

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN REM:

2001 DODGE RAM PICKUP TRUCK; VIN NO.: 3B7HC13Y11G207964
DOCKET NO.: 10-01,193

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IN REM:

1998 DODGE SEDAN; VIN NO.: 1B3EJ46X3WN338147
DOCKET NO.: 10-01,497

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IN REM:

1998 DODGE STRATUS SEDAN; VIN NO.: 1B3ET46X9WN341814
DOCKET NO.: 10-01,498

OPINION AND ORDER

These three matters come before the Court on an en banc review. They were originally brought before the Court on Petitions for Involuntary Transfer of Title. Petitioners are business owners in Lycoming County who provide maintenance and repair services to motor vehicles. At the request of the individual owners of the above-referenced vehicles, Petitioners performed services/repairs. Subsequently, Petitioners have continued to store the vehicles.

Despite requests for payment for the services, repairs and storage costs, the owners of the vehicles have failed to pay such. Furthermore, the owners of the vehicles have failed to attempt to retrieve the vehicles.

By Orders of the Honorable Dudley N. Anderson, respectively dated September 15, 2010 and October 1, 2010, the Petitions for Involuntary Transfer of Title were denied. The Court concluded that there was no authority for the relief requested and that transferring title based on the statutorily created lien would violate due process.

Following the denial of Petitioners' Motion for Reconsideration, Petitioners filed a Petition for En Banc Review. By Order of Court dated October 20, 2010, the En Banc Review was granted and an argument was held before the Court on November 17, 2010. It is apparent to the Court en banc that decisions in similar cases may be in conflict with the Orders in these cases thus justifying en banc review and clarification for the litigants and bar.

The issue before the Court is clear: What title transfer procedure is available to a repairman in order to recover legitimately owed charges? While the Court is sympathetic to the repairman and is willing to interpret the applicable statutes in order to effectuate their remedial purposes, the Court cannot condone the transfer of a motor vehicle without the minimal safeguards of due process being followed.

Pennsylvania law permits a repairman who has obtained a common law lien for labor and material to give notice to the owner of the amount of indebtedness and if the indebtedness is not paid within thirty (30) days, to proceed to sell the property. 6 P.S. § 11 et. seq. With respect to motor vehicles, ownership may not pass without a valid certificate of title being obtained. 75 Pa. C.S.A. § 201 (a). Penn DOT will not, however, issue a title to a repairman without an Order of Court. Indeed, Penn DOT has established a specific procedure wherein the ownership of a motor vehicle may be involuntarily transferred by a Court Order.

While the statutory authority for such involuntary transfer by Court Order is not explicit, it appears that such is permitted pursuant to the Vehicle Code and in particular 75 Pa. C.S.A. §1114. Pennsylvania common law even permits a repairman to retain possession of the vehicle until the payment is made. Wilson v. Malenock, 128 Pa. Super.

544, 194 A. 508 (1937). Nonetheless, while the law makes a remedy available to a repairman, such remedy should not be accomplished without adherence to the basic requirements of due process.

When a repairman petitions the Court for an involuntary transfer notice must be afforded to the property owner. This notice requirement should be satisfied by more than perfunctory efforts to locate the owner. Before a person's ownership rights are affected by judicial proceedings, due process requires that he be given notice and a chance to be heard. Hess v. Pawloski, 274 U.S. 352 (1927).

In deciding what constitutional balance to reach, and being mindful that Pennsylvania law has provided an ostensibly easy means for transferring title, the repairman must either effectuate actual service of the Petition and hearing notice on the owner, or obtain a pre-hearing Court Order authorizing service via alternate means. See Pa. R.C.P. 430. While the Court acknowledges that efforts were made in these cases to serve the vehicle owners, at the very minimum a Court Order must be obtained authorizing service by either publication and/or posting of the vehicle.

ORDER AND NOTICE OF HEARING

AND NOW, this ____ day of _____ 2010 following argument on Petitioners' Petition for En Banc Review, Petitioners' Motion for Reconsideration of the Court's prior Orders is **GRANTED**. The prior Orders denying the Petitions are VACATED. A hearing on the Petitions is set for the 2nd day of February, 2011 in Courtroom No. 5 of the Lycoming County Courthouse, Judge Marc F. Lovecchio presiding. Respondent vehicle

owners shall be served with a copy of the original Petition, this Order and Notice of Hearing as provided by the Pennsylvania Rules of Civil Procedure and more specifically either personally or through alternate service if approved by the Court following the filing of an appropriate Petition.

By The Court,

Nancy L. Butts, President Judge

Richard A. Gray, Judge

Dudley N. Anderson, Judge

Joy Reynolds McCoy, Judge

Marc F. Lovecchio, Judge

cc: Jeffrey Yates, Esquire
CST
Gary Weber, Esquire (Lycoming Reporter)

Work File