

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FORFEITURE OF \$10,146.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TEN THOUSAND ONE HUNDRED FORTY SIX
DOLLARS AND 00/100 CENTS (\$10,146.00) IN
U.S. CURRENCY,

Defendant,

and

ROSIE M. MCCOLLUM,

Claimant-Appellant.

UNPUBLISHED

May 20, 2014

No. 314611

Clinton County Circuit Court

LC No. 12-011006-CF

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Claimant appeals the trial court's award of summary disposition to plaintiff pursuant to MCR 2.116(C)(10). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves \$10,146 seized from claimant's grandson, Detwaun Hamilton, by the Michigan State Police (MSP). While Hamilton drove on Interstate 69 in Clinton County, a trooper ran his license plate number and discovered that Hamilton's license was suspended. The trooper pulled the car over, impounded it pursuant to MSP policy, and performed a routine pat down of Hamilton. He found \$1,119 in cash in Hamilton's pocket, which Hamilton claimed he received from his mother. The trooper then searched the car, and found a .380 caliber pistol concealed in a t-shirt on the floor of the front passenger side, as well as a shoebox in the trunk that contained \$9,027 in cash. Hamilton claimed that this large sum was from gambling winnings. Importantly, at no time did Hamilton state that claimant gave him the money to purchase a car.

The trooper then arrested Hamilton for driving with a suspended license. He also transported the money to the Lansing MSP post, where a drug-sniffing dog gave a positive indication that the money had come into contact with narcotics. The dog further indicated that the front of defendant's car had come into contact with narcotics as well. The trooper then informed Hamilton of his rights and questioned him. During the conversation, Hamilton gave conflicting accounts of how he acquired the money and how he intended to spend it. The trooper told Hamilton his money was seized as proceeds from violations of MCL 333.7521, *et seq.*, and served him with a Notice of Seizure and Intent to Forfeit.

In February 2012, claimant filed a claim under MCL 333.7523(1)(c). She asserted that the \$10,146 belonged to her and that she gave Hamilton the money so he could purchase a car. Plaintiff rejected claimant's contentions and filed a complaint in Clinton County Circuit Court. After a pre-trial conference, which scheduled a bench trial for January 2013, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10) because claimant did not respond to plaintiff's interrogatories, requests for document production, and requests for admission within 28 days, as mandated, respectively, by MCR 2.309(B)(4), 2.310(C)(2), and 2.312(B)(1).¹

The trial court addressed plaintiff's motion at a January 2013 hearing. Plaintiff reiterated its argument that claimant failed to respond to its request for admission by the required date, and emphasized that her failure to do so constituted admission to those requests—including one that she knew Hamilton received the money in exchange for drugs—therefore making the money subject to forfeiture. In addition, plaintiff stressed that Hamilton's conduct indicated that he received the money from his illicit activities, not his grandmother. Claimant stated that she thought she had additional time to respond to the requests for admission, and that Hamilton was not involved in the drug trade.

The trial court noted that Hamilton's actions, even when viewed in the light most favorable to claimant, did not support her claim, and granted plaintiff's request for summary disposition under MCR 2.116(C)(10). Claimant appealed to our Court, and argues that the trial court erred in granting summary disposition to plaintiff because a genuine issue of material fact exists as to whether the forfeiture was improper.²

¹ MCR 2.312(B)(1) reads:

Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

² Plaintiff makes a one sentence allegation in her brief that her case was improperly transferred to the Ingham County Prosecutor's Office. This claim is abandoned because it was not preserved below. "Generally, an issue is not properly preserved unless a party raises the issue before the trial court and the trial court addresses and decides the issue." *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). In addition, she fails to cite any authority to support her claim and fails to demonstrate how, if at all, this change affected her claim or prejudiced her. A party

II. ANALYSIS³

The Controlled Substances Act mandates that “[a]ny thing [sic] of value that is furnished or intended to be furnished in exchange for a controlled substance . . . that is traceable to an exchange for a controlled substance . . . including, but not limited to, money, negotiable instruments, or securities” is subject to forfeiture and may be seized as proceeds from violations of the act. MCL 333.7521(1)(f); MCL 333.7522. This power to seize property, however, is limited by MCL 333.7521(1)(f), which states: “[t]o the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner’s knowledge or consent.”

As such, an “innocent owner” can present a defense to reclaim the seized property if he did not have knowledge of or consent to the alleged criminal activity that formed the basis for the forfeiture. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 250; 805 NW2d 217 (2011). In the context of MCL 333.7521(1)(f), our Court has interpreted the word “knowledge” to “not include the concept of constructive knowledge”—i.e., “an innocent owner defense [is] defeated only by actual knowledge of the illegal activity.” *Id.* at 252–253. But a claimant’s “consent . . . might be implied from the circumstances even without knowledge.” *Id.* at 253. The “innocent owner” claimant bears the burden of establishing the affirmative defense. *In re Forfeiture of \$53*, 178 Mich App 480, 486; 444 NW2d 182 (1989). If claimant provides such proof, the plaintiff then must “produce clear and decisive evidence to negate the [innocent owner defense].” *Quantity of Marijuana*, 291 Mich App at 253.

Here, claimant’s suit has two fatal defects: one procedural, the other substantive. As noted, she failed to comply with MCR 2.312(B)(1) when she did not respond or object to plaintiff’s requests for admission by the required date. This inaction constitutes admission to those requests, which forecloses her ability to rely on the “innocent owner” defense. See MCR 2.312(B)(1); and *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991) (“where a party served with a request for admissions neither answers nor objects to the request, the matters in the request are deemed admitted”). Though the trial court seems not to have based its grant of summary disposition on these grounds alone, it would have been proper to do so. See *Gleason v Dept of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003) (“[a] trial court’s ruling may be upheld on appeal where the right result issued, albeit for the wrong reason”).

In any event, plaintiff presented “clear and decisive evidence” of how Hamilton received the money—through violations of the Controlled Substances Act—which the trial court found

may not “announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

³ Rulings on summary disposition are reviewed de novo, as are questions of statutory interpretation and the proper interpretation of court rules. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 249; 805 NW2d 217 (2011).

convincing. See *Quantity of Marijuana*, 291 Mich App at 253. As the trial court noted, this demonstration was enough to negate claimant's innocent owner defense.

Accordingly, claimant's appeal is without merit and the trial court properly granted plaintiff summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ William C. Whitbeck