STATE OF MICHIGAN

COURT OF APPEALS

STATE OF MICHIGAN and CITY OF GRAND RAPIDS, Plaintiffs-Appellants, v MASON CLARK, a/k/a MAYSON CLARK, and 1207 CASS AVENUE S.E., Defendants-Appellees.	UNPUBLISHED February 6, 2007 No. 263018 Kent Circuit Court LC No. 03-001690-CZ

Before: Sawyer, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order, following a bench trial, declaring real property at 1207 Cass Avenue S.E., in Grand Rapids, a nuisance, but not subject to forfeiture as property used to facilitate a violation of the controlled substances act, MCL 333.7201 *et seq*. We affirm.

Plaintiffs argue that the trial court erred in concluding that the property was not subject to forfeiture. This Court reviews a trial court's factual findings in a bench trial for clear error, and its conclusions of law are reviewed de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* This Court gives due regard to the trial court's superior ability to judge the credibility of witnesses who appeared before it. MCR 2.613(C).

Plaintiffs sought forfeiture under MCL 333.7521(1)(f), which provides that the following property may be forfeited:

> Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to

> forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent.

Plaintiffs were required to prove their case by a preponderance of the evidence. *In re Forfeiture of $1,159,420*, 194 Mich App 134, 146; 486 NW2d 326 (1992). For an asset to be forfeited because it was "used or was intended to be used to facilitate" a violation of the controlled substances laws, a court must find a substantial connection between the asset and the underlying criminal activity. Property is not subject to forfeiture if it has only an incidental or fortuitous connection with the unlawful activity. *Id*. Being the mere situs of a drug transaction does not subject real property to forfeiture. *In re Forfeiture of 45649 Maben Rd*, 173 Mich App 764, 772; 434 NW2d 238 (1988). Facilitation is a question of degree, "which in turn is a question of fact not readily amenable to generalization." *In re Forfeiture of 719 N Main*, 175 Mich App 107, 118; 437 NW2d 332 (1989).

Plaintiffs argue that the trial court clearly erred in finding that there was not a substantial connection between the property and drug trafficking that occurred there. They assert that the property was more than the mere situs of drug transactions, as the trial court found, and instead was the home base of the sellers' operation.

The evidence established that defendant's[1] relatives and their friends frequently conducted drug sales on the property's front porch or in front of it, leading the trial court to conclude that the property was a nuisance. However, there was no evidence that defendant was involved in any drug sales and no drugs were ever found in his apartment during the time period at issue at trial. On the contrary, the evidence established that no one ever saw defendant use or sell drugs. Further, there was no direct evidence that defendant ever witnessed any drug transactions, although he was aware that they occurred outside and attempted to disperse those who congregated on the porch or the sidewalk in front of the property. There was considerable testimony that defendant sought to prevent drug activity on the premises, and the trial court so found.

Plaintiffs argue that despite the fact that defendant was not the violator of the act, forfeiture of the property was proper because his maintenance of it facilitated his relatives' violations. Although plaintiffs assert that drugs would not have been sold in the neighborhood but for 1207 Cass, witnesses testified that drug use and sales occurred in the vacant lots beside 1207 Cass, in the alley behind it, and at the party store on the corner. Defendant's son, who resided at 1207 Cass, testified that although the drug dealing had decreased in the vacant lots since the police set up a command center in one of them, the trafficking had simply moved down the street. The evidence did not show that the only drug dealers in the area were defendant's relatives operating from 1207 Cass.

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[1] As used in this opinion, the singular term "defendant" refers to defendant Mason Clark.

Plaintiffs assert that the nexus between the drug trafficking and the property was sufficient because the house facilitated, i.e., made easier, the drug dealing, citing *In re Forfeiture of 719 N Main, supra* at 112 (noting this dictionary definition). But the test is not whether the property merely made the violation easier; but whether the property is substantially connected to the illegal activity.[2] For the same reason, we reject plaintiffs' "proximate cause" argument. Considering the evidence as a whole, the trial court did not clearly err in finding that being a convenient location in a drug-infested neighborhood was sufficient to establish a substantial connection between 1207 Cass and the drug trafficking. The dealing always occurred outside the house. And although officers testified that they observed defendant's relatives go inside the house for short periods of time and subsequently conduct a drug transaction, plaintiffs presented no direct evidence that these persons obtained the drugs from inside the house. Witnesses testified that these dealers who were arrested did not reside at 1207 Cass at the time of trial, although they may have given it as their address.

