REL: June 21, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180157

Betty Hopson

v.

State of Alabama

Appeal from Lee Circuit Court
(CV-15-900526)

EDWARDS, Judge.

Betty Hopson ("Betty") appeals from a judgment entered by the Lee Circuit Court ("the trial court") ordering the forfeiture of a 2002 Chevrolet Tahoe sport-utility vehicle ("the Tahoe") that the Opelika Police Department ("the OPD")

seized from the possession of Betty's 33-year-old grandson, Bryan Patrick Hopson ("Bryan").

On September 16, 2015, after the OPD received information that Bryan allegedly was selling methamphetamine from the Tahoe, an officer from the OPD stopped Bryan for changing lanes without using a signal. Thereafter, Bryan consented to a search of the Tahoe. That search allegedly revealed

> "a white sock hidden inside a McDonald's [fast-food restaurant] bag in the front passenger floorboard. The sock contained a black digital scale, a plastic bag with numerous small plastic baggies, a plastic bag containing suspected methamphetamine and [a] black plastic bag which contained two plastic bags of suspected methamphetamine and loose pieces of suspected methamphetamine."

On September 22, 2015, the State filed a complaint for forfeiture of the Tahoe ("the forfeiture action"); Bryan, who allegedly had title to the Tahoe, was served with a copy of the complaint. In the complaint, the State alleged that the Tahoe had been used to transport a controlled substance, that the State had possession of the Tahoe, and that, pursuant to Ala. Code 1975, § 20-2-93, the State was entitled to have the Tahoe forfeited to it. The State also pursued criminal charges against Bryan.

On August 10, 2016, before a grand jury considered the proposed criminal charges against Bryan, Bryan informed the trial court that someone else allegedly owned the Tahoe. On August 10, 2016, the trial court entered an order in the forfeiture action requiring Bryan to "provide the State with any title information he has" and requiring the State to "amend its pleadings to include any necessary parties." The record does not reflect that Bryan provided any information to the State in response to the August 2016 order.

The forfeiture action was delayed pending resolution of the criminal charges against Bryan. On June 16, 2017, Bryan entered a guilty plea on those charges. Included in his guilty plea was a statement that he "agree[d] to forfeiture" of the Tahoe.

On July 21, 2017, the State filed a motion for a summary judgment in the forfeiture action. That motion stated, in pertinent part:

> "The parties have reached a plea agreement in the companion criminal matter, CC 2016-738. Through this plea, [Bryan] acknowledges that the [Tahoe] is due to be declared contraband and forfeited pursuant to Section 20-2-93, Code of Alabama (1975). See Guilty Plea attached as State's Exhibit 1."

The trial court entered an order granting the State's motion for a summary judgment on August 10, 2017.

Pursuant to Rule 59(e), Ala. R. Civ. P., Bryan filed a motion to alter, amend, or vacate the order granting the State's motion for a summary judgment.[1] He alleged that the Tahoe was owned by Betty, who had not been made a party to the State's forfeiture action or served with process, that Bryan had not contributed financially to the purchase of the Tahoe, and that the Tahoe, "titled in [Betty's] name, was purchased by her from provable funds withdrawn from her bank for the purpose of purchase of the [Tahoe] and [Betty] had no knowledge that Bryan ... [was] in possession of drugs while in the [Tahoe]."[2] The motion continues:

> "4. That the motion for summary judgment was filed and ruled on prior to setting of any hearing. That

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[1]A Rule 59(e) motion ordinarily must be filed within 30 days of the date of the judgment. The 30th day in this case was September 9 -- a Saturday. Thus, Bryan's postjudgment motion filed on the 32d day was timely. See Rule 6(a), Ala. R. Civ. P.

[2]According to Bryan, Betty purchased the Tahoe for him approximately five months after he was released from prison in April 2015; Bryan had been convicted of theft. Bryan testified that his only drug charge before his September 2015 arrest was a 2012 charge for misdemeanor possession of marijuana.

> there is no order other than an order granting summary judgment which order is not clear as being dispositive of the ownership of the [Tahoe] at this time.
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> "5. That ... Betty ... is still the owner of the [Tahoe] as [Bryan] could not agree to extinguish or relinquish her interest. Therefore, it appears that the State's motion for summary judgment, while due to be granted as to [Bryan], is not dispositive of the case as to any final forfeiture of the [Tahoe]."

Bryan requested that the summary judgment be vacated and that Betty be served with process before any hearing on the State's motion for a summary judgment.

The trial court set Bryan's motion for a hearing, and, after that hearing, it entered an order on October 26, 2017, vacating its summary judgment. The trial court then set the State's forfeiture action for trial. Thereafter, Bryan filed a motion to add Betty as a necessary party to the forfeiture action, and the trial court entered an order granting that motion.

