COURT OF APPEALS
DECISION
DATED AND FILED

September 3, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-3392-FT **Cir. Ct. No. 02CV000244**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

PATRICIA M. MAROHL,

PETITIONER-APPELLANT,

V.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Patricia Marohl appeals an order affirming the Wisconsin Department of Transportation's determination that in lieu of the suspension of her vehicle registrations under WIS. STAT. ch. 344, Marohl is

required to post $25,500 security to cover damages resulting from a one-car accident involving an uninsured vehicle co-owned by Marohl and her son, Adam.[1] At the time of the accident, the uninsured vehicle was driven by a third party, Holly Bero. Marohl argues the department erred by finding that she failed to prove Bero was operating the vehicle without permission. We reject this argument.

¶2 Marohl also claims the circuit court erred by failing to hold a hearing on whether the suspension of her registrations would result in undue hardship pursuant to WIS. STAT. § 344.04(2). Because it is unclear whether Marohl requested such a hearing, we will remand the matter on this issue and direct the circuit court to determine whether it should consider Marohl's request given the procedural posture of the case.

BACKGROUND

¶3 Marohl initially purchased the subject car for Adam when he was sixteen-years-old. Although Adam maintained and used the car, it was titled in Marohl's name because Adam was a minor. When he reached age eighteen, Adam moved out of his mother's house and rented a residence with three other

[1] Under Wisconsin's Safety Responsibility Law, whenever a motor vehicle accident in this state causes death, bodily injury or property damage over $1,000, both the driver and the owner of any vehicle involved are required to prove that adequate resources exist to cover any possible liability. *See* ***Kopf v. State***, 158 Wis. 2d 208, 212, 461 N.W.2d 813 (Ct. App. 1990). This may be done by showing proof of insurance or posting security in the amount of a reasonably possible judgment. *See* ***id.*** Although the legislature allows people the freedom to choose to have no insurance, "the price of that freedom is the obligation to post security in the event of an accident." ***Id.*** at 215-16.

All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted. This is an expedited appeal under WIS. STAT. RULE 809.17.

individuals, one of whom was Bero. Although Marohl exercised no control over the car, no change in the car's title status occurred.

¶4 On September 30, 2001, Bero was driving the car on a personal errand when she lost control of the vehicle. The resulting rollover accident caused the death of her fourteen-year-old passenger. Because the car was uninsured at the time of the accident, the department ordered that all of Marohl's vehicle registrations be suspended unless she posted $25,500 security to satisfy any judgment that might be rendered against Bero. On review, the circuit court affirmed the department's decision and this appeal follows.

ANALYSIS

¶5 When an appeal is taken from a circuit court order on administrative review, we review the decision of the agency, not the circuit court. ***Zip Sort, Inc. v. DOR***, 2001 WI App 185, ¶11, 247 Wis. 2d 295, 634 N.W.2d 99. We must affirm the department's factual findings if supported by substantial evidence. ***Walag v. DOA***, 2001 WI App 217, ¶5, 247 Wis. 2d 850, 634 N.W.2d 906.

> Substantial evidence is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. An agency's decision may be set aside by a reviewing court only when, upon examination of the entire record, the evidence, including the inferences therefrom, is such that a reasonable person could not have reached the decision from the evidence and its inferences.

Id. (citation omitted). Moreover, we cannot substitute our judgment for that of the department with respect to the credibility of a witness or the weight to be accorded to the evidence supporting any finding of fact. ***West Bend Co. v. LIRC***, 149 Wis. 2d 110, 118, 438 N.W.2d 823 (1989). Our review is confined to the record

made before the department. ***Sterlingworth Condo. Ass'n v. DNR***, 205 Wis. 2d 710, 720, 556 N.W.2d 791 (Ct. App. 1996).

¶6 Here, Marohl maintains that she is exempt from the security requirements of WIS. STAT. ch. 344 because Bero was driving the car without permission. *See* WIS. STAT. § 344.14(2)(g). Marohl, however, had the "burden of furnishing proof satisfactory to the Secretary of Transportation" that she was entitled to the statutory exemption. *See* WIS. STAT. § 344.14(1). Marohl thus argues that the department erred by finding that she failed to prove Bero was operating the vehicle without permission.

¶7 It is undisputed that Adam had given Bero permission to drive the car for certain purposes. There was conflicting evidence, however, as to whether Bero had permission to drive the car at the time of the accident. Bero testified that Adam gave her the car keys a few days before the accident and told her she could drive the car until he put his other car in storage. She disputed Adam's claim that he gave her permission to drive the car only to and from work stating, "he let me use it for other things," but expressed confusion about the specifics. Bero also gave conflicting statements regarding whether Adam was at home when she took the car on the day of the accident. The department ultimately found the record contained "insufficient and inconsistent evidence to confirm that [Bero] was operating the Marohl vehicle without permission, expressed or implied, at the time of the accident." As with other factual determinations, where more than one inference is supported by the evidence, the agency's determination is conclusive. ***Abbyland Processing v. LIRC***, 206 Wis. 2d 309, 318-19, 557 N.W.2d 419 (Ct. App. 1996).

¶8 Alternatively, Marohl argues the circuit court erred by failing to hold a hearing on whether the suspension of her registrations would result in undue hardship pursuant to WIS. STAT. § 344.04(2). The statute allows the circuit court to issue a preliminary order restraining registration suspension, to be followed by a permanent injunction hearing on the undue hardship issue. The department concedes that a person who requests an injunction under § 344.04(2) is entitled to a hearing on undue hardship. Although the department admits that no such hearing took place, it claims Marohl failed to clearly request a hearing under that statute.

¶9 Marohl filed a petition pursuant to WIS. STAT. § 344.04(2) seeking a stay of the registration suspensions pending judicial review of those suspensions. The circuit court granted the stay and Marohl then filed a petition for judicial review under WIS. STAT. § 227.52. The petition claimed, in relevant part, that Marohl should be "relieved of her obligations due to hardship." Although the petition requested a hearing in general terms, it did not specifically mention Marohl's right to a hearing under § 344.04(2). Because it is unclear whether Marohl requested such a hearing, we will remand the matter on this issue and direct the circuit court to determine whether it should consider Marohl's request given the procedural posture of the case.

By the Court.—Order affirmed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.