2019 IL App (3d) 180151-U

Order filed April 3, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE *ex rel.* JAMES W. GLASGOW, State's Attorney of Will County, Illinois,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-18-0151 Circuit No. 15-MR-2298
2015 JEEP WRANGLER,	)	
Defendant	)	The Honorable Carmen Julia Goodman, Judge, presiding.
(Brian Austin, Claimant-Appellee).	)	

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying the State's complaint for forfeiture.

¶ 2 Claimant was convicted of driving while under the influence (DUI) of drugs and DUI while license was suspended as a result of a September 2015 incident. In October, the State filed a complaint to declare forfeiture on a 2015 Jeep Wrangler owned by claimant. The State filed a motion for summary judgment, which the trial court denied, and the case proceeded to trial. The

trial court ruled that the Jeep should be forfeited to claimant's wife because she had an interest in the Jeep and she and the three children of the marriage would benefit from having possession of the Jeep. The State requested that the court stay the release of the Jeep, order Austin to post bond, and order Austin to refrain from transferring and encumbering the Jeep pending the State's notice of appeal. The court denied the State's request, and the State appealed. We affirm.

¶ 3 FACTS

¶ 4 In October 2015, the State filed a complaint to declare forfeiture on a 2015 Jeep Wrangler owned by claimant Brian J. Austin, arguing that (1) the Jeep was used with Austin's knowledge and consent while he committed the offense of driving while his license was suspended under section 36-1(a)(7) of the Criminal Code of 2012 (720 ILCS 5/36-1(a)(7) (West 2016)) and (2) the Jeep was used with Austin's knowledge and consent while he committed the offense of driving while under the influence of drugs while his license was suspended under section 36-1(a)(6)(D) of the Criminal Code (720 ILCS 5/36-1(a)(6)(D) (West 2016)).

¶ 5 In November 2015, the trial court entered a default judgment against Austin for failing to file an answer to the complaint. Austin filed a motion to vacate default judgment, which the trial court granted and reinstated the case. The State filed a motion to reinstate default judgment, which the trial court denied. Thereafter, Austin filed an answer, stating:

> Speaking of the September incedent [*sic*], I plead guilty to operating a motor vehicle while impaired. I had left my house knowing I would not make it home in thime [*sic*] to seek another ride. And every one one [*sic*] I know work's during the day. Now my medication does indeed make me tired. However, after 5-6 years of being on the meds the effects on me are minnimall [*sic*].

The arresting officer stated in his sworn affidvid [*sic*] said "Mr. Austin handed me a valid insurance card." Yet he wrote me a ticket for no insurance? I'm not sure if that was a mistake or if he just wanted to pile on the charges as long as D.U.I., improper lane useage [*sic*], etc. I am not claiming not guilty. I had prior engagements in which I would not be home in time to take my nightly medication. So I took it upon myself to double up on them not knowing the consiqensis [*sic*]. Had I known it would cost me our Family car I would have thought strongly about it and never taken it. That Jeep is the only car we have. Now we have a very hard time getting our girls to poms, cheer, vollyball [*sic*], not to mention work. I only hope, and pray the state will see it in there [*sic*] hearts to return the car to my wife and I to ease life and inable [*sic*] her "my oldest" daughter to look at colleges and for my 16 yr old to have a car for work seeing as its our only car. Yes my adverse affect from my medication that I had doubled up on knowing I would miss my p.m. dose. I am afraid of haveing [*sic*] a seizure. Although they have been under control for over 2½ years that is why my doctor felt comfortable signing of [*sic*] on the medical forms to allow me to drive. I was hopeing [*sic*] to get a part time job and improve my life after the accident that's all I wanted!

My doctor had done an exame [*sic*] and said I was good to drive. After almost [ ] yrs without an incedent [*sic*]. I was so happy to get my DL back after eight years of not being about to move forward in life. That vehicle was the future for my wife, children, and myself. Do [*sic*] to my spinal injury I was forced to find another way to support my family in another way my life delivering etc. Maybe me doing mechanical work, handy man. I also can not deny that my medication doubled up had made me impaired and in turn swearved [*sic*] of [*sic*] the road into a gentleman's yard and landscape in which I feel very guilty for and would love to help the man repair his lawn & landscape. It bothers me that I can't have the chance to apologize to the gentleman I affected. Also in conclusion I thank the lord I haven't hurt anyone but myself, I'm very fourtuneate [*sic*] to have only injurys [*sic*] to myself. The quilt [*sic*] of that is something I couldn't live with. So the damadge [*sic*] is done. But by seizing my Family car my wife, daughter and myself have had to sacrifice. I have lost my part time job in Peotone. Shure [*sic*] thing are hard with one car but I could have made it work. After 8 years of injury and years of workman's comp. I was ready to rejoin the work force in any way possible to be a productive member of sociyity [*sic*] and provide for my family. And I can promise you, I will never double up on my medication again now that I'm aware of what will happen if I do. I

> have worked for over 20 yrs to support my marradge [*sic*]. I want that chance and the Jeep I spent my life saving on. It's the only vehicle for my wife, daughter and I have only one vehicle and went broke to get it. There is no replacing it. Not in my life time. I am also willing to repair the man's landscape if possible. In the end, I am truely [*sic*] sorry for any of those I may have adversely affected."

¶ 6 In April 2016, the State filed a motion for summary judgment, arguing that there were no issues of material fact in this case and that the Jeep should be forfeited as a matter of law. The motion stated that Austin is the only person listed on the title to the Jeep subject to this case; that his driver's license was under statutory summary suspension as of September 2015; and that he pled guilty to aggravated driving under the influence and driving while his license was suspended as a result of the incident that occurred on September 9, 2015, and was sentenced to intensive probation. The trial court denied the motion, and the case proceeded to trial.

¶ 7 At trial, the State called two witnesses: Will County Sheriff's Department Deputy Andrew Schwartz testified on behalf of the State and Austin testified as an adverse witness. Deputy Schwartz stated that he responded to a dispatch to a hit and run property damage incident on September 9, 2015. As he was driving, he observed damage to the victim's landscaping near the driveway of his home and, when he arrived at the scene, deputies informed him that the victim, later identified as Brian Benjamin, had been in his front yard when the victim observed a vehicle drive across the grassy area of his driveway and continue southbound. Schwartz also spoke with Austin, who was stopped between two to four miles away from the incident. He appeared to have "difficulty standing at times, pinpoint pupils, [and] slow reactions to questions

that I was asking him" and Austin's speech was "[a]t times slurred, difficult to understand." Austin told Schwartz that he had taken Suboxone and Alprazolam, which were prescribed to him by his doctor, but he did not have any other medical conditions, did not take any illegal substances, and did not consume any alcohol.

¶ 8 Schwartz asked Austin to submit to a field sobriety test and Austin complied. Schwartz conducted the horizontal gaze nystagmus test and observed six clues of impairment during the test. Austin performed the walk and turn test and Schwartz observed seven clues of impairment during the test. In particular, Schwartz observed that "[w]hile he's walking he stepped off the line. He missed touching heel to toe. He used his arms for balance, took an improper turn ***." Austin also performed the one leg stand test and Schwartz observed four clues of impairment during the test, specifying that "[h]e placed his foot down multiple times, he hopped, he swayed, and he used his arms for balance while he was doing the test." Afterward, Schwartz searched Austin's driving history and discovered that Austin's driver's license was suspended for driving while under the influence. Schwartz conducted a preliminary breath test to detect alcohol and Austin's results were .000. Schwartz arrested Austin for driving under the influence and for driving while his license was suspended. At the police station, Austin initially agreed to take a urine test; however, he did not complete the test because he did not believe he could provide a sample. Austin testified that, on September 9, 2015, he took Alprazolam and possibly Suboxone around 6 p.m. and, thereafter, operated the Jeep for about 45 minutes before he was stopped by the police. He plead guilty to driving under the influence of drugs because he had taken his medication before he drove the Jeep.

¶ 9 Austin also testified on his own behalf. He stated that he had taken prescription medication prior to his police encounter. He owned and operated a 2015 Jeep Wrangler at the

time he was stopped. He was aware that his driver's license was suspended for driving while under the influence at the time he was operating the Jeep on September 9. He paid $37,000 for the Jeep with cash because "I was in a pretty bad accident at work where I was injured and disabled pretty much permanently, and I received a settlement and used the money to purchase the vehicle ultimately for my wife and children. Austin explained that he did not submit a urine sample because he developed a neurological problem after his work accident and could not urinate without using a catheter. Austin was sentenced to two to four years' imprisonment on a 2017 driving under the influence conviction that occurred after the commencement of this forfeiture case. An affidavit of assets and liabilities was admitted into evidence. The affidavit showed that, in the 2017 DUI case, Austin listed the Jeep as an asset valued at $20,000.

¶ 10 The trial court denied the State's complaint, determining that, although it was not excusing Austin's actions, it believed that Austin's wife "has an interest even though she's not sitting there, she has an interest in this particular vehicle and may be able to benefit from that with three children." The court also noted Austin's four-year sentence on his subsequent DUI conviction and stated that Austin's "ability to drive a vehicle is none [*sic*] and void." In the trial court's written order, it denied the State's complaint for forfeiture, ordered that the Jeep be released to Austin's wife, Kelly Austin, and ordered that Kelly show proof of a valid driver's license before the Jeep was released in her possession. The State requested that the court stay the release of the Jeep, order Austin to post a bond, and order Austin to refrain from transferring and encumbering the Jeep pending the State's notice of appeal. The trial court denied the State's requests. The State appealed.

¶ 11 ANALYSIS

¶ 12 The State argues that the trial court's ruling was against the manifest weight of the evidence because (1) the State proved that forfeiture of the Jeep was proper by a preponderance of the evidence; (2) Austin's wife did not have an interest in the Jeep because (a) a marital relationship does not automatically give his wife title to the Jeep and (b) Austin failed to show that financial hardship to the family as a results of the seizure outweighs the benefit to the State from the seizure pursuant to 36-1(d) of the Criminal Code of 2012 (720 ILCS 5/36-1(d) (West 2016)); and (3) forfeiture did not violate the excessive fines clause of the eight amendment. Notably, Austin did not file an appellee brief. "Generally, we will not act as an advocate for an appellee who fails to file a brief." *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). "However, when a record is simple and the claimed error can easily be decided without the aid of an appellee's brief, we should decide the appeal's merits." *Id.* We believe that we can decide this case without the aid of appellee's brief.

¶ 13 The State challenges the trial court's denial of its complaint for forfeiture pursuant to sections 36-1(a)(6)(D) and 36-1(a)(7). Section 36-1 governs the type of property that is subject to forfeiture. It states, in relevant part:

> "Any vessel or watercraft, vehicle, or aircraft is subject to forfeiture under this Article if the vessel or watercraft, vehicle, or aircraft is used with the knowledge and consent of the owner in the commission of or in the attempt to commit as defined in Section 8-4 of this Code:
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> * * *
>
> (6) an offense prohibited by Section 11-501 of the Illinois Vehicle Code (driving while under the influence of alcohol or

other drug or drugs, intoxicating compound or compounds or any combination thereof) or similar provision of a local ordinance, and:

* * *

(D) he or she did not possess a valid driver's license or permit or a valid restricted driving permit or a valid judicial driving permit or a valid monitoring device driving permit; ***

***

(7) an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code [(driving while driver's license permit or privilege to operate a motor vehicle is suspended or revoked)]." 720 ILCS 5/36-1(a)(6)(D), (a)(7) (West 2016)).

