

O/A 4-1-87

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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LAWSON L. LAMAR,

Petitioner,

vs.

CASE NO. 69,286

WHEELS UNLIMITED, INC.,

Respondent.

BRIEF OF AMICUS CURIAE,
ATTORNEY GENERAL, STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

The Amicus was not previously a party to this action and has no independent knowledge of the proceedings below. For purposes of this brief it will rely on the statement of the case and facts in Petitioner's Brief.

SUMMARY OF ARGUMENT

The ownership of motor vehicles is determined by Ch. 319, Fla. Stat. Section 319.21(2), Fla. Stat., prohibits the sale, disposition, purchase or transfer of motor vehicles except by duly issued certificate of title, or by reassignment of an existing certificate of title. Section 319.22(1), Fla. Stat., prohibits the courts from recognizing any interest in motor vehicles except as established by certificate of title or some other statutorily authorized conveyance. These statutes serve a number of appropriate law enforcement and public safety purposes.

The District Court of Appeal erred when, contrary to the plain language of this statutory scheme, it recognized Respondent's claim of an unrecorded "equitable interest" in a motor vehicle forfeiture case.

The District Court of Appeal's decision will have serious adverse effects on forfeiture proceedings under the Florida Contraband Forfeiture Act and will thwart many other valid law enforcement purposes served by recordation of title. The Legislature never intended such a result. The District Court of Appeal misconstrued the intent and purpose of §§319.21(2) and 319.22(1), Fla. Stat., and its decision should be reversed.

ARGUMENT

THE DISTRICT COURT OF APPEAL ERRED
IN HOLDING THAT THE HOLDER OF AN
UNRECORDED EQUITABLE INTEREST IN A
MOTOR VEHICLE HAS STANDING TO CONTEST
FORFEITURE, NOTWITHSTANDING THE PLAIN
LANGUAGE AND PURPOSE OF §§319.21(2)
AND 319.22(1), FLA. STAT.

Introduction

This case arises under the Florida Contraband Forfeiture Act, which provides in §932.703(2), Fla. Stat.:

No property shall be forfeited under the provisions of ss. 932.701-932.704 if the owner of such property establishes that he neither knew nor should have known after a reasonable inquiry that such property was being employed or was likely to be employed in criminal activity.

The statute does not define the term "owner." It leaves that determination to other provisions of law.

The ownership of motor vehicles is governed by Ch. 319, Fla. Stat. Section 319.21(2), Fla. Stat., provides:

*The seizure contested here apparently took place in August 1984. Accordingly, all statutory references are to the 1983 statutes unless otherwise indicated.

No person shall sell or otherwise dispose of a motor vehicle or mobile home without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser. No person shall purchase or otherwise acquire or bring into the state a motor vehicle or mobile home, except for temporary use, unless such person obtains a certificate of title for it in his name in accordance with the provisions of this chapter. However, any licensed dealer may, in lieu of having a certificate of title issued in his name, reassign any existing certificate of title issued in this state.

This statute prohibits sale, disposition, purchase or acquisition of motor vehicles unless the purchaser obtains a certificate of title either by delivery with the purchaser's name recorded, or, if a licensed dealer, by reassignment.

Section 319.22(1), Fla. Stat., provides in pertinent part:

Except as otherwise provided herein, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle or mobile home sold, disposed of, mortgaged, or encumbered, unless evidenced by a certificate of

title duly issued to that person, in accordance with the provisions of this chapter.

This statute generally prohibits the courts from recognizing any interest in motor vehicles unless evidenced by a certificate of title. The provision authorizing licensed dealers to reassign existing certificates of title is an exception to this general rule, enacted for the dealers' own convenience in purchasing vehicles for resale. In any event, the purchaser must obtain a certificate of title either duly issued or reassigned.

There is no provision in these statutes authorizing claims based on "equitable ownership" not evidenced by certificate of title. The Court must evaluate Respondent's claim of "ownership" under this statutory scheme.

- A. Respondent does not have a certificate of title for the subject vehicle issued in its own name.

This issue appears to be uncontested, and requires no further discussion.

B. The District Court of Appeal's decision does not show any factual basis for ownership based on reassignment of a certificate of title to Respondent as a licensed dealer.

The instant case, as described in the District Court of Appeal's opinion, involves a contested chain of ownership. The last owner to obtain a certificate of title was Epicure International, Inc. Epicure claimed to have transferred the vehicle to Val Ward Porsche Audi, Inc., which in turn claimed to have transferred the vehicle to Vehicles Unlimited, Inc. The Petitioner apparently contends that the chain of ownership stopped there. The Respondent claims that the vehicle was subsequently transferred to Tropical Wheels, a partnership, and thence to Respondent itself.

