

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

HUNTINGTON NATIONAL BANK

Plaintiff-Appellee

-vs-

ASHRAF A. ETTAYEM

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Craig R. Baldwin, J.

Case No. 14 CAE 09 0058

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Common
Pleas Court, Case No. 12 CJ 57033

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 29, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Ashraf A. Ettayem appeals the September 16, 2014 Judgment Entry entered by the Delaware County Court of Common Pleas, which overruled his objections to the magistrate's July 16, 2014 decision, and approved and adopted said decision as order of the court. Plaintiff-appellee is Huntington National Bank ("Huntington").

STATEMENT OF THE FACTS AND CASE

{¶2} On November 20, 2012, Huntington obtained a judgment against Appellant in Franklin County Court of Common Pleas Case No. 12 CV 001129 ("the Judgment"). Huntington transferred the Judgment to Delaware County by filing a praecipe for a certificate of judgment lien on December 4, 2012. Huntington filed a writ of execution pursuant to R.C. 2329.09, seeking to have the sheriff levy it upon Appellant's personal property in order to satisfy the Judgment. The sheriff seized Appellant's 2004 Mercedes Benz ("the Vehicle") pursuant to the writ of execution on May 29, 2014.

{¶3} On June 2, 2014, Appellant requested an exemption hearing, disputing the seizure of the Vehicle because "property value below exemption, and without any equity or value above any exempted code." The magistrate conducted the exemption hearing on June 13, 2014, at which Appellant asserted for the first time he had sold the Vehicle.

{¶4} Appellant testified he pawned the Vehicle at Buckeye Pawn Shop dba Autopawn USA ("Autopawn") on January 4, 2012, in exchange for a loan of \$15,000. A replacement certificate of title was issued on January 4, 2012, noting Autopawn's lien.

Autopawn maintained possession of the Vehicle and the title until December 12, 2013, when Appellant redeemed the Vehicle for \$15,754. Autopawn completed the lien discharge section on the front of the title, indicating Appellant's obligation had been paid in full. Autopawn released the Vehicle and the title to Appellant. On the same day, Appellant sold the Vehicle to Buckeye State Wholesale, Inc. ("BSW") for \$20,000.

{¶15} A few days after the sale, BSW requested the sale of the Vehicle be cancelled. Appellant agreed to cancel the transaction, but did not have the \$20,000 available to return to BSW. BSW allowed Appellant to pay \$3,000, with the agreement Appellant would repay the \$20,000 by August, 2014. Appellant completed the assignment on the back of the title of the Vehicle and gave the title to BSW as security. Appellant maintained physical possession of the Vehicle. BSW never obtained a certificate of title issued in its name.

{¶16} The magistrate issued her decision on July 7, 2014, finding Appellant owned the Vehicle, the Vehicle was subject to execution by Huntington, and Appellant was entitled to an exemption of \$3,450. Appellant filed timely objections. Via judgment entry filed September 16, 2014, the trial court overruled Appellant's objections, and approved and adopted the magistrate's decision as order of the court.

{¶17} It is from this judgment entry Appellant appeals, raising the following assignment of error:

{¶18} "I. THE TRIAL COURT ERRED IN CONCLUSION, THAT APPELLANT WAS THE OWNER OF THE LEVIED AUTOMOBILE, AND IT WAS SUBJECT TO EXECUTION."

{19} R.C. 4505.04 provides, in pertinent part:

(A) *No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or there is delivered to the person a manufacturer's or importer's certificate for it, or a certificate of title to it is assigned as authorized by section 4505.032 of the Revised Code; and no waiver or estoppel operates in favor of such person against a person having possession of the certificate of title to, or manufacturer's or importer's certificate for, the motor vehicle, for a valuable consideration.*

(B) Subject to division (C) of this section, *no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle sold or disposed of, or mortgaged or encumbered, unless evidenced:*

(1) *By a certificate of title*, an assignment of a certificate of title made under section 4505.032¹ of the Revised Code, a manufacturer's or

¹ R.C. 4505.032 reads: (A)(1) If a person who is not an electronic motor vehicle dealer owns a motor vehicle for which a physical certificate of title has not been issued by a clerk of a court of common pleas and the person sells the motor vehicle to a motor vehicle dealer licensed under Chapter 4517. of the Revised Code, the person is not required to obtain a physical certificate of title to the motor vehicle in order to transfer ownership to the dealer. The person shall present the dealer, in a manner approved by the registrar of motor vehicles, with sufficient proof of the person's identity and complete and sign a form prescribed by the registrar attesting to the person's identity and assigning the motor vehicle to the dealer. Except as otherwise provided in this section, the motor vehicle dealer shall present the assignment form to any clerk of a court of common pleas together with an application for a certificate of title and payment of the fees prescribed by section 4505.09 of the Revised Code.

We find R.C.4505.04(B)(1) is not applicable herein as a physical title of the vehicle had been issued by a clerk of courts.

importer's certificate, or a certified receipt of title cancellation to an exported motor vehicle issued in accordance with sections 4505.01 to 4505.21 of the Revised Code;

(2) By admission in the pleadings or stipulation of the parties.

R.C. 4505.04 (Emphasis added).

{¶10} While we question Appellant's standing to challenge the trial court's finding BSW was not the rightful owner, we, nonetheless, choose to address the issue. A certificate of title was never issued in the name of BSW. The fact BSW was holding the certificate of title as security does not change the actual ownership of the Vehicle.² We find when BSW and Appellant agreed to rescind the sale, the parties were restored to their original positions, and legal ownership of the Vehicle remained with Appellant.

{¶11} Appellant's sole assignment of error is overruled.

² BSW may have an action against Appellant, however, that issue is not before the Court at this time.

{¶12} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur

