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Clarence Dahl dba Dixie Motors v. Antone B. Prince and C. G. Green : Brief of Appellants

Utah Supreme Court

Richards & Bird; Attorneys for Appellant

7532

IN THE SUPREME COURT
of the
STATE OF UTAH

CLARENCE DAHL,
d.b.a. DIXIE MOTORS,
Plaintiff and Respondent,

vs.

ANTONE B. PRINCE,
Defendant and Appellant,

C. G. GREEN,
Intervenor and Appellant.

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BRIEF OF APPELLANTS

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INDEX

CASES CITED

TEXT BOOKS

STATUTES CITED

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STATEMENT OF FACTS

Intervenor appeals from a judgment of the district court for Washington County holding void the claim of intervenor as attaching creditor of E. E. Garn and Cleo

V. Garn. The evidence was stipulated and the questions involved on the appeal are whether the findings of fact support the judgment. Defendant Sheriff also appeals.

C. G. Green commenced an action on contract in the Third District Court against E. E. Garn and his wife, Cleo, and had a writ of attachment issue. The writ directed the defendant Sheriff to attach a Buick automobile registered to the Garns and the car was attached while in the possession of E. E. Garn, (Tr. 12-13). The respondent brought this action in claim and delivery against the Sheriff (Tr. 1, 2). Thereupon Green intervened and by his attorney defended the Sheriff. Appellant alleged, and it was found by the Court that he had checked the Motor Vehicle Records of the State Tax Commission and had found that his debtors owned the said Buick, subject to the lien of Bradshaw Chevrolet, whereupon a suit had been commenced on February 7, 1949 and the Buick attached on Feb. 17, 1949. (Tr. 13, Findings 4, 5, 6).

It further appears from the Findings that after the suit was commenced and the writ obtained the Garns traded the Buick in to the respondent on a truck on February 10, 1949. The Garns drove the truck, leaving the Buick in appellant's possession until on or about February 17 when the respondent let Garns take the Buick while repairs were made on the truck. (Finding (7) Tr. 13). No change was made or initiated on the Motor Vehicle Records of the State Tax Commission (Tr. 13) and both the appellant and respondents acted in good faith. (Tr. 13-14).

The District Court (Judge A. H. Ellett sitting for Judge Hoyt) held that as between Garns and respondent the respondent was the owner and had the right of possession (Conclusion 3, Tr. 14) and that the failure to apply for transfer of title on the Motor Vehicle records resulted in no better right in appellant than his debtor had. (Tr. 14). The Trial Court also allowed respondent $200.00 for attorney's fees and costs. (Tr. 14).

POINTS RELIED ON

I. Under Utah Statutes interests in an automobile are measurable by the records of the Motor Vehicle Department as against an attaching creditor relying on the records.

II. The judgment allowing attorney fees was erroneous.

ARGUMENT

I.

Under Utah Statutes interests in an automobile are measurable by the records of the Motor Vehicle Department as against an attaching creditor relying on the records.

Section 57-3a-72, U.C.A. 1943 provides:

> Until the department shall have issued such new certificate of registration and certificate of ownership, delivery of any vehicle required to be registered shall be deemed not to have been made and title thereto shall be deemed not to have

> passed, and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose except as provided in section 76 of this act.

This is similar to the statutory rule relating to chattels generally and suggests that prevention of fraud was the legislature's motive. Section 33-1-14, U. C. A. 1943 provides:

> Every sale made by a seller of goods or chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by a delivery within a reasonable time, and is followed by an actual and continued change of the possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the seller or assignor, or subsequent purchasers in good faith. The word "creditors" as used in this section shall be construed to include all persons who shall be creditors of the seller or assignor at any time while such goods and chattels shall remain in his possession or under his control.

It is reasonable to assume that these sections mean what they say and that when the registered owner of a motor vehicle is in possession of it a creditor can rely on the statute as establishing ownership without asking the debtor about possible claims by third parties. An automobile dealer such as respondent cannot complain if he is held to a compliance with the statute before his claim to ownership is established.

