

RENDERED: FEBRUARY 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000424-MR

BARRY COFFEY AND  
GERALEAN ANDERSON

APPELLANTS

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 03-CR-00208

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING WITH DIRECTIONS

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BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Barry Coffey and Geralean Anderson bring this appeal from a January 26, 2005, order of the Barren Circuit Court which granted the Commonwealth of Kentucky's motion for forfeiture of a 1971 Chevrolet Malibu. We vacate and remand with directions.

Coffey was indicted by the Barren County Grand Jury upon two counts of trafficking in a controlled substance. Pursuant to a plea bargain, Coffey entered a guilty plea to

possession of a controlled substance and to trafficking in a simulated controlled substance.

As a result of Coffey's guilty plea, the Commonwealth filed a motion for forfeiture of the Malibu. In the motion, the Commonwealth alleged that Coffey utilized the vehicle "to conduct his illegal drug trafficking business." The Commonwealth conceded the "title holder" of the vehicle was Coffey's sister, Geralean Anderson and sent her notice of the motion. Anderson objected to the forfeiture and argued, what is commonly referred to as, the innocent owner defense found in Kentucky Revised Statutes (KRS) 218A.410(h)(2).

By order entered January 26, 2005, the circuit court ordered forfeiture of the Malibu.<sup>1</sup> The circuit court concluded that Anderson could not avail herself of the "innocent owner defense" of KRS 218A.410(h)(2). The circuit court rejected the contention that "owner" of vehicle under KRS 218A.410(h)(2) means merely title holder or record owner. To successfully assert the defense, the court determined the alleged owner "must demonstrate a ownership interest in the res with the attendant characteristics of dominion and control." The circuit court concluded:

In the case at bar, the evidence suggests that Barry Coffey did the same thing as Andrew Smith and placed title to

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<sup>1</sup> In the January 26, 2005, order, the circuit court incorrectly identified the vehicle as a 1969 Chevrolet Chevelle.

the vehicle in his sister's name solely to avoid forfeiture. His sister, Geralean Anderson, told Detective Hugh England with the Glasgow Police Department that she did not know the reason he put title in her name since he was the one who drove the car all the time. Mr. Coffey drove the car to work, paid taxes and insurance on it, and conducted his illegal trafficking activity out of the vehicle. Ms. Anderson failed to demonstrate any indicia of ownership other than bare record title that would allow her to use the "innocent" owner defense under KRS 218A.410(h)(2) to avoid forfeiture.

This appeal follows.

Coffey and Anderson contend the circuit court erred by concluding that Anderson was not the "owner" of the Malibu under KRS 218A.410(h)(2). Coffey and Anderson believe the circuit court erroneously interpreted "owner" of vehicle under KRS 218A.410(h)(2) to mean the individual who exercises dominion and control over the vehicle. Coffey and Anderson urge this Court to interpret owner of vehicle to mean title holder or record owner. For the reasons hereinafter elucidated, we agree.

The forfeiture statute at issue in this appeal is KRS 218A.410(h)(2):

- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

. . . .

2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof have been committed or omitted without his knowledge or consent  
. . . .

The Supreme Court has interpreted, KRS 218A.410(h)(2) as:

[S]ubject[ing] the motor vehicle to forfeiture on proof that it was used to facilitate the transportation for the purpose of sale or receipt of controlled substances unless the owner . . . is able to establish that such use, if any, was without her knowledge or consent.

Osborne v. Commonwealth, 839 S.W.2d 281, 283 (Ky. 1992). As a matter of first impression, we are called upon to decide the proper definition of the term "owner" of vehicle as found in KRS 218A.410(h)(2).

It is well-established the interpretation and construction of a statute is a matter of law for the court. City of Worthington Hills v. Worthington Fire Protection District, 140 S.W.3d 584 (Ky.App. 2004). When interpreting a statute, we are guided by legislative intent. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).

Our initial focus is upon the term "owner thereof" as found in subsection (h)(2). Section (h)(2) simply provides that "the conveyance" is not subject to forfeiture if "the owner thereof" can prove the illegal activity was "committed or

omitted without his knowledge or consent." The term "owner thereof" is not defined by the General Assembly. However, subsection (h) states that "[a]ll conveyances, including aircraft, vehicles, or vessels . . . ." By juxtaposing (h)(2) and (h), we think it reasonable the Legislature intended "owner thereof" to mean owner of "all conveyances, including aircraft, vehicles, or vessels, . . . ." Relevant to this appeal is the definition of owner of vehicle; our inquiry will be narrowly limited to this issue.<sup>2</sup>

When interpreting a term that has acquired a technical legal meaning, we are bound to give the term such meaning. Worthington Hills, 140 S.W.3d 584. We think the term owner of vehicle has acquired such a specific legal meaning.

In this Commonwealth, our legislature has defined owner of vehicle in KRS 186.010(7)(a):

"Owner" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.

Therein, owner of vehicle is defined as an individual who holds legal title to the vehicle or as an individual who has physical possession of the vehicle by reason of a bona fide sale. We are

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<sup>2</sup> In this opinion, we narrowly focus upon the definition of "owner" of vehicle under Kentucky Revised Statutes 218A.410(h)(2). We do not attempt and this opinion should not be misconstrued as passing upon the proper definition of owner of "all conveyances," aircraft, or vessel.

persuaded that KRS 186.010(7)(a) provides the proper definition for the term owner of vehicle as found in KRS 218A.410(h)(2).

Accordingly, we hold the term owner of vehicle, in KRS 218A.410(h)(2), means either the individual who holds legal title to the vehicle or the individual who has physical possession of the vehicle under a bona fide sale. We, thus, conclude the circuit court erroneously interpreted KRS 218A.410(h)(2). Upon remand, we direct the circuit court to reconsider its order in light of our interpretation of KRS 218A.410(h)(2).

We view any remaining arguments to be without merit or moot.

For the foregoing reasons, the order of the Barren Circuit Court is vacated and this cause is remanded with direction to reconsider its order in light of this opinion.

ALL CONCUR.

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