

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAY 23 2006

MICHAEL S. RICHIE
CLERK

STATE OF OKLAHOMA, *ex rel.*)
TIM HARRIS, DISTRICT)
ATTORNEY,)

Plaintiff/Appellee,)

vs.)

Case No. 101,903

1998 LEXUS VIN:)
JT8BD68S2W0034986,)
TAG 2004 OK TKU-305, and ONE)
THOUSAND TWO HUNDRED)
SIXTY-THREE DOLLARS)
(\$1,263.00), ONE (1) LORCIN 9MM)
HANDGUN, ONE (1) S&W 32 CAL.)
REVOLVER,)

Defendant,)

and)

LISA CRISP,)

Interested Party/Appellant.)

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DAVID L. PETERSON, TRIAL JUDGE

AFFIRMED

Steven Hightower
Tulsa, Oklahoma

For Appellant

Charles Creekmore
ASSISTANT DISTRICT ATTORNEY
Tulsa, Oklahoma

For Appellee

OPINION FROM JERRY L. GOODMAN, JUDGE:

This is Lisa Crisp's (Owner) appeal from the trial court's February 17, 2005, order of forfeiture of her Lexus automobile. Owner contends the vehicle was used by her estranged husband to transport contraband without her knowledge, and that she is the innocent owner of the vehicle. She contends the trial court erred when it determined she failed to meet her burden of proof to show she was the innocent owner. Based upon our review of the facts and applicable law, we affirm.

FACTS

On July 25, 2003, Tulsa Police executed two search warrants at two residences looking for Owner's estranged husband, Anthony Crisp. Police simultaneously executed warrants at a Tulsa residence on North Kenosha, and on a Broken Arrow residence on West Pittsburgh. Owner lives at the Broken Arrow residence where police found minute traces of marijuana in her Lexus automobile, cash, a firearm, and prescription medication. At the Tulsa residence, police found

crack cocaine, marijuana, a firearm, and household bills in the name of Owner's husband.

State filed an application to seize the Lexus, the firearms, and the cash. Owner objected, and a hearing was held on January 27, 2005. In its order filed February 17, 2005, the trial court ordered the two firearms and the Lexus forfeited. Further, the trial court found that \$643.00 of the money be forfeited, and the remaining \$620.00 be returned to Owner. Owner appeals, contending she was the innocent owner of the car, which was being used by her husband for drug dealing without her consent or knowledge.

STANDARD OF REVIEW

Actions for forfeiture of property seized under the Act are civil in nature and remedial in character. *State ex rel. McGehee v. 1989 Ford F-150 Pickup*, 1994 OK CIV APP 162, 888 P.2d 1036. In a civil action tried before the bench, the trial court's judgment, absent pure error of law, will not be disturbed on appeal if there is any competent evidence reasonably tending to support the trial court's conclusion. *American Fertilizer Specialists, Inc. v. Wood*, 1981 OK 116, 635 P.2d 592; *Anglo-American Clothing Corp. v. Marjorie's of Tiburon, Inc.*, 1977 OK 165, 571 P.2d 427; *State v. Eleven Thousand Five Hundred Sixty-Six (\$11,566.00) Dollars*, 1996 OK CIV APP 67, 919 P.2d 34.

ANALYSIS

The trial court entered an order of forfeiture of Owner's cash and vehicle pursuant to the Uniform Controlled Dangerous Substances Act, 63 O.S.2001 and Supp. 2005, §§ 2-101 to 2-608 (Act). Specifically, State sought seizure of the car based on 63 O.S. Supp. 2004, § 2-503(B), which states:

Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

State also sought seizure of the car, the cash, and the firearms pursuant to 63 O.S. Supp. 2004, § 2-503(A)(4),(6),(7) and (9), which state:

The following shall be subject to forfeiture:

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in Section 2-101 of this Title, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

...

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under Section 2-101 et seq. of this title. The burden of proof is upon claimants of the property to rebut this presumption;

...

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

On appeal, Owner's sole proposition of error is the trial court committed legal error when it found the Lexus should be forfeited. Owner contends the trial court's ruling was against the great weight of the evidence and should be reversed.

At the hearing, two detectives from the Tulsa Police Department testified. Detective Hickey testified about serving the warrant and the resulting search at the Tulsa house, while Detective Wolthuis testified about serving the warrant and the resulting search at the Broken Arrow house. Owner testified on her behalf. Her husband Anthony did not testify because he was incarcerated on federal drug charges, though he was later present in the courtroom for some of the testimony. The record reflects that two teams of police detectives observed both Anthony and Owner each drive the Lexus at various times 72 hours preceding the execution of the warrant. Anthony had also been seen driving the Lexus 10-15 times in the months preceding the search. There was no testimony that both Anthony and Owner occupied the car at the same time. The detectives testified that the Tulsa house was a drug-stash house; it was unoccupied when the warrant was served, but contained Anthony's clothes – but not Owner's – plus one firearm and drugs. There were utility bills in the home with Anthony's name and personal photos of Anthony and Owner.

When police searched the Broken Arrow house, they found Anthony and Owner in the bedroom, one gun, a large amount of cash in the possession of both Anthony and Owner, and various prescription narcotic medicines. They found Anthony's light blue clothes, which were associated with his gang affiliation, and a

homeowners insurance bill for the Broken Arrow house in both names. The Lexus and another vehicle was parked at the house, and a K-9 unit from the Broken Arrow Police Department alerted on the Lexus, suggesting the presence of drugs in the car. A subsequent search found marijuana residue scattered throughout the car. Keys to both houses and to the Lexus were found on a key ring which Anthony admitted belonged to him. The other vehicle was not seized because there was no testimony that Anthony had been seen driving it. After being notified of his rights, and upon questioning by the detective, Anthony admitted the crack cocaine belonged to him, that he used the Lexus to transport the drugs, and the Lexus was co-owned with Owner.

Owner testified she was a self-employed hair stylist. She stated the Lexus was hers, purchased with money from a loan, but was now paid off. She denied Anthony was a co-owner. She claimed some of the cash belonged to her as she was paid in cash in her business. She had not yet deposited the money in the bank. Her tax returns were admitted into evidence in support of her contentions. She claimed the man's clothing found in her house belonged to her son, not Anthony. She testified that she seldom let Anthony drive her Lexus, because he had his own car, although it had recently been repossessed. She denied any knowledge of his drug dealing or gang affiliation. She denied giving Anthony a key to her car. She

stated the last time she let him stay at her house was in 2001, and the night of the arrest was the first time since then that he had stayed overnight with her. She claimed at trial that she had a doctor's prescription for the drugs, Xanax and Lortab. However, in an earlier interrogatory she stated the drugs belonged to a friend who had given her some for back pain.

At the conclusion of the hearing, the trial court stated that the discrepancies in Owner's testimony regarding ownership of the Lortab and Xanax cast doubt on the rest of her testimony. Further, because Anthony made statements regarding the drugs and car which were against his interest, the trial court found those statements credible. The trial court returned \$620.00 cash to Owner as proceeds from her hairstyling business, but ordered forfeiture of the rest of the cash found in Anthony's wallet, the Lexus, and the two firearms.

Based on our review of the evidence set out above, we find competent evidence exists to support the trial court's decision. The trial court's order of forfeiture is affirmed.

AFFIRMED.

GABBARD, J. (sitting by designation), concurs, and WISEMAN, P.J., dissents.

WISEMAN, P.J., dissenting:

I am compelled to dissent based on the uncontroverted evidence in this case. There is nothing to connect or implicate Claimant Lisa Crisp with any of the illegal activities of which her husband, Anthony Crisp, was convicted, nor does the State make this argument. The State's position, summarized by counsel in his closing argument, is that Anthony Crisp had a key to the car in his possession and that he admitted transporting marijuana in it.

Counsel argued, "We, again, would state that we feel like we've met our burden of proof by a preponderance of the evidence that Anthony Crisp had access to this vehicle and that it was used in illegal activity." Once this showing has been made, if Claimant raises the "innocent owner" defense under 63 O.S. Rev. Supp. 2005 § 2-503(A)(4)(b), then the burden of establishing this defense rests on the owner. *See State ex rel. McGehee v. 1987 Oldsmobile Cutlass*, 1993 OK CIV APP 177, ¶ 5, 867 P.2d 1354, 1356.

The first issue left unaddressed by the majority opinion is, who is the owner of this car? The record is replete with testimony that Claimant is the only owner of this car, including Detective Wolthuis' testimony that when he ran the tag, it checked back to Claimant, but not to Anthony Crisp. Claimant testified that she

alone paid for the car and that it is hers alone. The only possible contrary indication is Detective Wolthuis' speculative testimony as follows:

Q. He [Anthony Crisp] told you that Lisa and himself were co-owners of that vehicle?

A. That's correct, sir.

Q. But you ran the registration of that vehicle and it showed her name on the tag; did it not?

A. Correct, sir.

Q. So do you know what he meant by co-owners?

A. He paid for the car as well, sir.

Q. That's what you believe he meant?

A. That's what I believe he meant, yes, sir

The trial court made no specific findings or rulings pertaining to the "innocent owner" defense argued by Claimant. Whether the trial court concluded that the Crisps are co-owners or that Claimant is the sole owner, it must still address the "innocent owner" defense Claimant has raised. As stated in *State ex rel. Moss v. Seven Hundred Fifteen Dollars (\$715.00)*, 1992 OK CIV APP 76, ¶ 5, 833 P.2d 1263, 1265:

Section 2-503.A.4.b provides that an owner's conveyance may not be forfeited if it was "unlawfully in the possession of a person other than the owner" and used to

commit an offense involving drugs We construe this phrase to mean that a non-owner's possession of a conveyance is unlawful, even if the owner gave initial permission to the non-owner to use the property, if the owner did not know and had no reason to know that the non-owner was going to use the property for unlawful purposes.

This issue did not go unaddressed at the evidentiary hearing. Detective Wolthuis testified that he did not know whether Claimant knew her husband was driving the car at the time in question. He further testified that no one, including the police informant and Anthony Crisp, ever told him that Claimant was aware of her husband's illegal activities, including his use of the vehicle to transport drugs, nor in his investigation did the detective ever ask her if she knew about such activities, nor was there anything in her house to connect her with her husband's drug-dealing. Claimant testified that she had no knowledge of her husband's illegal activities, did not know of any admission by him, presumably after his arrest, to dealing cocaine, and had not noticed any marijuana residue in the car (which the detective testified was not collected as evidence because it was so minute).

The State has offered nothing, either directly or circumstantially, to contradict Claimant's evidence that she did not know of and had no reason to know of her estranged husband's drug activities. Simply rejecting Claimant's testimony

about a nonessential matter (the origin of the prescription drugs) when Claimant is admittedly “not the focus of [the] investigation” as reiterated by the State’s witness, does not allow the trial court to ignore evidence establishing without contradiction her “innocent owner” defense.

On the record before us, I would reverse and, if the State wishes to contest Claimant’s full ownership of the vehicle despite its registration, then I would remand for the trial court to determine whether she is entitled to the return of the vehicle *in toto* or to only the value of her co-owner interest.

Accordingly, I respectfully dissent.

May 23, 2006