The District Court of Appeal's opinion gave only a brief discussion of the reassignment issue. The Court observed:

In fact, the long chain of titleholders without recorded certificates of title (equitable titleholders) listed above (Val Ward Porsche Audi, Inc.; Vehicles Unlimited, Inc.; Tropical Wheels; and Wheels Unlimited, Inc.) appear to be licensed dealers who are permitted by section 319.21(2), Florida Statutes, to reassign an existing certificate of title in lieu of obtaining a new certificate of title.

Wheels Unlimited, Inc. v. Lamar, 492 So.2d 785, 787 (Fla. 5th DCA 1986) (emphasis supplied). The opinion does not reveal the factual basis for this observation, or why the qualifier "appear to be" is used.

Moreover, the District Court of Appeal made no finding that the mesne owners or the Respondent acquired a certificate of title by a series of duly executed and delivered reassignments under §319.21(2), Fla. Stat. If the reassignments were not executed and delivered as required in the statute, then the mesne owners and Respondent acquired no title pursuant to that statute.

Given its abbreviated treatment of this issue, and the absence of any finding that Respondent had acquired title by a duly executed and delivered series of reassignments, it seems unlikely that the District Court of Appeal intended to base its ruling on ownership by reassignment under §319.21(2), Fla. Stat.

C. The statute furnishes no basis for Respondent's claim that "equitable title" should be honored.

The real grounds for the District Court of Appeal's ruling appears to be Respondent's claim of an "equitable interest." As noted above, §319.22(1), Fla. Stat., expressly prohibits the courts from recognizing any interest in motor vehicles unless

evidenced by a certificate of title or by some other statutorily authorized conveyance. The statutes make no reference to recognition of any "equitable interest." Accordingly, §319.22(1), Fla. Stat., by its plain language prohibits recognition of such interests.

The District Court of Appeal ruled that this express statutory prohibition is not applicable, however, because it has a limited purpose. According to the Court, its only purpose is to stabilize the ownership, sale and transfer of motor vehicles, and to protect the rights of bona fide owners who rely on a duly issued certificate of title. Because the statute serves only this limited purpose, the Court found no legislative intent to prohibit recognition of equitable interests. Wheels Unlimited, Inc., v. Lamar, 492 So.2d 785, 787 (Fla. 5th DCA 1986).

This ruling squarely contradicts the plain language of the statute. It also overlooks many significant statutory purposes other than the convenience of buyers and sellers. The motor vehicle title recordation requirements serve numerous purposes in assuring the lawful sale and use of motor vehicles.

Evidence may be found in the remaining provisions of §319.22, Fla. Stat. Subsection (3) of the statute requires that the seller's signature be notarized. The apparent purpose is to prevent traffic in forged titles. Subsection (4) requires that the sale price be recorded. The apparent purpose is to prevent

tax evasion. Subsection (5) requires that the odometer reading be recorded. The apparent purpose is to prevent odometer fraud. Although sales by licensed dealers are exempt from the first two provisions, the provisions nevertheless reflect a substantial law enforcement interest in supervising vehicle title transactions.

Most important, the recordation of title assists law enforcement in locating the responsible parties any time a motor vehicle is used in a negligent manner or in committing a crime.

The encyclopedia describes the purpose of vehicle registration statutes generally as follows:

Statutes providing for the registration of motor vehicles were enacted in the interest of public welfare, and they are primarily regulatory measures not purporting to affect property rights, although an incidental purpose is to raise revenue. Such statutes create only a public duty.

The registration of motor vehicles is required for the purpose of exercising control of the right to use the highways, secure a proper observance of duties on the highways, and place on the public records and easy means of identifying a vehicle and its owner. It has otherwise been stated that the purpose of licensing

and registration is to protect the purchasers of motor vehicles and persons injured through their operation and to impede the sale of stolen or other unregistered vehicles. A certificate of registration constitutes a license to operate the registered vehicle in accordance with such conditions as may be imposed, and the object of the license is to furnish a further guaranty that proper use of the vehicle will be made and that it will be operated in compliance with the law.

60 C.J.S. Motor Vehicles §59 (1969) (footnotes omitted). The same observations apply to statutes requiring recordation of title to motor vehicles. The title statutes are clearly intended to protect the public in more ways than the District Court of Appeal described.

