STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2429

Matthew Sobocinski,
Respondent,

vs.

2001 Honda VIN #JHMCG56421C004713, ND License HKT747,
Appellant.

Filed December 2, 2008
Affirmed
Peterson, Judge

Clay County District Court
File No. CV-07-1178

Robin A. Schmidt, 218 NP Avenue, P.O. Box 1389, Fargo, ND 58107; and

Kenneth J. Kohler, Vogel Law Firm, 215 30th Street North, P.O. Box 1077, Moorhead, MN 56561 (for respondent)

Brian Melton, Clay County Attorney, Stephanie Borgen, Assistant County Attorney, 807 11th Street North, Moorhead, MN 56560 (for appellant)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

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

PETERSON, Judge

In this appeal from a judgment ordering that the vehicle in a vehicle-forfeiture case be returned to the owners, appellant argues that respondent's father knew or should

have known that respondent would use the vehicle in a manner contrary to law and failed to take reasonable steps to prevent the unlawful use. We affirm.

FACTS

Pursuant to Minn. Stat. § 169A.63 (2006), the state seized the vehicle that respondent Matthew Sobocinski was driving when he was arrested for driving while impaired (DWI) on July 15, 2007. The vehicle was jointly owned by respondent and his father, Charles Sobocinski. Respondent filed a judicial demand seeking the return of the vehicle on the ground that his father was an innocent owner under Minn. Stat. § 169A.63, subd. 7(d).

At the time of the July 2007 offense, respondent had two prior alcohol-related driving incidents. The first resulted in a DWI conviction in 2001. The second, an implied-consent proceeding resulting from a June 2007 stop, was pending at the time of the forfeiture trial.

At the forfeiture trial, respondent's father testified that he had known about the 2001 DWI and the implied-consent proceeding before respondent was arrested for DWI in July 2007. When respondent was arrested for DWI in 2001, he was driving a pickup truck owned by his father. Father testified that after that offense, he made it clear to respondent that he was not to drive the truck when he was drinking alcohol. Father testified that, after the June 2007 stop, "I just asked that if he drank one drop of alcohol that he please not touch the steering wheel of that car, and that I considered it to be very serious." Father testified that he was very confused as to whether respondent "really

truly has an alcohol problem" and that he had requested professional assessments to make that determination.

On Saturday, July 14, 2007, father went to Dallas for a business meeting. Father believed that respondent would be spending the weekend at father's home in Crookston and would not be using the vehicle. Father also understood that respondent would not be consuming any alcohol that weekend. Respondent's mother was going to be home to monitor respondent. Respondent testified that he and his father had an understanding that the vehicle was to be left in Crookston that weekend and that he had agreed to never drive the vehicle if he was drinking alcohol.

The district court found that clear-and-convincing evidence showed that father did not have actual or constructive knowledge that his son was driving while impaired and that father took reasonable steps to prevent respondent from using the vehicle when drinking. The district court also found that father intended to sell the vehicle if it was returned to him and that the sale would satisfy the legislative intent to separate respondent from the vehicle. The district court ordered the state to return the vehicle to father and respondent. This appeal followed.

D E C I S I O N

This court will not set aside a district court's findings of fact unless they are clearly erroneous. *Rife v. One 1987 Chevrolet Cavalier*, 485 N.W.2d 318, 321 (Minn. App. 1992), *review denied* (Minn. June 30, 1992). Once the facts have been determined, conclusions of law and questions of statutory application are reviewed de novo. *Modrow v. JP Foodservice, Inc*., 656 N.W.2d 389, 393 (Minn. 2003) (conclusions of law); *In re*

Welfare of S.H.H., 741 N.W.2d 917, 919 (Minn. App. 2007) (statutory application).

A vehicle is subject to forfeiture if it is used in the commission of a statutorily designated offense. Minn. Stat. § 169A.63, subd. 6. "A vehicle is presumed subject to forfeiture" if "the driver is convicted of the designated offense upon which the forfeiture is based." *Id.* subd. 7(a). DWI is a designated offense under Minn. Stat. § 169A.63, subd. 1(e).[1]

But under a statutory exception for an "innocent owner," a vehicle is not subject to forfeiture

> 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.

Id., subd. 7(d) (emphasis added).

The state's argument, that the statute requires an innocent owner to prove that he lacked actual or constructive knowledge that the vehicle would be used or operated in a manner contrary to law *and* that he took reasonable steps to prevent use of the vehicle by the offender, is contrary to the statutory language.[2] "Where the legislature's intent is

[1] At the time of the forfeiture trial, respondent had pleaded guilty in the underlying DWI proceeding, but he had not been sentenced. Respondent stipulated that the district court could treat the plea as a conviction. Therefore, respondent's vehicle is presumed subject to forfeiture.

[2] Both parties cite unpublished opinions. Unpublished opinions are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2006) (stating that "[u]npublished opinions of the court of appeals are not precedential"); *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004) (stressing that "unpublished opinions of the court of appeals are not precedential" and that "[t]he danger of miscitation [of unpublished opinions] is great because unpublished opinions rarely

clearly discern[i]ble from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

In arguing that the district court erred in finding that father lacked actual or constructive knowledge that respondent would use the vehicle in a manner contrary to law, the state emphasizes respondent's history of a DWI conviction in 2001 and an alcohol-related stop in June 2007 and argues that the forfeiture statute should be liberally applied to further the purpose of separating repeat DWI offenders from their vehicles. Under the statute, if the driver "is a family or household member of the owner and has three or more prior impaired driving convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law." Minn. Stat. § 169A.63, subd. 7(d); *see also id.*, subd. 1(f)(1) (defining family or household member to include parent). Because the statute imputes constructive knowledge only after three or more prior impaired-driving convictions, a history of one prior DWI conviction and an alcohol-related stop is insufficient by itself to impute constructive knowledge.

About five and one-half years elapsed between respondent's 2001 DWI conviction and the June 2007 stop. Father testified that, after the June 2007 stop, he explained to respondent that he considered drinking and driving to be a very serious matter and "asked that if [respondent] drank one drop of alcohol that he please not touch the steering wheel

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contain a full recitation of the facts"). Moreover, the cited unpublished decisions are distinguishable from this case.

of that car." When father left for Dallas, he understood that respondent would be spending the weekend at his parent's home with his mother, respondent would not be using the car, and respondent's mother would be monitoring respondent. This evidence supports the district court's finding that father lacked actual or constructive knowledge that respondent would use the vehicle in a manner contrary to law.

At oral argument, the state argued that father had reason to know that respondent drove the vehicle illegally because father continued to allow respondent to use and possess the vehicle after respondent's driver's license had been suspended. The argument is without merit. There is no evidence in the record regarding the status of respondent's driver's license before July 15, 2007, and father's testimony indicates that there was a delay in the issuance of any notice following the June 2007 stop. While father did allow respondent to keep the vehicle at respondent's residence in Fargo, the record contains no evidence of illegal use during that time.

In light of the district court's findings crediting father's and respondent's testimony, and because the statutory presumption imputing constructive knowledge does not apply until an offender has had at least three prior impaired-driving convictions, the district court did not err in concluding that the state is not entitled to forfeiture and ordering that the vehicle be returned to its owners.

Affirmed.