

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED
January 12, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

DON MANIS, d/b/a)
EASY MONEY PAWN SHOP) HAMBLEN COUNTY
) 03A01-9505-CH-00154
)
Plaintiff - Appellant)
)
)
v.) HON. DENNIS H. INMAN,
) CHANCELLOR
)
STEVE HAUN)
)
Defendant - Appellee) AFFIRMED AND REMANDED

KENNETH S. CHRISTIANSEN OF KNOXVILLE FOR APPELLANT

STEVE HAUN, Pro Se

O P I N I O N

Goddard, P. J.

The Plaintiff, Don Manis, d/b/a Easy Money Pawn Shop, appeals dismissal of his suit against Steve Haun, wherein he sought possession of a 1985 Ford F-350 truck.

He insists that under the authority of Butler v. Buick Motor Co., 813 S.W.2d 454 (Tenn. App. 1991), the Trial Court was in error in dismissing his suit when the proof showed that Mr. Haun acquired possession of the truck from a thief and a title which had been forged.

The proof introduced below, which is preserved by a narrative statement of the evidence, discloses the following:

On September 10, 1993, Plaintiff purchased the subject vehicle from Supreme Auto Sales of Knoxville for a purchase price of \$10,500.00;

That Plaintiff had knowledge that Supreme Auto Sales had recently purchased/acquired the vehicle from Skyline Phillips 66, a gasoline service station located in Gatlinburg, Tennessee;

That unbeknownst to Plaintiff, however, the Certificate of Title was left "open" (i.e., the name of the transferee on the reverse side of the title was never filled in by Supreme Auto Sales), a fact that Plaintiff only discovered after a Mr. Jeff Wallace illegally obtained title to the vehicle;

That Plaintiff intended to comply with all statutory requirements regarding titling of a purchased vehicle and would have if not for Mr. Wallace's felonious action;

That shortly after the purchase and on or about the first of October, Plaintiff allowed Mr. Jeff Wallace to use the truck for the purpose of doing repossession work for the Plaintiff, work which Mr. Wallace had independently performed for the Plaintiff prior to this date;

That Mr. Wallace failed to return the vehicle after several days;

That Plaintiff, suspecting something had gone amiss, began investigating the situation;

That said investigation revealed that Mr. Wallace had stolen the vehicle along with the Certificate of Title

from the Plaintiff; filled in his name as transferee on November 1, 1993; indicated that he had purchased the vehicle from Skyline 66 for \$1,000.00 on said date and secured a new title showing himself (Wallace) as the registered owner;

That Plaintiff attempted on or about mid October to regain possession of the vehicle by filing a criminal warrant in Knox County against Mr. Wallace, however, this warrant went unserved for failure to locate Mr. Wallace;

That at no time subsequent to the November 1, 1993 alleged transfer had the Plaintiff sold or transferred the vehicle to Mr. Wallace;

That on November 11, 1993, Mr. Wallace sold said vehicle to a Mr. Steven Haun, the Defendant;

That according to the endorsed Certificate of Title, the Defendant represented that he had purchased the vehicle from Mr. Wallace for \$1,200.00, a fact he admitted was effectuated for the sole purpose of defrauding the State of Tennessee;¹ and

That Defendant, however, had actually paid \$10,500.00 for the vehicle as evidenced by the belated production of documents to the same, said documents only being produced after the Chancellor so requested.

¹ While we do not condone Mr. Haun's acts, we do suspect that this is not an uncommon practice. We also suspect it is also not an uncommon practice to leave blank the name of a mesne purchaser by those dealing in used cars, until a vehicle is transferred to the ultimate purchaser.

We concur in the Trial Court's resolution of this feature of the case:

Although this court intends to dismiss plaintiff's suit against the defendant, this court nevertheless must address one further issue, that being the defendant's evasion of state sales taxes. Mr. Haun shall, within 10 days of the date hereof, present himself before Mr. Wilburn Beck, County Clerk, and then remit to Mr. Beck the difference between the sales taxes he actually paid on a \$1,200.00 transaction and what he should have paid on a \$10,500.00 transaction, plus any other fees, penalties, and costs which arise by reason of his misrepresentation regarding the sales price of the vehicle. This court personally will inquire of the County Clerk's office if Mr. Haun has done what is ordered herein. If he does not, the court intends to refer this matter to the Tennessee Department of Revenue for appropriate action, be it civil or criminal.

The Trial Court distinguished Butler upon the following ground:

Plaintiff relies upon Butler v. Buick Motor Company, etc., 813 SW2d 454 (Tenn. App. 1991) for the proposition that an innocent purchaser of stolen goods acquires only a bare possessory interest therein, and acquires no title to the property.

What must be noted about the Butler case, however, is that the documents of title to the stolen vehicle were forged in their entirety, i.e., wholly created by the thief. In the case before this court, the thief merely filled in his own name as the transferee/new owner and then used that forged document to register the vehicle in his own name.

Moreover, Mr. Manis, unlike Buick Motor Company in Butler, was not an innocent party, but, as pointed out by the Chancellor, aided the thief by violating T.C.A. 55-3-119, which provides the following:

55-3-119. Transferee to reregister car and obtain certificate of title. -- The transferee, before operating or permitting the operation of such vehicle upon a highway, shall apply for and obtain a registration and apply for a certificate of title therefor in the manner provided in § 55-4-101, except as otherwise permitted in §§ 55-3-120 and 55-3-121.

It is apparent that had Mr. Manis complied with the provisions of the foregoing statute this controversy would not have arisen. The Chancellor was undoubtedly correct in stating that the Plaintiff's violation of the statute "undeniably created the situation which allowed Wallace to perpetuate a rather convincing fraud: Wallace not only had possession of the

vehicle, he had what appeared to be--indeed what actually was--a valid certificate of title issued by the State of Tennessee."

We concur in the Chancellor's determination and his judgment is accordingly affirmed.

The cause is remanded for collection of costs below. Costs of appeal are adjudged against M. Manis and his surety.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. McMurray, J.