On August 21, 2018, Betty filed an answer alleging that she had purchased the Tahoe with her own funds, that the Tahoe was titled "briefly in the name of Bryan," that she had title to and was entitled to possession of the Tahoe, and that she had had no knowledge that Bryan was in possession of drugs in

the Tahoe. After ore tenus proceedings, the trial court entered an order on September 27, 2018, making the following findings:

> "It is undisputed that Bryan ... was driving the [Tahoe] and was stopped by the police. The police searched the [Tahoe] and found two plastic bags containing methamphetamine, in a sock in a McDonald's [fast-food restaurant] bag, in the passenger floorboard. [Bryan] was arrested for unlawful possession with intent to distribute a controlled substance. He was ultimately indicted for, and pleaded guilty to, unlawful possession of a controlled substance. He consented to forfeiture of the [Tahoe].
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> "There was considerable evidence presented as to whether [Bryan] or [Betty] owned the [Tahoe]. That evidence indicates that [Betty] inherited some money and gave each of her sons $10,000. She testified that she wanted to provide a similar gift to Bryan ... and that, instead of giving him $10,000[,] she bought the [Tahoe] with $7,500 of her funds. On August 17, 2015[,] title was issued to Bryan .... That title indicates that he purchased the vehicle on August 4, 2015. The tag receipt in Bryan['s] ... name reflects the same date. [Betty] testified that Bryan had the Tahoe for about a month prior to the subject arrest, which occurred on September 16, 2015.
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> "[Betty] testified that Bryan was supposed to pay the insurance premium on the [Tahoe] and that, when he did not, she took it back. She testified, in fact, that she took it back 'a couple times' when Bryan demonstrated that in her opinion he was not acting in a responsible manner.
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> "This led to admission of a 'Bill of Sale' dated September 3, 2015, from Bryan to [Betty]. [Bryan

> and Betty] admit there was no consideration paid for the [Tahoe]. The bill of sale reflects that it was not notarized until September 21, 2015 (and then incorrectly, notarizing only Bryan's signature twice). Obviously, the bill of sale predated Bryan's arrest and the [Tahoe]'s seizure, and the notarization occurred subsequent thereto. Also admitted was [Betty's] application for a certificate of title dated October 19, 2015.
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> "In addition to the aforementioned discrepancies, [Betty]'s testimony to the effect that 'all he had to do was keep up expenses, but he didn't' and that she took back the vehicle because of it, is belied by the fact that Bryan was in fact in possession of and driving the [Tahoe] when arrested due to the drugs in the floorboard. The evidence indicates that Bryan owned the [Tahoe] at the time of his arrest.
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> "Applying the burden of proof, the evidence presented, the language of the applicable statute and intent of it, the Court finds the State has met its burden of proof."

The September 2018 order further stated that the State was to submit a proposed order reflecting the forfeiture of the Tahoe to the State.

The State submitted a proposed order, and, on November 5, 2018, the trial court entered an "Order Disposing of Property." That judgment states that the Tahoe was "forfeited from the owner, Bryan ..., to the State of Alabama" and, tracking the request for relief from the State's complaint, that the Tahoe was to

> "be used by the [OPD] for enforcement of the law pursuant to the provisions of [§] 20-2-93, Code of Alabama, 1975. If [the Tahoe] is sold, then such monetary proceeds are to be provided to the Clerk of Lee County Court who will disperse seventy-percent (70%) to the [OPD] Seizure Fund, twenty-percent (20%) to the Lee County District Attorney's Fund, and ten-percent (10%) to the Alabama Department of Forensic Sciences, Auburn Laboratory."

On November 8, 2018, Betty filed a notice of appeal to this court.

Betty's limited argument essentially is that the trial court's determination that Bryan owned the Tahoe at the time of his arrest and the seizure of that vehicle on September 16, 2015, is erroneous. According to Betty, the trial court should have concluded that she was the owner of the Tahoe, or a bona fide lienholder regarding the Tahoe, for purposes of the defense provided to owners and bona fide lienholders under Ala. Code 1975, § 20-2-93(h).[3] Betty does not argue that the

[3]Section 20-2-93(h) states, in pertinent part:

> "An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or

trial court lacked evidence to support its conclusion that Bryan was the owner of the Tahoe when that vehicle was seized. Indeed the evidence clearly supports that conclusion.

Bryan testified that Betty offered to buy him the Tahoe, that she was in attendance for the purchase of the Tahoe, and that she was aware that he took title to the Tahoe at the time of its purchase. See Ala. Code 1975, § 32-8-39(d) ("A certificate of title issued by the [Department of Revenue] is prima facie evidence of the facts appearing on it."). It is undisputed that Bryan was the owner of the Tahoe at least until September 3, 2015, the date on the bill of sale from Bryan to Betty.[4] Bryan further admitted that Betty did not take the Tahoe from him after he purportedly transferred it

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> bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use."

