

Beavercreek property owners file racketeering suit against neighbors growing marijuana

By
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The Oregonian

Portland, Ore. Two Beavercreek property owners are relying on a federal law usually reserved to fight organized crime to sue their neighbors, contending the people next door are engaged in racketeering by producing and selling marijuana.

Rachel McCart and Erin McCart, who own about 11 acres of fenced pastures and woodland off South Highland Crest Drive, say the operation harms their quality of life and diminishes the value of their land.

They filed the civil lawsuit in Portland against their neighbors, the multiple marijuana distribution businesses and stores that buy the marijuana and even the bank that holds a mortgage on the two adjacent plots where the marijuana grows.

The McCarts argue that any business producing or selling marijuana is a criminal enterprise and those who participate in the business should be subject to civil liability for causing injury to others.

The McCarts aren't the first to rely on the racketeering statute to stake a claim against neighbors involved in cultivating cannabis, and a recent federal appeals court ruling in a Colorado case may give their claims and the novel legal maneuver a boost.

The 10th U.S. Circuit Court of Appeals last month found that ranchers in Colorado alleged sufficient damages to invoke the Racketeering Influenced Corrupt Organizations Act in their suit against neighbors for growing marijuana.

The appeals panel reversed a U.S. District Court decision that had dismissed the ranchers' claims of noxious odors and lower property values as speculative.

In sending the case back to the district court, the appeals judges left the door open for something that legal experts and plaintiffs' attorneys say could pose a threat to the legal marijuana industry.

"I do see this as becoming a growing trend," said Brian Barnes, a lawyer for the nonprofit Safe Streets Alliance, which brought the racketeering suit on behalf of the Colorado ranchers. The Washington, D.C.-based group works to reduce illegal drug dealing and crime.

"The 10th Circuit ruling gives a green light to a property owner to seek damages if they're adversely affected by a bad smell

resulting from marijuana cultivation," Barnes said. "That decision is kind of a road map for future property owners affected by marijuana businesses."

Amy Margolis, a Portland lawyer who represents marijuana businesses, noted that the appeals court didn't rule on the substance of the case, just that it could move forward in court.

"I do think these cases pose an existential threat, but I think they'll fail on the merits of the claims," Margolis said.

Any claim of injury from noxious fumes, for example, would have to be "meaningfully substantiated," she said. For example, "What smells bad to some people may smell good to other people," she said. And farmland next to marijuana grows has been seen to actually increase in value, she said.

The multiple businesses named as co-defendants in the Oregon case also will question how they could be liable for the McCarts' claims, Margolis said. "There is no clear nexus," she said. "That is really taking this one or two or 10 steps too far."

The McCarts contend their neighbors converted a horse barn into a marijuana processing center and that cars from Washington, Idaho, California and Virginia regularly travel there, disrupting the couple's tranquil setting with its sweeping views of the Cascade foothills and Mount Adams.

The pot production and "powerful and unmistakable skunk-like stench of marijuana" have curtailed enjoyment of their vegetable garden and flowerbeds, riding their four horses on their pastures and tending to their "beloved pets' grave sites" on their land, the suit says.

When the odor is particularly strong, it keeps the McCarts from being outside, entertaining guests, eating meals on their deck or keeping their windows open, the suit says. They bemoan what they describe as noise from their neighbors' excavators operating until 3 a.m., diesel generators that disturb their peace, the loud barking of guard dogs that spooks their horses, trash along the road and a "jacked-up camouflage-painted" SUV that passes by with an "exceptionally loud engine."

The McCarts and others have had to lock their doors, install surveillance cameras and erect "No trespassing signs," according to the suit.

Constitution is the "supreme law of the land" and voids any conflicting state law.

The suit names 42 defendants and seeks three times the damage amount to the McCarts' property and other financial awards. Rachel McCart, a lawyer, signed the lawsuit. She has her own legal firm called Equine Legal Solutions and declined to comment on the suit.

Two of the defendants, Angie Kopsky and her fiancée Jeff Simonson, said the McCarts have their facts wrong. Kopsky and Simonson are tenants on property beside the McCarts' land, and run medical marijuana-growing operations.

"The McCarts are attempting to undermine the decisions of the state of Oregon and its citizens to legalize and regulate medical marijuana," Kopsky said in a prepared statement. "The McCarts' federal complaint is premised on falsehoods and at odds with the true facts. It is disappointing that the McCarts are trying to use the legal process to intimidate us and other lawful participants in Oregon's ground-breaking marijuana industries."

Two other defendants, Clifford Beddow and his wife, Carol Beddow, own a gated property just up the road from the McCarts and lease their property to Kopsky and Simonson, according to civil court records. Clifford Beddow said he couldn't comment because of the pending suit.

The appeals ruling in the Colorado case said the plaintiffs must prove that their business or property was injured, and that a violation of the racketeering law is the cause of the injury. The violation could include drug-related activity punishable under federal law, the judges said.

The appeals court found that cultivating marijuana for sale "is by definition racketeering activity" and that it's plausible that "the enterprise's foul emissions interfere with the use and enjoyment" of the ranchers' property.

The decision, however, came with a caution from the judges: "We are not suggesting that every private citizen purportedly aggrieved by another person, a group, or an enterprise that is manufacturing, distributing, selling, or using marijuana may pursue a claim under RICO. Nor are we implying that every person tangentially injured in his business or property by such activities has a viable RICO claim."

The Beddows are trying to protect their tenants' marijuana business as a "non-

conforming use" on their property under state land use law and have an appeal pending before the Oregon Land Use Board of Appeals, according to court records.

Kopsky and Simonson contend that McCarts filed the racketeering suit in retaliation for the Beddows and others trying to assert their rights before the state land board.

"We are attempting to reach an amicable settlement of the case filed against us and others by the McCarts in federal court alleging RICO liability. If we are unable to settle the case, we intend to dispute the claims and allegations stated in the McCarts' complaint," Kopsky and Simonson said in their statement.

Rob Bovett, legal counsel for the Association of Oregon Counties, said he's not surprised a federal racketeering lawsuit against marijuana growers has been filed now in Oregon. "We knew this was springing up in Colorado," he said.

He said he has repeatedly warned the marijuana industry of potential claims.

"It's a cautionary tale," Bovett said. "I think some people get into a green frenzy. But they must think carefully where they locate a marijuana business and make sure neighbors aren't going to be damaged economically as a result."

Marijuana grow stabbing

JACKSONVILLE, Ore. (AP) - A 28-year-old Medford man is facing attempted murder and other charges after authorities say he stabbed a co-worker at a marijuana grow operation.

The Jackson County Sheriff's Office says Matthew Gabbard stabbed a co-worker with a knife multiple times in the chest and abdomen Saturday afternoon. The two were cutting irrigation lines at a grow site.

Detectives believe the stabbing was unprovoked and that Gabbard had intended to kill his co-worker.

Authorities say the victim, 31-year-old Jakob Crouch, was taken to a local hospital with stab wounds that did not appear to be life-threatening.

Gabbard was arrested and lodged in the Jackson County Jail after being treated for a cut.

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