

STATE OF MICHIGAN
COURT OF APPEALS

JOHN LILLY,

Plaintiff-Appellant,

v

CITY OF LANSING,

Defendant-Appellee.

UNPUBLISHED

April 2, 1999

No. 208086

Ingham Circuit Court

LC No. 97-086968 CF

Before: O'Connell, P.J. and Jansen and Collins, JJ.

MEMORANDUM.

Plaintiff appeals by right from an order of Ingham Circuit Court granting summary disposition for defendant, pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction), in this action seeking the return of property seized for forfeiture under the relevant controlled substances provisions of the Public Health Code, MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.* We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's summary disposition ruling de novo. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998). MCL 600.605; MSA 27A.605 provides that the circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

Here, the trial court correctly concluded that its jurisdiction to review the forfeiture of the property is restricted by MCL 333.7523; MSA 14.15(7523), and that it lacked subject matter jurisdiction to order a return of the property where plaintiff had been duly notified of the intended forfeiture but had failed to file a claim contesting forfeiture and post bond in accordance with the statute. *In re Return of Forfeited Goods*, 452 Mich 659, 667-668; 550 NW2d 782 (1996); *Hollins v Detroit Police Dep't*, 225 Mich App 341, 347; 571 NW2d 729 (1997); *Derrick v City of Detroit*, 168 Mich App 560, 562-563; 425 NW2d 154 (1988), lv den 431 Mich 880 (1988).

Plaintiff contends that MCL 333.7523 and the above-cited case law is premised upon a lawful seizure and does not apply in this case because plaintiff's property was not lawfully seized in

accordance with right against unreasonable searches and seizures under the United States and Michigan Constitutions. We disagree. Because MCL 333.7523 provides a statutory procedure for contesting forfeiture claims in court, the statute is not based upon a presumption that the seizure was proper, but in fact anticipates that there may be meritorious grounds for challenging the seizure.

Plaintiff has not been deprived of a forum for raising his challenge to the constitutionality of the seizure. Fourth Amendment issues and arguments that the requisite probable cause for seizure was lacking may be raised in the in rem forfeiture proceedings contemplated by MCL 333.7523. See, e.g., *In re Forfeiture of United States Currency*, 164 Mich App 171; 416 NW2d 700 (1987), lv den 430 Mich 884 (1988). The statutory procedure affords an adequate remedy to ensure due process. *Derrick, supra*, at 563. As in the case of *In re Return of Forfeited Goods, supra*, plaintiff simply failed to pursue the statutory procedure for challenging the forfeiture claim after being duly advised of his right to do so.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins