

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 2008-12-09-02 / NON-PRECEDENTIAL  
**ID:** SJ-08-006-K  
**DATE:** DECEMBER 9, 2008  
**DISPOSITION:** REVOKED  
**TAX TYPE:** TITLE REVOCATION  
**APPEAL:** NO APPEAL TAKEN

### ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 24th day of October, 2008, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

### STATEMENT OF THE CASE

Complainant filed a request for revocation of Title No. XYZ-M issued to Respondent on a 1984 Ford Bronco, VIN XYZ123. On September 4, 2008, the request 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<sup>1</sup>, the Uniform Tax Procedure Code<sup>2</sup> and the Rules of Practice and Procedure before the Oklahoma Tax Commission<sup>3</sup>. The revocation request was docketed as Case No. SJ-08-006-K, and assigned to ALJ, Administrative Law Judge.<sup>4</sup>

A *Notice to Show Cause Why the Registration and Certificate of Title should not be Revoked* was served on Respondent and Complainant in accordance with 47 O.S. Supp. 2006, 1106(A)(2). The *Show Cause Hearing* was held on October 1, 2008. SUPERVISOR, Supervisor-Titles, testified regarding the title history of the vehicle in question. Exhibits A through E were identified, offered and admitted into evidence without objection. Testimony was elicited from OWNER, owner of Respondent and Complainant. Respondent's Exhibit 1 was identified, offered and admitted into evidence without objection.

### FINDINGS OF FACT

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

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<sup>1</sup> 47 O.S. 2001, § 1102 et seq.

<sup>2</sup> 68 O.S. 2001, § 201 et seq.

<sup>3</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

<sup>4</sup> OAC, 710:1-5-22(b).

1. On or about May 31, 2008, Complainant purchased the vehicle in question from SELLER for \$400.00, with the intention of reselling the same. Exhibits A<sup>5</sup> and B<sup>6</sup>, and testimony of Complainant.

2. On July 7, 2008, Complainant executed a *Bill of Sale* to the vehicle in favor of Respondent. Exhibit D. Respondent's witness testified that a check was initially drawn for the purchase price of the vehicle, which was later cancelled, and that Complainant was paid \$700.00 in cash for the vehicle. Respondent's witness also testified that he reduced the rent due on a house leased to Complainant and paid Complainant the balance due on the vehicle in cash. Complainant testified that he only received \$135.00 for the vehicle.

3. On or about July 8, 2008, the "K" title to the vehicle was issued in Complainant's name upon presentment of the assigned "J" title. Respondent paid the taxes and fees for the transfer of the title to Complainant. The "K" title was forwarded to Respondent's business address. Exhibit B, Respondent's Exhibit 1 and witnesses' testimony.

4. Respondent's witness testified that he never received the "K" title. Complainant testified that Respondent received the "K" title; however, he (Complainant) refused to execute the assignment because he didn't receive full payment for the vehicle.

5. On July 21, 2008, the "L" title to the vehicle (a "duplicate" title) was issued to Complainant upon presentment of an *Application for Replacement Certificate of Title for Vehicle/Boat/Motor*. Exhibit C. Complainant testified that he filed for the new title because he didn't receive the asking price offered for the vehicle.

6. On July 26, 2008, the "M" title to the vehicle (a "transfer" title) was issued to Respondent upon presentment of an *Affidavit for Transfer when Assigned Title is Lost* and the *Bill of Sale* executed July 7, 2008. Exhibit D.

7. The *Affidavit for Transfer When Assigned Title is Lost* used to obtain the "M" title to the vehicle stated that the certificate of title to the vehicle was assigned to the Respondent on or about July 7, 2008.

8. The Division's witness testified that because of the issuance of the intervening "L" title to Complainant on July 21, 2008, a mistake was made in issuing the "M" title to Respondent from the *Bill of Sale* executed July 7, 2008.

### CONCLUSIONS OF LAW

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

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<sup>5</sup> Vehicle title receipt in the name of SELLER dated April 19, 2007, the "J" title to the vehicle in question, and the assigned Certificate of Title ("I") from PREVIOUS OWNER to SELLER.

<sup>6</sup> Vehicle title receipt in the name of Complainant dated July 8, 2008, the "K" title to the vehicle in question, and the assigned Certificate of Title ("J") from SELLER to Complainant.

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<sup>7</sup>, 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. Only the most recent Oklahoma certificate of title issued is considered valid.<sup>8</sup>

6. The *Affidavit for Transfer When Assigned Title Is Lost* used to obtain the "M" title to the vehicle is fatally defective because the title in existence for the vehicle at the time asserted by the affidavit that the assignment occurred was not a valid title on the date the affidavit was presented to the tag agent.

It is therefore ordered by the Oklahoma Tax Commission that Certificate of Title No. XYZ-M issued to RESPONDENT on a 1984 Ford Bronco, VIN XYZ123 be and hereby is 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.

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<sup>7</sup> *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."

<sup>8</sup> OAC, 710:60-5-2