STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0179

Brandon Eugene Kubis,
Respondent,

vs.

2002 Chevrolet Pickup,
VIN #1GCHK29W12E222285,
Appellant.

Filed October 14, 2008
Affirmed
Johnson, Judge

St. Louis County District Court
File No. 69DU-CV-07-1332

Keith G. Shaw, P.O. Box 16418, Duluth, MN 55816 (for respondent)

Melanie S. Ford, St. Louis County Attorney, Janilyn K. Murtha, Assistant County Attorney, 100 North Fifth Avenue West, # 501, Duluth, MN 55802-1298 (for appellant)

Considered and decided by Ross, Presiding Judge; Minge, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Brandon Eugene Kubis's uncle was arrested for driving Kubis's pickup truck while impaired. After the county seized the truck and sought its forfeiture, Kubis filed an action in the district court seeking its return. The district court found that Kubis satisfied

the "innocent owner" defense to forfeiture and, thus, ordered the county to return the truck to Kubis. The county appeals. We conclude that the district court's findings of fact are not clearly erroneous and that the findings support the district court's conclusions of law and, therefore, affirm.

FACTS

On April 14, 2007, Brian Keith Johnson was arrested for driving while impaired (DWI). Johnson was driving a 2002 Chevrolet pickup truck, which at that time was owned by Brandon Kubis. Kubis is Johnson's nephew. The county seized the truck pursuant to Minn. Stat. § 169A.63 (2006) and notified Kubis that the truck would be forfeited to the state after 30 days unless Kubis challenged the seizure in court.

On May 14, 2007, Kubis commenced an action in the district court to recover his truck on the ground that he was an innocent owner, as provided in Minn. Stat. § 169A.63, subd. 7(d). The district court conducted an evidentiary hearing. On August 23, 2007, the district court issued an order finding, among other things, that Kubis had not given Johnson permission to use the vehicle on the day in question and that Kubis did not know that Johnson would commit a DWI offense while driving the truck. Accordingly, the district court concluded that Kubis had proved by clear and convincing evidence that he did not have actual or constructive knowledge that Johnson would use the vehicle in a manner contrary to law and, thus, that he was an innocent owner under section 169A.63, subdivision 7(d). Thus, the district court ordered the county to return the truck to Kubis.

The county moved for amended findings or a new trial, arguing that forfeiture was proper because of a statutory presumption that Kubis knew of Johnson's unlawful use of

the truck. On November 16, 2007, the district court issued an amended order in which it found that Kubis had "fully rebutted the presumption of knowledge" and, again, ordered the return of Kubis's truck. The county appeals.

D E C I S I O N

A vehicle may be forfeited pursuant to chapter 169A of the Minnesota Statutes if it has been used in the commission of a statutorily designated offense or was used in conduct that resulted in a designated license revocation. Minn. Stat. § 169A.63, subd. 6. The applicable designated offenses are listed in section 169A.63, subdivision 1(e); the applicable bases for a designated license revocation are listed in section 169A.63, subdivision 1(d). Forfeiture statutes are "disfavored generally" and, accordingly, we must "strictly construe [the statutory] language and resolve any doubt in favor of the party challenging" the application of such a statute. *Riley v. 1987 Station Wagon*, 650 N.W.2d 441, 443 (Minn. 2002); *see also Torgelson v. Real Prop. Known as 17138 880th Ave.*, 749 N.W.2d 24, 26-27 (Minn. 2008).

It is undisputed that, based on Johnson's conduct, Kubis's truck is subject to forfeiture. But an exception to the general rule of forfeiture exists for a vehicle that is not owned by the driver but, rather, is owned by someone who did not know that the vehicle would be used in an unlawful manner. *See Laase v. 2007 Chevrolet Tahoe*, 755 N.W.2d 23, 24-25 (Minn. App. 2008). The innocent-owner defense is contained in a statute that provides:

> A motor vehicle is not subject to forfeiture under this section if its owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive

> knowledge that the vehicle would be used or operated in any manner contrary to law or that the owner took reasonable steps to prevent use of the vehicle by the offender.

