

JOHN P. WESLEY
c/o HANK FANNIN, ESQ.
303 SOUTH COURT STREET
TALLADEGA, AL 35160,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MV. 10-915

FINAL ORDER

John P. Wesley ("Petitioner") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning a certificate of title for a 2006 Ford Mustang, VIN 1ZVFT82H66526476. A hearing was conducted on March 17, 2011. The Petitioner and his attorney, Hank Fannin, attended the hearing. Allan Jones represented State Farm Insurance. Assistant Counsel Lionel Williams represented the Department. Race City Towing was notified of the hearing by certified mail, but failed to appear.

The Department issued a certificate of title for the subject vehicle to Brian and/or Kasey Clark on July 21, 2006. The Clarks reported the vehicle as stolen on May 2, 2007. The vehicle was recovered on May 4, 2007 and towed to Race City Towing. The Clarks were not, however, notified that the vehicle had been recovered, nor was the vehicle removed from the stolen vehicle list maintained by the National Crime Information Center ("NCIC").

The Clarks had insured the vehicle with State Farm Insurance. State Farm subsequently issued a check for \$25,850 to the lienholder, AmSouth Bank. The Clarks subsequently executed a bill of sale selling the vehicle to State Farm. State Farm applied to the Department for a salvage title for the vehicle. The Department rejected the application in September 2007 because the vehicle was still listed as stolen on the NCIC records.

Race City Towing subsequently sold the vehicle to itself as an abandoned motor vehicle on January 12, 2008. Race City then applied for a title, which was also rejected because the vehicle was still listed as stolen. Race City subsequently sold the vehicle to John Wesley, the Petitioner in this case, in March 2008. Race City also prepared a title application for Wesley. The application listed First National Bank of Talladega as first lienholder. Wesley used his copy to obtain a tag for the vehicle. Unfortunately, Race City never submitted the title application to the Department.

The First National Bank subsequently inquired with Race City in early 2010 concerning the whereabouts of the title. Race City prepared and submitted to the Department in May 2010 a second title application for the vehicle in Wesley's name, with the First National Bank of Talladega as lienholder. The application indicated that Wesley had purchased the vehicle on May 5, 2010. The Department also rejected that title application because the vehicle was still listed as stolen on the NCIC records.

Wesley was pulled over in the vehicle by the City of Talladega Police in August 2010. The vehicle was subsequently identified as being stolen, and was impounded by the Talladega Police. State Farm later had the vehicle towed to a private lot.

Wesley testified at the March 17 hearing that he believed that Race City had applied for a title on his behalf in March 2008, and that the title had been sent to the lienholder, First National Bank of Talladega. Wesley annually tagged and drove the vehicle from April 2008 until he was pulled over by the Talladega police in August 2010.

The Department was notified in September 2010 that the vehicle had been recovered. It subsequently notified State Farm, Race City Towing, and Wesley that the vehicle had been recovered, but that it could not issue a title due to the competing claims for the vehicle. Wesley appealed.

As indicated, three parties have applied for a title for the subject vehicle. State Farm first applied for a salvage title, which was rejected because the vehicle had not yet been recovered. Race City next applied for a title after it had sold the vehicle to itself in January 2008 as an abandoned motor vehicle. The Department also rejected that application because the vehicle was still listed as stolen. And it rejected Wesley's title application in May 2010 for the same reason.

The abandoned motor vehicle statutes, Code of Ala. 1975, §32-13-1 et seq., provide that the purchaser of a vehicle at an abandoned motor vehicle sale shall own the vehicle, free and clear of all liens and encumbrances. Code of Ala. 1975, §32-13-3(c). But for the sale to be valid, the seller must notify all owners, lienholders, and others with an interest in the vehicle of the sale at least ten days before the sale. The seller must request the names and addresses of the above owners, lienholders, etc. from the Department. The Department subsequently issues an "Abandoned Motor Vehicle Record Request Response" giving the seller the pertinent information.

In this case, the Department issued the above Records Request Response to Race City showing the Clarks as owners and AmSouth Bank as lienholder. Race City duly notified those parties of the pending sale. But the Response also showed that State Farm Mutual Auto Insurance Company was a "pending vehicle owner" concerning the vehicle. The Response also stated – "Please note the pending vehicle owner(s) address may not be available to the Department and cannot be provided. This omission does not relieve the requestor (Race City) of the responsibility of providing written notification to the current (and pending) vehicle owner as required" by Alabama law. Race City failed to notify the pending owner, State Farm, of the sale. Consequently, because Race City failed to give State Farm the required notice under the law, the sale of the vehicle as an abandoned

motor vehicle was invalid. The subsequent sale by Race City to Wesley was thus also invalid.

Wesley's May 2010 application is also improper because it incorrectly shows that Wesley purchased the vehicle in May 2010. The evidence is undisputed that Wesley purchased and took possession of the vehicle in March 2008.

Under the circumstances, the Department should issue a title for the vehicle in the name of State Farm Insurance because State Farm purchased the vehicle from the last recorded owners, the Clarks.

I sympathize with the Petitioner because he is an innocent victim in this case. Hopefully he can recover against Race City for its failure to properly notify State Farm of the abandoned motor vehicle sale, and also its failure to submit the Petitioner's original title application to the Department in March 2008.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 18, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Hank Fannin, Esq.
John Casada
Ian Jones, Esq.
Race City Towing
Mike Gamble