**JURISDICTION:** **OKLAHOMA TAX COMMISSION**
**CITE:** **2009-12-10-03 / NON-PRECEDENTIAL**
**ID:** **SJ-09-009-K**
**DATE:** **DECEMBER 10, 2009**
**DISPOSITION:** **TITLE REVOKED**
**TAX TYPE:** **MOTOR VEHICLE**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice of these proceedings was served on Respondent, RESPONDENT, but Respondent neither filed a response to the Notice nor appeared at the hearing held on November 16, 2009. Complainants, COMPLAINANTS d/b/a DEALERSHIP, appear pro se. The Motor Vehicle Division of the Oklahoma 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 revocation hearing request was filed by Complainants on or about September 22, 2009, with respect to the Oklahoma Certificate of Title No. 456 issued August 4, 2009 to Respondent on the 2006 Yamaha ATV, VIN. XYZ123. The request and the Division's records were referred to the Office of the Administrative Law Judges 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 request was docketed as Case No. SJ-09-009-K and assigned to ALJ, Administrative Law Judge.[4]

An *Amended Notice to Show Cause Why the Registration and Certificate of Title should not be Revoked* was served on Respondent and Complainants in accordance with 47 O.S. Supp. 2004, 1106(A)(2). The *Show Cause Hearing* was held on November 16, 2009. Respondent neither filed a response to the *Notice* nor appeared at the hearing. Complainants appeared and gave their statement in support of the revocation request. Complainant's Exhibits 1 and 2 were identified, offered and admitted into evidence. SUPERVISOR, Supervisor-Titles, testified regarding the title history of the vehicle and the items submitted by Complainants in support of the revocation request. Division's Exhibits A through E were identified, offered and admitted into evidence. Upon conclusion of the hearing, the record was closed and the revocation request was submitted for decision.[5]

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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).

[5] *OAC*, 710:1-5-39(a).

## FINDINGS OF FACT

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

1. On June 26, 2008, Oklahoma Certificate of Title No. 123 (an "Original" title) to the ATV was issued to ATV DEALER 1 upon presentment of an assigned State of Mississippi Certificate of Title to the ATV. Division's Exhibit A.

2. ATV DEALER 1 sold the ATV to ATV DEALER 2 and it was purchased by Complainants on September 17, 2008. Complainant's Exhibits 1 and 2, and Division's Exhibit E.

3. On December 1, 2008, the ATV was reported stolen by Complainant and an Incident Report was taken by the COUNTY Sheriff. Division's Exhibit D.

4. On August 4, 2009, Oklahoma Certificate of Title No. 456 (a second "Original" title) to the ATV was issued to Respondent upon presentment of a Bill of Sale executed August 3, 2009, and an *Ownership Affidavit*. Division's Exhibit C.

5. The Division was notified of the reported theft of the ATV on August 6, 2009, through an NCIC report. Division's Exhibit D.

6. The ATV was recovered September 3, 2009, and is currently stored at SALVAGE YARD. Division's Exhibit D.

7. SUPERVISOR testified that Motor License Agent No 5505 overrode the title records to the ATV and erroneously issued a second "Original" Oklahoma Certificate of Title to the ATV. She also stated that the *Ownership Affidavit* is an obsolete document and should not have been accepted.

## CONCLUSIONS OF LAW

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

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[6], and the issuance or revocation of a certificate of

[6] *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."

title by the Commission is not a positive determination of ownership of a vehicle. ***Lepley v. State of Oklahoma***, 69 Okla.Crim. 379, 103 P.2d 568, 572, 146 A.L.R. 1323 (1940). See, 47 O.S. Supp. 2006, § 1105(U).

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. If a vehicle is stolen, the owner is required to immediately notify the appropriate law enforcement agency and the law enforcement agency is required to immediately notify the Tax Commission. 47 O.S. 2001, § 1105(K).

6. An error was committed in the issuance of a second "Original" Oklahoma Certificate of Title to the ATV when an Oklahoma record of title to the ATV previously existed. Further, notwithstanding that the Division did not have notice of the stolen vehicle report at the time title was issued to Respondent, the Division is now on notice and the provisions of § 1106(A) permit the revocation of said title.

## DISPOSITION

THEREFORE, it is ORDERED that Oklahoma Certificate of Title No. 456 issued to RESPONDENT on the 2006 Yamaha ATV, 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.