JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2008-08-05-03 / NON-PRECEDENTIAL**
ID: **SJ-08-002-K**
DATE: **AUGUST 5, 2008**
DISPOSITION: **REVOKED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Complainant, COMPLAINANT and Respondent, RESPONDENT appear pro se. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A request for revocation of Title No. TITLE D issued to Respondent on a 1997 Ford F-150 Pickup, VIN XYZ123, was filed by Complainant. On May 9, 2008, the Division's file was referred to the Office of the Administrative Law Judges (ALJ's Office) for further proceedings pursuant to the Oklahoma Vehicle License and Registration Act[1], the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[3]. The revocation request was docketed as Case No. SJ-08-002-K and assigned to ALJ, Administrative Law Judge.[4]

A *Notice to Show Cause Why the Registration and Certificate of Title should not be Revoked* was served on Complainant and Respondent in accordance with 47 O.S. Supp. 2006, 1106(A)(2). The *Show Cause Hearing* was held on June 5, 2008. Respondent neither appeared nor responded to the *Notice*. Complainant appeared and was assisted by an interpreter, INTERPRETER. Complainant's Exhibits A through C were identified and admitted into evidence. SUPERVISOR, Supervisor-Title Section of the Division, testified regarding the records of the Division. Division's Exhibits A and B were identified, offered and admitted into evidence.

FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the show cause proceeding and the exhibits received into evidence, the undersigned finds:

1. The "C" title to the vehicle in question, a transfer title, was issued to Complainant on June 14, 2005, upon presentment of the assigned "B" title of DEALERSHIP of CITY, Oklahoma. Exhibit A.

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[1] 47 O.S. 2001, § 1102 et seq.

[2] 68 O.S. 2001, § 201 et seq.

[3] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[4] *OAC*, 710:1-5-22(b).

2. On January 4, 2008, Respondent applied for and received the "D" title to the vehicle, a transfer title, upon presentment of a Notice of Possessory Lien[5], a Notice of Sale[6], a Proof of Posting and Mailing[7] and a Return of Sale (Assignment of Ownership)[8]. Exhibit B.

3. By letter marked received May 5, 2008, Complainant requested a hearing to revoke the "D" title issued to Respondent, asserting the vehicle was stolen and since recovered, but the vehicle is being held by the CITY Police Department because the title is in Respondent's name.

4. The incident report from the CITY Police Department shows Complainant reported the vehicle stolen on March 19, 2007 and that the vehicle was recovered at an auto salvage yard on February 10, 2008. Complainant's Exhibit A.

5. A letter dated March 11, 2008, from Detective DETECTIVE, CITY Police Department, Auto Theft Unit indicates that Respondent purchased the vehicle from an unknown white male, that Respondent filed Title 42 papers and received an Oklahoma title to the vehicle and that Respondent subsequently sold the vehicle to BUYER who was in possession of the vehicle at the time of recovery, but who had not transferred title to the vehicle. Complainant's Exhibit C.

6. SUPERVISOR testified that if the Division had been notified that the vehicle was stolen prior to Respondent applying for title a stop flag would have been placed on the title record and title would not have been issued to Respondent.

7. SUPERVISOR also testified that the Title 42 paper work was in order and that no error had been committed by the tag agent or the Division in the issuance of the "D" title to Respondent.

8. COMPLAINANT testified through her interpreter that she did not receive notice of the Title 42 action because she had moved residences.

CONCLUSIONS OF LAW

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

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[5] The Notice of Possessory Lien executed October 26, 2007, reflects that Respondent claimed a special lien against the vehicle in question for labor and/or services performed, including materials on August 22, 2007, in the amount of $2,800.00. The possessory lien notice was forwarded to Complainant and DEALERSHIP, the lien holder, by certified mail.

[6] The Notice of Sale shows that a public sale was held on November 12, 2007, at ADDRESS, to satisfy the special lien held by Respondent on the identified vehicle for the labor and/or services performed, including materials, and storage fees from October 26, 2007 through November 12, 2007, in the aggregate amount of $3,225.00.

