

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Stark County, a political
subdivision of the State of North
Dakota,

Plaintiff and Appellant,

v.

A motor vehicle described as a
1998 Peterbilt truck, VIN:
1NPFXB9X8WD470613, owned
by H&H Earthworks, Inc., and
driven by Tadd N. Strozzi,

Defendant,

and

Ryan Strozzi,

Third-Party Defendant
and Appellee.

Supreme Court Case No. 20130102
District Court Case No. 45-2012-CV-00503

APPELLEE'S BRIEF

APPEAL FROM THE DISTRICT
COURT, SOUTHWEST JUDICIAL
DISTRICT, STARK COUNTY, NORTH
DAKOTA, THE HONORABLE
WILLIAM HERAUF, DISTRICT JUDGE

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[¶3] STATEMENT OF THE CASE

[¶4] On June 25, 2012, Appellee, Ryan Strozzi, was issued an overload citation for the use of a semi-tractor and trailer. On July 26, 2012, Stark County filed a summons and complaint alleging that the defendant vehicle was found to weigh in excess of the legal limit.

[¶5] Ryan Strozzi answered the complaint and the matter proceeded to a court trial held before Southwest District Court Judge the Honorable William Herauf on February 21, 2013.

[¶6] After trial and the submission of written arguments the District Court found in favor of Mr. Strozzi and the County Appeals from that decision.

[¶7] STATEMENT OF THE FACTS

[¶8] On June 24, 2012 Ryan Strozzi (Appellee) had an excavator delivered to his property in the Greenville Subdivision. Transcript pages 44-45 (T. 44-45). Mr. Strozzi works for H&H Earthworks and he had asked his superintendent to borrow the excavator. T. 45. After unloading the excavator, the vehicle and trailer that transported the excavator left. T. 46. The transport vehicle and trailer belong to H&H Earthworks which owns more than one of each T. 46.

[¶9] Mr. Strozzi used the excavator and then scheduled to have it picked up on June 25, 2012. T. 47. At approximately 6:45 AM on June 25, 2012 a semi and trailer arrived and the trailer was detached from the semi. T. 47. The excavator was then driven onto the trailer. T 47. In the process of hooking the trailer back up to the semi Al Heiser, the Stark County Road Superintendent, arrived. T. 41-

42. Mr. Heiser called the Stark County Sheriff. T. 9.

[¶10] Sean Franchuck of the Stark County Sheriff's Department arrived and testified that he did not see the vehicle move. T. 35. Mr. Franchuck weighed the vehicle using portable scales. T. 28. Mr. Franchuck directed Tadd Strozzi to drive the vehicle onto the portable scales to be weighed. T. 29. Mr. Franchuck testified that the vehicle weighed in excess of the posted weight limit. T. 20-22.

[¶11] Mr. Franchuck issued an overweight citation and impounded the vehicle and Mr. Strozzi posted a bond for its release. T. 38.

[¶12] **LAW AND ARGUMENT**

[¶13] **Standard of Review**

[¶14] The case of State ex rel. Hjelle v. A Motor Vehicle Described as a 1973 Brockway Tractor License No. 237342, Serial No. 79629, Trailer SN No. 75-2531-LB-150, 299 N.W.2d 557, 562 (N.D. 1980) explains the scope of review with regard to reviewing findings of fact from a court trial as follows:

The scope of review of the trial court's findings on an appeal to this court on a case tried without a jury is limited by Rule 52(a), North Dakota Rules of Civil Procedure The trial court's findings of fact are "clearly erroneous" when, although there is some evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. Keidel v. Rask, 290 N.W.2d 255 (N.D. 1980). The mere fact that an appellate court might have viewed the facts differently if it had been the initial trier of the case does not entitle it to reverse the lower court. In re Estate of Elmer, 210 N.W.2d 815 (N.D. 1973).

[¶15] North Dakota Rule of Civil Procedure 52(a)(6) states that "[f]indings of fact . . . must not be set aside unless clearly erroneous and the reviewing court

must give due regard to the trial court's opportunity to judge the witnesses' credibility."

[¶16] **Analysis**

I. At trial the County failed to meet its burden pursuant to N.D.C.C. § 39-12-17 to prove that the defendant vehicle was moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of N.D.C.C. § 39-12-03 or as limited by the provisions of N.D.C.C. § 39-12-05.

