RENDERED: March 24, 2000; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001536-MR

GAINSCO INSURANCE COMPANY APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 98-CI-02422

UNIVERSAL UNDERWRITERS INSURANCE COMPANY APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: BARBER, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This appeal involves an automobile accident on a vehicle being transferred from one dealer to another and the question of ownership at the time of the accident. The trial court held the purchasing dealer who took delivery was the owner even though the paperwork was not completed. We reverse the trial court because we believe that statutory and case law both require execution and delivery of title papers before the transfer becomes effective.

Jeff Jones Chevrolet agreed to sell a 1986 Aerostar to Big Blue Auto Sales. Big Blue took delivery before any paperwork was done. Silas Prather saw the vehicle on Big Blue's lot and

took it for a test drive. While test driving the vehicle, Silas had an accident with Deborah Manning. Deborah sued Silas Prather and the question arose as to who owned the vehicle. Silas Prather was insured by Kentucky Farm Bureau Mutual Insurance company, Jeff Jones by Universal Underwriters Insurance company, and Big Blue Auto Sales by Gainsco Insurance Company. This case was filed to determine ownership. Issues of negligence, liability, etc. are reserved for a different forum. The trial court ruled in this case that although Jeff Jones Chevrolet had not executed the certificate of title, vehicle registration papers, dealer assignment form, or the odometer disclosure statement, Big Blue was the owner at the time of the accident. The trial court reasoned that Nantz v. Lexington Lincoln Mercury Subaru, Ky., 947 S.W.2d 36 (1997) and KRS 186A.220(5), which both require execution of the paperwork before title passes, do not apply in dealer-to-dealer sales. The trial court also held that KRS 186A.220(1) applies and it allows the dealer fifteen days to complete the re-assignment form.

In its appellant brief, Gainsco Insurance Company argues that the trial court erred in holding its insured, Big Blue Auto Sales, was the owner of the vehicle at the time of the accident. We agree. KRS 186A.220(5) applies to the sale of a vehicle to a purchaser for use, not to a dealer for resale. KRS 186A.220(1) and (2) applies to the sale of a vehicle to another dealer. Section 2 requires a dealer to obtain an executed "Certificate Of Title Re-Assignment Form" which is on the back of the title or can be a separate document. The form includes the

odometer disclosure statement. Section 1 required the dealer to obtain the paperwork although the dealer does not need to have the certificate of title list it as buyer. The fifteen-day requirement in Section 1 is a filing or recording requirement only. It does not contradict Section 2 which requires all necessary documentation to be completed at the time of transfer (upon purchasing).

Nantz v. Lexington Lincoln Mercury Subaru, Ky., 947 S.W.2d 36, 37-38 (1997) discusses these two sections, KRS 186A.220(1) and (2) as being requirements whenever a dealer obtains or purchases a vehicle or when purchasing from another dealer. The Court then cites KRS 186A.220(5) for sales to purchasers for use. There is no hint or suggestion in the opinion that dealer-to-dealer transfers have 15 days to execute the proper documentation. The Court did cite Potts v. Draper, Ky., 864 S.W.2d 896 (1993) for the contrary when it said that, "[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. . . ." Nantz, 947 S.W.2d at 38. (Emphasis the Court's). Clearly, after citing both sections (1) and (2) of KRS 186A.220, and then making that statement, the Court did not see a conflict. The Nantz case also involved a dealer-to-dealer transfer before the sale to the ultimate user, as in the case before us. The Nantz Court was analyzing both transactions, although it was only asked to rule on the last transfer. We have no doubt that if

that Court had ruled on the dealer-to-dealer transfer, it would have reached the same result that we have, that until the appropriate dealer paperwork is completed, title does not transfer, and the 15-day grace period in KRS 186A.220(1) is a recording or filing requirement.

Therefore, for the foregoing reasons, the judgment of the Fayette Circuit Court is reversed and the matter remanded to the circuit court.

BARBER, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent. I agree with the trial court that KRS 186A.220(5) and Nantz v. Lexington Lincoln Mercury Subaru, Ky., 947 S.W.2d 36 (1997), "apply only to assignment of a vehicle from a dealer to a purchaser for use not to a dealer for resale." I would affirm.

The sections of KRS 186A.220 at issue in this case are as follows:

> (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.
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> . . .
>
> (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. The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and the executed vehicle transaction record 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.

The Majority acknowledges that the Supreme Court in Nantz was only asked to rule on a dealer-to-purchaser transfer and not a dealer-to-dealer transfer. But, the Majority opines that "[w]e have no doubt that if that Court had ruled on the dealer-to-dealer transfer, it would have reached the same result that we have, that until the appropriate dealer paperwork is completed, title does not transfer, and the 15-day grace period

in KRS 186A.220(1) is a recording or filing requirement."[1] The problem with the Majority's prediction as to how the Supreme Court would apply Nantz to the case sub judice is that it ignores the controlling language of KRS 186A.220(1). The Majority discounts the importance of this language by stating "the 15-day grace period in KRS 186A.220(1) is a recording or filing requirement."[2] I disagree with this conclusion because the language in KRS 186A.220(1) is very specific in allowing a dealer who obtains a vehicle "which has been previously registered or titled for use in this or another state, and which he holds for resale . . . within fifteen (15) days . . . [to] notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee." I am convinced that this specific provision was included by our Legislature as a way to help facilitate the normal business operations of car dealers. For the Majority to treat dealer-to-dealer transactions the same as dealer-to-purchaser transactions is to ignore this specific statutory language.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Jay R. Langenbahn Barry F. Fagel Cincinnati, Ohio	R. Craig Reinhardt Lexington, Kentucky

[1] Slip opinion at 4.

[2] Slip opinion at 4.