[4]We note that Betty does not develop an argument, with citations to authority, that she did not make a completed gift to Bryan. See Cowley v. Cowley, 400 So. 2d 381, 381 (Ala. 1981). Any such argument would be inconsistent with the existence of the bill of sale from Bryan to Betty.

back to her pursuant to the bill of sale, and it is undisputed that Bryan was in possession of, and exercising dominion and control over, the Tahoe when he was arrested and the Tahoe was seized by the OPD on September 16, 2015. Also, regarding the bill of sale, although it bears a date that is a few days before Bryan's arrest and the seizure of the Tahoe, the notary's acknowledgment was not executed until September 21, 2015, several days after Bryan's arrest and the seizure of the Tahoe. In its judgment, the trial court mentioned the conspicuous timing of the foregoing dates in relation to Bryan's arrest and the seizure of the Tahoe. Further, we note that the notary provision on the bill of sale states that Bryan personally appeared before the notary and that the statements in the bill of sale were "[s]ubscribed and sworn to before me this 21st day of Sept., 2015." To "subscribe" is "[t]o sign one's name to a ... document," "to give consent to by signing with one's own hand." Black's Law Dictionary 1655 (10th ed. 2014). In other words, based on the notary's acknowledgment, there was evidence indicating that Bryan did not sign the bill of sale until September 21, 2015, although

the bill of sale includes an earlier date (September 3, 2015) at the top of that document.

Betty admitted that she did not fill out any of the dates on the paperwork involving the purported transaction between Bryan and her, and she also stated, when asked about whether the notary executed the bill of sale a few days after Bryan's arrest: "I don't remember, really, that far back." In the midst of a colloquy about whether the date of the transfer to her as listed on the title (September 3, 2015) might have been backdated based on the allegedly backdated bill of sale, Betty stated: "[M]y memory now is very, very bad." She then added:

> "I go to mental health. I'm on medication that alters my mind and I -- I really and truly, I can't go back as far as one day. So I can't sit here and say yes. I'm not going to tell you or anybody else yes or not, if it's the truth or not the truth. I don't even remember myself, you know, because I -- I really and truly don't remember a lot of this stuff."

It is well settled that "[w]here a trial court receives ore tenus evidence, its factual findings based on that evidence will not be reversed absent a showing that they are plainly or palpably wrong ...." Hillegass v. State, 795 So. 2d 749, 753 (Ala. Civ. App. 2001). Likewise, it is for the trial court to "resolve[] the conflicts in the evidence" and

to the assess credibility of witnesses. Id. This court has acknowledged that "title to a vehicle is only prima facie evidence of ownership of the vehicle" and that "[t]he prima facie evidence of ownership ... could be rebutted by other evidence pertaining to the ownership of the vehicle." Hildreth v. State, 51 So. 3d 344, 351 (Ala. Civ. App. 2010). However, title to a vehicle is nevertheless evidence of ownership, and the evidence and testimony discussed above supports the trial court's determination that Bryan, not Betty, was the owner of the Tahoe when it was seized during his arrest on September 16, 2015. Also, the trial court's conclusion in the present case is consistent with cases based on similar facts. See Winstead v. State, 375 So. 2d 1207, 1209 (Ala. Civ. App. 1979) ("There was further evidence from which the trial court could well have concluded that the mother made a gift of the vehicle to Robert. Specifically, there was testimony from the mother that Robert exerted virtually complete dominion and control over the vehicle." "It was the duty of the trial court to resolve any conflict in the testimony."); see also Eleven Autos. v. State, 384 So. 2d 1129, 1130 (Ala. Civ. App. 1980).

We note that Betty makes no argument, supported by legal authority, that this court may ignore the plain meaning of the term "owner" as used in § 20-2-93(h), that that term is ambiguous, or that that term must be broadly defined in some manner that would include her as the owner or an owner of the Tahoe, as a matter of law. Betty does cite Jester v. State, 668 So. 2d 822 (Ala. Civ. App. 1995), as purportedly presenting an analogous factual context.[5] In Jester, this court concluded that a father was a "bona fide lienholder" for purposes of § 20-2-93(h), stating:

> "[T]he father had an actual, good faith interest in the vehicle eight months before the arrest of the son and the seizure of the vehicle. Before his arrest, the son had made eight payments on the vehicle. The record provides us with no reason to think that the father, who kept a receipt book indicating his son's loan payments, did not believe in good faith that he had a lien on his son's car and that his son would repay the loan."

[5]Betty also cites State v. Pressley, 100 So. 3d 1058 (Ala. Civ. App. 2012), a plurality decision in which the main opinion stated that "the trial court erred in concluding that the grandmother was a bona fide lienholder whose interest in the truck was protected from forfeiture by § 20-2-93(h)" when only an oral agreement existed regarding the alleged loan. 100 So. 3d at 1068.

668 So. 2d at 826. No such loan from Betty to Bryan is at issue in the present case; no evidence exists that Bryan was to repay Betty for the purchase of the Tahoe. Further, we note that Betty made no argument to the trial court that she had made a loan to Bryan regarding the purchase of the Tahoe or that she should be treated as a bona fide lienholder rather than an owner for purposes of § 20-2-93(h). See, e.g., Smith v. Equifax Servs., Inc., 537 So. 2d 463, 465 (Ala. 1988) (noting that an appellate court "will not reverse the trial court's judgment on a ground raised for the first time on appeal").

Based on the foregoing, the judgment of the trial court forfeiting the Tahoe to the State is affirmed.

AFFIRMED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.