

A11-309

State of Minnesota
In Court of Appeals

Laura Patino,

Appellant-Petitioner,

v.

One 2007 Chevrolet,
VIN # 1GNFC16017J255427,
Texas License Plate # 578VYH,

Respondent-Respondent.

**APPELLANT'S BRIEF
AND APPENDIX.**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES ON APPEAL

- I. Whether a conviction of a designated offense is required in order to forfeit Appellant's vehicle?

The district court held: Although the driver was not convicted of the designated offense in the criminal matter, a conviction is not necessary in order to forfeit Appellant's vehicle.

- II. Whether Appellant was an innocent owner preventing her vehicle from being forfeited by the Minnesota State Patrol?

The district court held: Appellant was not an innocent owner because she likely had knowledge that the driver did not have a valid driver's license.

STATEMENT OF THE CASE

This is an appeal from a district court Order denying Appellant Laura Patino's ("Appellant"), Petition for Judicial Determination of Forfeiture for the return of Respondent 2007 Chevy Tahoe, VIN # 1GNFC16017J255427, Texas License Plate # 578VYH ("Respondent").

On April 24, 2010, the Minnesota State Patrol seized the vehicle following the arrest of Mr. [REDACTED] for Driving While Impaired ("DWI"). Mr. [REDACTED] was charged with Second Degree DWI; Third Degree DWI; two (2) counts of Fourth Degree DWI, and Driving After Revocation.¹

On April 25, 2010, the Minnesota State Patrol served a Notice of Seizure and Intent to Forfeit the Respondent vehicle upon Appellant, the sole owner of the vehicle. In response, Appellant served a Petition for Judicial Determination of Forfeiture.

On June 15, 2010, Mr. [REDACTED] pled guilty to Third Degree DWI. On August 24, 2010, Mr. [REDACTED] was convicted and sentenced of Third Degree DWI.

On December 13, 2010, this matter came before the district court for Appellant's motion for summary judgment and, if necessary, a Court Trial. Although unopposed on the merits, the district court refused to consider Appellant's motion, preferring to go forward with a Court Trial.

¹ The corresponding criminal case is State of Minnesota v. [REDACTED] Nicollet County Court File No. 52-CR-10-74.

In an Order dated December 22, 2010, the district court determined that the Minnesota State Patrol was entitled to ownership of the Respondent vehicle. [Order dated December 22, 2010; App's Appdx. at A-1]. This appeal follows.

STATEMENT OF THE FACTS

It is undisputed that at all times relevant to this matter, Appellant was the sole owner of the Respondent vehicle. [Transcript dated December 12, 2010 ("Transcript") at p. 8 (Fahning)]. Appellant previously owned the vehicle with her ex-husband, Mr. [REDACTED] but the vehicle was awarded to her pursuant to their divorce settlement. [Transcript at p. 25 (Patino)].

On April 24, 2010, Mr. [REDACTED] borrowed Appellant's vehicle so that he could drive to Worthington, MN for business.² [Transcript at p. 27 (Patino)]. Also, Mr. [REDACTED] took Appellant's minor daughter with him so that she could visit his sister and her family, who reside in Worthington, MN. [Transcript at p. 27 (Patino)]. Mr. [REDACTED] was scheduled to arrive back in St. Peter, MN later than evening. [Transcript at p. 27 (Patino)].

At some point on his way back into St. Peter, MN, Mr. [REDACTED] was stopped while driving the Respondent vehicle, and was subsequently charged by the following criminal charges:

- Count 1: Second Degree DWI (Prior Offense & Child Endangerment);³
- Count 2: Third Degree DWI (Child Endangerment);

² Appellant and Mr. [REDACTED] were in a personal relationship at all times relevant to the facts underlying this matter.

³ Mr. [REDACTED] had a prior DWI conviction in 2006, which was the other 'aggravating factor' that served as the basis for the Second Degree DWI charge.

- Count 3: Fourth Degree DWI (.08 or more);
- Count 4: Fourth Degree DWI; and
- Count 5: Driving After Revocation.

