

RENDERED: JANUARY 12, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001813-MR

KAYLA M. HOUSTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT,
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 15-CI-03169

LESLIE K. BARKER; DAVID E. GORMLEY; and
LIBERTY MUTUAL GROUP, INC., d/b/a
LIBERTY MUTUAL INSURANCE COMPANY, and
d/b/a GENERAL INSURANCE COMPANY

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: KRAMER, CHIEF JUDGE; JOHNSON AND MAZE, JUDGES.

KRAMER, CHIEF JUDGE: Kayla Houston appeals from a summary judgment entered in favor of David Gormley by the Fayette Circuit Court. After careful review, we reverse and remand.

This case originates from the private sale of a motor vehicle by Gormley to appellee Leslie Barker. The facts relevant to this appeal are largely undisputed and were succinctly stated in the circuit court's order as follows:

On . . . February 25, 2014 Barker and her ex-husband drove to Frankfort in response to an ad placed by Gormley to sell his Jeep Wrangler. After test driving the Jeep, Barker and Gormley signed a "Bill of Sale – Motor Vehicle" the same day identifying the 1998 Green Jeep Wrangler to be sold by Gormley and purchased by Barker. The "Bill of Sale" also contained the purchase price of \$8,250 (cash) and further obligations on the part of Buyer and Seller. The purchase price was given to Gormley by Barker in cash on February 25, 2014.

Barker and Gormley signed both the "Bill of Sale" and "Transfer of Title" on the same date. Under the terms of the Bill of Sale, it was the responsibility of Barker, as the Buyer to get the signatures on the "Transfer of Title" notarized and to get the title transferred within three working (3) days. The "Bill of Sale" further released Gormley from ". . . any and all liabilities and responsibilities concerning the vehicle." Barker thereafter assumed all responsibilities for the vehicle upon signing the "Bill of Sale" (which she had). The signatures of Barker and Gormley on the Title Transfer were not notarized at the time of the signing. Barker took possession of the Jeep after payment of the purchase price and the signing of the documents as aforesaid on February 25, 2014.

(Citations omitted).

The signatures were not notarized until March 5, 2014, and the certificate of title was not filed with the Scott County Clerk until March 11, 2014.

However, before this occurred, Barker was involved in an automobile accident with Houston while driving the subject Jeep on February 27, 2014.

Shortly thereafter, Houston filed a declaratory judgment action against Barker and Gormley to determine the owner of the vehicle for liability insurance purposes on the day of the accident. Gormley asserted that Barker was the owner of the Jeep following the bona fide sale because both parties signed the bill of sale; signed the back of the title document; and filled out the odometer statement. Barker and Houston asserted that Gormley was still the owner of the vehicle because the signatures on the back of the title were not notarized at the time of the accident; the consideration for sale was not completed on the title document, and the effective date of sale was not completed. Following a lengthy discovery period, both Houston and Gormley moved for summary judgment and asserted their respective arguments.

After considering the arguments of counsel, the circuit court found that Gormley had done everything required of him to transfer title of the Jeep to Barker. Accordingly, the court granted Gormley's motion for summary judgment and denied Houston's motion.

This appeal followed.

“In cases where a summary judgment has been granted in a declaratory judgment action and no bench trial held, the standard of review for

summary judgments is utilized.” *Ladd v. Ladd*, 323 S.W.3d 772, 776 (Ky. App. 2010) (citing *Godman v. City of Fort Wright*, 234 S.W.3d 362, 368 (Ky. App. 2007)).

We now turn to our analysis. Houston and Barker assert the same arguments on appeal as they did below. The sole issue in this case is whether Barker or Gormley was the owner of the vehicle for insurance purposes at the time of the accident. Boiled down, the dispositive issue is whether an individual seller can effectively transfer ownership to an individual buyer when the transfer of title documents were not notarized, and otherwise not fully complete. We answer that question in the negative.

KRS¹ 186.010(7)(a) defines an “owner” of an automobile to mean: “a person who holds legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.” On the day of the accident, both Barker and Gormley could be considered the owner of the Jeep pursuant to that definition. Barker was an owner under the statute because she had physical possession following a bona fide sale. Gormley, on the other hand, was still an owner under the statute because the certificate of title was not completed or filed with the county clerk until after the accident.

¹ Kentucky Revised Statute.

For more guidance, we look to KRS 186A.215, which sets out the general requirements for transfer of a motor vehicle title. In pertinent part, it provides as follows:

(1) If an owner transfers his interest in a vehicle, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title The transferor shall cause the application with the certificate of title attached to be delivered to the transferee.

. . .

(3) The application with its supporting documentation attached shall promptly be submitted to the county clerk as provided in KRS 186A.115, together with the required fees.

“The purpose of [this] 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.” *Nantz v. Lexington Lincoln Mercury Subaru*, 947 S.W.2d 36, 38 (Ky. 1997) (quoting *Potts v. Draper*, 864 S.W.2d 896, 899-900 (Ky. 1993)).

In *Nantz*, the Kentucky Supreme Court further explained the requirements to properly transfer ownership in a vehicle:

KRS 186A.215 . . . delineate[s] 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.

...

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.

Nantz, 947 S.W.2d at 37 (emphasis added).

Although still applicable to a private automobile sale, *Nantz* involved a sale between a commercial dealer and an individual buyer. On the other hand, *Omni Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 999 S.W.2d 724 (Ky. App. 1999) (overruled on other grounds by *Kentucky Farm Bureau Mut. Ins. Co. v. Shelter Mut. Ins. Co.*, 326 S.W.3d 803, 810-11 (Ky. 2010))² involved a private automobile sale between an individual seller and an individual buyer, similar to the case at bar. Relying on *Nantz*, this Court in *Omni* explained:

Unlike the statutory responsibilities of dealers, KRS 186A.215[], clearly makes it the responsibility of the individual transferor, as well as the transferee, to see that the transfer is accomplished. In any event, it is clear from the record that the assignment and warranty of title had not been notarized until [after the accident]. Thus, Thomas, in his capacity as a transferor, had not

² As indicated, this Court is aware that *Omni* was overruled to the extent that it was inconsistent with *Shelter*. However, *Shelter* dealt with two insurance policies and whether the policies should be prorated or if one was primary and the other secondary. These policies were for the owner of the automobile and for the permissive driver of the vehicle. That issue is not before this Court in the instant appeal.

completed the documents or “delivered” them as statutorily required prior to the accident.

Omni, 999 S.W.2d at 727. KRS 186A.215, *Nantz*, and *Omni* make it clear that the seller of an automobile must deliver a *completed* transfer of title document to effectively transfer ownership of an automobile to a buyer.

In his brief, Gormley cites *Franklin v. Safe Auto Ins. Co.*, 290 S.W.3d 69 (Ky. App. 2009), and argues that ownership was transferred even though the certificate of title may not have been formally completed because he and Barker had filled out and “executed” the transfer of title section on the certificate of title and odometer statement. It is his position that because there was a third party at the transaction who testified he saw both Barker and Gormley contemporaneously sign the bill of sale and transfer of title documents, the need for a notary is rendered superfluous. However, this argument, and his reliance on *Franklin*, is misplaced.

To be sure, *Franklin* held that the seller had successfully transferred ownership even though *all* the formal requirements of KRS 186A.215 were not met. *Franklin*, 290 S.W.3d at 73-74. However, the facts in *Franklin* and the case at bar are markedly different. Most importantly, in *Franklin* the documents were notarized and otherwise completed; the only formal requirement left for the parties was to file the title documents with the county clerk. Here, Gormley and Barker had signed the document and filled out the odometer statement. However, that was

it. In his deposition, Gormley admitted that on the day of the sale the transfer of title document was not notarized, the consideration for sale was not completed on the title document, and the effective date of sale was not completed. He further admitted that the title document needed to be notarized and was aware that the document was incomplete if it did not include a notary certificate as well as listing the date of sale and consideration paid. *Nantz*, and its progeny, mandate that the seller deliver a *completed* transfer of title document to transfer ownership. By his own admission, Gormley is aware that the title documents were not completed on the day of the accident. The presence of the Bill of Sale makes no difference to our analysis. Even assuming *arguendo* that the Bill of Sale could substitute for the consideration of sale and date of sale on the title document, it cannot take the place of the notary signature. This argument fails, and Gormley did not effectively transfer ownership in the automobile until after the accident because he failed to deliver *completed* transfer of title documents on the day of the sale.

Although this result may seem harsh in light of Barker's possession of the vehicle when the accident occurred following an arms-length transaction between individuals, this decision comports with the legislature's intent in mandating a certificate of title. Kentucky is no longer an equitable title state. The reason for certificates of title in this context is to ensure that uninsured motorists

do not drive any vehicles on the highways of the Commonwealth. This result adheres to that sound public policy.

Accordingly, the judgment of the Fayette Circuit Court is reversed. This matter is remanded for entry of judgment in favor of Houston in accordance with this opinion and for further proceedings as necessary.

ALL CONCUR.

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