STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0469

Jennifer Helen Aubin,
Appellant,

vs.

One 1988 Chevrolet Corvette,
Serial #1G1YY2180J5119191,
License Plate #JAUBIN,
Respondent.

Filed February 3, 2009
Reversed and remanded
Toussaint, Chief Judge

Washington County District Court
File No. 82-CX-07-005732

R. Michael Waterman, Mudge, Porter, Lundeen & Sequin, S.C., 110 Second Street, Post Office Box 469, Hudson, Wisconsin 54016 (for appellant)

Doug Johnson, Washington County Attorney, Kari A. Lindstrom, Assistant County Attorney, 14949 62nd Street North, Post Office Box 6, Stillwater, Minnesota 55082-0006 (for respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

TOUSSAINT, Chief Judge

Appellant Jennifer Helen Aubin challenges the district court order granting summary judgment affirming the forfeiture of her 1988 Chevrolet Corvette. Because material issues of fact exist regarding whether appellant's boyfriend, Adam T. A. Groshong, was a member of her household and whether appellant was an innocent owner of the vehicle subject to forfeiture, we reverse and remand to the district court for further proceedings.

D E C I S I O N

On June 29, 2007, Groshong was driving appellant's Corvette, in which appellant was a passenger. The car was pulled over by Stillwater police, and Groshong was arrested for driving while intoxicated. Groshong told the officers that he lived at the same address as appellant. One officer reported that appellant made statements to him that she was aware that Groshong should not have been driving and was under the influence of alcohol. Groshong later pleaded guilty to first-degree driving while impaired (DWI).

Because Groshong had three prior alcohol-related driving incidents in the ten-year period preceding his arrest, appellant's vehicle was subject to forfeiture. *See* Minn. Stat. §§ 169A.63, subd. 7(a)(1) (stating vehicle presumed subject to forfeiture if driver convicted of designated offense), subd. 1(e) (defining 'designated offense' as first-degree DWI); 169A.24, subd. 1(1) (2006) (stating driver guilty of first-degree DWI when offense committed within ten years of first of three qualified prior impaired-driving

incidents). As sole owner of the vehicle, appellant challenged the forfeiture.

The state moved for summary judgment affirming the forfeiture. In opposition to summary judgment, appellant claimed she was an innocent owner and filed an affidavit alleging that she had known Groshong for only two weeks and, although he had been planning to move into her house, he was not yet living there when he was arrested. Appellant alleged that she first found out about Groshong's prior convictions and intoxicated state at the time of his arrest.

Following a hearing, the district court issued an order granting summary judgment and forfeiting appellant's vehicle to the state, finding no genuine issues of material fact. The district court concluded that appellant was a "family or household member" of Groshong and not an innocent owner of the vehicle.

On appeal from summary judgment, this court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [the moving] party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists when "reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). The nonmoving party

"may not rest upon mere averments or denials" of the pleadings "but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05.

Because of the punitive and disfavored nature of forfeiture laws, we must strictly construe their language and resolve any doubt in favor of the party challenging them. *Schug v. Nine Thousand Nine Hundred Sixteen Dollars & Fifty Cents in U.S. Currency*, 669 N.W.2d 379, 382 (Minn. App. 2003), *review granted* (Minn. Dec. 16, 2003). 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 matter 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) (2006) (referred to as innocent-owner defense). "If the offender 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." *Id.* Family or household members are defined as, in relevant part, "persons residing together or persons who regularly associate and communicate with one another outside of a workplace setting." *Id.*, subd. 1(f)(3) (2006).

This case turns on whether Groshong and appellant were household members, that is, whether or not they resided together and regularly associated and communicated with each other. If appellant and Groshong were not household members, then the statutory presumption of knowledge does not apply to appellant, and she is free to assert the innocent-owner defense to the forfeiture of her vehicle.

In granting summary judgment, the district court disregarded appellant's affidavit, thereby improperly weighing evidence. The district court may not weigh evidence or assess credibility on a motion for summary judgment. *Hoyt Prop., Inc. v. Production Resource Group, L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007). Because the statements in appellant's affidavit conflict with facts alleged by the state, genuine issues of material fact regarding Gronshong's residence and appellant's knowledge on June 29, 2007, preclude summary judgment.

Reversed and remanded.