Appellant had no idea that Mr. [REDACTED] had a prior DWI conviction, that his driving privileges were revoked, nor that he would driving under the influence with her minor daughter in the vehicle. [Transcript at p. 28 (Patino)]. Had Appellant known this, she never would have allowed Mr. [REDACTED] to borrow her vehicle in the first place. [Transcript at p. 28 (Patino)]. Indeed, the district court found that Appellant had no knowledge that Mr. [REDACTED] would be consuming alcohol while driving her vehicle. [Order at p. 3; App's Appdx. at A-3].

Despite the fact that Appellant was not present in the vehicle at the time of the arrest, that she had no knowledge that Mr. [REDACTED] would be operating her vehicle while under the influence of alcohol, and that she did not know that his license was suspended, Appellant was served with a Notice of Intent to Forfeit the Respondent vehicle. The sole basis to forfeit the Respondent vehicle was because Mr. [REDACTED] was charged with Second Degree DWI because he had a prior conviction for DWI, and Appellant's minor daughter was in the vehicle at the time. Thus, Appellant was forced to bring a Petition for Judicial Determination of Vehicle Forfeiture.

On August 24, 2010, Mr. [REDACTED] was convicted of Count 2 of the criminal complaint, which is Third Degree DWI. [Order at p. 2-3; App's Appdx. at A-2-3]. The remaining counts in the Complaint were dismissed. [Order in Court

File No. 52-CR-10-74⁴; App's Appdx. at A-5]. Thus, Mr. [REDACTED] was not convicted of the designated offense of Second Degree DWI. [Order at p. 2-3; App's Appdx. at A-2-3].

On December 13, 2010, this matter came before the district court on Appellant's motion for summary judgment, and in the alternative, a court trial. The district court refused to hear the summary judgment motion so the matter moved to trial.

During the Trial, counsel for Respondent called Trooper Mark Fahning of the Minnesota State Patrol, who was the arresting officer for the underlying criminal offense. Trooper Fahning testified to the facts regarding the arrest of Mr. [REDACTED] which were not disputed. [Transcript at p. 4-9 (Fahning)].

Counsel for Respondent then called Officer Matthew Grochow of the St. Peter Police Department to testify about a prior encounter that Mr. [REDACTED] had with law enforcement. Officer Grochow testified that on March 31, 2010, he stopped the Respondent vehicle, which was being operated by Mr. [REDACTED] at the time. [Transcript at p. 11 (Grochow)]. Appellant was also in the vehicle on that date. [Transcript at p. 12 (Grochow)].

Mr. [REDACTED] was issued a citation for Driving After Revocation and No Proof of Insurance. [Transcript at p. 13 (Grochow)]. Officer Grochow specifically testified that he speaks very limited Spanish and that another officer,

⁴ This Order was attached to Respondent's Answer and Motion to Strike. The Answer will not be included in Appellant's Appendix.

Officer Paulus, had to come on the scene in order to speak with Mr. [REDACTED] in Spanish.⁵ [Transcript at p. 12 (Grochow)]. However, Officer Paulus is not fluent in Spanish either. [Transcript at p. 14 (Grochow)].

Upon arriving on the scene, Officer Paulus removed Mr. [REDACTED] from the vehicle to discuss the situation with him. [Transcript at p. 32 (Patino)]. Officer Grochow went to the passenger side of the vehicle where he remained with Appellant. [Transcript at p. 16 (Grochow)] Appellant remained in the vehicle during this encounter so she could not hear what was being said to Mr. [REDACTED] [REDACTED] [Transcript at p. 32 (Patino)]. Officer Grochow testified that he did not know if anyone had communicated to Appellant in Spanish that Mr. [REDACTED] license was revoked. [Transcript at p. 21-22 (Grochow)].

Finally, Appellant testified that no one told her that Mr. [REDACTED] did not have a valid driver's license. [Transcript at p. 29 (Patino)]. Again, Appellant testified that if she knew Mr. [REDACTED] license was revoked that she would not have let him drive her vehicle. [Transcript at p. 28 (Patino)].

