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CLERK OF COURTS—SECTION 4505.10 R. C.—DUTY TO ISSUE CERTIFICATE OF TITLE—PROOF OF JUDICIAL SALE—MOTOR VEHICLE—IF LIEN APPEARS ON RECORDS, CERTIFICATE MUST CONTAIN STATEMENT OF LIEN.

SYLLABUS:

Under the provisions of Section 4505.10, Revised Code, it is the duty of the clerk of courts, upon satisfactory proof that a motor vehicle has been sold at a judicial sale, to issue a certificate of title to the purchaser at such sale, but if from the clerk's records there appears to be any lien on such motor vehicle, the certificate of title so issued must contain a statement of such lien.

Columbus, Ohio, November 28, 1956

Hon. William Ammer, Prosecuting Attorney
Pickaway County, Circleville, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

"This is to request your opinion on the following set of facts relative to a situation which has been raised in this county.

"A judgment was taken in the Common Pleas Court of Hocking County, Ohio, and a certificate of judgment was sent to the Pickaway County Common Pleas Court and filed in the judgment docket and thereafter on August 30, 1956, execution was issued on the certificate of judgment in the Clerk of Courts Office of this county and on August 31, 1956, levy was made by the Sheriff on an automobile of the defendant and the car was taken into possession by the Sheriff.

"On September 1, 1956, a local automobile dealer filed a chattel mortgage in the Clerk of Courts Office against this automobile and subsequently on September 24, 1956, after the proper procedure had been followed, the car was sold at public auction with no one knowing that the chattel mortgage had been filed on September 1, 1956.

"The purchaser of the car at public sale now desires a clear title to the automobile; however, the Clerk of Courts here upon instruction from the Bureau of Motor Vehicles in Columbus has refused to issue a clear title to the car, stating they can only issue

a title with the mortgage which was recorded after levy was made noted thereon, and the original title given to the mortgagee as provided for by the motor vehicle certificate of title law. They base their opinion that this is necessary in the issuance of this title under the provision of Section 4505.13, Revised Code of Ohio.

“The feature in this particular set of circumstances is that the chattel mortgage against the automobile was not filed until after execution had been made on the car and the car taken into possession by the Sheriff, whereas the situation contemplated by Section 4505.13, Revised Code, is that the mortgage is on file and of record at the time any execution may have been made.

“Although the registration of motor vehicles is under special act of Legislature, the matter of priority of liens in general must be considered on this situation as the certificate of judgment and execution both were on file and levy made prior to the time of the filing of the chattel mortgage on the automobile.

“In view of the fact this matter is of statewide importance, I would appreciate your opinion on the matter of whether or not a chattel mortgage recorded on a certificate of title after an execution and levy on an automobile had been made has priority over the prior judgment and execution on said motor vehicle.”

The specific question which you present, viz. the rights of a purchaser of a motor vehicle at a sheriff's sale as against a chattel mortgage on such vehicle presented to the clerk of courts after such sale, is a question which the two parties to such transaction will have to settle for themselves; I do not consider that it is involved in the determination of the legal duties of the clerk or that it is within my province to express an opinion as to their respective rights. Accordingly, I will only touch on that question in so far as necessary in determining the duties imposed by law on the clerk.

Section 4505.13 Revised Code, to which you refer is a part of Chapter 4505, which is entitled “Certificate of Title Law.” The chapter comprises Sections 4505.01 to 4505.99, inclusive, Revised Code.

Section 4505.06 Revised Code, provides for the issuance by the clerk of courts of a certificate of title to an applicant upon presentation of specified evidence of his title to a motor vehicle. Section 4505.08 provides that the certificate shall be issued in triplicate, one copy being retained in the clerk's office, one copy being forwarded forthwith to the registrar of motor vehicles; and then it is provided in the statute:

“* * *

“The clerk shall sign and affix his seal to the original certificate of title and, if there are no liens on said motor vehicle, shall deliver said certificate to the applicant. If there are one or more liens on said motor vehicle, said certificate of title shall be delivered to the holder of the first lien.”

“* * * .

Section 4505.10 Revised Code, provides in part as follows :

“In the event of the transfer of ownership of a motor vehicle by operation of law, as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, or execution sale, * * * the clerk of the court of common pleas of the county in which the last certificate of title to said motor vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer’s or importer’s certificate, or, when that is not possible, upon presentation of satisfactory proof to the clerk of ownership and right of possession to such motor vehicle, and upon payment of the fee prescribed in section 4505.09 of the Revised Code, and presentation of an application for certificate of title, may issue to the applicant a certificate of title to such motor vehicle. Only an affidavit by the person or agent of the person to whom possession of such motor vehicle has passed, setting forth the facts entitling him to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, is satisfactory proof of ownership and right of possession. If the applicant cannot produce such proof of ownership, he may apply directly to the registrar of motor vehicles and submit such evidence as such applicant has, and the registrar may thereupon, if he finds the evidence sufficient, authorize the clerk to issue a certificate of title. *If, from the records in the office of said clerk, there appears to be any lien on said motor vehicle, such certificate of title shall contain a statement of said lien unless such application is accompanied by proper evidence of its extinction.*” (Emphasis added.)

This section would appear to apply to the situation which you present, and it points out the duty of the clerk as to the issuance of a new certificate to a purchaser at a judicial sale. But the sentence italicized would appear to relieve the clerk from the responsibility of deciding on the comparative priority of the purchaser’s title and the lien of a mortgage which remains uncanceled on the clerk’s records. As I have stated at the outset of this opinion, that is a matter which the parties interested will have to settle between themselves. If the holder of that lien declines to cancel it, that is

evidence of a controversy which the clerk certainly cannot be called upon to decide.

Section 4505.13 Revised Code, to which your letter refers, has reference to the procedure by which a lien holder on a motor vehicle may have his lien perfected, and also the procedure for the cancellation of such lien; but that section does not appear to have any bearing on the subject of your inquiry, and contains no provision relative to the issuance by the clerk of a new certificate to a purchaser at a judicial sale.

In specific answer to your inquiry, it is my opinion that under the provision of Section 4505.10 Revised Code, it is the duty of the clerk of courts, upon satisfactory proof that a motor vehicle has been sold at a judicial sale, to issue a certificate of title to the purchaser at such sale, but if from the clerk's records there appears to be any lien on such motor vehicle, the certificate of title so issued must contain a statement of such lien.

Respectfully,
C. WILLIAM O'NEILL
Attorney General