

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re FORFEITURE OF 1999 FORD CONTOUR.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

1999 FORD CONTOUR,

Defendant,

and

FREDDIE BURSE,

Claimant-Appellee/Cross-  
Appellant.

UNPUBLISHED

February 2, 2012

No. 300482

Wayne Circuit Court

LC No. 10-002976-CF

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Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

In this forfeiture action, plaintiff appeals as of right from a circuit court order granting the claimant's motion for summary disposition pursuant to MCR 2.116(C)(10).<sup>1</sup> The claimant has filed a cross appeal, challenging the trial court's denial of his request for sanctions. We affirm in part, reverse in part, and remand for entry of an order granting summary disposition in favor of plaintiff.

I. BACKGROUND

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<sup>1</sup> The claimant moved for summary disposition under MCR 2.116(C)(8) and (10). The trial court did not specify under which subrule it granted the motion. However, because the parties' arguments that addressed the limited connection between the claimant's vehicle and the attempted drug transaction relied on evidence outside the pleadings, review is appropriate under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

This case concerns the forfeiture of a vehicle titled in the claimant’s name, and the material facts are undisputed. Plaintiff alleged that the claimant’s wife drove the vehicle to an address where an officer was working undercover. She walked from the vehicle to the side of the house and attempted to purchase two bags of marijuana. An undercover officer told her to return in 15 minutes. After she drove away, a unit conducted a traffic stop of the vehicle. The complaint alleged that the vehicle was subject to forfeiture on several statutory grounds, including because under MCL 333.7521(1)(d) the vehicle was used in an attempt to purchase marijuana. The trial court granted summary disposition to the claimant because it agreed with the claimant that, to the extent MCL 333.7521(1)(d) applied, the exception in § 7521(1)(d)(iii) – relating to the possession of marijuana – also applied.

## II. ANALYSIS

### A. FORFEITURE ACTION

A motion for summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo issues involving statutory interpretation. *Bloomfield Twp v Oakland Co Clerk*, 253 Mich App 1, 9; 654 NW2d 610 (2002).

In interpreting statutes, “[w]e begin our analysis by consulting the specific statutory language at issue.” *Bloomfield Twp*, 253 Mich App at 10. Additionally,

[w]hen faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature’s intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature’s intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Id.* (citation and internal quotation marks omitted).]

Forfeiture actions pursuant to MCL 333.7521 are in rem proceedings. *In re Forfeiture of \$30,632.41*, 184 Mich App 677, 678; 459 NW2d 99 (1990). Although forfeitures are generally not favored in the law, the forfeiture provisions within the controlled substances act are a part of the Public Health Code and are intended to promote the health, safety, and welfare of Michigan’s citizens. *In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 184-185; 454 NW2d 201 (1990). On appeal, plaintiff only contends that the vehicle was subject to forfeiture pursuant to MCL 333.7521(1)(d), which states in pertinent part:

(1) The following property is subject to forfeiture:

\* \* \*

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner

to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):<sup>[2]</sup>

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(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).<sup>[3]</sup> [Footnotes added.]

This Court has held that MCL 333.7521(1)(d) clearly indicates that a vehicle used to transport a customer to and from the home of an illicit drug dealer for the purpose of purchasing controlled substances is subject to forfeiture. *Forfeiture of 1987 Chevrolet Blazer*, 183 Mich App at 183-185. The vehicle at issue here was used by claimant's wife to transport her to a house to purchase marijuana, a controlled substance. Hence, unless an exception applies, the vehicle was properly subject to forfeiture under the statute. See *People v One 1979 Honda Auto*, 139 Mich App 651, 655; 362 NW2d 860 (1984) (the mere possession of marijuana within a vehicle does not subject the vehicle to forfeiture).

However, as plaintiff argues, the plain reading of the exception found in MCL 333.7521(1)(d)(iii) reveals that it prohibits the forfeiture only when the vehicle merely contains a controlled substance, without additional evidence that the vehicle was also *used to facilitate* a marijuana transaction. This holds true because the exception references MCL 333.7403, which only prohibits the possession of marijuana. Thus, if a vehicle contains marijuana, and there is no evidence that it was used or intended to be used to facilitate the transportation for the sale or receipt of marijuana, the exception would apply because the only connection between the vehicle and the drug is its location. However, if as in this case, the evidence shows that the claimant intended to use the vehicle (or "conveyance") for the purpose of the sale or receipt of a drug, forfeiture is permitted under MCL 333.7521(1)(d).

This distinction, between mere possession of a controlled substance and possession "plus something more," is a distinction drawn by the controlling statutes, and is likewise contained in other statutory provisions. Specifically, under the controlled substances act— which categorizes illegal drug offenses – mere possession is distinct from other offenses, including possession with the intent to deliver marijuana. See *People v Broilo*, 58 Mich App 547, 550; 228 NW2d 456 (1975); MCL 333.7401; MCL 333.7403. Mere possession of marijuana, MCL 333.7403, occurs

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<sup>2</sup> Only the property described in subsection (a) applies to this case. MCL 333.7521(1)(a) provides, "[t]he following property is subject to forfeiture: (a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article."

<sup>3</sup> As discussed later, MCL 333.7403(2)(d) applies to this case because it proscribes the possession of marijuana. However, MCL 333.7404 does not because it proscribes the *use* of various controlled substances, including marijuana. Nor does MCL 333.7341(4) apply, because it prohibits the use or intended use of *imitation* controlled substances.

when (1) the defendant possesses a controlled substance; (2) the controlled substance in the defendant's possession is marijuana; and (3) the defendant knew that he was possessing marijuana. *People v Pegenau*, 447 Mich 278, 292; 523 NW2d 325 (1994). Possession with intent to deliver marijuana, MCL 333.7401, requires a showing that (1) the defendant knowingly possessed a controlled substance; (2) with the intent to deliver the controlled substance; and (3) the controlled substance was marijuana. *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). As can be seen from MCL 333.7401 and MCL 333.7403, to prove possession with intent to deliver marijuana, the prosecution must present additional evidence that a defendant intended "something more" than mere possession of marijuana.

Likewise, under the forfeiture statute the plaintiff must prove "something more" in addition to mere possession to avoid the exception found in MCL 333.7521(1)(d)(iii). That is, the plaintiff must prove that the claimant used a conveyance to facilitate the sale or receipt of a controlled substance. Under MCL 333.7521, this Court has defined "facilitate" to mean to "make easier." *In re Forfeiture of 719 North Main*, 175 Mich App 107, 112; 437 NW2d 332 (1989). Hence, where the plaintiff provides evidence that demonstrates – as the evidence here does – that a claimant used a vehicle with the intent to facilitate a drug transaction, the vehicle is properly subject to forfeiture pursuant to MCL 333.7521(1)(d) because the plaintiff has proven that in addition to mere possession, the use of a vehicle to buy or sell marijuana, has occurred.<sup>4</sup> The trial court erred in granting the motion for summary disposition in favor of the claimant. On remand, the trial court shall vacate its order granting the motion for summary disposition in favor of the claimant and enter an order granting summary disposition in favor of plaintiff.

As an alternative basis for affirmance, the claimant argues that he was entitled to summary disposition on the basis of the innocent owner exception in MCL 333.7521(1)(d)(ii), which states, "[a] conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent." In support of his motion, the claimant submitted an affidavit in which he averred that he was the owner of the vehicle, that he "was not involved in any way in the incident that led to the claim for forfeiture and seizure of the vehicle," and that he "was not operating the vehicle at that [sic] time that my wife allegedly went to purchase marihuana nor did I accompany her on that trip." The averments do not establish that the claimant was entitled to summary disposition under the innocent owner exception. The claimant did not state that he did not have knowledge of or consent to his wife's acts. Cf. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 252; 805 NW2d 217 (2011) ("The statute's requirement that the claimant lack 'knowledge or consent' of the acts or omission forming the basis for forfeiture

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<sup>4</sup> The claimant's reliance on *In re Forfeiture of 1987 Mercury*, 252 Mich App 533; 652 NW2d 675 (2002) is misplaced. In that case, this Court held that a prevailing claimant in a drug forfeiture action had no responsibility for the towing or storage fees associated with the plaintiff's forfeiture of a vehicle. *Id.* at 548. The court did not address whether the trial court correctly applied the forfeiture exception, and neither towing nor storage fees are at issue in this case. Thus, this case does not support the claimant's position.

means the innocent owner defense is defeated if the claimant has either knowledge of ‘or’ consented to the illegal activity.’”).

## B. SANCTIONS

On cross-appeal, the claimant argues that the trial court erred by denying his motion for sanctions. This Court reviews for clear error the trial court’s finding in regard to whether a claim is frivolous for purposes of awarding sanctions. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 195; 565 NW2d 887 (1997). The crux of the claimant’s argument for sanctions is that the complaint lacked legal merit. However, for the reasons previously discussed, plaintiff’s argument concerning the interplay between MCL 333.7521(1)(d) and § 7521(1)(d)(iii) is well-founded. Consequently, plaintiff’s claim was not frivolous and the trial court properly declined to apply sanctions.

Affirmed in part, reversed in part, and remanded for entry of an order granting summary disposition in favor of plaintiff. We do not retain jurisdiction.

No costs, a question of public importance being involved. MCR 7.219(A).

/s/ Christopher M. Murray

/s/ Michael J. Talbot