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2012 IL App (3d) 110336-U

Order filed March 2, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0336
)	Circuit No. 10-MR-370
2005 TOYOTA RAV 4,)	
VIN JTEHD20V056039329,)	Honorable
)	Joseph C. Polito,
Defendant-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it denied the State's complaint to forfeit a 2005 Toyota Rav 4, based on its finding that the claimant was an innocent owner not subject to forfeiture.

¶ 2 The State filed a complaint for forfeiture of a 2005 Toyota Rav 4, in which claimant Thomas Pavek asserted he was an innocent owner and excepted from forfeiture. The trial court found Thomas an innocent owner, held that the Rav 4 was not subject to forfeiture, and ordered the vehicle returned to Thomas. We affirm.

¶ 3

FACTS

¶ 4 The State filed a complaint for forfeiture of a 2005 Toyota Rav 4, vehicle identification number (VIN) JTEHD20V056039329. 720 ILCS 5/36-1 *et seq.* (West 2010). The complaint alleged that on March 13, 2010, Arlene Pavek used the vehicle in committing the traffic offense of driving while her license was suspended pursuant to a statutory summary suspension for driving while under the influence (DUI) (625 ILCS 5/6-303 (West 2010)) and that the Wilmington police department seized the Rav 4 upon her arrest. Claimant Thomas Pavek asserted he was an innocent owner, which exempted the vehicle from forfeiture. A hearing took place on the State's forfeiture complaint, where the following evidence was presented.

¶ 5 The parties stipulated that: (1) an order was entered in June 2010 which defaulted Arlene as a potential claimant; (2) Arlene pleaded guilty in July 2010 to the offense of driving the Rav 4 on March 13, 2010, while her license was suspended; (3) Arlene was awarded temporary possession of the Rav 4 in the parties' pending dissolution of marriage action; (4) the Country Companies' insurance policy covering the vehicle named Arlene as an insured driver; (5) Thomas was in Georgia on March 13, 2010; (6) an order entered in the dissolution action granted possession of the Rav 4 to Arlene; (7) the Rav 4 was jointly titled in Arlene's and Thomas's names; (8) Thomas possessed three other vehicle and a motorcycle; (9) Arlene possessed another vehicle and a motorcycle. All the vehicles were jointly owned. We note that although the parties stipulated in number 7 above that Arlene possessed the Rav 4 pursuant to a court order, it was subsequently discovered that there was no order entered regarding the Rav 4 in the dissolution proceedings. Rather, Thomas and Arlene reached a verbal agreement that Arlene would keep possession of the Rav 4. The trial court concluded that the existence or nonexistence of a court order did not affect its determination of the

forfeiture issue. We agree with its conclusion.

¶ 6 Arlene testified that she was driving the Rav 4 on March 13, 2010, and had exclusive possession of it from mid-October 2009 per an agreement between her and Thomas. She told Thomas about her January 2010 DUI arrest but did not keep him updated on its status. She did not tell him that she was driving on March 13. Prior to their separation, she and Thomas had shared use of the Rav 4. Thomas testified that in March 13, 2010, he lived in a corporate apartment in Georgia and was not in contact with Arlene about her driver's license status. He became aware of Arlene's DUI two months after the Rav 4 had been seized. The Rav 4 was jointly titled and purchased during the marriage. It had been used by both him and Arlene until November 2009, after which she maintained exclusive custody of it. When he would return to Illinois, Thomas would drive by Arlene's residence and check the appearance of the vehicle. He also saw it on the road several times. Arlene obtained insurance on the vehicle and he did not know whether he was a named insured on her policy, although he assumed he was listed. The trial court thereafter denied the State's complaint to forfeit. The State appealed.

¶ 7

ANALYSIS

¶ 8 The sole issue for our determination is whether the trial court erred when it denied the State's complaint for forfeiture and ordered the seized vehicle returned to Thomas. The State argues that it presented sufficient evidence to support its claim for forfeiture and is entitled to have the Rav 4 forfeited.

¶ 9 A vehicle may be seized when it is "used with the knowledge and consent of the owner in the commission of *** (g) an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code [625 ILCS 5/6-303]." 720 ILCS 5/36-1 (West 2010). In order to obtain the seized vehicle

through forfeiture:

“[t]he State shall show at such [forfeiture] hearing by a preponderance of the evidence, that such vessel, vehicle or aircraft was used in the commission of an offense described in Section 36-1 [720 ILCS 5/36-1]. The owner of such vessel, vehicle or aircraft or any person whose right, title, or interest is of record as described in Section 36-1 [720 ILCS 5/36-1], may show by a preponderance of the evidence that he did not know, and did not have reason to know, that the vessel, vehicle or aircraft was to be used in the commission of such an offense ***. Unless the State shall make such showing, the Court shall order such vessel, vehicle or aircraft released to the owner.” 720 ILCS 5/36-2 (West 2010).

