

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2019-02-05-07 / NON-PRECEDENTIAL
ID: SJ-18-019-K
DATE: FEBRUARY 5, 2019
DISPOSITION: TITLE REVOKED
TAX TYPE: MOTOR VEHICLE
APPEAL: NONE

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, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 17th day of January, 2019, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 17th day of January, 2019, the above styled and numbered cause comes on for decision under assignment regularly made by the Oklahoma Tax Commission to AHO, Administrative Hearing Officer. Notice of these proceedings was served on the parties in accordance with 47 O.S. Supp. 2016, § 1106(A)(2). Complainant, COMPLAINANT, appears pro se. The Respondent appears not. As custodian of Tax Commission records, the Motor Vehicle Division (“Division”) appears through AGC, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A revocation hearing request was filed by Complainant on August 13, 2018, regarding Oklahoma Certificate of Title No. 810004793819 issued to Respondent on a 2001 Cardinal travel trailer, VIN 4X4FCAD211G076736. The request and the Division’s records were referred to the Office of the Administrative Law Judges for further proceedings under the Oklahoma Vehicle

License and Registration Act¹, the Uniform Tax Procedure Code² and the Rules of Practice and Procedure before the Oklahoma Tax Commission³.

On August 21, 2018, a *Notice to Show Cause Why the Registration and Certificate of Title Should not be Revoked* was sent by certified mail to Respondent's last known address in accordance with 47 O.S. Supp. 2016, § 1106(A)(2). The notice was returned marked "unclaimed". A closed⁴ *Show Cause Hearing* was held on October 23, 2018 before AHO, Administrative Hearing Officer ("AHO"). Complainant appeared and testified in support of the revocation request. Respondent failed to appear. ADMINISTRATOR, Administrator of Titles for the Division, testified regarding the title history to the vehicle. Exhibits 1 through 4 were identified and admitted into evidence without objection from Complainant. Upon conclusion of the hearing, the record closed and the revocation request submitted for decision.⁵

FINDINGS OF FACT

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

1. On May 16, 2016, a duplicate Oklahoma Certificate of title No. 810001912880, to a 2001 Cardinal travel trailer VIN No. 4X4FCAD211G076736, was issued to OWNER. The title was transferred to BUYERS on June 1, 2016, upon presentment of the assigned duplicate title. Exhibit 1.

2. On October 17, 2017, title to the 2001 Cardinal travel trailer VIN No. 4X4FCAD211G076736 was transferred to Complainants upon presentment of a notarized assignment of original Oklahoma title by BUYERS. Exhibit 2.

3. On February 25, 2018, Oklahoma Certificate of Title no. 810004793819 on a 2001 Cardinal travel trailer, VIN 4X4FCAD211G076736, was issued to Respondent upon presentment of an original Oklahoma title and a Cleveland County court order declaring respondent to be the owner of the vehicle. The title presented at the time of transfer, no. 810000528964, shows the

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 710:1-5-49 of the *Oklahoma Administrative Code* ("OAC").

⁴ Confidentiality was invoked by the Court. 47 O.S. 2011, § 1109(A).

⁵ OAC 710:1-5-39(a).

owner to be OWNER with an undated assignment to BUYER 2. The first assignment is not notarized. There is a second undated assignment from BUYER 2 to BUYER 3. The second assignment is not notarized. The third assignment from BUYER 3 to Respondent is dated February 25, 2018 and is notarized. Exhibit 3.

4. On September 19, 2016, Oklahoma Certificate of Title No. 810002614355 to a 1996 Starcraft travel trailer, VIN1SACS02P4T1XA7927, was issued to SPOUSES. On February 25, 2017, the title was assigned to Claimants upon presentment of a signed and notarized original Oklahoma Title. Complainants received title to the 1996 Starcraft trailer on October 30, 2017 and are still the registered owners of the vehicle according to Tax Commission records. Exhibit 4.

5. Complainant testified that she and her husband purchased 2 travel trailers, a 2001 Cardinal and a 1996 Starcraft, with the intent of selling them to friends who were unable to obtain credit through commercial lenders. After the resale of the 2001 Cardinal trailer fell through, the complainants kept it for their personal use and have maintained continuous possession of the vehicle. Testimony of Complainant.

6. Claimant further testified that the 1996 Starcraft was sold to FRIEND. The relationship between complainants and FRIEND ended after the sale. Complainants were later contacted by Respondent to confirm that they had sold a trailer to FRIEND because FRIEND apparently did not have the title. Complainants believed RESPONDENT to be inquiring about the 1996 Starcraft trailer and were unaware that RESPONDENT had obtained title to the 2001 Cardinal until they attempted to renew their title. They have not had possession of the 1996 Starcraft since selling it to FRIEND. Testimony of Complainant.

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. 2016, § 1106(A)(2).

2. The Oklahoma Vehicle License and Registration Act was not enacted for the purpose of determining the ownership of a licensed vehicle⁶, and the issuance or revocation of a

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.*

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. Supp. 2012, § 1105(V).⁷ The Tax Commission is the custodian of the motor vehicle records 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(B).

3. Violation of Motor Vehicle License and Registration Act by not delivering certificate of title to buyer of automobile does not invalidate sale or prevent title from passing.⁸ Certificate of title to automobile issued under a motor vehicle code is not a muniment of title which establishes ownership, but is merely intended to protect the public against theft and to facilitate recovery of stolen automobiles and otherwise aid the state in enforcement of its regulation of motor vehicles.⁹

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.¹⁰

ANALYSIS

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."

⁷ This provision provides:

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.

⁸ *Al's Auto Sales v. Moskowitz*, 1950 OK 94, 203 Okla. 611, 614, 224 P.2d 588, 591.

⁹ *Id.*, citing *Adkisson v. Waitman*, 1949 OK 465, 202 Okla. 309, 213 P.2d 465.

¹⁰ 47 O.S. Supp. 2016, § 1106(A)(1) and (2).

1. The test for refusing the issuance or revoking a certificate of title on a motor vehicle is whether there is a determination at any time that the applicant or the person whom title is vested is not entitled thereto.¹¹

2. The evidence shows that Respondent received title to the 2001 Cardinal trailer following an error by Respondent who obtained title to the incorrect vehicle. Respondent was not entitled to transfer title to the 2001 Cardinal travel trailer and Certificate of Title No. 810004793819 should not have been issued.

RECOMMENDATIONS

Oklahoma Certificate of Title No. 810004793819 should 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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).

¹¹ 47 O.S. Supp. 2016, § 1106(A)(1) and (B).