This statute has been before this Court in *Swartz vs. White*, 80 Utah 150, 13 P. 2nd 643; *Jackson vs. James*,

97 Utah 41, 89 P. 2nd 235; and *Stewart vs. Commerce Ins. Co. of Glen Falls, Utah,* 198 P. 2nd 467.

In the latter case the court held that title had not passed to a purchaser where only one of six heirs had transferred his interest and title papers had been delivered to the buyer but no application for change of registration had been made.

In *Swartz vs. White,* supra, the court held that a person in possession of a car and title papers by trick cannot transfer a good title to a buyer, because that is not in compliance with the above quoted statute (then sec. 3972x, Comp Laws 1917 as amended) and at p. 646 of 13 P. 2nd this Court said:

> "The words of the statute, italicized by us, are clear and unambiguous and undoubtedly mean what they say. Any claimed transfer from Mrs. White to Stewart was incomplete. Title had not passed and the transfer was not valid or effective for any purpose."

This language would settle the matter were it not for *Jackson vs. James, supra.* That case holds that as between donor and donee the statute is not controlling but that it is as to third persons. The facts in *Jackson vs. James* involve a gift completed by delivery and continued possession, without any change on the Motor Vehicle records. The registered owner died and his donee claimed the car against the administrator and the estate. This Court held that passage of title could be accom-

plished without change in the records of the Motor Vehicle Department, as section 71 (now 57-3a-72) "is not to be construed . . . as absolute and mandatory to pass a title . . ." And then said at pp. 45-46:

> "In the light of the whole chapter it is evident that its provisions were written to protect innocent purchasers and third parties from fraud but was not intended to be controlling as between the parties to the transaction."

This language likewise upholds the position of appellant here and suggests no reason why an attaching creditor cannot rely on the Motor Vehicle records. Mr. Justice Wolfe's dissenting opinion cites several cases involving and protecting attaching creditors in situations similar to the instant case. No case has been found under a similar statute where the claim of an attaching creditor was defeated by a transfer of title not reflected on the records of the state's motor vehicle department.

A case like ours, holding for the attaching creditor under the similar California statute is *Samuels vs. Barnet,* 79 Cal. App. 529, 250 P. 406. Support of the same position is found in *Crandall vs. Shay,* 61 Cal. App. 56, 214 P. 450; *Du Puy vs. Shay,* 127 Cal. App. 476, 16 P. 2nd 158; *Paragould Wholesale Grocery vs. Middleton,* 235 S.W. 469, 208 Mo. App. 592.

And under section 33-1-14 U.C.A. 1943, supra, appellant should prevail, as the transferee had not maintained "actual and continued change of the possession."

Slaton vs. Davis, 118 Okl. 92, 246 Pac. 863; *Thiering vs. Gage,* 132 Ore. 92, 284 Pac. 832; *Wendel vs. Smith,* 291 Pa. 247, 139 At. 873; *Hogan Finance and Mortgage Co. vs. Mead,* 205 Cal. 1, 269 Pac. 610; *Gernerd vs. Union Indemnity Co.* 311 Pa. 169, 165 At. 405; *Kaplenski vs. Horwitz,* 114 Conn. 523, 159 At. 351; *GMAC vs. Wigger,* 249 Ky. 722, 61 S.W. 2nd 620.

II.

The judgment allowing attorney fees was erroneous.

Appellant is at a loss to know upon what theory attorney fees were allowed to respondent. The complaint does not ask for attorney fees (Tr. 2) and neither does the answer to the complaint in intervention (Tr. 9). The Court brought up the question without support of any pleading (Tr. 22-23) and the discussion between the Court and counsel is not included in the transcript.

In the absence of statute or punitive damages attorney fees are generally not allowable. 15 Am. Jur. 551; 25 C.J.S. 531; *Guay vs. Brotherhood Building Association,* 87 N.H. 216, 177 At. 409, 97 ALR 1053.

SUMMARY AND CONCLUSION

The Utah statute on motor vehicle registration requires a purchaser to obtain new registration and until that has been done the title is deemed not to have passed. The respondent here is an automobile dealer and had

ample time to request a new registration certificate before the attachment here involved. His failure so to do misled and injured appellant and the statute protects appellant's attachment of the car in the possession of the registered owner.

No judgment for attorney fees was prayed for, and none is allowable in a claim and delivery action.

Respectfully submitted,

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