¶ 10 In bringing a forfeiture action, the State must first establish by a preponderance of the evidence that the seized vehicle was used in the commission of the charged offense. *People ex rel. Barra v. Wiebler*, 127 Ill. App. 3d 488, 489 (1984). If the State does so, the burden shifts to the claimant to show, also by a preponderance of the evidence, that he was the vehicle’s owner and “ ‘did not know, and did not have reason to know’ ” the vehicle was used to commit the offense. *Barra*, 127 Ill. App. 3d at 489 (quoting Ill. Rev. Stat. 1983, ch. 38, par. 36-2) (now 720 ILCS 5/36-2 (West 2010)). In forfeiture proceedings, an owner may be an individual who has dominion or control over something which another has title, regardless of whether he has possession. *People ex rel. Foreman v. Estate of Kawa*, 152 Ill. App. 3d 792, 798 (1987). An owner may also be “one that has the legal title or rightful title whether he is the possessor or not.” *Foreman*, 152 Ill. App. 3d at 799 (quoting

Webster's Third New International Dictionary 1612 (1981)). When a vehicle is registered to more than one person, the persons named in the title are statutorily presumed to be joint tenants of the vehicle. 625 ILCS 5/3-107.1 (West 2010); *People v. 1991 Chevrolet Camero, VIN 1GFP23E9ML117842*, 251 Ill. App. 3d 382, 385 (1993). Ownership may be demonstrated by evidence that a claimant purchased the vehicle and paid for repairs, maintenance, licensing and insurance. *Barra*, 127 Ill. App. 3d at 491. We will not reverse a trial court's findings in a forfeiture proceeding unless they are against the manifest weight of the evidence. *People v. 1998 Lexus GS 300, VIN JT8D68S4W0028350*, 402 Ill. App. 3d 462, 465 (2010).

¶ 11 The forfeiture analysis begins with the State's burden to establish by a preponderance of the evidence that the Rav 4 was used in the commission of the charged offense. The parties agree that this element is satisfied. Arlene pleaded guilty to driving the Rav 4 on March 13, 2010, while her license was summarily suspended for DUI. The second step in the analysis is the determination of whether Thomas was the owner of the Rav 4 and did not know or have reason to know the Rav 4 was used to commit the offense. The State submits that Thomas does not qualify as an owner and does not fall under the innocent owner exception to forfeiture. The State further submits that Thomas failed to demonstrate that he did not know or have reason to know that Arlene was using the Rav 4 in the commission of an offense, namely driving while her license was suspended for DUI.

¶ 12 In support of its argument that Thomas is not a true owner of the vehicle, the State relies on *People v. Dugan*, 125 Ill. App. 3d 820, 830 (1984), *aff'd* in part and *rev'd* in part on other grounds, 109 Ill. 2d 8 (1985), for the proposition that the court must consider the owner's knowledge and consent paramount over that of the titleholder in determining whether a vehicle is subject to forfeiture. Like the trial court, we find *Dugan* distinguished. In *Dugan*, the driver of the seized

vehicle was not named as the owner on either the registration or title. *Dugan*, 125 Ill. App. 3d at 830. The driver purchased the vehicle and presented the owner's name for licensing. *Dugan*, 125 Ill. App. 3d at 825. The driver paid insurance for the vehicle and kept it in his possession for extended periods of time. *Dugan*, 125 Ill. App. 3d at 825. The appellate court's finding that the driver was the true owner of the vehicle and that ownership in the titleholder was a "pretense" to prevent forfeiture was affirmed on appeal. *People v. Dugan*, 109 Ill. 2d 8, 18-9 (1985). The *Dugan* court concluded that because the defendant was the true owner, his knowledge and consent that the vehicle was used in the commission of a crime was sufficient to sustain a forfeiture action. *Dugan*, 109 Ill. 2d at 19.

¶ 13 Here, there is no evidence that Thomas was named on the title as a pretense to prevent forfeiture. The trial court expressly found that Thomas was "not a novel title holder" but was "a joint tenant, joint title holder, of the vehicle with Arlene." The Rav 4 was titled in both Thomas's and Arlene's names. It was purchased during the marriage with marital funds for use by both spouses. Until their separation, Thomas maintained insurance coverage on the vehicle and paid for repairs and licensing. Pursuant to an informal agreement between Thomas and Arlene, she maintained possession of the Rav 4 from the time of their separation in October 2009 until its seizure in March 2010. Thomas presumed that Arlene kept him as an insured on the policy she procured on the vehicle. During this period, the couple's dissolution action was pending and no orders had been entered regarding a property distribution, including the Rav 4. Accordingly, we find that the trial court's determination that Thomas was a true owner of the vehicle was not against the manifest weight of the evidence.

¶ 14 We next look at whether Thomas knew or had reason to know that about Arlene's use of the vehicle in committing the admitted offense. The State maintains that Thomas did not establish

innocent ownership. The evidence indicates the opposite. Thomas and Arlene separated in October 2009, at which time Arlene kept possession of the Rav 4 with Thomas's consent. On March 13, 2010, the date of the offense at issue, Thomas was living in a corporate apartment in Georgia. While he observed the vehicle in Arlene's driveway and on the roadway from time-to-time when he returned to Illinois, there is no indication that he was aware Arlene was using the vehicle after her license was suspended. Thomas stated he was unaware of Arlene's DUI until a couple of months after the Rav 4 was seized, although Arlene stated she told him about her DUI at the time it occurred. Even if Thomas knew of Arlene's DUI, he had no reason to know that she would continue to drive after her license was suspended. By Arlene's testimony, communication was strained between the couple and she stated did not tell Thomas she was driving on March 13. We find that the trial court's determination that Thomas was an innocent owner and did not know or have reason to know of Arlene's use of the Rav 4 on a suspended license was not against the manifest weight of the evidence. We hold that the trial court did not err when it denied the State's complaint for forfeiture.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.