JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-05-10-21
ID: SJ-05-004-K
DATE: MAY 10, 2005
DISPOSITION: SUSTAINED
TAX TYPE: TITLE REVOCATION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request for revocation of Title No. ###B, a transfer title, issued to Respondent on a 1996 Plymouth, Vehicle Identification No. ###123, was filed by Complainant and was received by the Division on December 27, 2004. The request was forwarded to the Office of the Administrative Law Judges for further proceedings. A *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* was served on Respondent in accordance with 47 O.S. 2001, § 1106.

The Show Cause Hearing was held on March 9, 2005, in accordance with 47 O.S. 2001, § 1106. After being sworn, WITNESS and DECEDENT'S REPRESENTATIVE made statements on behalf of Respondent and Complainant, respectively. ADMINISTRATOR, Administrator of Titles (Lien/Corrections) for the Division, testified regarding the records of the Division. Complainant's Exhibits 1 through 3, Respondent's Exhibits 1 through 9, and State's Exhibits A through F were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the matter was submitted for decision.

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. That DECEDENT applied for and received Title No. ###A, a transfer title, to the vehicle in question on January 12, 2000. Division's Exhibit B.

2. That the vehicle was subject to a lien in favor of XYZ BANK. entered January 4, 2000. Division's Exhibit B.

3. That DECEDENT and Respondent were divorced as of August 5, 1986. Complainant's Exhibit 1.

4. That DECEDENT died on December 31, 2003. Division's Exhibit E.

5. That on or about March 5, 2004, Respondent applied for and received Title No. ###B, a transfer title, to the vehicle in question. Division's Exhibit A. The title was issued by Agent No. ###1 upon presentment of the "A" title reporting Respondent as purchaser, Division's Exhibit B; an OTC Form 798-R-94 (No Administrator Affidavit) reporting that DECEDENT died on December 31, 2003; that Respondent is the "Common-Law Husband" of the deceased; "that the deceased left no estate necessitating administration, and no letters of administration or letters testamentary have

been issued to any person; that said vehicle * * * has not been by will bequeathed to anyone other than [Respondent]; and that no person living would have prior right", Division's Exhibit D; and a copy of the Certificate of Death of DECEDENT, Division's Exhibit E.

6. That the Certificate of Death reports DECEDENT was divorced at the time of her death and that she left no surviving spouse. Division's Exhibit E.

7. That DECEDENT'S REPRESENTATIVE was appointed Personal Representative of the Estate of DECEDENT, deceased, by Letters of Special Administration filed March 25, 2004, in the District Court in and for McIntosh County, State of Oklahoma. Complainant's Exhibit 3.

8. According to DECEDENT'S REPRESENTATIVE, DECEDENT left a will and Respondent was not included as an heir under the will. Testimony of DECEDENT'S REPRESENTATIVE and Complainant's Exhibit 3.

9. That WITNESS, on behalf of Respondent, through a written statement, Respondent's Exhibit 1; and testimony at the hearing, testified that although Respondent and the deceased were divorced, Respondent lived with and cared for the deceased from four months after the divorce until her death; that Respondent placed the title in his name in March 2004 because payments on the loan for the vehicle were in arrears by two months, Respondent's Exhibit 3; that Respondent tried and failed to get the loan in his name, Respondent's Exhibit 7; that WITNESS and her husband paid off the loan with a low-interest credit card, which Respondent is repaying, Respondent's Exhibits 5, 6 and 9; that prior to the application for the transfer title, the daughters of the deceased told Respondent that none of them were interested in the vehicle; that at the time of Respondent's application for transfer title, no legal proceedings had been filed and no administrator had been named for the estate of the deceased; that by Journal Entry filed September 13, 2004, the District Court of McIntosh County ordered Respondent to return the vehicle to the personal representative of the Estate of DECEDENT upon reimbursement to him of the cost of the payoff of the note secured by said vehicle, Respondent's Exhibit 2; and that the amount owed to Respondent is $2,551.14, Respondent's Exhibits 1, 4, 5, 8, and 9.

10. That it is the Division's position that all documentation submitted to the tag agent at the time of application by Respondent were proper and in order. Testimony of ADMINISTRATOR.

CONCLUSIONS OF LAW

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

1. That 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. That 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 licensed vehicle, and the issuance or revocation of a certificate of title under the Act by the Commission is not a positive determination of ownership of title to the vehicle. ***Lepley v. State of Oklahoma***, 69 Okla.Crim. 379, 103 P.2d 568, 572, 146 A.L.R. 1323 (1940).

3. That 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. 2001, § 1107.

4. That 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. 2001, § 1106.

5. That "[t]he executor or administrator [of an estate] is entitled to the possession of all the real and personal estate of the decedent * * * until the estate is settled or delivered over by order of the district court to the heirs or devisees * * *". 58 O.S. 2001, § 290. "[G]enerally an administrator is entitled to possess the assets of an estate until the estate is settled." ***Volvo Commercial Finance LLC The Americas v. McClellan***, 2003 OK CIV APP 27 at ¶ 18, 69 P.3d 274, 279. In ***Volvo***, *Id.* at ¶ 17, the Court cited with approval the holding in *Litz v. Exchange Bank of Alva*, 1905 OK 76 at ¶ 4, 83 P. 790, 792, that "[T]he right to the possession of personal property between the time of the death of the intestate and the granting of letters of administration is by operation of law suspended and held in abeyance."

6. That the certificate of title issued to Respondent on the vehicle in question should be revoked so that ownership of the vehicle may be determined by the District Court of McIntosh County, State of Oklahoma in the probate proceedings of the Estate of DECEDENT, Case No. #####.

DISPOSITION

Therefore, it is ORDERED that the application for revocation of the Registration and Certificate of Title No. ###B issued to Respondent, RESPONDENT, on the 1996 Plymouth, Vehicle Identification No. ###1, be sustained.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.