

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2019-10-22-10 / NON-PRECEDENTIAL  
**ID:** SJ-19-011-F  
**DATE:** OCTOBER 22, 2019  
**DISPOSITION:** TITLE REVOKED  
**TAX TYPE:** MOTOR VEHICLE  
**APPEAL:** NONE TAKEN

### 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 24<sup>th</sup> 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 24<sup>th</sup> 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 failed to appear. 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 July 18, 2019, regarding Oklahoma Certificate of Title No. 810005802094, issued to Respondent on a 2016 Cadillac Escalade, VIN 1GYS4JK45GR105125. 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 Act<sup>1</sup>, the Uniform Tax Procedure Code<sup>2</sup> and the Rules of Practice and Procedure before the Oklahoma Tax Commission<sup>3</sup>.

On August 6, 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 closed<sup>4</sup> *Show Cause Hearing* was held on September 10, 2019 before AHO, Administrative Hearing Officer (“AHO”). Neither Complainant nor Respondent appeared. ADMINISTRATOR, Administrator of Titles for the Division, testified regarding the title history to the vehicle. Exhibits 1 and 2 were identified and admitted into evidence. Upon conclusion of the hearing, the record closed and the revocation request submitted for decision.<sup>5</sup>

#### 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 September 11, 2018, Certificate of title No. 810005802094 to a 2016 Cadillac Escalade VIN No. 1GYS4JK45GR105125, was issued to Respondent upon presentment of an Application for Oklahoma Title and an Original California title showing assignment to Respondent. The assignment is dated August 9, 2018. No “bill of sale” or “declaration of purchase price” was presented with the application for an Oklahoma title. Divisions Exhibit 1, Testimony of ADMINISTRATOR.

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<sup>1</sup> 47 O.S. 2011, § 1102 *et seq.*, as amended.

<sup>2</sup> 68 O.S. 2011, § 201 *et seq.*, as amended.

<sup>3</sup> Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* (“OAC”).

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

<sup>5</sup> OAC 710:1-5-39(a).

2. On January 16, 2019, Complainant was awarded ownership and title to the 2016 Cadillac Escalade in a “Final Order and Judgements of the Court” in Tulsa County District Court following a civil proceeding. In the final order, the Court declares, “The Court Orders the Oklahoma Tax Commission to void any title issued on the 2016 Cadillac Escalade (VIN# 1GYS4JKJ5GR105125) to the Defendant.” Case no. CV-2018-1274 <sup>6</sup>

### 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 vehicle<sup>7</sup>, 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).<sup>8</sup> The Tax Commission is the custodian of the motor vehicle records required to file and

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<sup>6</sup> The Aho is taking judicial notice of the court record contained on the Oklahoma State Courts Network (OSCN) website at: <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=tulsa&number=CV-2018-1274>

<sup>7</sup> *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.”

<sup>8</sup> 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.

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

5. Documentation of the actual sale price is required for any vehicle to be titled in Oklahoma where sales or excise tax is to be collected. Documentation includes a "bill of sale", "purchase contract" or "declaration of vehicle purchase price". Okla. Admin. Code 710:60-5-71(e).

### 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.<sup>12</sup>

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<sup>9</sup> *Al's Auto Sales v. Moskowitz*, 1950 OK 94, 203 Okla. 611, 614, 224 P.2d 588, 591.

<sup>10</sup> *Id.*, citing *Adkisson v. Waitman*, 1949 OK 465, 202 Okla. 309, 213 P.2d 465.

<sup>11</sup> 47 O.S. Supp. 2016, § 1106(A)(1) and (2).

<sup>12</sup> 47 O.S. Supp. 2016, § 1106(A)(1) and (B).

2. The Tulsa County District Court determined that Respondent obtained the vehicle and title by fraud. Additionally, an Oklahoma title should not have been issued without documentation of the purchase price of the vehicle. Oklahoma Certificate of title no. 810005802094, issued to Respondent on the 2016 Cadillac Escalade should be revoked.

### RECOMMENDATIONS

Oklahoma Certificate of Title No. 810005802094, issued to Respondent RESPONDENT, 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).