STATE OF MICHIGAN

COURT OF APPEALS

In re FORFEITURE OF 1998 DODGE DAKOTA.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

1998 DODGE DAKOTA,

Defendant,

and

THOMAS EDWARD FAUNCE,

Claimant-Appellant.

UNPUBLISHED
October 16, 2012

No. 307774
Wayne Circuit Court
LC No. 11-008257-CF

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

In this action for abatement of a public nuisance, claimant appeals as of right from the trial court's judgment that abated his interest in a 1998 Dodge Dakota. We reverse because the complaint was not timely filed and because the vehicle was not used for lewdness, assignation, or prostitution.

On May 19, 2011, the claimant drove the subject vehicle to an area known for prostitution. Law enforcement officers observed a known prostitute approach and enter the claimant's vehicle, converse with the claimant, and then exit the vehicle. The vehicle drove away and was stopped by the police. The driver, claimant, told police officers that he knew the woman and that he had given her money for food. At the forfeiture trial, plaintiff argued that the claimant was "aiding in [the woman's] illegal employment by providing the food so that she can continue with her prostitution activity." The trial court found that claimant, knowing that the woman was a prostitute, gave her money as well as "warmth and comfort when she got into his vehicle." The court determined that his actions aided and abetted acts of prostitution and, therefore, the vehicle was subject to forfeiture.

On appeal, claimant does not challenge the trial court's factual findings, but argues that those findings are insufficient to establish conduct within the scope of the abatement statute. We agree. Whether the facts, which were essentially undisputed, fell within the scope of the abatement statute presents a legal question that is reviewed de novo. *Attorney General v PowerPick Player's Club of Mich*, 287 Mich App 13, 28; 783 NW2d 515 (2010).

MCL 600.3801 defines a public nuisance subject to abatement as "[a]ny building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution . . . , or used by, or kept for the use of prostitutes[.]" The trial court did not find that the vehicle was used for the purpose of lewdness, assignation, or prostitution, or used or kept for the use of prostitutes. Cf. *Mich ex rel Wayne Co Prosecutor v Bennis*, 447 Mich 719; 527 NW2d 483 (1994); aff'd *Bennis v Mich*, 516 US 442; 116 S Ct 994; 134 L Ed 2d 68 (1996) (vehicle used for transportation to area known for prostitution and vehicle used as site for fellatio by a known prostitute). Instead, the court found that the statute was satisfied because claimant furnished the woman money for food and also used his vehicle to provide her with warmth and comfort. Because the statute does not refer to any of those purposes, and those purposes do not involve lewdness, assignation, or prostitution, the statutory standard for the vehicle to be a public nuisance subject to abatement was not satisfied.

Moreover, we agree with claimant that the complaint was not timely filed because it was not filed within 30 days after the alleged act involving the vehicle. MCL 600.3815(3) states:

> It is not necessary for the court to find the property involved was being used as and for a nuisance at the time of the hearing, or for the plaintiff to prove that the nuisance was continuing at the time of the filing of the complaint, if the complaint is filed within 30 days after any act, any violation, or the existence of a condition herein defined as a nuisance, but on finding that the material allegations of the complaint are true, the court shall render judgment and order of abatement as hereinafter provided.

The act alleged in the complaint as the basis for the request to abate the claimant's interest in his vehicle occurred on May 19, 2011. The complaint was filed on July 11, 2011. Plaintiff contends that the nuisance was "continuing at the time of the filing of the complaint" because the plague of prostitution persisted in the area. However, the complaint did not contain any allegations of an act, violation, or condition concerning the subject vehicle within 30 days of the filing of the complaint. A similar situation arose in *State ex rel Attorney General v Robinson*, 250 Mich 99; 229 NW 403 (1930). In that case, the plaintiff filed an action to abate the nuisance use of several apartments in a 50-unit complex. The bill alleged an act of prostitution in one of the apartments (Apartment 404) within 30 days of filing. The trial court found that the nuisance use had been made of several other apartments over a period of 26 months and closed them. Applying a statute substantively similar to MCL 600.3815, the Supreme Court reversed with respect to apartments other than unit 404. The Court explained:

> The proceeding herein is to abate the offensive use of designated places. The quoted statute qualifiedly avoids the common law rule that a court will not decree the abatement of a nuisance abated in fact before suit. The statute lays down a rule contingent upon a bill being filed within thirty days after a violation

> in a particular place. If a bill is so filed, the court need not find nuisance use of the place at the time of the hearing or a continuing nuisance at the time the bill was filed. Two purposes appear, one saving jurisdiction, in case of voluntary abatement during suit, and the other authorizing restraint, even in case of voluntary abatement within thirty days before suit.
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> The apartments in the building are dwelling places, each one distinct and as private and individual as though built alone and not grouped with others.
>
> The court found a nuisance use of apartment 404, within the period of thirty days before suit, and not only decreed the locking of that apartment but twenty-one others, in which no nuisance use was shown within the thirty-day period, and some in point of time two years removed. The court was in error in locking apartments aside from No. 404, and decree here will excise such excess of authority. [*Id*. at 102-103.]

Similarly, the trial court in the present case did not have authority to abate claimant's vehicle in the absence of any allegation that it had been used as a nuisance within the last 30 days.

Although plaintiff cites *People v One 1979 Honda Auto*, 139 Mich App 651, 656-657; 362 NW2d 860 (1984), in support of its contention that the complaint was timely filed because the forfeiture proceedings were "promptly" initiated, that case involved a forfeiture under a different statute, one that required "prompt" action. Accordingly, plaintiff's reliance on that case is misplaced.

Because the complaint does not allege an act involving the illicit use of the vehicle within 30 days before the filing of the complaint, the complaint was not timely filed and reversal is required on this basis as well.

Reversed.

/s/ Kathleen Jansen
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro