RENDERED: February 19, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

# Court Of Appeals

NO. 1997-CA-002887-MR

ACCEPTANCE INSURANCE COMPANY;
and DON'S AUTO II, INC. APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
V. HONORABLE ELLEN B. EWING, JUDGE
ACTION NO. 95-CI-3023

ANGELA R. KEENE; ROBERT RAY
WILLIAMS; SHARON Y. LEACH;
UNITED MARINE MECHANICS, INC.,
d/b/a UNITED AUTO SALES;
and MONROE GUARANTY INSURANCE
COMPANY APPELLEES

AND NO. 1997-CA-002911-MR

ANGELA R. KEENE APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
V. HONORABLE ELLEN B. EWING, JUDGE
ACTION NO. 95-CI-3023

MONROE GUARANTY INSURANCE
COMPANY; and UNITED
MARINE MECHANICS, INC., d/b/a
UNITED AUTO SALES APPELLEES

OPINION AFFIRMING

* * * * * * * *

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and MILLER, Judges.

GUDGEL, CHIEF JUDGE: These appeals stem from a summary judgment, granted by the Jefferson Circuit Court, adjudging that appellee Monroe Guaranty Insurance Company (Monroe) was not required to provide liability insurance coverage respecting a motor vehicle sold by appellee United Marine Mechanics, Inc. (United). Appellant/appellee Angela Keene, and appellants Don's Auto II, Inc. (Don's Auto) and Acceptance Insurance Company, contend on appeal that the court erred by finding that United validly transferred title to the vehicle before it was involved in a collision, and by finding that Monroe therefore was not required to provide liability insurance coverage to United respecting the collision. Alternatively, Keene contends that the supreme court's decision in Nantz v. Lexington Lincoln Mercury Subaru, Ky., 947 S.W.2d 36 (1997), should be revisited and overruled. We disagree with each of appellants' contentions. Hence, we affirm.

The relevant factual background of this litigation is well stated in the trial court's opinion, as follows:

> On January 11, 1995, Plaintiff Angela R. Keene, allegedly sustained physical injuries when an automobile operated by Defendant, Robert Ray Williams ("Williams") collided with her automobile. Williams was operating a 1997 [sic] Plymouth which he purchased from James Utley ("Utley"), who was purportedly acting as agent of Don's Auto II, Inc. ("Don's Auto"). The general dispute under which the motion for summary judgment was brought deals with the legal ownership of the automobile operated by Williams, for determination of liability.

Don's Auto operates a used car lot located on Preston Highway, in Louisville, Jefferson County, Kentucky. David Binford is the manager of Don's Auto. James Utley had worked at Don's Auto up until November 1994; however, there is a dispute as to whether he conducted any work for Don's Auto after that date, and the duration and extent of that work. Williams worked periodically for Don's Auto in or around the Fall of 1994.

On January 9, 1995, Dean Jaggers, manager of United Auto, was approached by Utley and Williams regarding the purchase of the 1987 Plymouth. Utley allegedly represented himself as a worker of Don's Auto, as did Williams. Utley purchased the 1987 Plymouth from United Auto for $450.00, with the intent to place the car on the Don's Auto lot and have it sold.

A dealer-to-dealer transfer for the 1987 Plymouth was executed on January 10, 1995, and the back of the title to the 1987 Plymouth was endorsed to Don's Auto. A dealer-to-dealer transfer does not require the payment of a transfer tax or the filling out of a vehicle transfer report.

Utley signed both Binford's name and his own name, on behalf of Don's Auto, on all documents relevant to the transfer of the 1987 Plymouth. Binford contends that he did not give Utley permission to sign on his behalf at the time of the said transaction. Utley had been given permission to sign on behalf of Binford, as agent of Don's Auto in the past.

Williams expressed that he wanted to buy the 1987 Plymouth, and Utley and Williams agreed that Williams, through his wife Tonya, would purchase the 1987 Plymouth from Don's Auto and/or Utley. Williams took possession of the vehicle on the evening of January 10, 1995, with Utley retaining possession of the title. There is a dispute about the timing of Williams' payment(s) for the auto. Williams contends that he made payments for six or seven months; while Utley contends that Williams either paid one or two payments

> for the purchase of the car. The accident occurred on January 11, 1995, while Williams was driving the 1987 Plymouth to his home from Utley's home, where he had been doing some yard work for Utley.
>
> On January 13, 1995, Utley filed a Vehicle Acquisition Notice for the automobile in question with the Jefferson County Clerk, signing as General Manager of Don's Auto. On that same day, Utley signed and filed the Second Re-assignment by Dealer section of the Certificate of Title to the motor vehicle, evidencing transfer of the vehicle from Don's Auto to Tonya Williams. Utley further executed and filed with the Jefferson County Clerk a Vehicle Transaction Record/Application for Title/Registration transferring title to the automobile from Don's Auto to Tonya Williams.
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> Plaintiff filed suit against Williams, Sharon Y. Leach (driver of a second motor vehicle which also struck the Plaintiff), Acceptance Insurance Company (insurance carrier of Don's Auto) and Don's Auto on March 13, 1997. Plaintiff filed suit against United Auto and Monroe on May 7, 1997. Defendants, Monroe and United Auto, filed their answer and cross-claim against Acceptance Insurance Company, Don's Auto, Robert Ray Williams and Sharon Y. Leach, on June 18, 1997.
>
> Defendants, Monroe and United Auto, make a motion for summary judgment, contending that title to the 1987 Plymouth was transferred from United to Don's Auto and/or Utley, prior to the accident, when United completed and signed the assignment of title section of the title certificate and delivered it to Utley.

The court determined that United had validly transferred title to the vehicle prior to the collision. Hence, the court granted United and its insurer, Monroe, a summary judgment. This appeal followed.

First, appellants contend that United and Monroe failed to meet their burden of establishing that they were entitled to a summary judgment. We disagree.

The record shows that United acquired the vehicle at issue from Boyd E. Grimes, Jr. on December 27, 1994. As required by KRS 186A.215(1), Grimes executed the assignment of title and odometer disclosure statement on the reverse side of his certificate of title. Moreover, it is undisputed that upon acquiring the vehicle, United timely notified the county clerk that it had acquired the vehicle's title as required by KRS 186A.220(1). United also obtained from Grimes the documents required by KRS 186A.215 to effect the transfer as required by KRS 186A.220(2), and the clerk subsequently provided United with a certificate of registration for the vehicle. At that point, United put the vehicle on its lot for purposes of sale.

Under KRS 186A.220, a dealer such as United which acquires a vehicle's title in circumstances such as those presented here may transfer the title to a purchaser by one of two methods. A dealer which sells the vehicle to another dealer may transfer title merely by executing, in favor of the dealer purchaser, one of the "reassignment by dealer" forms on the certificate of title's reverse side, and then delivering both the certificate of title and the vehicle to that purchaser. KRS 186A.220(4). Nothing else is required. On the other hand, if the dealer sells the vehicle to a purchaser for the latter's use, the dealer must deliver not only a properly-assigned certificate

of title, but also a properly-executed vehicle transaction record. KRS 186A.220(5).

Here, the record shows that United in good faith sold and delivered the vehicle to another dealer (Don's Auto), and that it complied with its 186A.220(4) duty to transfer the vehicle's title by executing a "reassignment by dealer" form on the reverse side of the certificate of title. This was all United was required to do in order to transfer the vehicle's title. Obviously, therefore, unless some basis exists for concluding, as asserted by appellants, that United knew or should have known that the vehicle was actually being sold to Utley and/or Smith individually rather than to Don's Auto, the trial court clearly did not err by granting a summary judgment in favor of United and Monroe. We find no basis for reaching such a conclusion.

There is simply no evidence in the record to create an issue of fact as to whether United and its employee either knew in advance that Don's Auto was not purchasing the vehicle, or conspired with Utley to assist him in avoiding the payment of a transfer tax on the vehicle. On the contrary, the only evidence adduced regarding the events shows that United's employee acted in good faith, based upon his understanding that Don's Auto was the vehicle's purchaser. Moreover, contrary to appellants' argument, United had no duty to deliver to Don's Auto the dealer-to-dealer assignment form required by KRS 186A.220. Instead, KRS 186A.220(2) clearly imposes the duty of obtaining

the form upon the dealer acquiring the vehicle, rather than upon the selling dealer. Further, since Don's Auto was a dealer rather than a purchaser for use, United had no duty under KRS 186A.220(5) to provide a vehicle transaction record in order to validly transfer title. Finally, we find no merit in appellants' argument that before United could treat the sales transaction as a dealer-to-dealer transfer, it was obligated to first independently verify that Don's Auto, rather than Utley and/or Williams, was acquiring the vehicle's title. To conclude otherwise, we believe, would create havoc in the automobile dealer industry, and would undermine the present statute's intent of facilitating the expeditious transfer of motor vehicle titles. Further, to require such independent verification by dealers would further be both impractical and entirely too burdensome. Finally, we note that KRS 186A.220 clearly does not impose such a burden, and we decline to do so by judicial fiat.

Appellant Keene's remaining contention, regarding the overruling of the court's decision in Nantz, supra, is one which addresses itself exclusively to the supreme court.

For the reasons stated, the court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR ACCEPTANCE INSURANCE COMPANY; and DON'S AUTO II, INC.:

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Louisville, KY

ORAL ARGUMENT FOR ACCEPTANCE INSURANCE COMPANY; and DON'S AUTO II, INC.:

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BRIEF AND ORAL ARGUMENT FOR ANGELA R. KEENE:

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BRIEF AND ORAL ARGUMENT FOR UNITED MARINE MECHANICS, d/b/a UNITED AUTO SALES; and MONROE GUARANTY INSURANCE COMPANY:

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