STATE OF MICHIGAN

COURT OF APPEALS

STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 10, 2012
v	No. 303575 Alpena Circuit Court
JACK MCDONALD and EDWARD J. BENOIT, d/b/a THE HEALTH CENTER, Defendants-Appellants.	LC No. 11-003968-CZ

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

MEMORANDUM.

Defendants, Jack McDonald and Edward J. Benoit, appeal as of right from a permanent injunction, enjoining their business, The Health Center, from any engaging in patient-to-patient sales of marihuana. This matter concerns the application of Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, as it relates to sales between eligible patients which are facilitated by a third party. We affirm.

The facts are largely uncontested. Defendants run a business in Alpena Township known as The Health Store. Operating as a dispensary, The Health Store provided marihuana and hashish to Alpena County residents that possess a medical marihuana card. Defendants sought to supply marihuana to new cardholders who had not yet grown their own marihuana. Defendants' business model is one where excess marihuana is taken in from patients who cultivate a surplus and then sold to other patients.

The Alpena County Prosecutor's Office sued defendants to preliminarily and permanently enjoin their patient-to-patient transfers on the ground that the 60 patients serviced by The Health Store exceeded the 10 patients the two defendant caregivers were allowed to provide marihuana under the MMMA. The court issued the permanent injunction enjoining the patient-to-patient sales as a nuisance, concluding that the MMMA does allow gratuitous transfers between patients but does not allow such transfers as sales.

Resolution of this appeal is controlled by *People v McQueen*, 293 Mich App 644, ___NW2d ___ (2011), which specifically addressed whether patient-to-patient sales of sales of marihuana are authorized under the MMMA:

> . . . The "medical use" of marihuana, as defined by the MMMA, allows for the "delivery" and "transfer" of marihuana, but not the "sale" of marihuana. MCL 333.26423(e). We may not ignore, or view as inadvertent, the omission of the term "sale" from the definition of the "medical use" of marihuana. . . . Therefore, the "medical use" of marihuana does not include the "sale" of marihuana, i.e., the conveyance of marihuana for a price.
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> [Section] 4(e) authorizes a registered primary caregiver to receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. MCL 333.26424(e). However, § 4(e) goes on to state that "[a]ny such compensation shall not constitute the sale of controlled substances." *Id.* This quoted sentence would not be needed if the definition of the "medical use" of marihuana included the "sale" of marihuana. No statutory provision should be rendered nugatory. *Apsey v Mem Hosp*, 477 Mich 120, 131; 730 NW2d 695 (2007). Consequently, § 4(e) actually supports the conclusion that the "medical use" of marihuana does not include the "sale" of marihuana. [*McQueen*, 293 Mich App at ____, slip op pp 12-14.]

McQueen clearly compels the result in this case – the medical use of marihuana does not include patient-to-patient sales of marihuana.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly