2011 IL. App. (3d) 110076-U

Order filed September 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re Complaint for Forfeiture, 1996 Chevrolet Caprice. VIN 1G1BL52WXTR157073 (THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. PRISCILLA KNICKEL and RODNEY A. VANRYCKE, Defendant-Appellees).	))))))))))))))	Appeal from the Circuit Court of the 14th Judicial Circuit Whiteside County, Illinois, Appeal No. 3-11-0076 Circuit No. 09-MR-51 The Honorable John L. Hauptman, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's denial of the State's complaint for forfeiture was against the manifest weight of the evidence as the State met its burden of proving that forfeiture was warranted, and the vehicle's owner did not present evidence indicating that the driver used her vehicle without her knowledge or consent, and also did not present evidence of a hardship.

¶ 2 The State filed a complaint for forfeiture pursuant to section 36 of the Criminal Code of 1961 (the Code) (720 ILCS 5/36 (West 2008)). After a hearing, the court denied the State's complaint, finding that it would cause the vehicle's owner, Priscilla Knickel, a hardship if the vehicle were forfeited. The State appealed, contending that Knickel did not qualify for the hardship exception, nor did she present evidence showing that forfeiture would result in a hardship. Because we believe that the State met its burden of proof, and because Knickel neither presented evidence indicating that she did not know of or consent to the driver's use of her vehicle, nor did she present evidence indicating that forfeiture would cause a hardship, we reverse the determination of the trial court and remand the cause for further proceedings.

¶ 3 FACTS

¶ 4 On August 31, 2009, the State filed a complaint for forfeiture of a 1996 Chevrolet Caprice, VIN Number 1G1BL52WXTR157073 (the Chevy). The State alleged that the Chevy was subject to forfeiture because Rodney VanRycke used it in the commission of the offense of aggravated driving under the influence of alcohol (DUI) at a time his license was revoked for a prior DUI offense.

¶ 5 The court conducted a hearing on the State's complaint. At the hearing, Priscilla Knickel, VanRycke's mother, stipulated that on August 17, 2009, she knew that VanRycke was driving the Chevy and that his driver's license had been revoked for a prior DUI conviction. The trial judge noted that he had adjudicated VanRycke guilty of the DUI offense underlying the forfeiture complaint. In response to questions from the court, Knickel, who proceeded *pro se*, specifically acknowledged that on August 17, 2009, she "allowed [her] son to use th[e] vehicle," and did so "[k]nowing that [VanRycke's] driver's license was revoked."

¶ 6 Knickel further answered that she did not have a loan on the Chevy, and she had alternate means of transportation because she had purchased another vehicle. The court inquired whether VanRycke's use of the Chevy was an "isolated occurrence" or if the Chevy was "always in [VanRycke's] possession," to which Knickel explained that VanRycke's use of the Chevy "wasn't anything special[.]" She further acknowledged that VanRycke had used the Chevy "on more than just [that] one occasion." Knickel also stated that at the time of the instant offense, VanRycke did not reside with her.

¶ 7 The State asserted that it had met its burden of proving forfeiture under section 36 of the Code (720 ILCS 5/36 (West 2008)), as it established that Knickel knew and consented to VanRycke's use of the Chevy, and that she did so knowing his license was revoked for a prior DUI conviction. The State also argued that Knickel did not meet the exclusions from forfeiture pursuant to section 36-3 of the Code (720 ILCS 5/36-3 (West 2008)), as these pertained to vehicles used by a common carrier. The State further contended that Knickel had not indicated that forfeiture of the Chevy would cause a hardship.

¶ 8 VanRycke, who was present and appeared with counsel at this hearing, asserted through counsel that Knickel was not necessarily aware that VanRycke was driving the Chevy on the day of the instant offense. Counsel also acknowledged that this instance did not involve a hardship to a spouse of Knickel, and since she already had title to the vehicle, the hardship exception of section 36-1 of the Code (720 ILCS 5/36-1 (West 2008)) did not apply. Counsel thus asserted that for equitable reasons, the Chevy should be returned to Knickel.

¶ 9 The court stated that section 36 of the Code called for "very harsh consequences," and that it provided for the taking of property from an owner because they had knowledge of

another's illegal activity regarding the property. The court considered the hardship exception in section 36-1 of the Code. The court acknowledged that while section 36-1 of the Code first referred to a hardship on the spouse, it later mentioned "family member." The court thus found "a hardship" and denied the State's complaint. The State appealed.

¶ 10 ANALYSIS

¶ 11 On appeal, the State contends that the court erred when it denied their motion for forfeiture based on hardship. The State specifically contends that section 36-1 of the Code provides that the spouse of the owner must prove that forfeiture would cause a hardship to him, and does not provide that the vehicle's owner or a family member of the owner may assert the hardship exception. The State also contends that in this case, Knickel did not show that any hardship would result due to forfeiture of the Chevy. We conclude that in this case, the State met its burden of establishing forfeiture, and that Knickel presented no evidence to the contrary. Knickel also failed to present any evidence of a hardship. Thus, the court's finding of a hardship and determination to deny the State's complaint for forfeiture were against the manifest weight of the evidence.

¶ 12 A forfeiture action is a civil action and it is an in rem proceeding against the item used in the commission of a crime. *People v. 1991 Chevrolet Camaro*, 251 Ill. App. 3d 382 (1993). Section 36-1 of the Code specifically provides for the seizure of any vehicle "used with the knowledge and consent of the owner in the commission of *** driving under the influence of alcohol *** during a period in which [the driver's] driving privileges are revoked" for a prior DUI offense. 720 ILCS 5/36-1(f)(1) (West 2008). This section further provides, however, that if the spouse of the owner of a seized vehicle makes a showing that the seized vehicle was his only

source of transportation, and if the court determines that the financial hardship to the family outweighs the benefit to the State of seizing the vehicle, the vehicle may instead be forfeited to the spouse or other family member, and title may be transferred from the owner to the spouse or family member who needs the vehicle for employment or family transportation purposes. 720 ILCS 5/36-1 (West 2008).

¶ 13 After the vehicle is seized, the statutory scheme of section 36 of the Code states that, if the State's Attorney in the county where the seizure occurred "finds that such forfeiture was incurred without willful negligence or without any intention on the part of the owner *** to violate the law, or finds the existence of such mitigating circumstances as to justify remission of the forfeiture, [the State's Attorney] may cause the sheriff to remit the [vehicle]." 720 ILCS 5/36-2(a) (West 2008). However, if the State's Attorney does not opt for remitter of the seized vehicle, the State's Attorney must bring an action for forfeiture. 720 ILCS 5/36-2(a) (West 2008).

¶ 14 At the forfeiture hearing, the State must show, by a preponderance of the evidence, that the relevant vehicle was used in the commission of an offense described in section 36-1 of the Code. 720 ILCS 5/36-2 (West 2008). In turn, the owner may put forth evidence that shows, by a preponderance of the evidence, that she neither knew, nor had reason to know, that vehicle was to be used in the commission of an offense described in section 36-1 of the Code, or she may also show the applicability of an exception enumerated in section 36-3. 720 ILCS 5/36-2 (West 2008). The exceptions in section 36-3 pertain to vehicles used as a common carrier in a business, or instances where the relevant vehicle was in the unlawful possession of someone other than the owner at the time the police seized it. 720 ILCS 5/36-(3)(a), (b) (West 2008).

¶ 15 Another district of this appellate court has articulated the proper procedure pursuant to section 36 of the Code in a forfeiture proceeding. *People v. One 1980 Mercedes Auto.*, 166 Ill. App. 3d 467 (1988). Specifically, that court stated that section 36-1 of the Code

> "provides that any vehicle used with the knowledge or consent of the owner in the commission of [aggravated DUI] may be seized. [Citation.] Section 36-2 of the Code provides that after seizure, the State may bring a forfeiture action in the circuit court of the county of seizure. [Citation.] Section 36-2 further provides that in the forfeiture action, the State must show by a preponderance of evidence that the vehicle was used in the commission of an offense. If the State fails to meet this burden of proof, or if the owner *** shows by a preponderance of evidence that [s]he did not know and did not have reason to know that the vehicle was being used in the commission of an offense, the court shall order release of the vehicle." *One 1980 Mercedes Auto.*, 166 Ill. App. 3d at 469.

¶ 16 On appeal, a reviewing court will not disturb the findings of the trial court in a forfeiture proceeding unless the findings are against the manifest weight of the evidence. *People v. 1998 Lexus GS 300*, 402 Ill. App. 3d 462 (2010). A trial court's decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident from the record. *People v. Hood*, 265 Ill. App. 3d 232 (1994).[1]

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[1] Although the appellee has not filed a brief on appeal, we have reached the merits of the instant case as "the record is simple and the claimed errors are such that [this] court can easily

¶ 17 Moving to the merits, in this case, the State's evidence showed that Knickel knowingly permitted VanRycke to use the Chevy at a time when his license was revoked for DUI, and during his use of the vehicle, he committed a DUI offense. Knickel specifically acknowledged that she had permitted VanRycke to use the Chevy, and that she knew that his driver's license was revoked. She also agreed that VanRycke's use of this vehicle was not an isolated event, and deemed that "[i]t wasn't anything special" that VanRycke used the vehicle, as he had used it "on more than just [that] one occasion." The court stated that it had convicted VanRycke of the aggravated DUI offense underlying the instant seizure, and aggravated DUI is an offense enumerated in section 36-1(f)(1) of the Code (720 ILCS 5/36-1(f)(1) (West 2008)). Therefore, the evidence shows that Knickel knew that VanRycke's license was revoked, that it had been revoked for DUI, and that she permitted him to use her vehicle on August 17, 2009, the date of his subsequent DUI offense, as well as on other occasions. Consequently, the manifest weight of the evidence indicates that the State met its burden under section 36-2 of the Code.

¶ 18 On the other hand, the evidence does not indicate that Knickel met her burden to show that she did not know, or have reason to know, that VanRycke would use the Chevy at the time he committed the aggravated DUI offense. As we have noted, Knickel permitted VanRycke to use her Chevy, and indicated that he routinely used it. She also knew that his license had been revoked for a DUI conviction. Thus, Knickel permitted VanRycke to use her Chevy, and did so at a time that she knew his license was revoked for a DUI offense. As a result, Knickel did not meet her burden of showing that she did not know or have reason to know of VanRycke's use of

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decide them without the aid of an appellee's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

the Chevy. See *People v. One 1999 Lexus*, 367 Ill. App. 3d 687 (2006) (appellate court affirmed forfeiture in an instance where the State proved that the driver was convicted of aggravated DUI, and the vehicle's owner should have known that the driver's license was suspended for prior DUI convictions). Knickel also did not invoke any of the exceptions in section 36-3 of the Code, and we conclude that none apply. Consequently, the State met its burden for establishing forfeiture, and the court erred in finding otherwise.

¶ 19 We further conclude that Knickel did not present evidence, either through her own testimony, or the testimony of a spouse or family member, that forfeiture of the Chevy would create a hardship. The only testimony that bears on a hardship was Knickel's statement that she had alternate means of transportation because she had purchased another vehicle, and the testimony indicates that forfeiture of the Chevy would not create a hardship to her. Therefore, Knickel has not established a hardship such that the court should have denied the State's complaint for forfeiture. Thus, we need not comment on the State's contention of whether the exception of section 36-1 of the Code can be invoked by only a spouse, or a spouse or family member. Consequently, the court's finding of a hardship was against the manifest weight of the evidence.

¶ 20 Here, in sum, because the State met its burden of proof, and because Knickel did not present evidence countering the State's evidence or indicating a hardship, the court's determination to deny the State's forfeiture complaint was against the manifest weight of the evidence.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Whiteside County is reversed, and the cause is remanded for further proceedings consistent with this order.

¶ 23 Reversed and remanded.