JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-02-23-05 / NON-PRECEDENTIAL**
ID: **SJ-09-010-K**
DATE: **FEBRUARY 23, 2010**
DISPOSITION: **REVOKED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent 1, RESPONDENT[1] is represented by MOTHER, Respondent's mother. Respondent, RESPONDENT 2 is represented by the REPRESENTATIVE. Complainant, 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

The Division on November 9, 2009, filed a revocation hearing request with respect to the issuance of Oklahoma Certificate of Title No. 123E to Respondents on a 1998 Ford Mustang, VIN XYZ123. Pursuant to the Oklahoma Vehicle License and Registration Act[2], the Uniform Tax Procedure Code[3] and the Rules of Practice and Procedure before the Office of the Administrative Law Judges[4] the request was docketed as Case No. SJ-09-010-K and assigned to ALJ, Administrative Law Judge[5] for further proceedings.

A *Notice to Show Cause Why the Registration and Certificate of Title should not be Revoked* was served on Respondents in accordance with 47 O.S. Supp. 2006, 1106(A)(2). The *Show Cause Hearing* was held as scheduled on December 9, 2009. Both Respondents appeared and were allowed to make statements with respect to the disputed title. RESPONDENT 1's Exhibits 1 and 2, and RESPONDENT 2's Exhibits 1 through 7 were admitted into evidence. ADMINISTRATOR, Administrator for the Division testified with respect to the records of the Division. Exhibits A through G were identified, offered and admitted into evidence. Upon conclusion of the hearing, the record was closed and the request was submitted for decision.[6]

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[1] This is the proper spelling of Respondent's given name. Some documents show Respondent's name as "MISSPELLED NAME".

[2] 47 O.S. 2001, § 1102 et seq., as amended.

[3] 68 O.S. 2001, § 201 et seq., as amended.

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

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

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

FINDINGS OF FACT

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

1. On October 1, 2009, the "C" Oklahoma title to the vehicle in question was issued in the names of "RESPONDENT 2 &/or RESPONDENT 1" upon submission of an *Affidavit for Transfer When Assigned Title is Lost*, a certified copy of the re-assigned "B" Oklahoma title, a certified copy of the *Odometer Disclosure Statement* and a certified copy of the *DEALERSHIP Purchase Agreement*. Exhibit D.

2. On October 7, 2009, the "D" Oklahoma title to the vehicle was issued to "RESPONDENT 1" upon submission of the assigned "C" Oklahoma title executed by one (1) of the registered owners – RESPONDENT 1. Exhibit E.

3. On October 16, 2009, the Oklahoma "E" title to the vehicle was issued in the names of "RESPONDENT 2 &/or RESPONDENT 1" upon submission of the re-assigned "B" Oklahoma title.

4. On November 4, 2009, Respondent, RESPONDENT 2 applied for an Oklahoma title to the vehicle in his own name upon submission of the assigned "E" Oklahoma title executed by RESPONDENT 2. This title was not issued. Exhibit G.

5. The Division maintains that an error was committed in the issuance of the "E" Oklahoma title in the names of "RESPONDENT 2 &/or RESPONDENT 1" because there were intervening titles acquired on the vehicle. Testimony of ADMINISTRATOR.

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 ("Act") was not enacted for the purpose of determining the ownership of a licensed vehicle[7], and the issuance or revocation of a certificate of title by the Commission is not a positive determination of ownership of the vehicle.

[7] *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."

Lepley v. State of Oklahoma, 69 Okla.Crim. 379, 103 P.2d 568, 572, 146 A.L.R. 1323 (1940). Specifically, the Act provides at § 1105(U)[8]:

> The Tax Commission shall not be considered a necessary party to any lawsuit which is instigated for the purpose of determining ownership of a vehicle, wherein the Tax Commission's only involvement would be to issue title, and the court shall issue an order dismissing the Tax Commission from the pending action. In the event no other party or lienholder can be identified as to ownership or claim, the Tax Commission shall accept an affidavit of ownership from the party claiming ownership and issue proper title thereon.

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(B).

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. The "E" Oklahoma title was acquired by error on the submission of the superseded "B" Oklahoma title. Accordingly, the "E" Oklahoma title should be revoked.

DISPOSITION

THEREFORE, IT IS ORDERED that Certificate of Title No. 123E issued to RESPONDENT 2 and/or RESPONDENT 1 on the 1998 Ford Mustang, 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.

[8] Added by Laws 2006, c. 295, § 3, eff. July 1, 2006.