[Cite as *Owners Ins. Co. v. Halak*, 2012-Ohio-1565.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Owners Insurance Company	Court of Appeals No. L-11-1210
Appellant	Trial Court No. CI0200908016
v.	
Jerry Halak, et al.	**DECISION AND JUDGMENT**
Appellee	Decided: April 6, 2012

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Robert J. Bahret and Andrew J. Ayers, for appellant.

John Czarnecki and George C. Ward, for appellee.

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HANDWORK, J.

{¶ 1} This appeal is from the August 8, 2011 judgment of the Lucas County Court of Common Pleas, which granted declaratory judgment in favor of appellee, Jerry Halak. Upon consideration of the assignments of error, we affirm the decision of the lower court. Appellant, Owners Insurance Company, asserts the following assignments of error on appeal:

1. The trial court erred in finding that Jerry Halak did not own the vehicle transferred to him by Janson Swy.

2. The trial court erred in holding that the vehicle transferred to Jerry Halak by Janson Swy was not available for its [sic] regular use.

{¶ 2} Appellant initiated a declaratory judgment action to determine its obligations under a policy of insurance issued to appellee. The policy provides coverage for "your automobile," which is defined as "the automobile described in the declarations." Furthermore, the policy provides coverage for temporary substitute automobiles, automobiles that replace an automobile in the declarations, or additional automobiles reported to the agent within thirty days of the transfer of title. The policy also covers automobiles not regularly furnished for the use of an insured. The parties entered into a stipulation of evidence and filed the deposition testimony of appellee and Denise Swy. The case was submitted to the court for determination.

{¶ 3} The following evidence was presented. Appellee testified that he was involved in an automobile accident on June 10, 2009, while driving a 1995 Nissan Maxima automobile, which had been owned by his grandson, Janson Swy. Appellee was insured at the time under an automobile insurance policy issued by appellant.

{¶ 4} Appellee had been storing this vehicle for about a year prior to the accident and had just recently restored the vehicle to working condition in preparation for selling it. The vehicle was not registered at the time of the accident, and appellee had removed the license plates from another inoperable vehicle (one listed in the declarations of his

insurance policy) and placed the plates on this vehicle just prior to driving it. Appellee was the only driver cited by the police in connection with the accident. The other driver brought a legal action against appellee for negligence.

{¶ 5} Denise Swy testified that her son, Janson Swy, is bipolar and has difficulty communicating. Therefore, her son had not been involved in the arrangements for the transfer of the car to her father, appellee. About a year prior to the accident, Denise and her husband decided to ask appellee if he could fix up Janson's vehicle and sell it because appellee worked on cars as a hobby. Appellee testified that he needed to replace the transmission and radiator, repair the exhaust, repair dents, and clean the car inside and outside. Appellee and Denise agreed that appellee would take the vehicle because the value of the vehicle and the cost to fix it were almost equal. Neither Denise nor appellee could recall how the car was initially transported to appellee's home. Denise proceeded to obtain a new vehicle for Janson. She took the Nissan Maxima vehicle off her insurance policy sometime before the insurance period of May 2007 through November 2007 and listed Janson's new vehicle as the sole vehicle. Appellee and Denise never discussed appellee's use of the vehicle or who would insure it.

{¶ 6} The police report listed appellee as the owner of the vehicle. However, appellee told the insurance adjuster shortly after the accident that his grandson owned the vehicle. He also told the adjuster that they did not discuss the matter except that they intended to repair the vehicle and sell it or repair it and have appellee keep it.

{¶ 7} While Janson signed the transfer section of the Certificate of Title to the Nissan Maxima, he did not include a date of transfer. Denise's intent was to enable appellee to sell the car whenever he could and eliminate the need to contact Janson to accomplish the sale. Appellee would keep any profits he obtained from the sale of the vehicle. Denise could not recall whether she retained the Certificate of Title or gave it to appellee. Appellee, however, testified that Denise brought him the Certificate of Title when he decided that the vehicle could be sold. Appellee never intended to put his name on the Certificate of Title. His only intention was to help his daughter.

{¶ 8} At the time of the accident, appellee listed three vehicles on his insurance policy: one of which was operable and two of which were not operable. Two of the vehicles have current license plates. Appellee owns many more vehicles, but they are not operable, they are not listed on his insurance policy, and he does not have license plates for those cars. Before driving the Nissan Maxima, appellee took the license plates off another inoperable vehicle listed in the declaration and put the license plates on the Nissan Maxima. This was the only time appellee drove the vehicle to see how the car handled after appellee had repaired it for approximately $600 out of pocket. Appellee also admitted that the car had to be transported to two shops for repairs, but he could not recall how the car was transported.

{¶ 9} Appellant sought a judgment declaring that the Nissan Maxima was not a covered automobile under the insurance policy, that appellant was not obligated to defend

or indemnify appellee for damages arising from the accident, and that appellee is not entitled to any benefits under the policy.

{¶ 10} The trial court entered a general verdict in favor of appellee and dismissed the declaratory judgment action. Appellant requested findings of fact and submitted objections. The trial court adopted appellee's findings of fact without ruling on appellant's objections. The factual finding at issue in this case was that appellee was helping his daughter out by repairing the vehicle and that the vehicle had not been provided to appellee for his regular use. Furthermore, the court found that there was no evidence that the parties intended for the vehicle to be sold to appellee.

{¶ 11} In its first assignment of error, appellant argues that the trial court erred by not making a finding that appellee was the owner of the vehicle or that it had been transferred to him for regular use by Janson Swy.

{¶ 12} The trial court concluded that no sale to appellee was intended. Therefore, we find that the trial court did make a finding as to the issue of ownership. Secondly, we find that the trial court did not err in making this legal conclusion.

{¶ 13} Appellant cites *Smith v. Nationwide Mut. Ins. Co.*, 37 Ohio St.3d 150, 153, 524 N.E.2d 507 (1988). That case holds, generally, that ownership of a vehicle is transferred upon the taking of physical possession of property subject to a purchase agreement to the exclusion of all others. *See also* R.C. 1302.42 and *Hitt v. Anthem Cas. Ins. Group*, 142 Ohio App.3d 262, 267, 755 N.E.2d 418 (11th Dist.2001). A Certificate

of Title may be delivered at a later time and, therefore, is not dispositive of the question of ownership. *Smith, supra*.

{¶ 14} However, in the case before us, we find that physical possession of the vehicle and the title are not determinative of the issue of ownership. It is clear that Denise Swy did not sell the vehicle to appellee because appellee gave no consideration for the vehicle. Consequently, the transfer of possession of the vehicle to appellee (along with a partially-completed Certificate of Title) could be viewed as either an intention to make a gift of the vehicle, *Motorists Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co*., 5th Dist. No. CA-8103, 1990 WL 103746, *2 (July 23, 1990), or as a means of enabling appellee to repair the car and sell it for the Swys.

{¶ 15} The determination of what type of transfer occurred in this case is a factual issue for the trier of fact. *Barnickel v. Auto Owners Ins. Co*., 186 Ohio App.3d 722, 930 N.E.2d 364, ¶ 16 (12th Dist.2010). The trial court, as the trier of fact in this case, considered the intent of the parties as disclosed by their conversations and conduct, as well as the additional circumstances of the case. As an appellate court, we must defer to the trial court's finding as long as there is sufficient evidence to support it. *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St. 3d 77, 79-80, 461 N.E.2d 1273 (1984).

{¶ 16} In this case, appellee testified that he never considered himself as the owner of the vehicle. He had taken the car solely to help his daughter. His intention was always to repair the vehicle and sell it. His testimony alone supports the trial court's factual

finding that appellee did not own the vehicle. Appellant's first assignment of error is not well-taken.

{¶ 17} In its second assignment of error, appellant argues that the trial court erred by holding that the vehicle had not been transferred to appellee for his regular use. Again, this factual finding must be upheld on appeal if there sufficient evidence to support it. *Auto-Owners Ins. Co. v. Merillat*, 167 Ohio App.3d 148, 2006-Ohio-2491, ¶ 43-44, 854 N.E.2d 513 (6th Dist.).

{¶ 18} The fact that the vehicle needed extensive repairs supports a finding that the vehicle had not been transferred to appellee for his regular use. Furthermore, appellee testified that he only drove the vehicle in connection with its repair and test drive. Therefore, we find there was sufficient evidence to support the trial court's factual finding. Appellant's second assignment of error is not well-taken.

{¶ 19} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.
CONCUR.

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JUDGE