

RENDERED: JULY 9, 1999; 2:00 P.M.
ORDERED NOT PUBLISHED BY THE KENTUCKY SUPREME COURT:
APRIL 12, 2000 (1999-SC-0655-D)

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001673-MR

ESTATE OF JAMES EDDIE WILLIAMS,
BY EVELYN WILLIAMS AS ADMINISTRATOR;
AND METROPOLITAN PROPERTY AND CASUALTY
INSURANCE COMPANY

APPELLANTS

APPEAL FROM WHITLEY CIRCUIT COURT
v. HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 1996-CI-191

JUDER STIDHAM PONTIAC-BUICK-GMC, INC.;
TOM RAINES IN HIS OFFICIAL CAPACITY
AS WHITLEY COUNTY CLERK;
WHITLEY COUNTY CLERK;
ESTATE OF LAWRENCE CRAWFORD, JR.,
BY H.D. MOSES, PERSONAL REPRESENTATIVE;
AND BOWLING GREEN WARREN COUNTY
COMMUNITY HOSPITAL CORPORATION
D/B/A THE MEDICAL CENTER, BOWLING GREEN,
KENTUCKY APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: GARDNER, KNOPF, AND MCANULTY, JUDGES.

KNOPF, JUDGE: This is an appeal from a partial summary judgment

finding that the liability of an automobile dealer who fails to confirm that a purchaser has motor vehicle insurance is limited to the minimum statutory coverage when the vehicle is involved in an accident after the title transfer documents are completed.

Under the circumstances of this appeal, we find no error and hence, we affirm.

The parties to this appeal entered into a stipulation of the following facts:

1. That Juder Stidham Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer transacting business in the Commonwealth of Kentucky in Whitley County, Kentucky.

2. That on or about August 22, 1995, Juder Stidham Pontiac-Buick-GMC, Inc. sold a 1995 Pontiac Firebird to Lawrence Crawford, Jr. Mr. Crawford executed the vehicle transaction record, an odometer statement, a buyer's order and, with a trade-in provided by his mother, paid in full the purchase price of \$20,754.00. Thereafter, Juder Stidham Pontiac-Buick-GMC, Inc. assigned the 1995 Pontiac Firebird to

Mr. Crawford, the purchaser, for his use on the public highways of the Commonwealth of Kentucky.

3. That on or about August 24, 1995, Juder Stidham Pontiac-Buick-GMC, Inc., with the consent of Lawrence Crawford, Jr., the purchaser, delivered the assigned Certificate of Title and the executed Vehicle Transaction Record of the 1995 Pontiac Firebird directly to the Whitley County Clerk's Office and on behalf of Mr. Crawford, the purchaser, made application for registration and certificate of title.

4. Juder Stidham Pontiac-Buick-GMC, Inc. never obtained any documentation of any proof of insurance from Mr. Lawrence Crawford, Jr., the purchaser, before delivering possession of the 1995 Pontiac Firebird to him.

5. That at the time Juder Stidham Pontiac-Buick-GMC, Inc. made application for registration and a certificate of title on behalf of Lawrence Crawford, Jr., the purchaser, it did not have proof of insurance from him.

6. That on or about August 24, 1995, a title and registration was issued by the Commonwealth of Kentucky to Juder Stidham Pontiac-Buick-GMC, Inc. in the name of Larry Crawford, Jr., the purchaser.

7. That on or about October 5, 1995, Lawrence Crawford, Jr., was operating the said 1995 Pontiac Firebird with Mr. James Eddie Williams as a passenger in Bowling Green, Warren County, Kentucky, on Interstate 65 whereby a motor vehicle collision occurred in which the decedent, Mr. Williams, sustained personal injuries resulting in his death. Also, Lawrence Crawford, Jr., decedent, sustained personal injuries resulting in his death.

In addition to the foregoing, the parties also agree that Crawford did not have a motor vehicle insurance policy in effect either at the time he purchased the car or at the time of the accident.

Evelyn Williams, acting as administrator of the estate of James Eddie Williams, brought a wrongful death action against Crawford's estate. Williams's estate also brought a complaint against Juder Stidham Pontiac-Buick-GMC, Inc. (Juder Stidham), alleging that Juder Stidham's failure to require Crawford to show proof of insurance, in violation of KRS 186A.220(5), was a contributing factor in Williams's death.¹ Metropolitan Property

¹Williams's estate and Metropolitan also filed an amended complaint naming the Whitley County Clerk as a defendant, alleging that the county clerk failed to determine whether Juder Stidham had obtained proof of insurance from Crawford prior to transfer of the title documents. The trial court dismissed the complaint against the county clerk, finding that the

and Casualty Insurance Company (Metropolitan) filed an intervening complaint to obtain subrogation of basic reparation and uninsured motorists benefits which it paid to the Williams estate.²

On December 2, 1997, the trial court entered a partial summary judgment on behalf of the Williams estate and Metropolitan, as to liability on the wrongful death claim against Crawford's estate. The trial court reserved the issue of damages for later adjudication. In a separate order, the trial court entered a partial summary judgment on behalf of the Williams estate against Juder Stidham, finding no factual dispute that Juder Stidham's failure to obtain proof of insurance from Crawford constituted a violation of KRS 186A.220(5). However, the trial court further held that Juder Stidham's liability for this violation was limited to the minimum motor vehicle insurance requirements imposed upon Crawford pursuant to KRS 304.39-110, which is \$25,000.00.

Following a jury trial, the jury returned a verdict against the Crawford estate in the amount \$1,348,272.05. The trial court entered an order allowing Metropolitan to recover \$110,000.00 from the judgment, leaving a judgment of

automobile dealer is the only party responsible for obtaining proof of insurance from a purchaser prior to transfer of possession. The appellants named the Whitley County Clerk as a party to this appeal, but they do not state any grounds for relief from the judgment dismissing the county clerk as a party to the action below.

²The Bowling Green-Warren County Community Hospital Corporation d/b/a The Medical Center at Bowling Green, also filed an intervening complaint for payment of medical expenses incurred by Williams following the accident. The Medical Center is likewise a party to this appeal, but the appellants do not state any grounds for relief against it.

\$1,238,272.05 for the Williams estate. Juder Stidham tendered its full liability of \$25,000.00 to the Williams estate following the judgment. The Williams estate and Metropolitan now appeal.

Juder Stidham contends that the trial court erred in imposing any liability on it. It argues that any obligation to provide insurance on the Pontiac Firebird was extinguished once the title and registration were transferred to Crawford. Juder Stidham further argues that since its failure to obtain proof of insurance from Crawford prior to transferring possession of the Pontiac was not the proximate cause of the accident, it should not have any liability to Williams's estate. However, Juder Stidham failed to file a cross-appeal from the trial court's judgment regarding these issues. Consequently, they are not preserved for our review.

Rather, the sole issue in this case is whether the trial court erred in limiting Juder Stidham's liability to \$25,000.00. Juder Stidham concedes that its failure to require Crawford to present proof of insurance prior to transferring possession of the Pontiac was a violation of KRS 186A.220(5). Williams's estate argues that it is entitled to recover the entire amount of its damages from Juder Stidham. We disagree.

Williams's estate relies upon KRS 446.070, which provides:

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the

violation, although a penalty or forfeiture is imposed for such violation.

Contrary to the assertion by Williams's estate, KRS 446.070 does not create joint and several liability between Juder Stidham and Crawford. Rather, Williams's estate is only entitled to recover from Juder Stidham "such damages as [it] sustained by reason of the violation." Clearly, Juder Stidham's violation of KRS 186A.220(5) was not the cause of the accident. Rather, Juder Stidham is liable for damages caused by its failure to require Crawford to show proof of insurance.

Moreover, Juder Stidham's failure to obtain proof of insurance from Crawford was not fatal to the transfer of the title. As explained in Nantz v. Lexington Lincoln Mercury Subaru, Ky., 947 S.W.2d 36 (1997):

In determining the 'owner' of a vehicle, KRS 186A.345 dictates that we utilize the definition of 'owner' as set forth in KRS 186.010. KRS 186.010(7) defines an 'owner' as 'a person who holds the legal title of a vehicle.' Moreover, two statutes, KRS 186A.215 and 186A.220, delineate the procedure to be followed when ownership to a motor vehicle is transferred. KRS 186A.215(1), the general requirements for transfer of vehicle ownership, provides that one may transfer title to a motor vehicle simply by completing the assignment and warranty of title portion of the certificate of title form and by filling in the federally-required odometer statement. Additionally, if 'the owner's certificate of title fails to meet Kentucky's requirements for a lawful conveyance of title or . . . the owner's certificate of title fails to meet the requirements for the owner to execute an odometer disclosure statement . . .,' the transferor must further complete and deliver a VTR [vehicle transaction record]. KRS 186A.215(1). Furthermore, KRS 186A.215(2) provides:

Except as otherwise provided in this chapter, the *transferee shall*, promptly after delivery to him of the vehicle, execute the application for a new certificate of title and registration by executing the applicable portions of a vehicle transaction record. If a vehicle transaction record is required by subsection (1) of this section, the *transferee shall* execute the applicable portions of the vehicle transaction record provided to him by his transferor. Any unexpired registration shall remain valid

upon transfer of said vehicle to the transferee.³

(*emphasis added*). Thus, according to KRS 186A.215, a transfer of title takes place when the seller completes and signs the assignment of title section of the title certificate and delivers it to the buyer.

KRS 186A.220 also addresses the requirements an automobile dealer must follow to achieve a proper transfer. In pertinent part it states:

(1) Except as otherwise provided in this chapter, when any motor vehicle dealer licensed in this state buys or accepts such a vehicle in trade, which has been previously registered or titled for use in this or another state, and which he holds for resale, he shall not be required to obtain a certificate of title for it, but shall within fifteen (15) days after acquiring such vehicle, notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee.

(2) Upon purchasing such a vehicle or accepting it in trade, the dealer shall obtain from his transferor, properly executed, all documents required by KRS 186A.215, to include the odometer disclosure statement thereon, together with a properly assigned certificate of title.

. . . .