Given these other purposes, the District Court of Appeal had no occasion to limit the statute's applicability by judicial construction. If the language of a statute is so plain and unambiguous as to fix legislative intent and leave no room for construction, the courts should not depart from the plain language of the statute. Citizens of State v. Public Service Comm'n, 425 So.2d 534, 541-42 (Fla. 1982). The Court should have given effect to the plain language of §§319.21(2) and 319.22(1), Fla. Stat.

- D. The Legislature could not have intended the provisions of Ch. 319 governing automobile ownership to be construed in such a way as to render the provisions of the Florida Contraband Forfeiture Act practically unenforceable.

The District Court of Appeal's decision will make enforcement of the state's forfeiture laws far more difficult, because it enables parties who have neither a record interest nor possession to appear and contest forfeiture proceedings.

Criminals commonly attempt to circumvent forfeiture proceedings by disposing of vehicles and other forfeitable property to innocent parties, who can then appear and successfully contest the forfeiture. The government cannot always demonstrate that such a conveyance was fraudulent after the fact. The courts properly place the burden on the claimant to show that he acquired title (or some other interest) in a manner authorized by the statute. If the claimant is unable to make such a showing, his claim of standing to object to the forfeiture should be denied. Stated otherwise, persons who both relinquish possession of the vehicles and allow their vehicles to be titled in another person's name assume the risk that the vehicle will be used unlawfully and subjected to forfeiture.

Judicial recognition of this policy is implicit in numerous court decisions denying standing to third parties whose interests in seized property appear of record only after the

seizure. See Matthews v. City of Zephyrhills, 493 So.2d 10 (Fla. 2d DCA 1986); Henrich v. Seaglione, 490 So.2d 240 (Fla. 2d DCA 1986); Lauderdale Investments, Inc. v. Miller, 456 So.2d 539 (Fla. 5th DCA 1984); Smith v. City of Miami Beach, 440 So.2d 611 (Fla. 3d DCA 1983); In re Forfeiture of a Cessna 401 Aircraft, 431 So.2d 674 (Fla. 4th DCA 1983), review denied, 444 So.2d 416 (Fla. 1984). See also D.V. & A., Inc. v. Town of Golden Beach, 11 F.L.W. 1977 (Fla. 3d DCA, September 16, 1986), rehearing granted, 12 F.L.W. 140 (Fla. 3d DCA, December 30, 1986).

These cases involve claims by nonrecord aircraft title claimants or nonrecord motor vehicle lien claimants. The courts rejected these claims, and enforced the plain language of the recordation statutes, in order to assure that criminals would not evade forfeiture by granting a nonrecord "equitable interest." The clear policy in all these decisions is to make the Florida Contraband Forfeiture Act practically enforceable.

To recognize an "equitable interest" in motor vehicle titles, contrary to the plain language of the statutes, would likewise impair the enforceability of the forfeiture law. It would also impair the enforceability of the sales and use tax and the laws prohibiting odometer fraud, and would make location of responsible parties in offenses involving motor vehicles more difficult. For all these reasons, it is unlikely that the Legislature intended that the courts recognize "equitable title" to motor vehicles.

E. Conclusion of Argument

Both the plain language and legislative purpose of Ch. 319, Fla. Stat., and the public interest in having the Florida Contraband Forfeiture Act operate effectively to accomplish its purpose, require that the Court not recognize Respondent's "equitable interest" in opposition to forfeiture.

There are two caveats to this principle, which the Amicus respectfully offers to the Court. The first is that Respondent, by obtaining the appropriate certificate of title by reassignment or reissuance, could potentially have perfected its claim of ownership under Ch. 319, Fla. Stat. In such case it could then have appeared and contested the forfeiture. Its claim would have been subordinate, however, to the Petitioner's forfeiture claim, which vests upon seizure. Section 932.703(1), Fla. Stat.

A second caveat is that an "equitable interest" may be recognized where a buyer asserts such interest against a seller in order to compel the transfer of a certificate of title. One feature of "equitable title" is that it carries the right to compel conveyance of legal title. The instant Respondent may have a cause of action for damages against Godby or the Tropical Wheels partnership for failure to deliver title to the vehicle.

Neither of these caveats apply here. The Respondent's claim was not perfected as required by the statute, and the Circuit Court properly denied that claim by summary judgment.

CONCLUSION

The Supreme Court should reverse the decision of the District Court of Appeal, and remand with directions to reinstate the Circuit Court's final summary judgment.

Respectfully submitted,

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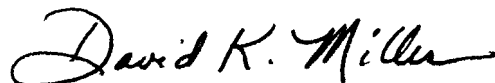
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing Brief of Amicus Curiae, Attorney General, State of Florida, have been furnished to the following:

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