JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-10-04-14
ID: SJ-05-021-K
DATE: OCTOBER 4, 2005
DISPOSITION: DENIED
TAX TYPE: TITLE REVOCATION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request for revocation of Title No. 999999999E, a transfer title, issued to Respondent on a 1965 Ford Mustang, Vehicle Identification No. 9X99X999999, was filed by Complainant with the Division on July 25, 2005. The Division forwarded its file in this cause to the Office of the Administrative Law Judges (ALJ's Office) on July 28, 2005. The case was docketed as Case No. SJ-05-021-K and assigned to ALJ, Administrative Law Judge.[1]

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 August 22, 2005. Respondent appeared at the Show Cause Hearing. Complainant did not appear at the hearing although notice was forwarded to him in accordance with 47 O.S. 2001, § 1106.[2] Counsel for the Division made a brief opening statement which included the Division's recommendation with respect to the disposition of this cause. Counsel also identified the Division's records in this cause which were marked as Exhibits A through F, offered and admitted into evidence. Exhibits G and H were also admitted into evidence upon identification of the undersigned.

FINDINGS OF FACT

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

1. Respondent applied for and received Title No. 999999999E, a transfer title, to the vehicle in question on October 16, 2004[3], upon presentment of a Return of Sale (Assignment of Ownership)[4], a Notice of Sale[5] and Proof of Posting and Mailing[6].

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[1] Rule 710:1-5-22(b) of the Oklahoma Administrative Code ("*OAC*").

[2] The Notice was returned "unclaimed" on August 14, 2005 and received by the ALJ's Office on August 23, 2005.

[3] Exhibit A.

[4] Exhibit C. The Return of Sale (Assignment of Ownership) shows that SELLER, Seller, in accordance with the Notice of Sale, offered the vehicle in question at public sale on September 12, 2004 and actually sold the vehicle on September 13, 2004 to Respondent for $1,000.00. The Return of Sale (Assignment of Ownership) was executed by the seller, SELLER, and the buyer, Respondent.

[5] Exhibit D. The Notice of Sale shows that a public sale was held on September 12, 2004 at 2652 SW 62nd, OKC, OK 73159, to satisfy the lien on the identified vehicle claimed by SELLER for storage, labor and parts used in repair of the vehicle in the amount of $3,330.00.

2. The Track & Confirm of the United States Postal Service shows that the Notice of Sale to Complainant was returned "unclaimed" at 9:41 am on September 25, 2004. Exhibit G.[7]

3. On July 25, 2005, Complainant filed a written request for a revocation hearing.[8] In the request, Complainant asserts that the Title 42 action on the vehicle in question is illegal as he did not receive notice of the sale. He further asserts that the upholstery shop owner, SELLER, picked up the car at his house and was paid $500.00 in cash and $200.00 in meat towards the work on the car, but he never performed any work on the vehicle.

4. It is the position of the Division in this cause that the Title 42 proceedings were regular and timely; therefore, Complainant's request for revocation of the "E" title should be denied.

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 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. 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. 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. Based on the evidence presented, the application for revocation of Certificate of Title No. 999999999E should be and the same is hereby denied. Nothing herein shows that SELLER, the "special lienholder"[9], failed to comply with the provisions of 42 O.S. 2001, § 91(A)(1), (2) and (3). Further a vehicle owner in delivering his vehicle to a repair or storage facility for an extended period

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[6] Exhibit E. The Proof of Posting and Mailing shows that SELLER posted the Notice of Sale at three (3) separate locations and sent a copy of the Notice of Sale by certified mail, return receipt requested to the record owner of the vehicle, Complainant, at the address listed on the Division's records.

[7] The ALJ's Office requested the Details regarding the Track & Confirm of the Label/Receipt on the Notice of Sale on August 23, 2005 to which the United States Postal Service responded on August 23, 2005, at 5:58 pm. Official notice of the Details of the Track & Confirm is taken in this cause.

[8] The revocation request does not contain a verification.

[9] See, 42 O.S. 2001, § 91(A)(1).

of time bears some responsibility to monitor what the merchant does with the goods. Harrell, *Can a Buyer and Secured Party Rely on a Certificate of Title? Part II*, 76 O.B.J. 447, 448 (2005).

DISPOSITION

Therefore, it is ORDERED that the application for revocation of Certificate of Title No. 999999999E issued to Respondent, RESPONDENT, on the 1965 Ford Mustang, Vehicle Identification No. 9X99X999999, be denied.

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.