Minn. Stat. § 169A.63, subd. 7(d).

There is a rebuttable presumption that the innocent-owner defense does not apply in some cases in which a driver has three or more prior convictions of a DWI offense. If such a driver is a member of the owner's family or household, the owner of the vehicle "is presumed to know of any vehicle use by the offender that is contrary to law." *Id.* The statutory definition of "family or household member" includes, among many others, an owner's uncle. Minn. Stat. § 169A.63, subd. 1(f)(2). Johnson had been convicted of DWI on three previous occasions. Thus, Johnson is deemed to be within Kubis's family or household, and Kubis is presumed to have known that Johnson's use of Kubis's truck would be contrary to law.

A. Burden of Proof

The county first argues that the district court erred by failing to apply an appropriately stringent burden of proof to Kubis's evidence. In its brief, the county argued that Kubis must present clear and convincing evidence to rebut the statutory presumption that he knew of Johnson's unlawful use of the truck. At oral argument, however, the county argued that an even more stringent evidentiary standard applies to Kubis because he is required both to rebut the statutory presumption of knowledge and to carry his burden of proof on the innocent-owner defense. In other words, the county argues that Kubis must present more evidence or stronger evidence to rebut the presumption of knowledge and to carry his ultimate burden than would be required

merely to carry the ultimate burden of proof in the absence of that presumption. This argument by the county raises a question of statutory interpretation, which we review de novo. *Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 519 (Minn. 2007).

The innocent-owner defense expressly states that the owner of a vehicle must establish the defense "by clear and convincing evidence." Minn. Stat. § 169A.63, subd. 7(d). The statute makes no distinction between situations in which the presumption of knowledge applies and situations in which the presumption of knowledge does not apply. The presumption of knowledge simply places certain individuals in the position of being presumed to have knowledge, but the ultimate burden remains the same: a person must "demonstrate by clear and convincing evidence" that he or she did not "have actual or constructive knowledge that the vehicle would be used . . . in any manner contrary to law." Minn. Stat. § 169A.63, subd. 7(d). The statute does not support the county's argument that some additional evidence above and beyond clear and convincing evidence must be presented both to rebut the presumption of knowledge and also to establish the innocent-owner defense. The evidence used to rebut the presumption may serve double duty; i.e., the same evidence also may allow an owner to carry the ultimate burden of proof on the innocent-owner defense. Thus, there is no statutory basis for applying a different evidentiary standard at any stage or for imposing a heightened requirement on the quantum or quality of evidence necessary to rebut the presumption of knowledge and carry the burden of proof on the innocent-owner defense.

Thus, we agree with the county that a person in Kubis's position must present clear and convincing evidence to rebut the presumption in the second sentence of section

169A.63, subdivision 7(d). But we reject the county's argument that the evidence necessary in this case is greater than the evidence ordinarily required to prove the innocent-owner defense.

B. Findings of Fact

Because the district court found that Kubis had established the innocent-owner defense by clear and convincing evidence, the question remains whether the evidence supports the district court's findings. A district court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. In applying rule 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "A trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). If the underlying findings of fact made by the district court are undisputed or sustainable because they are not clearly erroneous, the district court's "ultimate" findings of fact and legal conclusions must be affirmed in the absence of a demonstrated abuse of the district court's discretion. *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990).

As a threshold matter, we note that there is evidentiary support for the district court's implicit finding that Kubis owns the truck. Kubis is the registered owner. "There is a rebuttable presumption that a person registered as the owner of a motor vehicle according to the records of the Department of Public Safety is the legal owner." Minn. Stat. § 169A.63, subd. 1(h). Although the county introduced evidence that Johnson

previously owned the vehicle, the district court adopted Kubis's testimony that he owned the vehicle at the time it was seized, and that finding is not clearly erroneous.

To establish the innocent-owner defense, Kubis was required to prove either, first, that he "did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law" or, second, "that [he] took reasonable steps to prevent use of the vehicle by" Johnson. Minn. Stat. § 169A.63, subd. 7(d). The district court relied on the first prong of the innocent-owner defense. Specifically, the district court found, "Mr. Kubis . . . had no knowledge, actual or constructive, that Mr. Johnson would drive drunk with" Kubis's vehicle. This finding is supported by Kubis's testimony that Johnson was not allowed to use the truck without express permission. Kubis also testified that he did not give Johnson permission to use the truck on the night on which Johnson was arrested and that he was not aware that Johnson was using the truck on that occasion. The county focused on Kubis's testimony that he would have given Johnson permission to use the truck if Johnson had asked to use it. But that admission does not undermine the district court's findings because the admission was merely hypothetical. Kubis maintained that, on the evening in question, Johnson neither asked for nor received permission to use the truck.

The district court also found that Kubis did not know that Johnson had several prior DWI convictions. Kubis testified that he did not know about Johnson's three previous DWI convictions. Kubis explained that Johnson "was always pretty secretive" and "never told [my mother and me] anything about that." Kubis testified that he knew that Johnson had been in some trouble with the law and had lost his driver's license for a

period of time, but Kubis also testified that Johnson had told him sometime prior to the night of the DWI arrest that he had gotten his license back. Thus, the record contains evidence that supports the district court's finding that Kubis did not know that Johnson had multiple DWI convictions and, therefore, did not know that Johnson would use or operate the truck "in any manner contrary to law." *See* Minn. Stat. § 169A.63, subd. 7(d).

The county refers to the testimony of a St. Louis County deputy sheriff, who testified that, in a tape-recorded interview, Kubis stated that Johnson had general permission to drive the truck, that Johnson drove it a couple of times each week, that Johnson was the primary driver, and that Johnson had his own set of keys for the vehicle. The county did not introduce the tape recording of the deputy's interview into evidence. An investigator in the sheriff's office also testified that Kubis told him that Johnson had permission to use the truck. The district court was permitted to credit Kubis's testimony over the testimony of the deputy sheriff and the investigator. *See* Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.1988). Thus, despite the testimony of the county employees, the record contains evidence to support the district court's finding that Kubis did not know that Johnson would use or operate the truck "in any manner contrary to law" by committing the offense of DWI. *See* Minn. Stat. § 169A.63, subd. 7(d).

The county contends that, in light of the above-described testimony of the deputy sheriff and the investigator, the district court committed error by stating in its memorandum of law that "[t]here was no testimony contrary to [Kubis's] assertion" that he did not give Johnson permission to use the truck. It appears that the district court's

statement overlooks the testimony of the deputy sheriff and the investigator. Nonetheless, the district court's finding on that issue is clear: the district court credited Kubis's testimony that he did not give Johnson permission to use the vehicle on the evening in question. Furthermore, the district court's misstatement is of no consequence. The question whether Kubis gave permission to Johnson is relevant only if Kubis knew that Johnson was impaired or had a tendency to drive while impaired, but the district court found that Kubis did not have such knowledge. An erroneous finding of fact does not require reversal if the district court's conclusion is supported by other evidence in the record. *Rogers*, 603 N.W.2d at 656; *Rosendahl v. Nelson*, 408 N.W.2d 609, 612 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987); *see also* Minn. R. Civ. P. 61 (stating that courts shall disregard harmless errors). Thus, the district court's misstatement concerning the contradictory evidence offered by the county is not reversible error.

Because there is "reasonable evidence to support the trial court's findings of fact," *Fletcher*, 589 N.W.2d at 101, the district court's findings of fact were not clearly erroneous. Thus, the district court did not abuse its discretion in concluding that Kubis was entitled to the return of his pickup truck.

Affirmed.