deprive Ms. xx of her constitutional rights.

Under the federal Crime Victims’ Rights Act (CVRA), which is comparable to Ohio Constitution, Article I, Section 10a, victims may petition appellate courts to uphold and enforce their rights. 18 U.S.C. 3771(d)(3). This includes the right to defend their victories. *See generally U.S. v. Laraneta*, 700 F.3d 983, 986 (7th Cir. 2012). In *Laraneta*, the victims sought to intervene in the appellate action, not to appeal, but to defend the award they received in the lower court action. *Id.* The court reasoned that their case for joining the appellate proceeding was compelling because the victims had a financial stake in the case and could not be certain that any party had

an interest in defending it. *Id.* The government did not have a financial stake in their restitution award, and, therefore, could not defend the restitution award if the award was challenged by the defendant in his appeal from his sentence, leaving the victim with no recourse. *Id.* Further, the court held that “[p]articipation as amici curiae would not be an adequate substitute, for as nonparties they could not seek rehearing or rehearing en banc or review by the Supreme Court, should our decision go against them.” *Id.*

Here, Ms. xx’s victory is the scheduling of the restitution hearing to allow her to, again, present competent, credible evidence and be ordered constitutionally guaranteed restitution. Neither Respondent nor the State of Ohio has a financial stake in the restitution constitutionally guaranteed to Ms. xx. Relator will not defend Ms. xx’s right to restitution, as evidenced by the fact that he is appealing the trial court’s decision to set a hearing on restitution and is asking the Court in this case to permit him to intervene in Ms. xx’s mandamus action to prevent her from obtaining constitutionally guaranteed restitution. Thus, neither party to the case is motivated to protect Ms. xx’s interest in the outcome of this action. Therefore, like the victims in *Laraneta*, Ms. xx should be permitted to join this action.

Ms. xx filed a complaint for a peremptory writ of mandamus, seeking a restitution order. The trial court subsequently set a hearing on the restitution matter, presumably to hear evidence, and, if it determines the evidence supports it, to award restitution as required by the constitution. On the eve of the scheduled hearing, Relator filed a Notice of Appeal, which is the subject of Relator’s other pending action before this Court, divesting the trial court of jurisdiction to conduct the restitution hearing. Defendant’s excessive filings have effectively denied M.S.’s constitutional rights to “proceedings free from unreasonable delay and a prompt conclusion of the case” and the right to appellate review of trial court violations of victims’ rights through the

right to “petition the court of appeals for the applicable district, *which shall promptly consider and decide the petition.*” (Emphasis added.) Ohio Constitution, Article I, Section 10a(A)(8), (B). As such, Ms. xx should be permitted to join the instant appellate action to defend her victory, assert her rights, and defend her financial stake in this matter.

This Court has acknowledged that requiring an offender to pay restitution to the victim as a criminal sanction “serves both remedial and punitive purposes.” *State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, 41 N.E.3d 1178, ¶ 23. Importantly, this Court recognized that “the primary goal of restitution is remedial or compensatory” *Id.*, citing *Paroline v. United States*, 572 U.S. 434, 456, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014). Since the primary goal of restitution is to compensate victims of crime for their losses, it follows that victims have the most at stake in these cases when trial courts fail to order constitutionally mandated restitution and defendants attempt to divest courts’ authority to avoid a restitution order.

In addition to the fact that the instant motion meets the substantive requirements of Civ.R. 24(A), Ms. xx’s motion is also timely filed. Ms. xx is filing this motion before Respondent’s time to answer or file to dismiss has even elapsed. By all standards set forth in *State ex rel. N.G.*, this motion is timely. *See State ex rel. N.G.* at ¶ 23.

Ms. xx must be joined as a necessary party to this action. Civ.R. 19(A) provides that joinder is required when a person “claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest.” “Moreover, a party’s failure to join an interested and necessary party constitutes a jurisdictional defect that precludes the court from rendering a judgment in the case.” *Id.* at ¶ 27, citing *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 15, citing *Portage County Bd. of Comm’rs v. City of Akron*, 109

Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 99. For all of the reasons discussed above, Ms. xx has a substantial, constitutional interest in the subject of this action, and, as a practical matter, she will have no ability to protect that interest if this action proceeds without her intervention.

Finally, if this Court finds that mandatory intervention is not required, Ms. xx asks to be permitted to intervene as her claims and defenses share common questions of law and fact with the main action, pursuant to Civ.R. 24(B). Ms. xx's intervention will not unduly delay the proceedings or prejudice the adjudication of the rights of Relator or Respondent, as this motion is filed timely and Respondent has yet to file its answer.

IV. Conclusion

For the aforementioned reasons, Ms. xx respectfully requests that this Honorable Court permit her to intervene in this action.

Respectfully submitted,

/s Elizabeth Well
Elizabeth Well (0087750)
Ohio Crime Victim Justice Center
3976 North Hampton Drive
Powell, Ohio 43065
P: 614-848-8500
F: 614-848-8501
ewell@ocvjc.org
Attorney for Ms. xx

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following via the Supreme Court Electronic filing system and/or electronic mail, this 15th day of July 2019 upon:

Erika B. Cunliffe
Reg. No. 0074480
Cuyahoga County Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
P: 216.443.7583

Eighth District Court of Appeals
1 Lakeside Avenue, #202
Cleveland, Ohio 44113

Respondent

ecunliffe@cuyahogacounty.us

Attorney for Relator

/s Elizabeth Well
Elizabeth Well (0087750)