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ISSUANCE OF CERTIFICATE OF TITLE TO PURCHASER—
ESTABLISHES OWNERSHIP CONCLUSIVELY FOR PUR-
POSES OF SAFETY RESPONSIBILITY ACT. §§4509.01 (D),
4505.06, R.C.

SYLLABUS:

1. Where a motor vehicle is purchased from an automobile dealer, the purchaser does not become the "owner" of said motor vehicle within the purview of Section 4509.01(D), Revised Code, until a certificate of title is issued in the name of said purchaser; and in case of an accident involving said motor vehicle occurring before such issuance of certificate of title, such automobile dealer seller is the "owner" of said motor vehicle within the purview of Chapter 4509., Revised Code.

2. Where a motor vehicle is purchased from an owner who is not an automobile dealer, the purchaser becomes the owner of said motor vehicle within the purview of Section 4509.01(D), Revised Code, immediately upon the assignment and delivery to such purchaser of the seller's certificate of title to said motor vehicle; and in case of an accident involving said motor vehicle occurring after such assignment and delivery, such purchaser is the owner of said motor vehicle within the purview of Chapter 4509., Revised Code, regardless of whether such purchaser has obtained a new certificate of title in his own name within the three day period stipulated in Section 4505.06, Revised Code.

Columbus, Ohio, July 14, 1959

Hon. C. W. Ayers, Registrar
Bureau of Motor Vehicles
Columbus 16, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"The safety responsibility law provides that if there has been a conviction for a violation of a provision of this law, the operator of the motor vehicle is subject to the law. However, if the operator is not the owner of the motor vehicle and cannot comply, then under this law the owner of the motor vehicle is subject to such provisions.

"Under the recent Brewer vs. DeCant decision, 167 Ohio State 411, it was held that title in a motor vehicle has not passed until a certificate of title is issued.

"Prior to this decision the Workman and Sayles vs. Republic Mutual Insurance Company decision, 144 Ohio State 237, was

the basis as the deciding factor when title in a motor vehicle had passed.

“When a change in ownership is now consummated, the interpretation of the findings made in the Brewer case requires the seller of a motor vehicle to see that the purchaser obtains a certificate of title in his name within the three day period stipulated in the certificate of title law.

“If the purchaser does not obtain a certificate of title in his name within the three day period and later is involved in an accident, is the previous owner (seller) subject to the provisions under the safety responsibility law?

“Your opinion is respectfully requested.”

The three day period mentioned in your letter is a requirement specifically established in Section 4505.06, Revised Code, which reads in part as follows:

“In all cases of transfers of motor vehicles, the application for certificates of title shall be filed within three days after the delivery of such motor vehicle.”

Sections 4505.18(A) and 4505.19(F), Revised Code, respectively, provide as follows:

“4505.18. No person shall:

“(A) Operate in this state a motor vehicle for which a certificate of title is required without having such certificate in accordance with sections 4505.01 to 4505.19, inclusive, of the Revised Code, or upon which the certificate of title has been canceled; * * *”

“4509.19. No person shall:

* * *

“(F) Purport to sell or transfer a motor vehicle without delivering to the purchaser or transferee thereof a certificate of title, or a manufacturer’s or importer’s certificate thereto, assigned to such purchaser as provided for in such sections.”

The penalties for violation of these sections are provided in Section 4505.99, Revised Code, as follows:

“(A) Whoever violates section 4505.18 of the Revised Code shall be fined not more than two hundred dollars or imprisoned not more than ninety days, or both.

“(B) Whoever violates section 4505.19 of the Revised Code shall be fined not more than five thousand dollars or imprisoned in the county jail or workhouse not less than six months nor more than one year or in the penitentiary not less than one nor more than five years, or both.”

In this manner Chapter 4505., Revised Code, which is the Certificate of Title Law of the State of Ohio, contains both the requirement of acquiring or delivering a certificate of title within three days after delivery of a motor vehicle and also the penalties for the violation of these sections by either the purchaser or seller of a motor vehicle. There is nothing, however, in Chapter 4505., Revised Code, to indicate that a violation of this three day requirement in and of itself will have any effect upon a violator other than to make him subject to said penalties. In other words, even though a purchaser violates Section 4505.18(A), Revised Code, by operating a motor vehicle without a certificate of title in his own name until the fourth day after accepting delivery of a motor vehicle and said purchaser thereby becomes subject to the penalty contained in Section 4505.99(A), Revised Code, he would thereafter, upon acquiring said certificate, become and remain the holder of legal title of said motor vehicle.

Thus, I believe that it is immaterial so far as the Financial Responsibility Law is concerned whether or not a certificate of title is obtained by a purchaser within the three day period specified in Section 4505.06, Revised Code.

In addition, since there is no provision in Sections 4509.01 to 4509.78, inclusive, for subjecting a previous owner (seller) to any provision of the Safety Responsibility Law of the State of Ohio, it is my opinion that your question should be answered as follows:

The previous owner (seller) of a motor vehicle is not subject to any provision of the Safety Responsibility Law of the State of Ohio, Sections 4509.01 to 4509.78, Revised Code, inclusive, regardless of whether or not the new owner obtained a certificate of title in his name within the three day period.

In view of the language contained in the decision of *Brewer v. DeCant*, 167 Ohio St., 411, however, the problem of determining who is the owner of a motor vehicle at the time of an accident will arise whenever said accident occurs subsequent to an attempt to change to ownership of an automobile but prior to the consummation of the change in ownership by the

issuance of a certificate of title in the name of the purchaser, regardless of whether or not said consummation is effected within the three day period. For this reason, I therefore feel that the following question should be answered:

If a purchaser of a motor vehicle does not obtain a certificate of title in his name prior to the involvement of said motor vehicle in an accident, who is the owner of said motor vehicle at the time of said accident within the meaning of the term "Owner" as defined in Section 4509.01(D), Revised Code?

Section 4509.01(D), Revised Code, defines the term "owner" as follows:

"(D) 'Owner' means a person who holds the legal title of a motor vehicle. If a motor vehicle is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the vendee or lessee is the owner. If a mortgagor of a motor vehicle is entitled to possession, the mortgagor is the owner."

It is therefore clear that a person becomes an "owner" as the term is above defined providing he either:

1. Holds the legal title, or
2. Is a conditional vendee or lessee with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or
3. Is a mortgagor entitled to possession.

For the purpose of answering your question, however, it is necessary to consider these conditional sale and mortgage transactions as we are concerned only with the problem of when a purchaser becomes a holder of the legal title.

The recent case of *Brewer v. DeCant*, 167 Ohio St., 411, to which you refer, states in the second and third paragraphs of the syllabus that:

- "2. Under the Ohio Certificate of Title Act, a change in ownership of an automobile is not consummated until a certificate of title is issued in the name of the purchaser.

“3. Where a purchaser contracts to buy an automobile and *takes possession thereof from an automobile dealer* and uses the automobile, such use is a use with the permission of the dealer until such time as a certificate of title thereto is issued to the purchaser.”

(Emphasis added)

Also on page 415, the court states :

“The line between ownership and nonownership of an automobile must be finely drawn. This court in its most recent decisions, in interpreting Section 4505.04, Revised Code, has drawn that line at the issuance of a certificate of title. Until such time as a certificate of title is issued to a purchaser, no title to the automobile passes to him.”

While on first impression it might appear that in no case will a title pass to a purchaser until such time as a certificate of title is issued to the purchaser in his name, it is my opinion that this does not necessarily follow from the decision in the Brewer case, *supra*. On the contrary, I believe that the decision is applicable only where the purchase is made from a dealer, and that when a purchase is made from an owner other than a dealer the title passes to the purchaser when there is delivered to him a certificate of title with an assignment thereon executed by the seller.

This interpretation, restricting the effect of the second paragraph of the syllabus of the case of *Brewer v. DeCant*, 167 Ohio St., 411, to these situations involving a purchase of a motor vehicle from a dealer by a general purchaser or user, is based upon the following reasons :

1. There is a substantial distinction between a transaction involving a purchase from a dealer by a general purchaser or user and all other cases because the responsibility of securing a certificate of title is separately established for each type of transaction. In this regard, the second paragraph of Section 4505.06, Revised Code, reads in part :

*“In the case of the sale of a motor vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application being signed by the purchaser. In all other cases such certificates shall be obtained by the purchaser. * * *”* (Emphasis added).

2. The case of *Brewer v. DeCant*, 167 Ohio St., 411, involved a question in ownership between a dealer and a general purchaser, and the law of that case as stated in the second paragraph of the syllabus as above

quoted should not be applied to factually distinct situations without reason. Indeed, it is apparent that the court had no intention to do so for on page 414, it states as follows :

“The third paragraph of the syllabus of the *Garlich case* which recites a situation almost identical with that recited in the above-quoted paragraph from the *Workman case*, reads as follows :

“Where an automobile is sold by the owner, with full payment of the agreed price and delivery of possession to the purchaser thereof but the assignment and delivery of the certificate of title are deferred, a change in the ownership of the automobile is not consummated in accordance with the provisions of the Ohio Certificate of Title Act and coverage of such automobile by an insurance policy issued to the owner thereof continues in force until the consummation of the sale by assignment and delivery of the certificate of title.”

Since the decision of the case of *Garlich v. McFarland*, 159 Ohio St., 539, which involved a dispute of ownership between a general purchaser and a seller who was not a dealer, was cited with approval as being one of the more recent decisions of the Supreme Court, it is most persuasive to note the following language of the court in said case on page 549 :

“These cases clearly and firmly establish the rule in Ohio that where endorsement and delivery of a certificate of title for an automobile are made, title passes even though there is a failure on the part of the recipient to secure the issuance of a new certificate in his name. It follows that where an owner fails to comply with the certificate of Title Act by not assigning and delivering his certificate of title to the purchaser, title does not pass. * * *”

It thus become apparent that the court in the case of *Brewer v. Decant*, 167 Ohio St., 411, was merely overruling those previous decisions in cases concerning disputes of ownership between dealers and general purchasers such as in *Workman and Sayles v. Republic Mutual Insurance Company*, 144 Ohio St., 37, wherein on page 48 it was stated :

“Without deciding whether the legal title had passed, actual ownership with complete possession and control had certainly passed to Mrs. Rhodes, and if legal title had not been transferred as agreed, her right to a certificate of title was enforceable. *Automobile Finance Co. v. Munday*, 137 Ohio St., 504, 30 N. E. (2d), 1002.”

3. The statutes clearly provide that the possession of a certificate of title properly assigned is evidence of ownership. First, Section 4505.03, Revised Code, provides in part:

“No person, except as provided in Section 4505.05 of the Revised Code, shall sell or otherwise dispose of a motor vehicle without delivering to the purchaser or transferee thereof, a certificate of title *with such assignment thereon as is necessary to show title in the purchaser; * * **” (Emphasis added).

Second, the form of assignment provided in Section 4505.07, Revised Code, unequivocally states that all right, title and interest is thereby assigned to the assignee.

Also, the two forms of application provided in Section 4505.07, Revised Code, both require the applicant to swear that he is the lawful owner or purchaser.

Third, Section 4505.04, Revised Code, reads in part as follows:

“No person acquiring a motor vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to said motor vehicle until such person has had issued to him a certificate of title to said motor vehicle, or delivered to him a manufacturer’s or importer’s certificate for it; *nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title, or manufacturer’s or importer’s certificate for said motor vehicle, for a valuable consideration.*” (Emphasis added).

It therefore clearly appears that once a purchaser of a motor vehicle receives possession of a certificate of title duly assigned by the former owner thereof, he is as a matter of fact the holder of the legal title of said motor vehicle. Although this fact of ownership may not be provable in a court of law or equity until such time as a certificate is issued in the name of the purchaser (see Section 4505.04, Revised Code, *Mielke v Leeberson*, 150 Ohio St., 528) this does not alter the fact of his ownership as distinguished from admissible proof of the fact.

4. A contrary conclusion to the effect that ownership does not pass until such time as a certificate is issued in the name of the purchaser would in the case of sales by parties other than dealers result in a dangerous and absurd situation for the seller wherein he would be faced with the burden of the various liabilities accompanying ownership of a motor vehicle for

some unknown period of time until the purchaser saw fit to file application with the clerk of courts. Furthermore, this situation would be completely beyond his control because there is no statutory permission or authority to permit him to obtain the certificate, but to the contrary, Section 4505.06, Revised Code, specifically provides that in all cases other than a sale by a *dealer* to a general purchaser or user, the certificates of title shall be obtained by the purchaser.

At the same time, limiting the applicability of the decision in *Brewer v. DeCant*, 167 Ohio St., 411, to cases involving sales by dealers eliminates the undue hardship upon other sellers and imposes no burden upon the dealers for the reason that they have full control over the issuance of the certificate of title to a purchaser by virtue of the statutory duty placed upon them to obtain the certificate of title.

It is evident that the court in *Brewer v. DeCant*, 167 Ohio St., 411, recognized the importance of the element of control for on page 415 the opinion reads in part as follows:

“It is conceded that a certificate of title to the automobile involved herein had not been issued to DeCant. The automobile remained in the custody and control of Gingrich, and *until such time as it saw fit to have a certificate issued to DeCant*, the automobile was being used by DeCant with its permission.” (Emphasis added).

Accordingly, it is my opinion and you are advised:

1. Where a motor vehicle is purchased from an automobile dealer, the purchaser does not become the “owner” of said motor vehicle within the purview of Section 4509.01(D), Revised Code, until a certificate of title is issued in the name of said purchaser; and in case of an accident involving said motor vehicle occurring before such issuance of certificate of title, such automobile dealer seller is the “owner” of said motor vehicle within the purview of Chapter 4509., Revised Code.

2. Where a motor vehicle is purchased from an owner who is not an automobile dealer, the purchaser becomes the owner of said motor vehicle within the purview of Section 4509.01(D), Revised Code, immediately upon the assignment and delivery to such purchaser of the seller’s certificate of title to said motor vehicle; and in case of an accident involving said motor vehicle occurring after such assignment and delivery, such purchaser is the owner of said motor vehicle within the purview of

Chapter 4509., Revised Code, regardless of whether such purchaser has obtained a new certificate of title in his own name within the three day period stipulated in Section 4505.06, Revised Code.

Respectfully,

MARK McELROY

Attorney General
