NON-PRECEDENTIAL DECISION OKLAHOMA TAX COMMISSION

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-08-24-21
ID: SJ-04-013-K
DATE: AUGUST 24, 2004
DISPOSITION: DENIED
TAX TYPE: TITLE APPLICATION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

An Application for Registration and Certificate of Title No. XXXXXXX on a 1984 Dodge Pickup, Vehicle Identification No. VIN, was personally filed by Respondent with the Tax Commission on June 4, 2004. The Division denied the Application on site and by letter filed with the Office of the Administrative Law Judges on June 4, 2004, Respondent protested the denial.

On June 8, 2004, a *Notice to Show Cause Why the Application Should Not Be Refused* was forwarded to the parties. The *Notice* scheduled the show cause proceedings for hearing on June 24, 2004, pursuant to 47 O.S. 2001, § 1106 and 68 O.S. 2001, § 212.

The parties were present at the hearing. Respondent, MINOR, is represented by MOTHER, mother of Respondent. MOTHER gave testimony on behalf of Respondent. ADMINISTRATOR, Administrator-Title (Motor Vehicles and Boats), Motor Vehicle Division, testified regarding the records of the Division. Respondent's Exhibits A and B and Division's Exhibits A through D were identified and offered into evidence. All exhibits, with the exception of Respondent's Exhibit A, were admitted

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. On both the morning and afternoon of June 04, 2004, Respondent personally appeared at the Division's office located at 123 STREET, Oklahoma City, Oklahoma and presented a completed Oklahoma Tax Commission Title 42 Packet for registration and certificate of title on the vehicle in question. Division's Exhibit A[1] and Testimony of ADMINISTRATOR.

2. Respondent requested the application be processed that day, however because the Division receives approximately 2,500 to 3,000 Title 42 requests per month, Respondent's request would have been processed in accordance with the Division's policy which does not allow for "walk-in" processing, but instead each request is logged, filed and processed in daily order. Testimony of ADMINISTRATOR.

3. According to ADMINISTRATOR, at the request of a title consultant, she spoke to Respondent on the morning of June 4, 2004, at which time he stated that he had purchased the vehicle in question from his uncle.

4. Based on Respondent's statement, ADMINISTRATOR verbally denied the application, advising a Title 42 application cannot be used to register a vehicle that has been purchased. Division's Exhibit B[2] and testimony of ADMINISTRATOR.

5. According to ADMINISTRATOR, the Title 42 Packet is missing the certified mail return receipt showing proof of mailing of the notice of sale to the alleged record owners of the vehicle by certified mail.

6. MOTHER testified that when the Title 42 Packet was turned in to the Division, the certified mail return receipt was in the paperwork.

7. The Title 42 Packet shows the Notice of Sale listed MR.. or MRS. OWNER as the only interest parties and the Proof of Mailing reports that a copy of the Notice of Sale was sent to MR. or MRS. OWNER as record owner of the vehicle.

8. The printout of the Division's computer screen shows MR. OR MRS OWNER applied for and received title to the vehicle on June 8, 1990, and the title of MR. OR MRS. OWNER to the vehicle was canceled on November 10, 1994. Division's Exhibit A.

9. According to ADMINISTRATOR, MRS. OWNER called her on June 16, 2004, after she received notice of the revocation hearing and stated that she had sold the vehicle many years ago and did not wish to attend the hearing if it was not required.

10. The Oklahoma certificate of title issued to MR. OR MRS. OWNER on June 8, 1990, which was received from the State of Texas, shows MR. AND MRS. OWNER assigned the title to the vehicle to ASSIGNEE of TOWN, Texas on February 17, 1994. Division's Exhibit C[3] and Testimony of ADMINISTRATOR.

11. A teletype from the Texas Department of Motor Vehicles dated June 23, 2004, shows a Texas title to the vehicle was issued to ASSIGNEE on April 30, 1994. Division's Exhibit D.

12. MOTHER testified that Respondent did not purchase the vehicle from his uncle, but only paid his uncle for the work done on the truck for which he had not received any reimbursement.

13. On June 4, 2004, Respondent filed a written protest to the Division's denial of his application for title to the vehicle in question. Respondent's Exhibit B.

14. Respondent contends that he should receive title to the vehicle in question because the Title 42 Packet was completed as required based on the information obtained from the Division.

15. The Division contends that the application for title to the vehicle should be denied not only based on the statement of Respondent that the vehicle was purchased, but also for the reasons that a certified mail return receipt was not contained in the Title 42 Packet submitted by Respondent and that the record owner of the vehicle was not notified of the Title 42 sale.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 47 O.S. 2001, § 1106 and 68 O.S. 2001, § 212.

2. The Oklahoma Vehicle and Registration Act, 47 O.S. 1991, § 1101 ***et seq.***, was not enacted for the purpose of determining the ownership of a vehicle for which a license is to be obtained. ***Lepley v. State of Oklahoma***, 69 Ok. Cr. 379, 103 P.2d 568 (1940).

3. The revocation of a certificate of title is not a positive determination of ownership of title to the vehicle. ***Id.***

4. The Tax Commission is merely a custodian of the records required to file and index certificates of title so that "at all times it is possible to trace title to the vehicle designated." 47 O.S. 1991, § 1107.

5. The Tax Commission upon determination that an Applicant is not entitled to register and title a vehicle may at any time refuse to issue or revoke the registration and certificate of title. 47 O.S. 1991, § 1106.

6. A Title 42 application for title to a vehicle can not be used by a purchaser of the vehicle. 42 O.S. 2001, § 91(A)(1).[4]

7. The notice of foreclosure by sale of the special lien created by 42 O.S. 2001, § 91(A)(1) shall contain, among other requirements, the names of the owner and any other party or parties who may claim any interest in the property, 42 O.S. 2001, § 91(A)(2)(a); and a copy thereof shall be mailed to the owner and any other party claiming any interest in the property if known, at their last-known post office address, by registered mail on the day such notice is posted in three (3) public places in the county where the property is to be sold, 42 O.S. 2001, § 91(A)(3).

8. Here, Respondent failed to prove that the record owner of the vehicle in question was provided notice of the foreclosure sale. Accordingly, Respondent's protest to the denial of the Title 42 application for title on the vehicle should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Respondent, MINOR, be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

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[1] Oklahoma Tax Commission Title 42 Packet consisting of the Notice of Sale dated May 10, 2004; Proof of Posting and Mailing subscribed and sworn on May 2, 2004; Return of Sale (Assignment of Ownership) subscribed and sworn to on June 1, 2004; and printout of the Division's computer screen showing the title history to the vehicle.

[2] Motor vehicle stop flag. According to ADMINISTRATOR, after Respondent appeared at the Division's offices in the afternoon of June 4, 2004, insisting that the application be processed, she ordered a stop flag be issued on the title to the vehicle to prevent any action concerning the title until a determination could be made by the court.

[3] According to ADMINISTRATOR, the State of Texas returns any Oklahoma title to the Division where an Oklahoma title is turned in to Texas and a Texas title is issued so that the Division can mark its system to show the Oklahoma title is no longer valid.

[4] This section provides:

> Any person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.