

IN THE COURT OF APPEALS OF IOWA

No. 9-273 / 88-897

FILED

AUG 23 1989

CLERK SUPREME COURT

MATT A. KNAPP,

Appellant,

vs.

CITY OF GUTHRIE CENTER, IOWA, et al.,

Appellees,

RICHARD W. ZIEBELL,

Intervenor.

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Appeal from the Iowa District Court for Guthrie County,
Arthur E. Gamble, Judge.

Appellant appeals a district court judgment dismissing his replevin petition concerning a 1965 Mustang and rejecting his motion for judgment notwithstanding the verdict. **AFFIRMED.**

Walter Knapp, Jr., Linden, for appellant.

Robert E. Feilmeyer, Guthrie Center, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

PER CURIAM

Plaintiff appeals from the district court judgments dismissing his replevin petition and overruling his motion for judgment notwithstanding the verdict. We affirm.

In 1981, Richard Ziebell purchased a dilapidated 1965 Mustang which he subsequently towed to Ed Anderson's body shop for some body work. Because Ziebell didn't pay Anderson for several years, Anderson kept the car.

In 1981, a corporation was formed which included the plaintiff's father, Walter Knapp, and Anderson. The assets of Anderson's business were transferred to the corporation and when Anderson lost his lease on the body shop, the Mustang temporarily was stored at Knapp's farm. Later Anderson had Knapp move the car to prevent Ziebell from recovering it until he paid for it.

In 1985, the Knapps took possession of the Mustang, without the consent of either Ziebell or the corporation. Knapp's son, Matthew, completed the restoration of the car and drove it on public roads. At no time did the Knapps have consent to restore, repair, or drive the car.

In June, Matthew was stopped by the Guthrie Center police. He was arrested and charged with, inter alia, operating a nonregistered vehicle and false evidence of registration. He pled guilty and paid a fine. The police impounded the car pursuant to Iowa Code section 321.84, which provides for seizure of a vehicle with an altered VIN

number and reasonable cause to believe the possessor of the vehicle wrongfully holds it.

Matthew's subsequent application for title to the car was rejected by the Iowa Department of Transportation.

In September, Ziebell applied for and was issued a certificate of title for the Mustang he had purchased. However, Ziebell's ownership of the impounded Mustang can't be established because the impounded car has no VIN number.

A police inspection of the vehicle revealed the front fenders, fender skirt, and inner fenders had been altered and the VIN number deliberately obliterated. The left door had a warranty number on it which indicates it is a six-cylinder vehicle, while the 1965 Mustang is an eight cylinder.

Knapp appeals from the district court judgment dismissing his petition for replevin and overruling the motion for judgment notwithstanding the verdict. He contends the court erred in determining he had no right to possession of the 1965 Mustang and the vehicle was abandoned as defined in Iowa Code section 321.89(1)(b)(4).

Replevin is a law action triable by ordinary proceedings, and is reviewed upon assigned errors. Iowa Code § 643.2 (1987); Ritchie v. Helmer, 251 Iowa 1002, 1004, 103 N.W.2d 858, 859 (1960). When the action is tried to the court, its findings of fact have the force of a jury verdict and are binding on appeal if supported by

substantial evidence in the record. Flickinger v. Mark IV Apartments, Ass'n, 315 N.W.2d 794, 797 (Iowa 1982), citing to Ritchie, 251 Iowa at 1004, 103 N.W.2d at 859.

The essence of a replevin action is the plaintiff's immediate right to possession of the property; the strength or weakness of the defendant's right is not in issue. Marx Truck Line, Inc. v. Fredricksen, 150 N.W.2d 102, 105 (Iowa 1967). If plaintiff is not entitled to present possession, he cannot prevail. Id.

The car was merely stored on Walter Knapp's property and he was a member of a corporation owning the assets of Anderson's body shop. At no time did the corporation or anyone else give plaintiff or his father permission to repair the car or drive it. Plaintiff was unable to come forward with sufficient evidence to persuade the trial court he was entitled to immediate possession of the car. Therefore, his petition for replevin and motion for judgment notwithstanding the verdict were properly dismissed and denied.

AFFIRMED.