(5) When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and a properly executed vehicle transaction record, to such purchaser, who shall make application for registration and a certificate of title thereon.⁴

Our decision in [Potts v. Draper, Ky., 864 S.W.2d 896

3 This section was amended in 1996 Ky. Acts Ch. 35, § 5 (*eff.* 7-15-96).

4 The current version of this section reads as follows:

“When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon. The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle. Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215 and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.”

(1993)], appropriately followed the same requirements prescribed by the aforementioned language in KRS Chapter 186A. Potts concerned the sale of an automobile in which a commercial car dealer failed to transfer title to the buyer of a van at the time the buyer took possession of it because the dealer had not yet received the certificate of title from the previous owner. Id. at 898. When the dealer did file the VTR to effectuate transfer, an accident involving the van had already occurred. Id. Our decision in Potts determined that Kentucky's titling statutes are clear and unambiguous that 'the owner of a motor vehicle is the title holder' in the absence of a valid conditional sale. Id. We further emphasized the public policy of this state, as expressed in KRS 304.39-010(1), to keep uninsured motorists off Kentucky's roads. Id. at 900.

Specifically, we stated in Potts:

[T]he real practical effect will merely be that licensed motor vehicle dealers will be required to obtain insurance coverage for motor vehicles they sell *until they transfer title by executing the appropriate legal documents* in the absence of a conditional sale . . . The purpose of the statute is to require the seller of a motor vehicle to take statutory steps to properly complete the sale and until this is done the seller will be considered the owner for the purposes of liability insurance. The result will be that all the public will be protected from uninsured motorists. That was the original intention of the statute and it must be supported.

864 S.W.2d at 899-900. (emphasis added). Ultimately, Potts correctly concluded that unless a conditional sale is involved, the dealer's insurance covers a vehicle 'until' appropriate legal documents are given to the buyer. Id.

Nantz, 947 S.W.2d at 37-38.

KRS 186A.220(5) allows an automobile dealer to give immediate possession of a car to a purchaser prior to completion of the documents required to transfer ownership of the vehicle. To protect the public during the period between the time the purchaser obtains possession of the vehicle and the time the proper legal documents are transferred from the dealer to the buyer, the purchaser must provide the dealer with proof of insurance coverage. If the dealer fails to confirm that the purchaser has coverage, then the dealer remains responsible for insurance

coverage until the transfer of title is accomplished. However, compliance with KRS 186A.220(5) is not a prerequisite to the transfer of title, and the failure of an automobile dealer to obtain proof of insurance from a purchaser does not void an otherwise valid transfer of title. Consequently, Juder Stidham was not the owner of the Pontiac when the accident occurred, nor was it required to maintain insurance on the vehicle. See also, Stigall v. Fourth Avenue Auto Co., Inc., Ky. App., 922 S.W.2d 752 (1996).

Indeed, based upon the law as set out by our Supreme Court in Nantz, we question whether Juder Stidham has any liability to the Williams estate. Even if an automobile dealer fails to confirm that a purchaser has insurance coverage, its liability extends only until the transfer of ownership is completed. The automobile dealer does not remain an insurer of the vehicle for all time. Nonetheless, we recognize that Juder Stidham's failure to preserve this issue by filing a cross-appeal from the trial court's judgment prevents this Court from disturbing that portion of the judgment.

Based upon the circumstances of this case, the trial court acted properly in limiting Juder Stidham's liability to \$25,000.00. Once the certificate of title to the Pontiac was properly transferred to Crawford, Juder Stidham had no further obligation to insure the vehicle. Any potential liability it may have to third parties does not arise out of its own motor vehicle insurance coverage, but from its negligence in failing to confirm that Crawford had at least the minimum level of motor vehicle insurance coverage as mandated by KRS 304.39-080.⁵ Under that statute, Crawford was required to maintain at least \$25,000.00 coverage, and it would be

5 However, if the accident had occurred prior to the transfer of title to Crawford, Juder Stidham would still have an obligation to insure the Pontiac, and its liability to third persons would arise out of its insurance contract on the vehicle.

improper to speculate as to the amount of additional coverage Crawford might have obtained if he actually obtained motor vehicle insurance. Therefore, if Juder Stidham's violation caused any damages, it was only to the extent of the minimum insurance coverage which it failed to confirm that Crawford possessed. Consequently, we have no difficulty with the trial court's decision to limit Juder Stidham's liability to that amount.

Accordingly, the judgment of the Whitley Circuit Court is affirmed.

GARDNER, JUDGE, CONCURS.

McANULTY, JUDGE, CONCURS IN RESULT.

BRIEF AND ORAL ARGUMENT FOR
APPELLANTS:

William L. Davis
Lexington, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:
JUDER STIDHAM PONTIAC-BUICK-
GMC, INC.

R. Craig Reinhardt
Fowler, Measle & Bell, LLP
Lexington Kentucky

No Briefs for Appellees

Tom Raines in his Official
Capacity as Whitley County
Clerk; and Whitley County
Clerk

Estate of Lawrence Crawford,
Jr., by H.D. Moses, Personal
Representative

Bowling Green Warren County
Community Hospital Corp.
d/b/a The Medical Center,
Bowling Green, Kentucky