In an Order dated December 22, 2010, the district court determined that the Respondent vehicle was to be forfeited to the Minnesota State Patrol. The district court specifically found that Mr. [REDACTED] was not convicted of the designated offense, but that forfeiture was still appropriate because he did commit a designated offense. [Order at p. 2-3; App's Appdx. at A-2-3]. Next, the district

⁵ Appellant also does not speak English and an interpreter was needed at the trial to assist her and the Court.

court found that Appellant was not an “innocent owner” because she had reason to know that Mr. [REDACTED] would be using her vehicle contrary to law because his driving privileges were suspended. [Order at p. 2-3; App’s Appdx. at A-2-3]. This appeal follows.

ARGUMENT

I. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN AWARDING THE RESPONDENT VEHICLE TO THE MINNESOTA STATE PATROL.

A. Standard of Review.

We review questions of law de novo. State v. Bussmann, 741 N.W.2d 79, 82 (Minn. 2007).

B. Applicable Law.

Vehicle forfeiture is a civil *in rem* action, independent of any criminal prosecution. Minn.Stat. § 169A.63, subd. 9(a).⁶ Our Supreme Court has long recognized that civil *in rem* forfeiture is at least in part a penalty, and accordingly is disfavored and should be strictly construed. Torgelson v. Real Property known as 17138 880th Ave., Renville County, 749 N.W.2d 24, 26-27 (Minn. 2008); Jacobson v. \$55,900 in U.S. Currency, 728 N.W.2d 510, 521 (Minn. 2007); see also Austin v. United States, 509 U.S. 602, 621-22 (1993) (holding that forfeitures of real property pursuant to federal law are fines that fall within the scope of the

⁶ The Minnesota State Patrol initially commenced an administrative forfeiture pursuant to Minn.Stat. § 169A.63, subd. 8. However, since Appellant filed a timely demand for judicial determination of the forfeiture, the proceedings are conducted as described in Minn.Stat. § 169A.63, subd. 9 (Judicial forfeiture procedure).

Excessive Fines Clause of the United States Constitution); Riley v. 1987 Station Wagon, 650 N.W.2d 441, 443 (Minn. 2002) (“[T]o the extent that the forfeiture law at issue here is, in part, “punishment” and, therefore, disfavored generally, we strictly construe its language and resolve any doubt in favor of the party challenging it.”).

A vehicle is subject to forfeiture if the driver of a vehicle is operating it while under the operator of the vehicle is committing a “designated offense” of Minnesota laws. Minn.Stat. § 169A.63, subd. 1(e). Second Degree DWI is specifically enumerated as a “designated offense.” Minn.Stat. § 169A.63, subd. 1(3)(1). However, the forfeiture statute goes on to state:

If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in Court as required and is not convicted of the offense, the court *shall* order the property returned to the person legally entitled to it upon the person’s compliance with the redemption requirements of 169A.42.⁷

Minn.Stat. § 169A.63, subd. 9(f) (emphasis added).

C. Analysis.

In this case, it cannot be disputed that (1) the sole basis of the forfeiture was the charge of Second Degree DWI; (2) Mr. ██████████ appeared in Court as ordered; and (3) Mr. ██████████ was not convicted of the designated offense.

[Order at p. 2-3; App’s Appdx. at 2-3]. Indeed, the district court specifically found

⁷ These requirements are that Appellant provide her proof of ownership of the vehicle, proof that her driver’s license is valid, and proof of insurance of the vehicle.

that Mr. [REDACTED] was not convicted of the designated offense. [Order at p. 2-3; App's Appdx. at A-2-3].

Thus, pursuant to the clear and unambiguous language of Minn.Stat. § 169A.63, subd. 9(f), the district court should have ordered the vehicle returned to Appellant. Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001) (“Where the legislature's intent is clearly discern[i]ble from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning.”); State by Beaulieu v. RSK, Inc., 552 N.W.2d 695, 701 (Minn. 1996) (If a statute is unambiguous, a court must apply its plain meaning).

Remember, forfeitures are civil *in rem* proceedings that are strongly disfavored and the statutory language is strictly construed in favor of the party opposing the forfeiture. Torgelson, 749 N.W.2d at 26-27; Jacobson, 728 N.W.2d at 521; see also Austin, 509 U.S. at 621-22; Riley, 650 N.W.2d at 443. This is especially true in a circumstance such as this where the party challenging the forfeiture was not the individual who committed the underlying offense.

The district court relied upon Mastakoski v. 2003 Dodge Durango, 738 N.W.2d 411 (Minn.Ct.App. 2007), to support its conclusion that a conviction was not necessary to award the State Patrol Appellant's vehicle. [Order at p. 2-3; App's Appdx. at A-2-3]. In Mastakoski, the driver and owner of the vehicle were the same person. In that case, the driver/owner was charged with Second and Third Degree DWI, and eventually pled guilty to Third Degree DWI. 738 N.W.2d

at 413. This Court in Mastakoski said that even though the driver/owner was not convicted of the designated offense, the vehicle was still “subject to” forfeiture. 738 N.W.2d at 413.

First, Mastakoski did not involve a driver who was not the owner of the vehicle, thus its applicability to Appellant is questionable. Additionally, since this Court did not even mention Minn.Stat. § 169A.63, subd. 9(f) in Mastakoski, Appellant believes that case presents a great opportunity for this Court to clarify its interpretation of the forfeiture statutes.

Since Appellant properly filed a Petition for Judicial Determination of the Forfeiture, subdivision 9 of Minn.Stat. § 169A.63 controls this case. Minn.Stat. § 169A.63, subd. 9(d), states that the judicial determination of the forfeiture “must not precede adjudication in the criminal prosecution of the designated offense. . .” This shows that the legislature intended for the results of the corresponding criminal case to have an influence on the civil forfeiture proceedings.

Next, subdivision 9(e) of Minn.Stat. § 169A.63, states that forfeiture is presumed if the prosecuting authority establishes that the vehicle was used in the commission of a designated offense. The term “prosecuting authority” means the agency that prosecutes the criminal case. Minn.Stat. § 169A.63, subd. 1(i). Again, this subdivision shows that the legislature intended for the results of the corresponding criminal case underlying the forfeiture to have an influence on the forfeiture proceedings.

Subdivision 9(e) goes on to state that if the prosecuting authority

establishes the designated offense, the claimant bears the burden of proving any affirmative defenses. It is believed this portion of subdivision 9(e) relates to the “innocent owner defense,” which will be further discussed below.

Next, and most important to this matter, subdivision 9(f) of Minn.Stat. § 169A.63, specifically states:

If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in Court as required and is not convicted of the offense, the court *shall* order the property returned to the person legally entitled to it upon the person’s compliance with the redemption requirements of 169A.42.

(emphasis added). This subdivision shows that the legislature intended for the results of the corresponding criminal case too not only influence the forfeiture proceedings, but to control them.

As stated above, and as found by the district court, Mr. [REDACTED] was not convicted of the designated offense. Thus, the forfeiture fails as a matter of law and the vehicle must be returned to Appellant.

Subdivision 9 shows that our Legislature meant a significant difference between a vehicle being “subject to” forfeiture, and a vehicle being actually forfeitable. By stating a vehicle is “subject to” forfeiture allows the prosecuting authority to initiate forfeiture proceedings prior to the criminal case being resolved, but that is all. Once a judicial determination of the forfeiture has properly been initiated and when there is a corresponding criminal prosecution, then subdivision 9 of Minn.Stat. § 169A.63 controls the proceedings, Minn.Stat §

169A.63, subd. 8(f), and the outcome of the criminal case controls whether the vehicle can be forfeited or not.

Thus, Mastakoski is not necessarily incorrect when it states that a conviction is not necessary for a vehicle to be “subject to” forfeiture. Indeed, if a claimant never challenges the forfeiture, then the owner automatically loses all interest it has in the vehicle, regardless of the outcome of the criminal proceedings.

But, the clear statutory language should limit the applicability of the holding in Mastakoski only to administrative forfeiture proceedings or uncontested forfeitures. Once a judicial determination of forfeiture has begun, then Mastakoski no longer applies. Once the criminal proceedings have concluded, and there was not a conviction of the designated offense, then a vehicle is no longer “subject to” forfeiture, and the vehicle must be returned to its owner. Minn.Stat. § 169A.63, subd. 9(f),

By taking the plain and unambiguous language of Minn.Stat. § 169A.63, subd. 9(f), and construing the language of the statute in favor of Appellant, the district court erred as a matter of law in awarding the Minnesota State Patrol the Respondent vehicle. Genin v. 1996 Mercury Marquis, 622 N.W.2d 114,118 fn. 7 (Minn. 2001) (successful forfeiture depends on the conviction of a designated

offense).⁸

D. Conclusion.

For the reasons stated above, the district court erred as a matter of law and Appellant requests this Court reverse the district court.

II. **THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DETERMINING THAT APPELLANT WAS NOT AN “INNOCENT OWNER.”**

A. Standard of Review.

Mixed questions of law and fact are reviewed de novo. State v. Bunde, 556 N.W.2d 917, 918 (Minn.Ct.App. 1996) (holding the district court’s application of statutory criteria to facts as found is a question of law subject to de novo review).

B. Applicable Law.

Vehicle forfeiture is a civil *in rem* action, independent of any criminal prosecution. Minn.Stat. § 169A.63, subd. 9(a). Our Supreme Court has long recognized that civil *in rem* forfeiture is at least in part a penalty, and accordingly is disfavored and should be strictly construed. Torgelson, 749 N.W.2d at 26-27; Jacobson, 728 N.W.2d at 521; see also Austin, 509 U.S. at 621-22; Riley, 650 N.W.2d at 443.

A vehicle is subject to forfeiture if the driver of a vehicle is operating it while under the operator of the vehicle is committing a “designated offense.” Minn.Stat. § 169A.63, subd. 1(e). The legal owner of a vehicle that is used for a

⁸ In 2000, the legislature in part repealed Minn.Stat. §§ 169.121 to 169.123 and enacted ch. 169A relating to the same subject matter. 2000 Minn. Laws ch. 478. The current version of the statute construed in Genin Minn.Stat. § 169A.63.

“designated offense” is subject to forfeiture unless the legal owner can show by “clear and convincing evidence” that that she had no actual or constructive knowledge that the vehicle would be used contrary to law or she took reasonable steps to prevent the use of the vehicle. Minn.Stat. § 169A.63, subd. 7(d).

“Vehicle use contrary to law” is defined as any offense for (1) driving without a valid license; (2) failure to provide proof of insurance; (3) driving restrictions; (4) driving while impaired; (5) underage drinking and driving; or (6) open bottle law. Minn.Stat. § 169A.63, subd. 7(d).

C. Analysis.

Minnesota law is clear that the State has no right to forfeit a vehicle if Appellant can that she is an “innocent owner.” Assuming the vehicle is forfeitable, Appellant is an “innocent owner” if she can show by clear and convincing evidence that she had no actual or constructive knowledge that the vehicle would be used “contrary to law.” Minn.Stat. § 169A.63, subd. 7(d).

In this case, it is undisputed that Appellant is the sole owner of the Respondent vehicle, and that she was not present in the vehicle at the time Mr. [REDACTED] was arrested. Even though Appellant and Mr. [REDACTED] are likely considered family or household members, knowledge is not presumed in this case because Mr. [REDACTED] does not have three (3) prior impaired driving convictions. Minn.Stat. § 169A.63, subd. 7(d).

