

3-23

O/A 4-1-87

IN THE SUPREME COURT OF FLORIDA

Case No. 69,286

FILED
MAR 5 1987
CLERK, SUPREME COURT
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LAWSON L. LAMAR, SHERIFF
OF ORANGE COUNTY, FLORIDA,

Petitioner,

vs.

WHEELS UNLIMITED, INC.,

Respondent.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
OF THE STATE OF FLORIDA

ANSWER BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

References to the Record on Appeal shall be denoted as
(R/ _____).

STATEMENT OF FACTS AND CASE

Respondent objects and specifically denies the first sentence of the Statement of Facts and Case. Respondent also objects to the use of the word "intensive" in the second sentence of the first paragraph, as there are no facts to characterize the investigation as intensive. Respondent objects to the first sentence of the fifth paragraph as it is not a true statement of the facts. The second to last sentence of the sixth paragraph has a misstatement of fact and should read, "In its amended answer, Wheels Unlimited, Inc., sought to substitute itself for Vehicles Unlimited, Inc., and admitted that Wheels Unlimited, Inc. and William Thomas Godby claimed an interest in the automobile." Petitioner fails to mention in the eighth paragraph that Respondent's Motion for Intervention stated an interest in the subject motor vehicle.

In paragraph 9 Petitioner fails to state that on June 20, 1985, the Respondent's Motion for Rehearing was granted and Wheels Unlimited, Inc.'s Motion for Intervention was allowed. Wheels Unlimited was allowed 15 days from the date of the Order to file a responsive pleading in the cause. (R/33).

Prior to the hearing on the Motion for Summary Judgment, Respondent filed three affidavits from Thomas Godby, William Waldorf, and Bub Lunsford (R/50-52), showing that Thomas Godby had in fact been in partnership with Bud Lunsford from

1982 to 1983, and during the year 1983 in a business known as Tropical Wheels, Godby and Lunsford purchased the 1982 Mercedes Benz motor vehicle, which is the subject of the forfeiture. The affidavit of Bud Lunsford further went on to state that when Godby left the partnership of Tropical Wheels, in dissolving the property of the partnership, the parties agreed that Godby would have ownership of the 1982 Mercedes Benz motor vehicle. Godby left Tropical Wheels owning the motor vehicle.

The affidavit of William Robert Waldorf stated that he was the co-owner of Wheels Unlimited, Inc. and that Godby entered into a partnership with him in Wheels Unlimited, Inc., and as a capital investment in the corporation Godby contributed the 1982 Mercedes Benz motor vehicle. The affidavit further stated that the automobile insurance and license tag for the Mercedes Benz motor vehicle were purchased through Respondent's corporation, and that the motor vehicle was for sale through Respondent's corporation. The affidavit further stated that the vehicle was never transferred into the name of Respondent due to oversight and lack of diligence of the parties. The affidavit concluded with the statement that Respondent claimed an interest in the 1982 Mercedes motor vehicle.

Thomas Godby's affidavit stated that he purchased the Mercedes Benz vehicle through Tropical Wheels, and when the partnership between himself and Bud Lunsford dissolved, he kept the Mercedes Benz motor vehicle as his property and

Mercedes Benz vehicle through Tropical Wheels, and when the partnership between himself and Bud Lunsford dissolved, he kept the Mercedes Benz motor vehicle as his property and share of the partnership. The affidavit further stated that from formation of Respondent's corporation, he contributed to the corporation as capitalization for the company, the Mercedes Benz motor vehicle and that the automobile insurance and license tag on the vehicle were paid for by Respondent's corporation, as the automobile was considered inventory for the corporation.

Respondent takes no exception to the 10th, 11th, and 12th paragraphs of Petitioner's Statement of Facts and Case.

Respondent takes exception to paragraph 13, and would state that the Fifth District Court of Appeal held that Summary Judgment would not be appropriate against Respondent where Respondent claimed to have an equitable interest in the res of the forfeiture.

Further, Respondent would state that the body of the Fifth District Court of Appeal's opinion never addresses a lienholder's interest; and therefore, speaks only to an ownership interest in the subject property.

Other than the above-noted exceptions and additions, Respondent accepts the Statement of Facts and Case.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal in Wheels Unlimited, Inc. v. Lamar, 492 So.2d 785 (5th DCA 1986), addressed the issue of ownership as it pertains to the Florida Contraband Forfeiture Act. In its decision it did not address a lienholder's interest.

The Fifth District Court of Appeal determined that §319.22, Fla.Stat. (1985) deals with a marketable title and that the Florida Contraband Forfeiture Act requires ownership and not a marketable title. Further, the holding by the Fifth District Court of Appeal is consistent with a long line of cases by this Court and other lower courts in interpreting §319.22 to relate only to a marketable title. The opinion by the Fifth District Court of Appeal is also consistent with a long line of cases by this Court, recognizing an equitable or beneficial interest by owners of motor vehicles who do not own or possess a marketable title.

Respondent asks this Honorable Court to affirm the holding by the Fifth District Court of Appeal and to acknowledge that the Florida Contraband Forfeiture Act merely requires ownership in order to contest the forfeiture of property, and does not require a marketable title.

ARGUMENT

Lawson L. Lamar, Sheriff of Orange County, Florida, published a Notice of Forfeiture Proceedings advising, "All Others Who Claim an Interest" in the subject motor vehicle that he was attempting to forfeit said vehicle. Wheels Unlimited, Inc. claimed an equitable interest in the subject motor vehicle and was permitted to intervene in the forfeiture in order to assert its claim. The Fifth District Court of Appeal in the case before this Court held that Florida Statute, §§932.701-704, known as the Florida Contraband Forfeiture Act, permits the use of equitable principals in determining the ownership of a motor vehicle.

Petitioner claims that the Florida Contraband Forfeiture Act requires that the owner of a motor vehicle have a marketable title pursuant to §319.22, Fla.Stat. (1985), in order to claim an interest in the motor vehicle. Petitioner argues in his brief that the Fifth District Court of Appeal erred in holding that in a forfeiture proceeding brought pursuant to Florida Statute §§932.701-704, equitable principals must be applied independent of Florida Statute §319.22 and Florida Statute §319.27. His argument regarding a lienholder's interest is misplaced since the Fifth District Court of Appeal did not address this issue. Regarding an ownership interest, the Fifth District Court of Appeal did not create an equitable or beneficial interest in interpreting Florida Statute §319.22, but merely followed the

line of cases which permit such an interest to exist independent of §319.22, Florida Statutes.

POINT ONE

THE FIFTH DISTRICT COURT OF APPEAL DID NOT ADDRESS A LIENHOLDER'S INTEREST.

Petitioner spends a great deal of time discussing a lienholder's interest as it relates to §§319.27, 679.302(3), 679.302(4) and 932.703(3), Florida Statutes (1985). In addition, he cites to In Re: Forfeiture of the Following Described Property: One 1979 Chevrolet C-10 Van, VIN CGU1590137222, Florida Tag #BXF922; (hereinafter In Re: Chevrolet C-10 Van), One 1980 Buick Century, VIN 4H69AAG156802, Florida Tag #BDT700, 490 So.2d 240 (Fla. 2nd DCA 1986) and Smith v. City of Miami Beach, 440 So.2d 611 (3rd DCA 1983), which also deal with a lienholder's interest. All of the above statutes and cases are inapposite to the case before this Court since the Fifth District Court of Appeal addressed an ownership interest in contesting the forfeiture of property and not a lienholder's interest in contesting the forfeiture of property.

Section 319.27, Florida Statute (1985), is entitled, "Notice of Lien on Motor Vehicles or Mobile Homes; Notation on Certificates; Recording of Lien". The statute deals with the steps a lienholder must take in order to perfect a lien and protect an interest. In order to do so the lienholder must, amongst other things, record the lien on the

Certificate of Title. The obvious purpose of this section is to inform potential buyers of a lien on the property they are about to purchase. May v. Citizen, 100 So.2d 651 (2nd DCA 1958). Sections 679.302(3) and (4), Florida Statute, are part of the Uniform Commercial Code involving secured transactions. They too deal with a security interest in property, and not with ownership, vel non, of the subject property. Section 932.703(3), Florida Statute (1985), is a subsection in the Florida Contraband Forfeiture Act that is under scrutiny in this appeal. The particular subsection deals specifically with a lienholder's interest and limits a lienholder's standing to a lien that, "... had been perfected in the manner prescribed by law prior to such seizure." In the In Re: Chevrolet C-10 Van case and the Smith case, supra, both deal with the issue of perfecting a lien as required by §932.703(3), in order to properly contest the forfeiture of property.

Since the law regarding a lienholder's right to contest a forfeiture is so clear cut, it is easy to see why Petitioner would like to argue this point to this Court. However, the Fifth District Court of Appeal's opinion, which is the subject of this appeal and this brief, does not address the standing of a lienholder in a forfeiture action under §932.701-704.

POINT TWO

THE FLORIDA CONTRABAND FORFEITURE ACT,
§932.701-704, FLORIDA STATUTES (1985), DOES
NOT PRECLUDE AN EQUITABLE OR BENEFICIAL OWNER
FROM CONTESTING A FORFEITURE OF HIS OR HER
PROPERTY.

Section 932.703(2), Florida Statutes, which is part of
the Florida Contraband Forfeiture Act states:

No property shall be forfeited under the
provisions of §§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. (Emphasis added)

The issue before the Fifth District Court of Appeal and now
before this Court, is whether the meaning of the word "owner"
in the above subsection requires a "marketable title" as set
out in §319.22, Fla.Stat. (1985) or whether it permits an
equitable owner to assert his or her right.

Petitioner argues that only the owner of a motor vehicle
who has complied with §319.22, and has a marketable title may
have standing to contest the forfeiture of his or her
property. The effect of Petitioner's argument is to preclude
a bona fide purchaser who has an equitable and possessory
interest in a motor vehicle without a marketable title from
having his or her day in court.

Section 319.22 is entitled, "Transfer of Title".
Subsection one of the statute, which Petitioner relies on,
deals with acquiring a marketable title to a motor vehicle.
The purpose of this statute was stated by the Fifth District

Court of Appeal in its opinion on the case now before this Court:

The salutary purpose of this statute is to stabilize the ownership, sale, and transfer of motor vehicles and to protect the rights of bona fide owners of motor vehicles by requiring one method of transferring record title and protecting those who rely upon a recorded certificate of title. It is, in summary, a statute to protect the rights of bona fide owners of motor vehicles who have relied upon a duly issued certificate of title in connection with any sale, disposition of mortgage, or encumbrance of the motor vehicle.

Wheels Unlimited, Inc. v. Lamar, 495 So.2d 785, 787 (5th DCA 1986).

Based upon all the affidavits filed in this case at the trial court level as evidence, there is no dispute that Wheels Unlimited, Inc. was the equitable and beneficial owner of the subject motor vehicle at the time of seizure by the Orange County Sheriff's Office. Throughout the lower court proceedings there have been no other businesses or persons who have claimed an interest in the subject motor vehicle.

The Florida Contraband Forfeiture Act speaks to the owner of property and never addresses the requirement of a marketable title in order to contest the forfeiture in court. Since there is no argument regarding the equitable ownership of the subject motor vehicle and no requirement of a marketable title under the Florida Contraband Forfeiture Act, §319.22 should not be the threshold requirement for Respondent to appear in court and contest the forfeiture.

The Fifth District Court of Appeal stated:

We do not believe it was the intent of the legislature to prohibit courts from recognizing equitable interests in motor vehicles which are not asserted in opposition to the rights of good faith purchasers who have acquired a right, title, claim or interest in a motor vehicle relying upon a duly issued certificate of title.

Wheels Unlimited, Inc., supra at 787.

The court's rationale in the above statement of legislative intent is supported by this Court's holding in Nash Miami Motors v. Bandel, 47 So.2d 701 (Fla. 1950), where it was stated, "The law does not favor, and equity abhors, a forfeiture," Nash, supra at 703.

The Nash case dealt with the interpretation of §319.03, Fla.Stat. (1941), which required a purchaser of a motor vehicle to present the Certificate of Title to the State Motor Vehicle Commissioner within 10 days after purchase. This Court held that a failure to comply with the statute should not lead to an implied forfeiture of the motor vehicle, stating:

We cannot subscribe the view that the owner of an automobile should be held to have lost his property, or should be precluded from showing that he does in fact own it, simply because he did not within 10 days after the purchase present the assigned certificate to the State Motor Vehicle Commissioner as required by §319.03, Florida Statutes (1941) FSA. Moreover, a registered certificate of title is not, in all cases, conclusive proof of ownership. It invariably establishes presumptive ownership, but such presumption may be overcome by competent evidence.

Nash, supra at 703. Even if there was presumption under the

Florida Contraband Forfeiture Act which operated against a person failing to comply with §319.22, which there is not, the affidavits presented to the trial court create the competent evidence required to overcome the presumption.

In Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955), this Court found that the primary emphasis intended by §319.22, is upon the marketability of a title to a motor vehicle. The Palmer case involved the issue of tort liability and an interpretation of §319.22(2). This subsection deals with an owner's civil liability for the operation of a vehicle when that vehicle has been sold or transferred, and §319.22(1), has not been complied with. This Court held that there existed a beneficial owner along with the mandates of §319.22. In specifically addressing §319.22(2), this Court found that the common law of sales coexisted with this section of the Florida Statutes. As such, this Court found that the holder of a mere naked legal title to a vehicle did not render said holder civilly liable for a tort where the beneficial owner was the tortfeasor.

In Motor Credit Corp. v. Woolverton, 99 So.2d 286 (Fla. 1957), this Court specifically addressed §319.22(1). While the Woolverton case dealt with a lienholder's interest and ultimately held §319.22 was inapplicable due to appellee's recording of title prior to the suit, this Court still addressed the meaning of the section. This Court stated:

The Florida Statute, like Louisiana's provides that the purchaser shall not acquire a

'marketable' title until a certificate of title is issued to him. The Louisiana court said in Hamner v. Domingue, La.App. (1955), 82 So.2d 105, 107, that the statute 'does not provide that no valid title shall be perfected until the purchaser obtains a title certificate, but that no marketable title shall be perfected until that time.' The term 'marketable title' does not connote that the vendor cannot sell, but that he cannot enforce an agreement to buy, in absence of same. Words and Phrases (Perm.Edition), vol. 26A, pp 35-55, Verbo, "Marketable Title"

Woolverton, supra at 290. Thus, §319.22(1) specifically speaks to a marketable title and does not preclude the rights of an equitable or beneficial owner.

This Court, in Greyhound Rent-A-Car, Inc. v. Austin, 298 So.2d 345 (Fla. 1974) referred to the Woolverton case as it related to §§319.21 and 319.22, Fla.Stat., and stated, "The Woolverton holding is an equitable exception to these general rules of law." Greyhound, supra at 346. The Greyhound court addressed §319.22(1), specifically and reiterated that it dealt only with a marketable title and that:

Section 319.22(1), Fla.Stat., prevented a "marketable" title from being passed, it did not mean that there were no circumstances under which title could actually pass.

Greyhound, supra at 348. The Greyhound case involved a used car company who would acquire its cars from the Greyhound Rent-A-Car fleet. Greyhound would retain possession of the certificates of title while the cars were on the used car lot. The particular issue in the Greyhound case, was whether Greyhound could reclaim the automobile sold by the used automobile company when the used automobile company had failed to pay Greyhound for the car. This Court held that

equitable title passed to the buyer of the used automobile and barred the holder of the certificate of title from reclaiming the automobile. It seems clear that this Court, has in the past, held that §319.22 does not preclude the use of equitable ownership.

District Courts of Appeal have also interpreted §319.22(1), to relate only a marketable title, and held specifically:

Section 319.22(1) provides that a purchaser shall not acquire a 'marketable' title until the certificate of title is issued to him; however, it does not prevent valid title from being passed.

Correria v. Orlando Bank & Trust Co., 235 So.2d 20, 24 (4th DCA 1970) and Fla. Dept. of Corrections v. Blount, etc., 411 So.2d 930, 932 (1st DCA 1982).

It is clear that this and other courts have in the past held §319.22 to allow ownership to exist to a motor vehicle, and that this ownership exists with or without a marketable title.

Petitioner's citation to Lauderdale Investments, Inc. v. Miller, 456 So.2d 539 (5th DCA 1984), is confusing, at best, since it deals with an owner acquiring an interest after the date of seizure. The affidavits in the case before this Court indicate that there was a pre-forfeiture ownership by Wheels Unlimited; and therefore, the Lauderdale case has no application to the case before this Court.

Petitioner's reliance on Lamar v. Universal Supply Co., Inc., 456 So.2d 627 (5th DCA 1984), is equally confusing,

since its only relevance appears to be that on a completely separate issue this Court reversed the Fifth District Court of Appeal in the past. The Lamar case dealt with a legislatively mandated procedure set forth in Chapter 78, Florida Statutes. The case before this Court deals with the Florida Contraband Forfeiture Act and its use of the word "owner". The Petitioner is asking this Court to utilize the requirements of a marketable title under §319.22 to define the word "owner" utilized in the Florida Contraband Forfeiture Act. Therefore, it is Petitioner's hoped for procedure, not a legislatively mandated procedure to determine the "owner" of forfeited property.

Respondent believes that the only case even remotely relevant, cited by Petitioner, is the In Re: Forfeiture of One 1946 Lockheed L-18 Loadstar, Right 1820-A105A Engines, Visible ID #N43WT, John S. Mathews v. City of Zephyrhills, 11 F.L.W. 1537 (2d DCA, July 18, 1986), (hereinafter In Re: Lockheed). The In Re: Lockheed case deals with an aircraft and the application of §329.01, Fla.Stat. (1985). Section 329.01, provides that no instrument which affects the title to an aircraft is valid until such instrument is recorded in the Office of the Federal Aviation Administrator. Mr. Mathews claimed, in his case, that he was record title holder of the subject aircraft. Since he did not comply with §329.01, the Second District Court of Appeal disagreed with Mr. Mathews and held that he was not the record title holder. In the case before this Court, the res of the forfeiture is a

motor vehicle and therefore §329.01 is inapplicable to §329.01, Fla. Stat. Further, Respondent does not claim to be the "record title holder" of the subject motor vehicle. It merely claims to be the equitable or beneficial owner of the motor vehicle since it admittedly did not comply with §319.22(1) and does not have a marketable title.

Thus, Respondent seeks to have its equitable ownership of the subject motor vehicle recognized by this Court so that it may have a day in court to protect its property.

CONCLUSION

For the above-stated reasons Respondent asks this Honorable Court to affirm the Fifth District Court of Appeals' holding that the Florida Contraband Forfeiture Act does not preclude the use of equitable ownership in determining who owns property and who may appear in court to claim an interest in property that is the subject of a forfeiture action. Respondent is not asking for a determination of the merits of the forfeiture. It only seeks to be permitted into the courtroom to challenge the merits of the forfeiture.

Respectfully submitted,



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