[¶17] N.D.C.C. § 39-12-17 required the County to prove that the defendant vehicle was "moved upon the highways, streets, or roads of this state." The County's complaint failed to allege that the defendant vehicle was moved at all. The complaint only alleged "[t]hat at that time and place, the Defendant vehicle was weighed" The evidence presented at the trial also indicated that at the time the defendant vehicle was overweight the defendant vehicle was only moved at the direction of law enforcement.

[¶18] The County appears to argue that the vehicle that first delivered the excavator and then left was overweight and because of that the district court's finding is clearly erroneous. However, the County failed to issue a summons and complaint for that vehicle or even identify it. See Findings of Fact, Conclusion of Law and Order for Judgment page 2 paragraph 8 (Findings p. 2 ¶ 8). Therefore, the County's argument is irrelevant to the defendant vehicle, which is the subject of this proceeding, because the district court would not have had jurisdiction over the vehicle because the statutory requirements to obtain jurisdiction over that vehicle had not been met. See N.D.C.C. § 39-12-11, 39-12-12, 39-12-14 to 39-12-

16; Wentz v. One White 1952 Diesel Three-Ton Tractor and Semi-Trailer, 110 N.W.2d 178, 181 (N.D. 1961) (“As we have pointed out, this is a proceeding in rem. It is a proceeding that is purely statutory. The statute provides for certain procedures, and these procedures must be followed by impounding officers and by the court.”).

[¶19] The County appears to argue that the defendant vehicle was moved for purposes of N.D.C.C. § 39-12-17 because law enforcement ordered the vehicle to be moved in order to weigh it. N.D.C.C. § 39-12-07 authorizes a peace officer to move the vehicle to be weighed. Mr. Franchuck testified he is a peace officer and had Tadd Strozzi move the defendant vehicle at his direction. T. 25, T. 29. The County’s argument has no legal support and because Tadd Strozzi relied in good faith in complying with the direction of law enforcement to move the defendant vehicle the County is estopped from now claiming a violation.

[¶20] **Analysis**

II. The District Court’s Findings of Fact do not promote an absurd result.

[¶21] The County appears to argue that the District Court misinterpreted the definition of “move” in N.D.C.C. § 39-12-17 which led to an absurd result. However, the district court did not define the word “move” and only concluded that “[s]ince there has been no showing of movement of this particular load with the subject tractor trailer combination on the highways of the State of North Dakota, the matter must be dismissed.” Findings p. 3.

[¶22] The County only argues that the loaded defendant vehicle was moved at the

direction of law enforcement. It appears the County agrees with the District Court as to what “moves” means but wants the District Court to include those times when the defendant vehicle is being moved at the direction of law enforcement. As explained previously the principles of estoppel and N.D.C.C. § 39-12-07 authorized Mr. Franchuck to direct Tadd Strozzi to move the defendant vehicle and therefore the County’s argument has no legal support.

[¶23] **CONCLUSION**

[¶24] Because there was no evidence that the defendant vehicle was moved while overweight other than at the direction of law enforcement it was not clearly erroneous for the District Court to make a finding that the defendant vehicle was not moved for the purpose of N.D.C.C. § 39-12-17.

[¶25] Because the District Court did not interpret a statute to lead to an absurd result the County’s request for relief should be denied.

[¶26] Based on the foregoing arguments Mr. Strozzi respectfully requests that the County’s appeal be dismissed and that he be awarded his reasonable attorney’s fees and costs.

Dated: July 24, 2013

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[¶1] Thomas F. Murtha IV is an attorney licensed in good standing in the State of North Dakota, Attorney ID 6984 and states that on July 24, 2013 he served the following on the Stark County State's Attorney:

APPELLEE'S BRIEF

Through the Odyssey electronic service system.

Dated: July 24, 2013

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[¶1] Thomas F. Murtha IV is an attorney licensed in good standing in the State of North Dakota, Attorney ID 6984 and states that on July 24, 2013 he served the following on Tom Henning, the Stark County State's Attorney:

APPELLEE'S BRIEF

Through the Odyssey electronic service system to email address attorney@starkcountynd.gov and on July 29, 2013 he forwarded a copy of the email and attachments including the Appellee's Brief to Tom Henning, the Stark County State's Attorney at email address attorney@starkcountynd.gov.

Dated: July 29, 2013

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