JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2014-10-14-13 / NON-PRECEDENTIAL**
ID: **SJ-14-012-K**
DATE: **OCTOBER 14, 2014**
DISPOSITION:
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

ORDER

Respondents, RESPONDENT and SALVAGE COMPANY were represented in these proceedings by RESPONDENT and SPOUSE. Complainant, COMPLAINANT, is represented by ATTORNEY, Attorney at Law, FIRM. The Motor Vehicle Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY 1, First Deputy General Counsel and OTC ATTORNEY 2, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A revocation hearing request was filed by Complainant on June 20, 2014, with respect to the Oklahoma Certificate of Title No. B TITLE, a transfer title issued October 10, 2013 to Respondents on the 2012 Springdale Travel Trailer, VIN XYZ123. The request was referred to the Office of the Administrative Law Judges for further proceedings consistent with 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-14-012-K and assigned to the undersigned.[4]

A *Notice to Show Cause Why the Registration and Certificate of Title should not be Revoked* was served on Respondents and Complainant in accordance with 47 O.S. 2011, § 1106(A)(2). The *Show Cause Hearing* was held on September 4, 2014. ADMINISTRATOR, Administrator-Liens and Titles, Division identified the title records to the vehicle, opined that Respondents were not entitled to receive title to the vehicle and testified to the reasons for this opinion. Division's Exhibit A, consisting of the records of the Division was admitted into evidence. Respondents' representative gave a statement in regard to the purchase of the vehicle. Respondents' Exhibit A, a copy of the Oklahoma Certificate of Title obtained by Respondents to the vehicle was admitted into evidence. Complainant did not offer any direct evidence in support of the application.

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1 47 O.S. 2011, § 1102 et seq., as amended.

2 68 O.S. 2011, § 201 et seq., as amended.

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

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

Upon conclusion of the hearing, the record was closed and the revocation request was submitted for decision.[5]

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 May 27, 2011, an "original" Oklahoma Certificate of Title was issued on the vehicle in question to OWNER 1 upon presentment of an *Application for Oklahoma Certificate of Title for a Vehicle*, an assigned manufacturer's certificate of origin showing the seller as DEALER and the purchaser as OWNER 1 and a copy of the purchase agreement. Division's Exhibit A, pp. 1-6.

2. The vehicle was subject to the lien of CREDIT UNION. Division's Exhibit A, pp. 7 and 8.

3. On March 13, 2013, an "unrecovered theft" Oklahoma Certificate of Title was issued to COMPLAINANT upon presentment of the assigned "original" title issued to OWNER 1 showing the seller as OWNER 1 and the purchaser as COMPLAINANT, the lien release of CREDIT UNION, and two (2) powers of attorney; (1) from OWNER 1 to COMPLAINANT permitting COMPLAINANT to do those things necessary to obtain title to the vehicle and (2) from COMPLAINANT to REPRESENTATIVE allowing REPRESENTATIVE to secure an unrecovered theft title to the vehicle in COMPLAINANT'S name. Division's Exhibit A, pp. 9-15.

4. On October 10, 2013, a "transfer" Oklahoma Certificate of Title was issued to Respondents upon presentment of a *Bill of Sale for a Motor Vehicle* showing Respondents purchased the vehicle from SELLER, for a price of $4,000.00. Division's Exhibit A, pp. 16 and 17.

5. The "transfer" title received by Respondents on the vehicle was branded "recovered theft". Respondents' Exhibit A.

6. According to ADMINISTRATOR, an "unrecovered theft" title is not to be transferred. Upon recovery of the vehicle, the insurance company issued the "unrecovered theft" title would notify the Tax Commission and would be issued a new title type of either "salvaged", "junked" or "original" depending on the estimate of damage with the brand "recovered theft". Testimony of ADMINISTRATOR.

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

7. ADMINISTRATOR testified that the *Bill of Sale for a Motor Vehicle* was insufficient documentation and should not have been accepted for the purpose of issuing the transfer title to Respondents since there was an existing unrecovered theft title on record.

8. According to RESPONDENT, they were not aware the vehicle was stolen, other than it had been stolen and recovered according to the documents they received on the vehicle.

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. 2011, § 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 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. 2011, § 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. 2011, § 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. 2011, § 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. 2011, § 1105(K).

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[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."

6. "The ownership of any unrecovered vehicle which has been declared a total loss by an insurer because of theft shall be transferred to the insurer by an unrecovered theft vehicle title". 47 O.S. 2011, § 1105(O). "Upon recovery of the vehicle, the ownership shall be transferred by an original title, salvage title, or junked title, as may be appropriate based upon an estimate of the amount of loss submitted by the insurer." *Id*.

7. "In the event of the sale or transfer of the ownership of a vehicle for which a certificate of title has been issued as provided by Section 1105 of this title, the holder of such certificate shall endorse on the back of same a complete assignment thereof with warranty of title * * * with a statement of all liens or encumbrances on the vehicle, sworn to before a notary public * * * and deliver same to the purchaser or transferee at the time of delivery to the purchaser or transferee of the vehicle." 47 O.S. 2011, § 1107(A).

8. "In case of a lost certificate of title, the loss of which is accounted for to the satisfaction of the Commission or one of its motor license agents, the Commission or one of its motor license agents may issue duplicates.." 47 O.S. 2011, § 1108.

9. The evidence shows that the transfer title to the vehicle in question should not have been issued to Respondents. This conclusion is drawn not only from the title history of the vehicle which shows the pre-existing unrecovered theft title issued to COMPLAINANT, but from the fact that the *Bill of Sale for a Motor Vehicle* offered in support of Respondents' title application is statutorily insufficient to substantiate the sale or transfer of ownership of a vehicle for which an Oklahoma certificate of title has been issued. 47 O.S. 2011, § 1107(A).

DISPOSITION

THEREFORE, based on the above findings of fact and conclusions of law it is ORDERED that Oklahoma Certificate of Title No. B TITLE issued to RESPONDENT/SALVAGE COMPANY on the 2012 Springdale Travel Trailer, 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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West

2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."