¶ 14 A civil forfeiture involves a civil proceeding consisting of a two-step process. *People v. 2009 Chevrolet 2500*, 2016 IL App (3d) 140883, ¶ 37. First, the State must prove its right to the property by a preponderance of the evidence. *Id.* "A proposition is proven by the preponderance of the evidence when, considering all the evidence, the proposition on which the party has the burden of proof is more probably true than not true." *Id.* Once the court finds that the State's evidence established its proposition, "the burden then shifts to the owner to show, by a preponderance of the evidence, either that he did not know, and did not have reason to know, that the vehicle was used in the commission of a statutorily enumerated offense or that an exception applies." *People ex rel. Nerheim v. 2005 Black Chevrolet Corvette*, 2015 IL App (2d) 131267, ¶ 18. In any forfeiture case, the trier of fact determines the credibility of the witnesses and evaluates their testimony, including any reasonable inferences and conclusions that is drawn from the evidence. *2009 Chevrolet 2500*, 2016 IL App (3d) 140883, ¶ 38. This court will not

reverse a trial court's decision regarding forfeiture unless it is against the manifest weight of the evidence. *Id.*

¶ 15 First, we review whether the State demonstrated that the Jeep is subject to forfeiture by a preponderance of the evidence. Austin testified that he was owner of a 2015 Jeep Wrangler. He stated that, on September 9, 2015, he took Alprazolam and possibly Suboxone and, afterward, operated the Jeep subject to this forfeiture action. While operating the Jeep, Austin drove onto Benjamin's front yard and continued to drive until he was stopped by the police. He admitted that he was aware that his driver's license was suspended for a prior DUI at the time he was operating the Jeep. He also stated that he pled guilty to DUI as a result of the incident that occurred on September 9, 2015. In Austin's answer to the complaint, he stated that he pled guilty to "operating a motor vehicle while impaired" and that he was not claiming his innocence. He explained that he "doubled up" on his medication before he operated the Jeep, that the medication "does indeed make me tired," and that he could not "deny that my medication doubled up made me impaired." Therefore, we find that the State established the Jeep was subject to forfeiture under sections 36-1(a)(6)(D) and 36-1(a)(7) by a preponderance of the evidence.

¶ 16 Next, we examine whether the evidence shows that Austin did not know, or have reason to know, that the Jeep was used during the commission of any offense enumerated under section 36-1 or that an exception applies. The record does show by a preponderance of the evidence that Austin did not know the Jeep was to be used for the commission of driving under the influence of drugs under section 36-1(a)(6)(D). In Austin's answer to the complaint, he stated that his doctor performed an examination on him and concluded that he was allowed to drive; that, historically, the effects of his medication were minimal; and that he did not know the

consequences of doubling up on his medication. However, the record is devoid of evidence that Austin did not know the Jeep was used while driving with a suspended license under section 36-1(a)(7). In fact, Austin admitted that he was aware his license was suspended when he drove on September 9, 2015. Because each subsection under section 36-1(a) is separated by the word "or", the State need only prove one ground to constitute forfeiture under section 36-1. See *People v. Frieberg*, 147 Ill. 2d 326, 349 (1992) ("As used in its ordinary sense, the word 'or' marks an alternative indicating the various members of the sentence which it connects are to be taken separately."). Therefore, the evidence did not show that Austin met his burden of proof by a preponderance of the evidence.

¶ 17 We do believe, however, that an exception applies in this case. As the State notes, section 36-1(d) allows a spouse of the owner of the vehicle subject to forfeiture to retain the vehicle under certain circumstances. Specifically, it states:

> "If the spouse of the owner of a vehicle seized for an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code, a violation of subdivision (d)(1)(A), (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section 11-501 of the Illinois Vehicle Code, or Section 9-3 of this Code makes a showing that the seized vehicle is the only source of transportation and it is determined that the financial hardship to the family as a result of the seizure outweighs the benefit to the State from the seizure, the vehicle may be forfeited to the spouse or family member and the title to the vehicle shall be transferred to the spouse or family member who is properly licensed and who requires the use of the

> vehicle for employment or family transportation purposes. A written declaration of forfeiture of a vehicle under this Section shall be sufficient cause for the title to be transferred to the spouse or family member. The provisions of this paragraph shall apply only to one forfeiture per vehicle. If the vehicle is the subject of a subsequent forfeiture proceeding by virtue of a subsequent conviction of either spouse or the family member, the spouse or family member to whom the vehicle was forfeited under the first forfeiture proceeding may not utilize the provisions of this paragraph in another forfeiture proceeding. If the owner of the vehicle seized owns more than one vehicle, the procedure set out in this paragraph may be used for only one vehicle."

¶ 18 The State argues that there is no evidence of financial hardship to Austin's wife and children that outweighs the benefit of forfeiture to the State. We disagree. Section 36-1(d) does not provide a definition of financial hardship. However, our supreme court established that "[f]orfeitures are generally disfavored under the law, and the courts must be vigilant in safeguarding the rights of innocent persons who have legitimate interests in the property at issue." *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 79. We must construe forfeiture statutes strictly in favor of the property owner in a way that is consistent with fair principles of statutory interpretation. *Id.* Therefore, we will interpret financial hardship strictly in favor of the property owner in this case. In Austin's answer, he stated that the Jeep was the family's only car, that his children would have a hard time getting to their school activities and work, that his oldest daughter was inhibited from exploring colleges; that his 16-year-old

daughter needed the car for work; that Austin spent a substantial amount of money on the vehicle; and that the family could not afford to replace the vehicle. We believe that this evidence shows the Jeep is the only source of transportation for Austin's family and that the financial hardship to the family outweighs the benefit of forfeiture to the State.

¶ 19 The State also claims that section 36-1(d) is not applicable to this case because Austin's wife did not make a showing of financial hardship in accordance with the section. Section 36-1(d) state that if *the spouse of the owner of the vehicle seized* for an offense listed in section 36-1(d) *makes a showing* that the seized vehicle was the only source of transportation and that financial hardship outweighs the benefit of forfeiture to the State, the vehicle may be forfeited to the spouse. Here, there is no evidence that the wife made a showing of financial hardship.

¶ 20 However, we believe that it would be unjust and unfair to apply the State's narrow interpretation that the wife must present the argument of financial hardship to the court in person for two reasons. First, this court must ensure that we do not interpret a statute in a way that would lead to an absurd or unjust result. *Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan District*, 238 Ill. 2d 262, 283 (2010). There is ample evidence of a financial hardship for the family despite the wife's failure to make that showing personally before the court and it would be unfair to allow forfeiture to the State in such cases, particularly given our established principle that forfeiture is disfavored in Illinois. Second, assuming *arguendo*, we were to reverse the trial court's decision on the basis that the State has met its burden of showing it is eligible to forfeit the vehicle and Mrs. Austin has not personally made a case for her family's financial hardship, section 36-1(d) does not limit the period in which she can seek forfeiture of the Jeep to her for the benefit of her family. She could still file a petition and make a showing of financial hardship at any time after this court's decision. It would be an

unnecessary use of court resources and time if this court did not render a decision on the issue when there is already uncontroverted evidence of financial hardship. Therefore, we find that the trial court's finding that forfeiture of the family Jeep to the State was a financial hardship to Austin's wife and children and that they were entitled to possession of the Jeep in accordance with section 36-1(d) was not against the manifest weight of the evidence.

¶ 21 Section 36-1(d) also requires that "the vehicle shall be transferred to the spouse or family member who is properly licensed and who requires the use of the vehicle for employment or family transportation purposes. A written declaration of forfeiture of a vehicle under this Section shall be sufficient cause for the title to be transferred to the spouse or family member." The trial court found that the Jeep was needed for employment and family transportation purposes and, in its written order, it ordered that the Jeep be released to Austin's wife and that she had to show proof of a valid driver's license before the Jeep was released. We hold that trial court complied with section 36-1(d) and that the Jeep was properly forfeited to Austin's wife and we affirm the trial court's decision. Given this decision, we find it unnecessary to address the State's argument that the forfeiture does not violate the excessive fines clause of the eighth amendment.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.