[7] The Proof of Posting and Mailing shows that copies of the Notice of Sale were posted at three (3) separate locations within COUNTY (where the property sale was held) and copies of the Notice of Sale were sent by certified mail and 1st class U.S. mail to Complainant and the lien holder.

[8] The Return of Sale (Assignment of Ownership) shows that Respondent in accordance with the Notice of Sale, offered the identified vehicle at public sale on November 12, 2007, and actually sold the vehicle on November 12, 2007 to Respondent for $125.00. The Return of Sale (Assignment of Ownership) was executed by Respondent, as seller.

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 47 O.S. Supp. 2004, § 1106(A)(2).

2. The Oklahoma Vehicle License and Registration Act was not enacted for the purpose of determining the ownership of a licensed vehicle[9], and the issuance or revocation of a certificate of title by the Commission is not a positive determination of ownership of title to a 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 the custodian of the records and is 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. If at any time, the Tax Commission determines that an applicant for a certificate of title to a vehicle is not entitled thereto, it may refuse to issue such certificate or to register such vehicle and for a similar reason, after ten (10) days' notice and a hearing, it may revoke the registration and the certificate of title already acquired on any outstanding certificate of title. 47 O.S. Supp. 2004, § 1106(A)(1) and (2).

5. "Any person who, while lawfully in possession of an article of Section 91 Personal property[10], <u>renders any service to the owner thereof</u> by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, * * *, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person <u>from the owner for such service</u>", (emphasis added). 42 O.S. Supp. 2006, § 91(A)(2). The special lien is subordinate to any perfected security interest unless the claimant complies with the requirements of § 91. 42 O.S. Supp. 2006, § 91 (A)(3). Notice of the special lien shall be mailed by regular, first class United States mail and by certified mail to all interest parties who reside at separate locations no later than sixty (60) days after the first services are rendered. 42 O.S. Supp. 2006, § 91 (A)(4). The lien may be foreclosed by a sale of such personal property upon notice of such sale, which notice shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time specified for the sale and mailed to all interested parties at their last-known post office address, by regular, first class United States mail and by certified mail on the day of posting. 42 O.S. Supp. 2006, § 91 (A)(6) and (7).

6. An "interested party" is defined to include "all owners of the article of personal property as indicated by the certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person having any

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[9] *But Cf.*, ***Volvo Commercial Finance LLC The Americas v. McClellan***, 2003 OK CIV APP 27, ¶ 27, 69 P.3d 274, which cited with approval ***Mitchell Coach Manufacturing Company, Inc. v. Stephens***, 19 F.Supp.2d 1227, 1233 (N.D.Okla.1998), wherein the Court held that certificates of title under the Act are "proof of ownership" citing 47 O.S. 2001, § 1103. Distinguished by ***In Re Robinson***, 285 B.R. 732, 49 UCC Rep.Serv.2d 327 (W.D.Okla.2002) which cites ***Sutton v. Snider***, 2001 OK CIV APP 117, ¶ 9, 33 P.3d 309, 312, for the proposition that ***Mitchell*** "addresses the issue of perfecting security interests" and "the person who held the paper title in ***Mitchell*** was in essence a bona fide purchaser for value."

[10] "Section 91 Personal Property" is defined at 42 O.S. Supp. 2006, § 91(A)(1).

interest in the article of personal property, of whom the claimant has actual notice." 42 O.S. Supp. 2006, § 91(A)(8).

6. The evidence shows Respondent had purchased the vehicle from an unknown white male prior to the rendition of any services. Under these circumstances, Respondent was either not lawfully in possession of the vehicle, was the owner of the vehicle or was not rendering any service to the owner of the vehicle. In any cases, Respondent could not legally obtain title to the vehicle through a Title 42 action. Accordingly, an error was made in the issuance of the "D" title to Respondent.

DISPOSITION

THEREFORE, IT IS ORDERED that the Certificate of Title No. TITLE D issued to RESPONDENT on the 1997 Ford F-150 pick-up, VIN XYZ123, be revoked.

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.