

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A07-0087

Darrell M. Hart,
Respondent,

vs.

2000 Jeep Grand Cherokee Ltd., VIN: 1J4GW58S3YC31679,
Appellant.

Filed January 22, 2008

Affirmed

Peterson, Judge

Hennepin County District Court
File No. 27-CV-06-3211

David G. Roston, Marc S. Berris, Segal, Roston & Berris, P.L.L.P., 250 Second Avenue
South, Suite 225, Minneapolis, MN 55401 (for respondent)

Sandra H. Johnson, Associate Bloomington City Attorney, 1800 West Old Shakopee
Road, Bloomington, MN 55431 (for appellant City of Bloomington)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order denying its demand for judicial forfeiture of a vehicle,
appellant city argues that the district court erroneously determined that because

respondent is an “innocent owner” under the forfeiture statute, the vehicle is not subject to forfeiture. We affirm.

FACTS

On January 22, 2006, Kelley Hart was arrested and charged with two counts of second-degree driving while impaired. When she was stopped, she was driving a 2000 Jeep Grand Cherokee. Kelley Hart told the arresting officer that the Jeep belongs to her father, respondent Darrell Hart, but she drives it “all the time.” On March 8, 2006, Kelley Hart pleaded guilty and was sentenced on one count of second-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd.1(5) (2004).

At the time of the January 2006 offense, Kelley Hart had two prior alcohol-related driving incidents. The first resulted in an October 2001 careless-driving conviction and a revocation of her driver’s license. The second resulted in a November 2003 third-degree driving-while-impaired conviction.

Appellant City of Bloomington initiated a judicial forfeiture of the Jeep. At the forfeiture hearing, Darrell Hart testified that he bought the Jeep in February 2005 when he and Kelley were looking for a vehicle for Kelley to buy. He had agreed to cosign a loan for the Jeep, but Kelley did not qualify for a car loan even if he cosigned. Because Kelley did not qualify for a car loan, Darrell Hart bought the Jeep, and they discussed the possibility of her purchasing it from him at a later date. The Jeep was registered in Darrell Hart’s name, and there are no liens or encumbrances against the Jeep. The Jeep has always been insured by Darrell Hart, and his wife is the rated driver on the policy. Kelley Hart has had unrestricted access to the Jeep and possession of the only set of keys.

Kelley Hart resides in Minneapolis. Darrell Hart resides in northern Minnesota, but he also has a home in Edina. Darrell Hart uses the Jeep two to three times per month.

On January 22, 2006, Darrell Hart was in northern Minnesota and had no knowledge that Kelley Hart was driving the Jeep after consuming alcohol. He testified that he knew about his daughter's prior alcohol-related convictions, but he did not believe that she drinks regularly, and before her January 2006 arrest, he did not have any concerns about her alcohol use. He always recommended that she not drink and drive. The district court also found that he was aware that before January 22, 2006, she was attending alcohol-information classes and Alcoholics Anonymous meetings.¹

The district court found Darrell Hart's testimony credible and persuasive and concluded that he is the owner of the Jeep and that he demonstrated by clear and convincing evidence that he did not have actual or constructive knowledge that the Jeep would be used or operated in any manner contrary to law. The district court ordered that the Jeep be returned to Darrell Hart. This appeal followed.

D E C I S I O N

The city argues that in concluding that Darrell Hart is within the "innocent owner" exception to the forfeiture statute, the district court incorrectly applied the statute. Questions of statutory application are reviewed de novo. *Heine v. Simon*, 702 N.W.2d 752, 764 (Minn. 2005). We are not bound by the district court's interpretation of a

¹ Although the city does not contest this finding, we note that our review of the record shows only that Darrell Hart was aware that Kelley Hart participated in alcohol-information classes prior to January 22, 2006. Darrell Hart testified that he was aware that Kelley Hart attended Alcoholics Anonymous meetings after January 22, 2006.

statute. *Boutin v. LaFleur*, 591 N.W.2d 711, 714 (Minn. 1999). But 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).

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) (2006). "A vehicle is presumed subject to forfeiture" if "the driver is convicted of the designated offense upon which the forfeiture is based." Minn. Stat. § 169A.63, subd. 7(a)(1) (2006). Second-degree driving while impaired is a designated offense under Minn. Stat. § 169A.63, subd. 1(e)(1) (2006). Therefore, the Jeep is presumed to be subject to forfeiture.

But under a statutory exception for an "innocent owner," a vehicle that is not owned by the driver 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.

Minn. Stat. § 169A.63, subd. 7(d) (2006). 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." *Id.*

The district court concluded that because Kelley Hart did not have three prior impaired-driving convictions on January 22, 2006, Darrell Hart "is not presumed to know of any vehicle use by Ms. Hart that is contrary to law." The district court also concluded that Darrell Hart "demonstrated by clear and convincing evidence that he did not have

actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law.” Based on these conclusions, the district court determined that the Jeep is not subject to forfeiture.

The city argues that in order to establish the “innocent owner” defense to forfeiture, Darrell Hart needed to demonstrate by clear and convincing evidence not only that he lacked actual knowledge that Kelley Hart would use the Jeep in a manner contrary to law, but that he did not have reason to know of the potential illegal use under all of the facts and circumstances of the case. The city contends that the constructive-knowledge prong of the “innocent owner” defense is not limited to cases where the driver is a family member who has three or more prior impaired-driving convictions and the district court’s conclusion that mere assertions of a lack of knowledge are sufficient to shield a vehicle from forfeiture is contrary to the plain language of the statute.

But the district court did not conclude that mere assertions of a lack of knowledge are sufficient to shield a vehicle from forfeiture; the district court concluded that Darrell Hart did not have constructive knowledge that the Jeep would be used in a manner contrary to law based on its finding that

Mr. Hart does not believe that Ms. Hart drinks regularly and, at least before her January 22, 2006, arrest, he did not have any concerns about her alcohol use. Mr. Hart has always recommended that Ms. Hart not drink and drive and was aware prior to January 22, 2006, that Ms. Hart was attending alcohol information classes and Alcoholics Anonymous meetings.

This finding indicates that although Darrell Hart knew that his daughter had been involved in prior alcohol-related driving incidents, the most recent prior incident was

more than 26 months before the January 2006 incident, and after the prior incident, Kelley Hart had done something to try to control her alcohol use. The city does not contest the district court's factual determination, and the factual determination supports the district court's conclusion that Darrell Hart did not have constructive knowledge that Kelley Hart would use the Jeep in any manner contrary to law.

The city argues that Kelley Hart "falls squarely within that category of dangerous repeat DWI offenders addressed by the statute who continue to expose the public to the well-documented dangers of intoxicated drivers on the streets." But in making this argument, the city ignores the plain language of the statute. The statute does not state that a vehicle owner is presumed to know that any vehicle use by a repeat DWI offender is contrary to law. The presumption arises only when the driver has three or more prior impaired-driving convictions. When the presumption does not apply, the district court must consider the evidence and determine whether the owner has demonstrated that he did not have actual or constructive knowledge that the vehicle would be used in any manner contrary to law. That is what the district court did.

The city disagrees with the district court's factual determination and contends that Darrell Hart had constructive knowledge that Kelley Hart would use the Jeep in a manner contrary to law because she had prior impaired-driving convictions. But this is essentially an argument that knowledge of illegal use should be presumed when an offender has just one prior impaired-driving conviction, and that is not what the statute requires.

The city also argues that the district court erred in concluding that Darrell Hart is the owner of the Jeep. An owner is statutorily defined as “a person legally entitled to possession, use, and control of a motor vehicle, including a lessee of a motor vehicle if the lease agreement has a term of 180 days or more.” Minn. Stat. § 169A.63, subd. 1(h). “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.” *Id.* Titled ownership, however, is controvertible. *Rife*, 485 N.W.2d at 321 (concluding that state satisfied its burden of proving daughter owned car titled in her father’s name when daughter paid for the car and admitted in a statement to police that she owned the car).

Based on its findings that Darrell Hart is the registered owner of the Jeep and no other names appear on the title and that Darrell Hart made all payments for the Jeep, including insurance, the district court concluded that Darrell Hart owned the Jeep. The city argues that because Kelley Hart had the only set of keys for the Jeep and admitted that she drove it “all the time,”² she meets the statutory definition of owner.

But the statutory definition requires that an owner be “legally entitled to possession, use, and control.” Minn. Stat. § 169A.63, subd. 1(h). Although Kelley Hart

² The city also asserts that Kelley Hart told the arresting officer “that the Jeep belonged to her but [is] registered to her father because she lacked the credit to purchase it in her name.” But the arresting officer’s trial testimony does not support this assertion. The officer testified that when he asked Kelley Hart who the vehicle belonged to, “she stated that the car belonged to her father but she’s the primary driver of the car. She drives it all the time.” During cross-examination, the officer testified that Kelley Hart did not say that she was the primary driver and that she only said that she drives the Jeep “all the time.”

had frequent and unrestricted use of the vehicle, the city has not identified any evidence that would support a claim that she is legally entitled to continued possession, use, and control of the Jeep. The district court found credible Darrell Hart's testimony that he owned the Jeep, which he used two to three times per month, and frequently loaned the Jeep to his daughter, often for weeks at a time. Unlike the driver in *Rife*, Kelley Hart did not pay for the Jeep, and she cannot claim that because she paid for the Jeep, she is entitled to possession, use, and control. The evidence supports the district court's conclusion that Darrell Hart owned the Jeep.

Affirmed.