The district court specifically found that Appellant did not know that Mr. [REDACTED] would be operating the Respondent vehicle while he was under the

influence of alcohol. [Order at p. 3; App's Appdx. at A-3]. Despite these findings, the district court found that Appellant was not an "innocent owner" because she may have had knowledge that Mr. [REDACTED] driver's license was suspended. [Order at p. 3; App's Appdx. at A-3]. This was error.

As a matter of fact, the evidence presented at trial showed that Appellant did not know that Mr. [REDACTED] driver's license was suspended on that date in question. [Transcript at p. 28-29 (Patino)]. Appellant specifically testified that she did not know that his license was revoked. In fact, she testified that had she known, she would not have allowed him to take her vehicle on the date in question. [Transcript at p. 28 (Patino)]. Thus, had she known of the status of Mr. [REDACTED] drivers license, she would have taken the steps necessary to prevent his use of the vehicle.

The district court focused on the encounter that occurred on March 31, 2010 to discredit her testimony that she did not know Mr. [REDACTED] license was revoked. [Order at p. 3; App's Appdx. at A-4]. However, Appellant specifically testified that the conversation that Mr. [REDACTED] had with Officer Paulus occurred out of her presence, and no one told her in Spanish that his license was revoked. [Transcript at p. 29, 32 (Patino); Transcript at p. 21-22 (Grochow)]. Remember, Officer Paulus was not called to testify. Thus, the undisputed evidence showed that she did not have knowledge of the license revocation.

In this case, Appellant specifically testified that she did not know that Mr. [REDACTED] had a prior DWI conviction, did not know that he would be operating her vehicle while under the influence of alcohol, that she never would have let him take her car with her minor daughter had she known he would be consuming alcohol, and that she had no idea that Mr. [REDACTED] driving privileges were suspended on the day in question. If Appellant is not an “innocent owner” then no one is.

Further, it seems inconceivable that the owner of a vehicle, who has no knowledge that a vehicle will be used in the commission of a “designated offense,” can have their vehicle forfeited because they may have known that the person who was borrowing the vehicle did not have a valid driver’s license. After all, operating a vehicle without a valid driver’s license cannot be the basis for forfeiture. Minn.Stat. § 169A.63, subd. 1(e).

Such an interpretation of the “innocent owner defense” is against public policy, conflicts with the spirit of the law, and is likely unconstitutional as applied to Appellant in this context. A “taking” of private property implicates the 5th Amendment of the United States Constitution (private property shall not be taken for public use, without just compensation), and Article I, Section 13 of the Minnesota Constitution (private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured).

Forfeiture is clearly a governmental taking, but in this context, what is the public purpose? The purpose of a civil forfeiture is to deter and punish criminal

activity by depriving the “offender” of the property that assisted him in the offense, i.e. the vehicle. See Minn.Stat. § 609.531, subd. 1(a); Austin v. United States, 509 U.S. at 621-22 (historically, forfeiture has been understood, at least in part, as punishment).⁹

However, in this case, the only person that is being punished is Appellant who did not commit the underlying offense. Thus, when applied to Appellant, there is no public purpose for the taking. If, in general, Courts are to strictly construe forfeitures, such interpretations of the law should be even more rigorous where the opposing party is the non-offending party. Moreover, what is the just compensation for the taking? There is none, which further violates the constitutional protections afforded when there is a governmental taking.

When applying the facts of this case to Minn.Stat. § 169A.63, subd. 7(d), and when strictly construing the language of that statute in favor of Appellant, the district court erred as a matter of law in awarding the Minnesota State Patrol the Respondent vehicle.

D. Conclusion.

For the reasons stated above, Appellant requests this Court reverse the district court.

⁹ The legislature specifically enumerated the public purpose of forfeitures initiated under Minn.Stat. § 609.531. However, there is no stated purpose for forfeitures initiated under Minn.Stat. § 169A.63. If there is no public purpose for the taking, then the entire DWI forfeiture statute may be unconstitutional.

CONCLUSION

For the reasons stated above, Appellant requests this Court reverse the district court and award the Respondent vehicle to Appellant.

Dated: April 15, 2011

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