STATE OF MICHIGAN

COURT OF APPEALS

CITY OF WARREN,

Plaintiff-Appellee,

v

EXECUTIVE ART STUDIO, INC d/b/a THE VELVET TOUCH d/b/a THE VELVET FINGERS, H.C. MESK, TERRY WHITMAN a/k/a TERRY SHOULTES a/k/a MICHAEL GORDON, CHRISTY NEWSREEL SERVICES, INC., and FASHION DESIGNS,

Defendants-Appellants.

UNPUBLISHED
February 13, 1998

No. 197353
Macomb County Court
LC No. 96-003630-CZ

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Defendants appeal as of right from an injunction entered against them enjoining them from the use and occupancy of the property at 22640 and 22644 Van Dyke, Warren, Michigan, for violation of §§ 22.10 and 14.10 of the City of Warren zoning ordinance and enjoining them from the use of the property at 22640 Van Dyke, Warren, Michigan, for one year in accord with § 21-7 of the City of Warren zoning ordinance. We affirm.

Defendants argue that the trial court issued the injunction concerning matters which were the subject of a conditional permanent injunction entered in a previous case in violation of MCR 3.310(G)(1). MCR 3.310(G)(1) states:

> If a circuit judge has denied an application for an injunction or temporary restraining order, in whole or in part, or has granted it conditionally or on terms, later application for the same purpose and in relation to the same matter may not be made to another circuit judge.

An order granting permanent injunction and denying request for declaratory judgment was entered on December 6, 1982, in Macomb Circuit Court case no. 78-2669-CZ against Michigan Diversified Properties. Assuming that the permanent injunction issued in that case was conditional, we find that the permanent injunction in this case is not barred by MCR 3.310(G)(1) because it was not issued for the same purpose and in relation to the same matter as that issued in case no. 78-2669-CZ.[1]

The permanent injunction in case no 78-2669-CZ involved the same property as that involved in this case. Both cases issued the injunction as a result of a violation of § 14.02 which prohibited any adult uses within 500 feet of a residential district. As a result of the violation of § 14.02, a certificate of occupancy could not be issued as required by § 22.10. However, in the case at bar, the trial court also issued the injunction because the property was declared a nuisance per se pursuant to § 21-7 because of the continuous prostitution at 22640 Van Dyke. In addition, the parties in the cases were not the same. The previous injunction was issued against Michigan Diversified Properties, Inc., a corporation that is not a party in the present case. Accordingly, we find that MCR 3.310(G)(1) does not bar this action, and the trial court did not err in issuing an injunction concerning the same property that was the subject of a permanent injunction entered in Macomb Circuit Case no. 78-2669-CZ.

Defendants next argue the trial court's ruling should be reversed because plaintiff submitted an affidavit and police reports as exhibits to its supplemental and reply brief after it had asserted during an in-camera discussion that it would not present any testimony in support of its motion. Defendants have abandoned this issue by not citing any authority in support of their position. *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363.

Finally, defendants argue plaintiff did not establish that the property located at 22640 Van Dyke was a public nuisance. Plaintiff's public nuisance ordinance § 21-7 is similar to MCL 600.3801; MSA 27A.3801. The statute and ordinance declare, in part, that any building or place used for lewdness, assignation or prostitution or used by or kept for the use of prostitutes is a nuisance. In the injunction, the trial court enjoined defendants from the use of 22640 Van Dyke for violating § 21-7 of the City of Warren Ordinances.

The issuance of an injunction is within the discretion of the trial court. *Dafter Twp v Reid,* 159 Mich App 149, 163; 406 NW2d 255 (1987). In equity cases, this Court reviews the record de novo, with due deference given to the findings of the trial court. This Court will sustain the trial court's findings unless convinced that it would have reached a contrary result. *Kern v City of Flint*, 125 Mich App 24, 27; 335 NW2d 708 (1983).

Defendants contend the prostitution plaintiff alleged occurred at the property was sporadic and did not impose a continuing detrimental effect on the public. See *Michigan ex rel Prosecutor v Bennis,* 447 Mich 719 , 732; 527 NW2d 483 (1994), aff'd *Bennis v Michigan,* ___ US ___; 116 S Ct 994, 999; 134 L Ed 2d 68 (1996). We disagree. Plaintiff presented evidence to the trial court that over a ten month period from October 1994 to August 1995, the police arrested three women at defendants' massage parlor operation for prostitution. These arrests culminated in convictions for prostitution. Plaintiff also presented evidence that the police made another arrest for prostitution in March 1996.[2] We agree with the trial court that these arrests and convictions are adequate to confirm

that ongoing acts of illicit sexual behavior occurred at defendants' business. See *Michigan ex rel Wayne Co Prosecutor v Mesk*, 123 Mich App 111, 123-124; 333 NW2d 184 (1983). Accordingly, abatement was appropriate.

Defendants also argue that knowledge by defendants of the illicit sexual activities was a requirement for abatement. Knowledge is not a requirement for abatement under the Michigan nuisance abatement statute. *Michigan ex rel Wayne Co Prosecutor v Bennis, supra* at 737. Because plaintiff's ordinance was modeled after the Michigan statute, we find that plaintiff was not required to show that defendants knowingly permitted the illicit sexual acts.

Lastly, because defendants failed to raise the issue in their statement of questions presented, we regard as unpreserved defendants' contention, alluded to only in passing in their brief on appeal but asserted at oral argument, that the adult bookstore at 22644 Van Dyke was in existence prior to the ordinance requiring that adult uses be at least 500 feet from a residential district and therefore was a nonconforming use. *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). We observe, however, that defendants do not argue that the trial court erred in its determination that the issue was moot because defendants were operating without certificates of occupancy.

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Helene N. White

[1] In that case, Circuit Judge George Deneweth ordered, in relevant part, the following:

> IT IS ORDERED AND ADJUDGED that plaintiff's request for a Permanent Injunction restraining Defendant Michigan Diversified Properties from the operation of any of the proposed adult uses until it has complied with the City of Warren Ordinances be and hereby is granted.

[2] At the time of the lower court's ruling, this arrest had not yet resulted in a conviction. However, plaintiff indicates that the woman subsequently pleaded guilty to prostitution.