For these reasons, the trial court did not clearly err in finding that the evidence failed to establish a sufficient nexus between the drug sales and defendant's property to subject the property to forfeiture as property used to facilitate a violation of the controlled substances act.

Plaintiffs next argue that the trial court abused its discretion by excluding evidence. We review the trial court's evidentiary decisions for an abuse of discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). The abuse of discretion standard is deferential and acknowledges that there is no single correct outcome. When a trial court chooses a reasoned and principled outcome, it does not abuse its discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Plaintiffs challenge the trial court's decisions to exclude evidence of (1) defendant's 1988 charge for possession of marijuana, (2) the arrest of Alexander Clark, defendant's great-grandson, for possession of marijuana at 1215 Cass, and (3) several search warrant affidavits.

Plaintiffs assert that defendant's charge rebutted his testimony that no drugs were ever found in his apartment. However, defendant was never convicted of the charge and, therefore, it was never established that the substance was, in fact, marijuana.[3] Also, the charge stemmed from a search that occurred six years before the earliest evidence plaintiffs presented regarding drug usage and sales at 1207 Cass. Under the circumstances, the trial court did not abuse its discretion in excluding this evidence.

Regarding Alexander Clark's arrest, plaintiffs assert that the evidence was relevant because it rebutted defendant's testimony that Clark was not connected to the drug activity that

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[2] Our Supreme Court announced the "substantial connection" test in *In re Forfeiture of $5,264*, 432 Mich 242, 262; 439 NW2d 246 (1989), which was decided a few months after *In re Forfeiture of 719 N Main, supra*.

[3] Defendant denied that the substance was marijuana.

occurred on either side of his property, and showed that defendant's relatives were attracted to the area because of defendant's home. The trial court recognized that an argument could be made that there was an attenuated connection between Alexander's arrest and 1207 Cass, but stated that it had been presented with sufficient evidence regarding activities at 1207 Cass so there was no need to present evidence regarding 1215 Cass. While we agree, as the trial court apparently did, that the evidence was marginally relevant, the crux of the trial regarding the forfeiture claim was whether 1207 Cass was substantially connected to the drug activity. A trial court's decision on a close evidentiary question is ordinarily not an abuse of discretion. *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003). Here, the trial court's ruling was within the range of principled outcomes and, therefore, was not an abuse of discretion. *Maldonado, supra* at 388.

Lastly, we address the trial court's exclusion of the search warrant affidavits. Because plaintiffs only sought admission at trial under MRE 803(8) (public records exception), their argument on appeal that the evidence was admissible under the catch-all exception, MRE 803(24), is unpreserved. See *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Therefore, we review the issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Plaintiffs sought to admit statements made in the search warrant affidavits by confidential informants. To be admissible under the catch-all exception to the hearsay rule, a hearsay statement must have circumstantial guarantees of trustworthiness equal to the specified exceptions, must tend to establish a material fact, must be the most probative evidence on that fact which the offering party could produce through reasonable efforts, must serve the interests of justice, and must have been the subject of advance notice of the offering party's intent to introduce it. *People v Katt*, 468 Mich 272, 290; 662 NW2d 12 (2003).

Plaintiffs assert that the affidavits had the necessary indicia of trustworthiness required for admission under MRE 803(24) because they were reviewed by a district court and resulted in the issuance of search warrants. While there is no complete list of factors to consider whether a statement has equivalent guarantees of trustworthiness, the guidelines listed by our Supreme Court all involve assessing the declarant. *Id*. at 291 n 11. Here, the declarants were confidential informants and no evidence was presented to allow an assessment of the trustworthiness of their statements. The sufficiency of the affidavits in forming probable cause for a search warrant does not render the confidential informants' statements inherently trustworthy. Furthermore, plaintiffs did not give the advanced notice required under this exception. Therefore, we find no plain error in the exclusion of this evidence.

In their final issue, plaintiffs argue that the trial court erred in viewing the neighborhood surrounding 1207 Cass without first notifying the parties and giving them an opportunity to be present. Because plaintiffs fail to cite any authority in support of their position, appellate relief is not warranted. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). Even if we

considered the issue, we would find that any error[4] was harmless because it is apparent that the trial court's view of the area was not decisive to the outcome.

Affirmed.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Helene N. White

[4] We note that MCR 2.513(B) authorized the trial court to view the property, but it was required to give the parties notice and an opportunity to be present. *Travis v Preston (On Rehearing)*, 249 Mich App 338, 349; 643 NW2d 235 (2002).