

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2019-10-22-09 / NON-PRECEDENTIAL
ID: SJ-19-001-K
DATE: OCTOBER 22, 2019
DISPOSITION: REQUEST FOR REVOCATION DENIED
TAX TYPE: MOTOR VEHICLE
APPEAL: PENDING

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 16th day of September, 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 16th day of September, 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, and Respondent, RESPONDENT, appear pro se. 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 February 20, 2019, regarding Oklahoma Certificate of Title No. 810002084240 issued to Respondent on a 1964 Dodge Truck, VIN 1862000957. 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 March 12, 2019, a *Notice to Show Cause Why the Registration and Certificate of Title Should not be Revoked* was served on Respondent in accordance with 47 O.S. Supp. 2016, § 1106(A)(2). A *Show Cause Hearing* was held on May 22, 2019 before AHO, Administrative Hearing Officer (“AHO”). Complainant appeared and testified in support of the revocation request. Claimant’s Exhibit 1 was identified and admitted into evidence without objection. Respondent appeared and testified in opposition to the revocation request. Respondent called WITNESS to testify in opposition to the revocation request. Respondent’s Exhibit 1 was identified and admitted into evidence without objection. ADMINISTRATOR, Administrator of Titles for the Division, testified regarding the title history to the vehicle. Division’s Exhibits 1 and 2 were identified and admitted into evidence without objection. Upon conclusion of the hearing, the record closed and the revocation request submitted for decision.⁴

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 or about June 27, 2015, Oklahoma certificate of title No. 810000151878 was issued to WITNESS on a 1964 Dodge Truck, Vehicle identification No. 1862000957, upon presentment

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 OAC 710:1-5-39(a).

of an Application for Oklahoma Title, Return of Sale, Notice of Sale, Affidavit of Publication, Vehicle Information Request, and Proof of Posting and Mailing. Division's Exhibit 1 testimony of ADMINISTRATOR.

2. On or about May 27, 2016, certificate of title no. 810002084240 was issued to Respondent on a 1964 Dodge truck, VIN 1862000957, upon presentment of an assignment of Oklahoma Title from WITNESS. Division's Exhibit 2, Testimony of ADMINISTRATOR.

3. There is no history of title being issued to Claimant in the records of the Oklahoma Tax Commission. Testimony of ADMINISTRATOR,

4. Claimant, who currently resides in Florida, left the vehicle with WITNESS before leaving Oklahoma. WITNESS was to restore the truck. WITNESS stated that he never received payment for materials to fix the truck and initiated the title 42 sale after storing the vehicle for 17 years. Testimony of WITNESS, Testimony of Claimant.

5. WITNESS testified that he attempted to reach Claimant by phone before initiating the Title 42 sale but was unable to reach Claimant or determine his last known address. Testimony of WITNESS.

6. Respondent was awarded ownership of the Dodge truck in Oklahoma County District Court. Respondent's Exhibit 1.

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 vehicle⁵, 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. Supp. 2012, § 1105(V).⁶ 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.⁷ 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.⁸

⁵ *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 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.

⁷ *Al's Auto Sales v. Moskowitz*, 1950 OK 94, 203 Okla. 611, 614, 224 P.2d 588, 591.

⁸ *Id.*, citing *Adkisson v. Waitman*, 1949 OK 465, 202 Okla. 309, 213 P.2d 465.

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.⁹

5. "Any person who, while lawfully in possession of Personal property¹⁰, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, * * *, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service." 42 O.S. Supp. 2006, § 91A(A)(2)(a).

6. Failure to comply with any prescribed notice or procedural requirements¹¹ shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. 42 O.S. Supp. 2006, §91A(A)(2)(b).

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

¹⁰ "Personal Property" is defined at 42 O.S. Supp. 2006, § 91A(A)(1)(b).

