

STATE OF MICHIGAN  
COURT OF APPEALS

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STATE OF MICHIGAN and KRISTINE DORER,

UNPUBLISHED

June 5, 2007

Plaintiffs,

and

CITY OF GRAND RAPIDS

Plaintiff-Appellant,

v

No. 266154

Kent Circuit Court

JELTE JANSMA and JANINE JANSMA,

LC No. 03-007750-CZ

Defendants-Appellees,

and

854 HAZEN SE,

Defendant.

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Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff City of Grand Rapids (the City) appeals as of right the trial court’s judgment and order, entered following a bench trial, declaring the real property at 854 Hazen Street SE in Grand Rapids a nuisance, but not subject to forfeiture as property used to facilitate a violation of the controlled substance provisions of the public health code (PHC), MCL 333.7201 *et seq.* We affirm.

Plaintiffs sought forfeiture of the subject property under MCL 333.7521(1)(f), which permits the forfeiture of “[a]ny thing of value . . . that is used or intended to be used to facilitate any violation” of the controlled substance provisions of the PHC. Property is not subject to forfeiture, however, if it has “only an incidental or fortuitous connection to the unlawful activity.” *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 146, 486 NW2d 326 (1992). Thus, 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). Rather, the property must have a substantial connection to the controlled substance activity. *In re Forfeiture*

of \$5,264, 432 Mich 242, 244-245; 439 NW2d 246 (1989). The question whether real property is subject to forfeiture as an item used to facilitate a violation of the controlled substance laws is one of fact for the trial court. *In re Forfeiture of 719 N Main*, 175 Mich App 107, 118-119, 437 NW2d 332 (1989). A trial court's findings of fact may not be set aside on appeal unless they are clearly erroneous. *In re Forfeiture of \$19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* After review of the record developed below, we are not left with such a conviction.

The forfeiture proceedings at issue arise from the illegal drug activities of the defendant property owners' sons. The trial court found that although the defendant owners "suffered an atmosphere wherein that activity flourished," they were not themselves "actively engaged in the specific conduct which gave rise" to the forfeiture proceedings. The court further found that the sons' drug violations involved amounts typically characterized as "user quantities," and were not confined to the defendant owners' home. The court thus found that the house was itself "largely incidental" to the activities of the property owners' sons and, therefore, not subject to forfeiture under MCL 333.7521(1)(f) as an item used to "facilitate" a violation of the controlled substance provisions of the PCH.

The City argues that the trial court erred in basing its decision regarding forfeiture, in part, on the small amount of marijuana found in the house. The City argues that the amount of marijuana found in the house is irrelevant to the determination whether the house had a substantial connection to controlled substance activity. Citing *In re Forfeiture of One 1978 Sterling Mobile Home*, 205 Mich App 427; 517 NW2d 812 (1994), and *In re Forfeiture of 719 N Main, supra*, the City asserts that small amounts of marijuana have justified forfeiture in previous cases. These cases are, however, distinguishable from the one at bar.

In *In re Forfeiture of One 1978 Sterling Mobile Home, supra* at 430-431, this Court held that the trial court's decision to deny forfeiture was clearly erroneous because the trial court focused *solely* upon the relatively small amount of marijuana found in the mobile home, and failed to take into account, among other things, that the claimant actually admitted to the police that she distributed marijuana from the mobile home sought to be forfeited. Here, the trial court did not look only at the small amount of marijuana involved, it also took into account the fact that the use and distribution of controlled substances occurred both at the house and away from the house, and it determined that the house was not substantially connected to the activity itself. Further, in this case, defendants denied distributing marijuana, and the trial court found that the marijuana distribution that occurred in the house occurred without their knowledge.

*In re Forfeiture of 719 N Main, supra*, is equally inapposite. There, a panel of this Court affirmed the trial court's determination that a claimant's house facilitated the distribution of controlled substances, although the evidence demonstrated only two sales of cocaine from the house in a two-month period. *Id.* at 114-115. The panel determined that merely making the controlled substance transactions easier was enough for a real property to have "facilitated" controlled substance activity. *Id.* at 115. Again, however, the claimant in that case admitted to the police that he "sold dope for a living." *Id.* at 109. As mentioned above, in this case, the trial court found that the marijuana distribution that occurred at 854 Hazen SE occurred without the owners' knowledge, and that the use and distribution of controlled substances occurred in numerous other locations, indicating that the house was not substantially connected to the

distributions. Deferring to the trial court's assessment of the evidence and superior ability to assess witness credibility, see *People v Shipley*, 256 Mich App 367, 373, 662 NW2d 856 (2003), we cannot conclude that the trial court clearly erred in determining that the house located at 854 Hazen Street SE did not facilitate the distribution of controlled substances. The trial court's findings of fact do not leave us with a definite and firm conviction that a mistake has been made.

The City further argues, however, that the trial court should have determined that the property was subject to forfeiture because the property made defendant Jelte Jansma's personal marijuana use and possession easier. Possession and use, like distribution, are also violations of the controlled substances provisions of the PHC, see MCL 333.7403 and MCL 333.7404, and thus may be the basis for forfeiture of real property. The trial court found that defendant Jelte was a, "more or less, regular marijuana user," and it acknowledged that forfeiture may be based upon use or possession of marijuana. Nevertheless, it determined that because Jelte was not actively growing or distributing marijuana, the house was merely "incidental to and the situs of these kinds of violations." As mentioned above, being the mere "situs" of controlled substance activity does not subject real property to forfeiture. *In re Forfeiture of 45649 Maben Rd, supra* at 772. Moreover, evidence was presented at trial that while Jelte was a "regular marijuana user," he did not use marijuana solely on the real property at issue, but in fact used marijuana away from the house because of his wife's disapproval. Affording the required deference, *Shipley, supra* at 373, we cannot conclude that the trial court clearly erred in determining that the house was merely incidental to Jelte's marijuana use and possession.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens