

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF \$4,673.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

\$4,673 UNITED STATES CURRENCY, REAL
PROPERTY AT 2939 PARK STREET,
DETROIT, 2004 CHEVROLET TRAILBLAZER,
and 1996 CHEVROLET IMPALA,

Defendants,

and

JONATHAN MAURICE ADAMS,

Claimant-Appellant,

and

DAWN SHAREE LEWIS, a/k/a DAWN SHAREE
ADAMS, and KEVIN MAURICE JACKSON,

Claimants.

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Claimant appeals by right the circuit court's final judgment ordering the forfeiture of his real property located at 2939 Park Street in Detroit. We vacate the judgment of forfeiture and remand for further proceedings consistent with this opinion.

The property at issue was the subject of a consent judgment entered on June 27, 2005, in *People v 2939 Park Street*, Wayne Circuit Court No. 04-432108-CF. That consent judgment

required claimant to rehabilitate the property immediately. It also ordered the named defendants, including claimant, “not to permit the Property to be occupied by any person who engages in drug activity[.]” The consent judgment further provided:

IT IS FURTHER ORDERED that Plaintiffs shall request a Show Cause Hearing to determine whether title to the Property should transfer to Plaintiff, Wayne County Prosecuting Attorney, if Defendants fail to:

* * *

- (ii) prevent further drug activity at the Property, as defined herein[.]

The consent judgment stated that it was “in effect for a period of three (3) years, unless title transfer is shown”

Plaintiff filed the present forfeiture action on April 20, 2006. Significantly, the complaint for forfeiture did not rely on, or even refer to, the consent judgment entered in Wayne Circuit Court No. 04-432108-CF. Instead, the complaint referred to the forfeiture statute, MCL 333.7521, and a history of drug transactions and confiscations that had allegedly occurred at the property on June 3, 1996, May 21, 2003, November 1, 2003, September 4, 2004, March 8, 2006, March 15, 2006, March 20, 2006, and March 23, 2006. At the conclusion of a bench trial in June 2010, the circuit court did not address any statutory basis for forfeiture and instead ordered forfeiture of the property “based on the violation of the consent agreement[.]”

Claimant first argues on appeal that the circuit court lacked jurisdiction because the consent judgment controlled the forfeiture proceedings and plaintiff did not follow its terms. Whether the circuit court has jurisdiction over a particular case is a question of law that this Court reviews de novo. *Sierra Club Mackinac Chapter v Dep’t of Environmental Quality*, 277 Mich App 531, 544; 747 NW2d 321 (2008).

“A forfeiture proceeding pursuant to MCL 333.7521(1)(f) is a proceeding in rem,” in which the subject property is “the ‘offender’ and the ‘claimant’ is the owner, or perhaps only a possessor, of the item in question.” *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007). In general, “‘possession or control over the subject matter or res is essential to the court’s jurisdiction to enter a judgment.’” *In re Forfeiture of 301 Cass Street*, 194 Mich App 381, 387; 487 NW2d 795 (1992) (citation omitted).

Claimant invokes the doctrine of “prior exclusive jurisdiction,” which recognizes that “courts may not assume in rem jurisdiction over a res that has already come under the jurisdiction of another court[.]” *In re Forfeiture of Certain Personal Prop*, 441 Mich 77, 85; 490 NW2d 322 (1992) (italicization omitted). The doctrine provides that once a court has exercised its jurisdiction over an item, the court’s “‘authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of; and no court of co-ordinate authority is at liberty to interfere with its action.’” *Id.* (citation omitted). “For a court to possess ‘co-ordinate authority’ the ‘two proceedings must be in all respects identical, as to the identity of the parties, the subject matter involved, the nature of the remedies, and the character of the relief sought.’ Where the two proceedings are not identical, there is no conflict of jurisdiction.” *Id.* (citation omitted).

The doctrine does not apply in this case because the remedies were not the same and the first action had concluded. The parties involved in the first action (plaintiff, the property, and claimant) were also involved in the present action. Moreover, identity of the subject matter was shown because the property involved in the first action (2959 Park Street) was also involved in the second action. See *In re Forfeiture of Certain Personal Prop*, 441 Mich at 85-86. The remedies that were sought, however, were different. The relief sought in the first action included a declaration that the property was a nuisance and an order allowing specific steps to abate the nuisance. The present action sought forfeiture of the property. In addition, the first action ended with the entry of a consent judgment that provided, “This Judgment resolves the last pending claim and closes this case.” Although the terms of the consent judgment provided that it remained in effect for three years after its entry, the judgment did not specify that the judge who entered it retained jurisdiction to enforce it. As this Court has acknowledged in another context, the potential for disputes in the future does not reduce the finality of a consent judgment. See *Detroit News, Inc v Detroit*, 185 Mich App 296, 303; 460 NW2d 312 (1990). Therefore, we conclude that the doctrine of prior exclusive jurisdiction did not preclude the circuit court from exercising jurisdiction in the present forfeiture action.

Claimant also argues that the circuit court erroneously relied on the consent judgment, which had expired by the time of trial. He further contends that the court’s findings were inadequate because they did not address the standards set forth in the consent judgment.

“A trial court’s decision in a forfeiture proceeding will not be overturned unless it is clearly erroneous. A finding is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made.” *In re Forfeiture of \$180,975*, 478 Mich at 450.

We agree that the circuit court’s forfeiture judgment must be vacated, but for reasons different than those advanced by claimant. The circuit court relied on the prior consent judgment as the basis for its forfeiture judgment. However, the present action was not an action for enforcement of the consent judgment. As plaintiff emphasizes, the complaint sought forfeiture under the forfeiture statute, MCL 333.7521, and did not refer to the prior consent judgment. Real property is subject to forfeiture under MCL 333.7521(1)(c) if it is “‘used, or intended for use, as a container’ for illegal narcotics or for materials, products, or equipment used, or intended for use, in manufacturing or distributing illegal narcotics.” *In re Forfeiture of 19203 Albany*, 210 Mich App 337, 340; 532 NW2d 915 (1995). Real property is also subject to forfeiture under MCL 333.7521(1)(f) as “‘[a]nything of value . . . that is used or intended to be used to facilitate any violation’ of the controlled substances act.” *In re Forfeiture of 19203 Albany*, 210 Mich App at 340 (citation omitted). With respect to both of these provisions, plaintiff was required to establish by a preponderance of the evidence a “substantial nexus” (also referred to as a “substantial connection”) between the real property in question and the underlying illegal transaction. *In re Forfeiture of \$5,264*, 432 Mich 242, 260-262; 439 NW2d 246 (1989); see also *In re Forfeiture of 301 Cass Street*, 194 Mich App at 384. Our Supreme Court has expressly rejected a test that would allow the forfeiture of property upon a showing that the property has been used “in any manner” connected with an unlawful drug transaction. *In re Forfeiture of \$5,264*, 432 Mich at 262.

In this case, the circuit court did not make any findings of fact or conclusions of law that addressed the statutory standards. Instead, it determined that the property should be forfeited because the “consent agreement was violated on at least three occasions after the consent agreement was entered into.” Because the complaint for forfeiture was not based on the consent judgment, and the circuit court failed to address the statutory bases under which forfeiture was sought, we must vacate the judgment of forfeiture and remand this case to the circuit court for a determination whether plaintiff established a proper statutory basis for forfeiture under MCL 333.7521.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen