

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0655**

Progressive Direct Insurance Company,
Respondent,

vs.

Elizabeth Namarra,
Appellant,

Issiaka Traore,
Defendant.

**Filed April 19, 2021
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-17-15942

James P. Young, Young Law Office, Bloomington, Minnesota (for respondent)

Andrew W. Horstman, Minneapolis, Minnesota; and

P. Chinedu Nwaneri, Nwaneri Law Firm, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from an adverse judgment entered after a court trial, appellant-pickup-truck-owner challenges the district court's finding that she impliedly

consented to defendant-house-guest's use of her pickup, during which he collided with a parked car that was insured by respondent. Appellant argues that the district court clearly erred in finding that she gave the guest "unfettered access" to the pickup keys, and that the district court legally erred in its analysis of the burden of proof. Because the district court followed applicable law, including long-standing precedent on the burden of proof, and because the record supports the district court's factual findings, we affirm.

FACTS

In October 2017, respondent Progressive Direct Insurance Company sued appellant Elizabeth Namarra and defendant Issiaka Traore, claiming that Traore drove Namarra's pickup and negligently collided with a vehicle insured by Progressive. Progressive sought damages of \$8,904.29, the amount it paid to its insured. Namarra's pickup was uninsured.

Progressive moved for summary judgment, which the district court granted in part and denied in part. Traore did not respond to the motion for summary judgment or otherwise participate in the case.¹ In its memorandum on summary judgment, the district court "considered undisputed" that Traore drove the pickup, negligently collided with the parked car, and caused \$8,904.29 in damages, which Progressive paid to its insured. But the district court denied summary judgment on Namarra's liability, concluding that "whether [Traore] had implied consent from [Namarra] to drive or permissibly use the vehicle, making [Namarra] liable under Minnesota law" was a disputed material fact.

¹ Progressive served Traore with the summons and complaint through his roommate. Traore was self-represented and did not file an answer, or appear at the summary judgment hearing or at trial.

Before trial, the district court asked the parties to submit briefs on which party had the burden to prove that Traore used the pickup with or without Namarra's permission. The district court "received [Progressive's] memorandum on the burden of proof on November 19th. [Namarra] did not file anything related to the issue." The district court determined on the first day of trial that "the law is clear: 'The burden of proving lack of consent is upon [Namarra] and requires a strong showing that the automobile was being used without the owner's knowledge and contrary to [her] explicit instructions.'" There was no further discussion of the burden of proof during trial.

The following summarizes the pertinent facts found by the district court after the court trial. Two witnesses testified—Namarra and the police officer who responded to the collision. Traore did not testify.

In May 2015, Namarra bought a house in Brooklyn Center for her business. She hired a contractor to renovate the house. A friend asked Namarra if she would also hire Traore to "help renovate the house." Namarra declined, and the friend asked if Traore, who was homeless, could stay at the house during renovations. Namarra testified that she "told [Traore] that because the building is under renovation, it might not be a good idea for him to stay but . . . I gave him a blanket and he started sleeping on the sofa." The district court found that Namarra allowed Traore to stay in her home "as a favor to a friend."

No one else stayed at the house with Traore, and the sofa was the only piece of furniture in the home. Namarra testified that she kept a pickup in the driveway because it was "valuable" for "runs" to get supplies for the renovation. She kept the pickup keys in a kitchen cupboard "in case of an emergency."

The district court found that Namarra testified credibly and that she “never gave Mr. Traore express permission to use her vehicle.” But the district court also found that Namarra “never told” Traore “he was not allowed to drive the vehicle in any circumstance.” Rather, the district court found that Namarra and Traore did not discuss “what he could and could not do or use while residing in the house.” For instance, although it was never discussed, Namarra testified that Traore could use the bathroom and kitchen. Namarra also testified that she would not have allowed Traore to drive the pickup, even in an emergency.

On February 4, 2016, while Namarra was on vacation, a Brooklyn Center police officer responded to the report of a collision between Namarra’s pickup and a parked car. The officer cited Traore for driving without a valid driver’s license, but did not discuss with Traore who owned the pickup or whether Traore had permission to drive.²

When Namarra returned from vacation two days later, she found her pickup parked in the driveway and “damaged to the point that it was not drivable.” Namarra did not report the pickup stolen and did not call the police to report that Traore had taken the pickup without her permission.

In its written findings of fact, conclusions of law, and order for judgment, the district court stated that it “render[ed] its decision based solely on the law.” First, the district court found that Namarra “did not give Mr. Traore express permission to use her vehicle.” Second, the district court found that Traore had “unfettered access to the car keys that were stored in an unlocked kitchen cupboard, a space from which Mr. Traore was not precluded

² The district court found the officer’s testimony “credible,” but gave “little weight to [the officer’s] testimony because he has little to no insight as to the issue at hand.”

while living in [Namarra's] house.” The district court also found that Namarra gave implied permission to Traore to use her pickup:

The facts and the circumstances of this case are that [Namarra's] vehicle was parked at the house where Mr. Traore was living. Mr. Traore was the only person living in this home during the renovation. The keys to the vehicle were readily accessible to Mr. Traore. There is no evidence that [Namarra] told Mr. Traore he was not allowed to drive her vehicle. There is no evidence that [Namarra] told Mr. Traore not to touch the car keys.

Thus, [Namarra] has not met her burden in this case.

The district court therefore determined that Namarra was liable to Progressive for the damage to the parked car. The district court directed entry of judgment against Namarra and Traore, jointly and severally, for \$8,904.29.

Namarra appeals.

DECISION

“On appeal, a trial court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). A finding is clearly erroneous when we are “left with the definite and firm conviction that a mistake has been made.” *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted). We review issues of law de novo. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984).

Namarra raises two issues on appeal. First, she argues that the district court erred “in concluding the facts and circumstances of this case inferred Appellant Namarra gave implied permission to Mr. Traore to drive her vehicle.” Second, she argues that “[t]he trial

court did not follow Minnesota law in allocating burdens of proof” and “placed the full burden of showing lack of consent ‘in the first place’ and at the time of the accident upon [Namarra.]” Because which party bears the burden of proof is a question of law that we review de novo, and our resolution of this issue guides our analysis of the district court’s factual findings, we address it first.

I. The district court correctly assigned the burden of proof.

Namarra argues that the district court erred when it required her to prove that she did not consent to use of her pickup, rather than requiring the plaintiff-insurer to prove she gave consent.³ The district court’s ruling rested on statute and caselaw. We first observe that Progressive’s claim as plaintiff depends on its subrogation rights: because Progressive paid its insured for damage to the parked car, it “stands in the shoes” of its insured and may

³ While not raised by the parties, we consider whether Namarra forfeited appellate review of the burden-of-proof issue. As noted above, Namarra failed to submit a brief to the district court on the burden-of-proof issue and, based on our review of the record, took no position on the issue. The district court invited briefing on the burden of proof, and only Progressive responded. Generally, “litigants are bound in this court by the theory or theories, however erroneous or improvident, upon which the action was actually tried below.” *In re Dahlgren Twp.*, 906 N.W.2d 512, 519-20 (Minn. App. 2017) (quoting *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957)). Nor did Namarra file a motion for new trial. Progressive does not contend that Namarra forfeited review of the issue on appeal, and both parties have fully briefed the issue to this court.

Even though Namarra did not file a motion for new trial, she is entitled to review of the judgment against her. Specifically, we will review “whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). We will also review substantive questions of law that were “properly raised and considered at the district court level.” *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). Because the district court raised and determined which party had the burden of proof, Progressive is not prejudiced by our review of issue, and the issue is a question of law that affects our review of the judgment, we determine the burden-of-proof issue on the merits.

sue to recover its payments under the insurance policy. *Medica, Inc., v. Atlantic Mut. Ins. Co.*, 566 N.W.2d 74, 77 (Minn. 1997).

Second, Progressive’s claim rests on the Safety Responsibility Act (“the Act”), first codified in 1933, which today states, “[w]hensoever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.” Minn. Stat. § 169.09, subd. 5a (2020).⁴ Here, the only disputed fact issue was whether Traore operated the pickup with Namarra’s consent, express or implied, and should therefore be “deemed” Namarra’s agent under the Act (“the consent issue”). And the only disputed legal issue was whether Progressive or Namarra had the burden of proof on the consent issue for a claim arising under the Act (“the burden-of-proof issue”).

To resolve the burden-of-proof issue, we turn to the Act as it has been interpreted in a long line of caselaw. “The construction of the Safety Responsibility Act is a question of law that is ‘fully reviewable’ by this court.” *Ridler v. Madsen*, 565 N.W.2d 38, 39 (Minn. App. 1997) (citing *Hibbing Educ. Ass’n v. Pub. Emp’t Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985)), *review denied* (Minn. Aug. 26, 1997). “We review a district court’s

⁴ The Act enjoys a long history. It was first conceived in the early 1930s, 1933 Minn. Laws ch. 351, § 4, at 577, and was codified as Mason’s Minn. Stat. § 2720–104 (Supp. 1934). The Act was later renumbered to Minn. Stat. § 170.54, Minn. Laws 1945, ch. 285, § 34, at 501, and then to Minn. Stat. § 169.09, subd. 5a in 2005. Minn. Laws 2005, ch. 163, § 88. The language of the Act has remained largely unchanged.

application of the law de novo.” *Harlow v. Dep’t of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

Caselaw interpreting the Act has consistently focused on the legislature’s intent. *See generally Christianson v. Henke*, 831 N.W.2d 532, 536-37 (Minn. 2013) (“[T]he goal of all statutory interpretation is to ascertain and effectuate the intention of the legislature.” (quotation omitted)). More than 80 years ago, the supreme court determined that “[i]t is clear that the purpose [of the Act] was to make the owner of motor vehicles liable to those injured by their operation upon public streets or highways where no such liability would otherwise exist.” *Holmes v. Lilygren Motor Co.*, 275 N.W. 416, 418 (Minn. 1937). The supreme court has since reiterated that the legislature’s “enactment of the owner consent statute, as part of the Safety Responsibility Act, was impelled by strong considerations of public necessity,” *Huchings v. Bourdages*, 189 N.W.2d 706, 708 (Minn. 1971), and was intended to “giv[e] such injured persons more certainty of recovery by encouraging owners to obtain appropriate liability insurance.” *Shuck v. Means*, 226 N.W.2d 285, 287 (Minn. 1974). Thus, the Act “must be liberally construed to accomplish its purpose of making the owner of a motor vehicle liable to those injured by its operation upon public streets and highways.” *State Farm Mut. Auto. Ins. Co. v. Dellwo*, 220 N.W.2d 367, 369-70 (Minn. 1974). The Act, however, does not create “absolute” liability. *Id.* at 370.

In deciding that Namarra has the burden of proof on the consent issue, the district court relied on supreme court caselaw that held “[t]he burden of proving lack of consent is upon the named insured [i.e., the owner of the vehicle driven by another] and requires a strong showing that the automobile was being used without the owner’s knowledge and

contrary to his explicit instructions.” *Mut. Serv. Cas. Ins. Co. v. Lumbermens Mut. Cas. Co.*, 287 N.W.2d 385, 386 (Minn. 1979) (citing *Shuck*, 226 N.W.2d at 285). “To escape liability under the act, the owner must prove that the person driving his automobile at the time of the accident was doing so without his consent, either express or implied.” *Western Nat. Mut. Ins. Co. v. Auto-Owners Ins. Co.*, 220 N.W.2d 362, 363 (Minn. 1974) (syllabus by the court).⁵ Because Namarra owned the pickup at the time of the accident and the district court followed supreme court caselaw, we conclude that it did not err when it determined Namarra bore the burden of proof on the consent issue.

Namarra argues that *Lumbermens* does “not support the [district court’s] ruling” because, in *Lumbermens*, the vehicle owner gave “initial permission” for the driver to use the car. She points out that she never gave initial permission to Traore and argues that *Lumbermens* does not apply because the issue “was whether the driver of the owner’s vehicle at the time of an accident was driving it outside the scope of the initial permission.” The so-called initial-permission rule “holds that when permission to use a vehicle is initially given, subsequent use short of actual conversion or theft remains permissive . . . even if such use was not within the contemplation of the parties or was outside any limitations placed upon the initial grant of permission.” *Milbank Mut. Ins. Co.*

⁵ The syllabus of a case “summarizes the [authoring court’s] holding.” *Albright v. Henry*, 174 N.W.2d 106, 111 (Minn. 1970) If prepared by the court, a syllabus may be legal authority. *See id.* (quoting syllabus as authority); *Sefkow v. Sefkow*, 427 N.W.2d 203, 214 (Minn. 1988) (citing syllabus of a prior opinion as authority). The Minnesota Supreme Court syllabi are “written by the court.” *Sharood v. Hatfield*, 210 N.W.2d 275, 280 (Minn. 1973); *see also* Minn. Stat. § 480.06 (2020) (“In all cases decided by the [supreme] court, it shall give its decision in writing . . . together with headnotes, briefly stating the points decided.”).

v. U.S. Fidelity & Guar. Co., 332 N.W.2d 160, 162 (Minn. 1983). We agree with Namarra; the initial-permission rule does not guide our analysis because there is no record evidence that Namarra gave Traore initial permission to use the pickup. In fact, the district court specifically determined that Namarra did not give Traore express permission to use her pickup.

Namarra asks us to follow *Anderson v. Hedges Motor Co.*, 164 N.W.2d 364 (Minn. 1969), *overruled in part by Milbank*, 332 N.W.2d at 167. In *Anderson*, the supreme court stated, “[t]he inference of permission which arises upon establishing defendant’s ownership of the automobile and the driver’s employment by defendant *does not relieve the claimant of the burden of proving that the vehicle was being used with the permission of the owner at the time and place of the accident.*” *Id.* at 368 (emphasis added). But *Anderson*, too, was an initial-permission case and therefore does not help our analysis.

Because *Anderson* is Namarra’s principal authority, we discuss the facts in some detail to explain why we reject it. In *Anderson*, the defendant, a used-car dealer, hired the plaintiff, Anderson, “to do body work on various used cars owned by the defendant.” *Id.* at 366. Anderson would “pick[] up the cars at defendant’s car lot, repair[] them, and return[] them to defendant when finished.” *Id.* But on the day of the accident, Anderson drove the defendant’s car for Anderson’s “personal use . . . in no way connected with the business of defendant.” *Id.* With his wife as a passenger, Anderson lost control of the car and struck a pole. *Id.* at 367. His wife died at the scene. *Id.* The jury found the defendant was not liable for wrongful death, and the supreme court affirmed. *Id.* at 368. The supreme court first determined that there was “no dispute over the fact that permission was given for the

original use of the vehicle in making body repairs thereon.” *Id.* at 367. The court then reasoned that “ultimate issue on [] appeal [was] whether defendant consented to Anderson’s using the vehicle during the time and at the place of the accident.” *Id.* The court finally determined that the evidence supported the jury’s determination that Anderson lacked implied consent to use the defendant’s car “for purposes unrelated to repair.” *Id.* at 368.

We reject Namarra’s reliance on *Anderson* because it was overruled in part by *Milbank*, 332 N.W.2d at 167. In *Milbank*, the supreme court overruled *Anderson*’s holding that “major departures by a permittee from limitations placed upon initial permission under [the Act] relieves the bailor from vicarious liability for negligent acts of the permittee,” and instead held that “any violation of a limited scope of permission by the operator, short of theft or conversion of the vehicle, will not relieve the insurer from affording to the named insured coverage protecting him against claims made against him by an injured third party.” *Id.* The supreme court reasoned, in part, that “we have consistently reiterated that public policy demands the [Act] be given a liberal interpretation to accomplish its purpose. In essence, our focus has been on the ‘victim’ of automobile accidents rather than on the owner/driver.” *Id.* at 165-66 (citing *Leppla v. Am. Family Ins. Grp.*, 238 N.W.2d 592 (Minn. 1976)).

Milbank did not address the burden-of-proof issue. Still, *Milbank* underscored that the legislature’s intent in adopting the Act was to provide relief for the victim. *Lumbermens* relied on *Shuck*, which stated that by passing the Act the legislature “intended to make the owners of motor vehicles liable to those injured by their operation where no such liability

would otherwise exist, giving such injured persons more certainty of recovery by encouraging owners to obtain appropriate liability insurance.” *Shuck*, 226 N.W.2d at 287. If the burden of proof on the consent issue fell to the victim making a claim, then the Act would not give effect to the legislature’s intent to make vehicle owners liable “where no such liability would otherwise exist.” *See id.*

Importantly, *Granley v. Crandall*, 180 N.W.2d 190, 192 (Minn. 1970), first announced the rule requiring that vehicle owners had the burden of proof on the consent issue. *Granley* was decided almost a year after *Anderson*, and *Lumbermens* and *Shuck* followed *Granley*. We therefore conclude that the district court did not err by relying on *Lumbermens* and holding that Namarra had the burden of proof on the consent issue.

II. The district court did not clearly err by finding Namarra gave implied permission to Traore to use her pickup.

Namarra argues she “is not appealing or challenging a finding of fact,” and is instead “challenging the trial court’s conclusions of law [and] the incorrect inferences the trial court drew from the findings of fact.” Namarra contends that she is therefore entitled to de novo review. To the contrary, whether an owner has consented to use of a vehicle by another is a fact issue. *Carlson v. Fredsall*, 37 N.W.2d 744, 752 (Minn. 1949). We will not set aside the district court’s findings of fact unless clearly erroneous. *See* Minn. R. Civ. P. 52.01. “In applying this rule, we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). The district court’s factual determination “should not be reversed merely because the appellate court views the evidence differently. Rather, the findings must be manifestly contrary to the

weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (citation and quotation omitted); *see also Rasmussen v. Two Harbors Fish. Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (holding a factual finding is clearly erroneous when, after viewing “the evidence in the light most favorable to the verdict,” the appellate court is “left with the definite and firm conviction that a mistake has been made” (quotations omitted)).

“Implied consent, if it exists at all, must be drawn from all the facts and circumstances existing in the case and is usually a question for the [fact-finder].” *Carlson*, 37 N.W.2d at 752; *see also Beebe v. Kleidon*, 65 N.W.2d 614, 617 (Minn. 1954).⁶ Here, the district court highlighted five facts and circumstances as showing Namarra’s implied consent to Traore’s use of the pickup.

First, the district court found that Namarra “allowed Mr. Traore to sleep on the sofa in the house and use the house as a residence” while “[n]o one else was staying in the house.” Second, Namarra “kept a vehicle on the driveway of the house,” and “she kept the keys to [her] vehicle in a kitchen cupboard of the house in case of an emergency.” The district court emphasized that the pickup keys were “readily accessible” to Traore. Third, Namarra “never discussed the vehicle with Mr. Traore at all, [and] she would not have

⁶ This rule is reflected in the pattern jury instructions. When there is “a dispute whether the owner gave initial permission for use of the vehicle,” a fact finder “must consider all the circumstances,” which includes: (1) any discussions about the driver’s permission to use the vehicle; (2) the relationship between the owner and the driver; (3) the fact that the driver used the vehicle, or frequently used the vehicle in the past; (4) whether the owner objected to the driver using the vehicle in the past, or using it in the future; and (5) additional factors. *4 Minnesota Practice*, CIVJIG 32.15 (2018).

allowed him to drive the vehicle in case of an emergency.” Fourth, Namarra and Traore also “did not discuss what Mr. Traore could and could not use in the house,” although Traore “had permission to use the bathroom and kitchen.” Fifth, Namarra learned of the collision two days after it happened, when she returned from vacation. But Namarra “did not report the vehicle as stolen or tell police that Mr. Traore had taken the vehicle without her permission.” Each of these facts is supported by record evidence.

Namarra makes two arguments, which we address in turn.

First, Namarra argues that the district court erred because she “did not take any action relating to Mr. Traore taking her truck,” therefore, consent cannot be implied. Namarra cites no caselaw to support her position that the district court may only consider affirmative acts when determining implied consent. Even assuming this were the rule, the district court found that Namarra took specific actions—she gave Traore permission to stay in her home, left her pickup in the driveway of the home while Traore was the sole occupant, and stored the pickup keys in an unlocked cupboard in the kitchen, which Traore had access to and permission to use.

We conclude that the district court correctly considered Namarra’s omissions as part of “all the facts and circumstances existing in the case.” *See Carlson*, 37 N.W.2d at 752. Namarra never discussed use of the pickup with Traore, nor did Namarra secure the keys or move the pickup, not even while she was away on vacation. Namarra also did not report the pickup stolen when she returned from her vacation and discovered Traore had damaged it. We agree with the district court that the evidence here was not “[t]he strongest evidence of implied permission” because the record lacks evidence of “a series of prior uses without

express permission and yet without objection by the owner.” See *Stewart v. Anderson*, 246 N.W.2d 576, 578 (Minn. 1976). Precedent recognizes, however, that “the very concept of implied permission is that under some factual situations permission may be found even though not expressly granted.” *Id.* Because implied consent turns on the facts and circumstances of each case, we discern no clear error here. See *Carlson*, 37 N.W.2d at 752.

Second, Namarra argues that the district court erred because its decision appears to require Namarra to lock or hide the pickup keys to avoid liability. Namarra points to *Shelby Mut. Ins. Co. v. Kleman*, where the supreme court determined that “concealment of car keys is not a prerequisite to a finding of nonliability.” 255 N.W.2d 231, 235 (Minn. 1970). But Namarra misunderstands the court’s reasoning in *Kleman*.

In *Kleman*, a son took his father’s car “without his father’s express permission” while the father slept on a couch. *Id.* at 232. The son, who “had neither a driver’s license nor an instruction permit,” drove the car into a motorcycle, and injured the motorcyclist. *Id.* at 232-33. The father’s insurer brought a declaratory-judgment action to determine the extent of its liability. *Id.* at 232. After a bench trial, the district court found that the father was not liable under the Act because he did not give the son implied permission to use the car. *Id.* at 233. The motorcyclist appealed, and supreme court affirmed. *Id.* at 235. On review, the motorcyclist argued, among other things, that the father should have hidden the car keys. *Id.* at 234.

In rejecting the motorcyclist’s argument, the supreme court noted that the father “took adequate precautions to prevent [his son] from driving,” even without hiding the keys. *Id.* at 234-35. “Significantly, [the son’s] older brother had to obtain his father’s

permission before he could use the car.” *Id.* at 233. “Since [the son’s] older brother, who was a licensed driver, had to obtain his father’s permission before taking the car, [the son] must have been aware that he also was not to take the car without securing permission.” *Id.* at 235. Viewing the record in a light most favorable to the district court’s finding, the supreme court determined that the father “had thus implicitly given [the son] instructions not to drive.” *Id.* at 235.

While it is true that *Kleman* rejected the claim that the father had to hide the keys from his son, the court’s reason for affirmance was that the evidence supported the district court’s finding that father had implicitly instructed son not to drive. Here, however, the district court made no similar finding, and the record lacks evidence from which the district court could determine that Namarra implicitly instructed Traore not to use her pickup. Namarra testified that she did not discuss use of the pickup with Traore. And Namarra had the burden of proof on the consent issue. In viewing the record, as we must, in a light most favorable to the district court’s factual findings, we cannot say that it clearly erred by finding that Namarra impliedly consented to Traore’s use of the pickup.

Affirmed.