¹¹ 42 O.S. Supp. 2006, §91A(A)(2)(b) provides in pertinent part:

Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within thirty (30) business days of receipt of the denial, and proceed to comply with the requirements of this section. "Failure to comply" includes, but is not limited to:

(1) failure to timely provide additional documentation supporting or verifying any entry on submitted forms as requested by the Tax Commission,

(2) failure to provide the documentation supporting lawful possession as outlined in paragraph 3 of subsection H of this section,

(3) claimant being other than the individual who provided the service giving rise to the special lien, as in subparagraph a of this paragraph,

(4) claimant not being in possession of the vehicle, or

7. Any person claiming a lien under this section shall request, within five (5) business days of performing any service or work on the property, the Tax Commission or other appropriate license agency to furnish the name and address of the current owner of and any lienholder upon the property. The Motor Vehicle Division of the Tax Commission or appropriate license agency shall respond in person or by mail to the lien claimant within ten (10) business days of the receipt of the request for information. The Tax Commission shall render assistance to ascertain ownership, if needed. The lien claimant shall send, within seven (7) business days of receipt of the requested information from the Oklahoma Tax Commission or other license agency, a notice of the location of the property by certified mail with return receipt requested, postage prepaid, to the owner and any lienholder of the vehicle at the addresses furnished. 42 O.S.Supp.2006, §91A(A)(2)(c).¹²

(5) notification and proceedings not accomplished in accordance with subparagraph c of this paragraph, and paragraph 3 of this subsection.

¹² 42 O.S. Supp. 2006, §91(A)(2)(c) provides in pertinent part:

The notice shall be in writing and shall contain, but not be limited to:

- (1) a statement that the notice is a Notice of Possessory Lien,
- (2) the complete legal name, physical and mailing address, and telephone number of the claimant,
- (3) the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,
- (4) a description of the article of personal property, and the complete physical and mailing address of the location of the article of personal property,
- (5) the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided that, in the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission shall serve as written proof of authority,

8. The lien may be foreclosed by a sale of such personal property upon the notice of the sale and procedures set out in 42 O.S. Supp. 2006, §91A(A)(3). The notice shall be in writing and shall contain, but not be limited to:

(a). the names of the owner and any other known party or parties who may claim any interest in the property,

(b). a description of the property to be sold, including a visual inspection or a photograph if the property is a motor vehicle, and the physical location of the property,

(c). the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided. In the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission, shall serve as written proof of authority,

(d). the time and place of sale,

(e). the name, telephone number, physical address and mailing address of the claimant, and agent or attorney, if any, foreclosing such lien. If the claimant is a business, then the name of the contact

(6) the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, the name of the contact person representing the business shall be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and

(7) an itemized statement describing the date or dates the labor or services were performed and material furnished and the charges claimed for each item, the totals of which shall equal the total compensation claimed.

person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and

(f). itemized charges which shall equal the total compensation claimed.

9. Such Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to the owner and any other party claiming any interest in the property, if known, at their last-known post office address, by certified mail, return receipt requested, at least ten (10) days before the time therein specified for such sale. 42 O.S. Supp. 2006, §91A(4)(a).

10. When the jurisdiction of titling for a vehicle cannot be determined by ordinary means, the claimant, the agent of the claimant, or the attorney of the claimant, shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction where the vehicle is titled. The Oklahoma Tax Commission Motor Vehicle Division shall, within fourteen (14) days from the date the request is received, provide information as to the jurisdiction where the personal property is titled. If the Oklahoma Tax Commission Motor Vehicle Division is unable to provide the information, it shall provide notice that the record is not available. 42 O.S. Supp. 2006, §91A(A)(4)(d).

11. The lienor or any other person may in good faith become a purchaser of the property sold. 42O.S. Supp. 2006, §91A(A)(4)e(5).

12. Here, the title 42 documentation accepted by the Division to transfer title to the vehicle to Respondent was in proper form and sufficient to grant WITNESS' title application. Additionally, Respondent has become a good faith purchaser of the vehicle in question.

ANALYSIS

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.¹³

2. The evidence shows that WITNESS met his statutory obligations for the Title 42 sale and the title issued to WITNESS and the subsequent transfer to Respondent was proper.

RECOMMENDATIONS

Oklahoma Certificate of Title No. 810002084240, issued to Respondent, should not be revoked and Claimant's application for revocation of title should be denied.

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).

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