IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTOPHER J. WARE,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	C.A. No. SN09A-07-004 CLS
EWING'S TOWING SERVICE, INC.,	)	
	)	
	)	
Appellee.	)	

Date Submitted: October 12, 2011
Date Decided: October 19, 2011

On Appeal from the Court of Common Pleas. **AFFIRMED.**

ORDER

Christopher J. Ware, 806 N. West Street, Apt. C, Wilmington, DE 19801. *Pro Se* Appellant.

Mark D. Sisk, Esq., 220 Continental Drive, Suite 215, Newark, DE 19713. Attorney for Appellee.

Scott, J.

Introduction

Before the Court is an appeal from the Court of Common Pleas denying Appellant's claim to either possession of his vehicle or the alleged total value of the vehicle in the amount of $3,500. The Court has reviewed the Appellant's submission and the record below. For the reasons that follow, the appeal is **AFFIRMED.**

Background

On October 25, 2004, Persimmon Creek Corporation contacted Ewing's Towing Service, Inc. ("Appellee") to tow a 1995 Mitsubishi Eclipse (the "vehicle") without tags. Once the vehicle was towed to a storage lot, Appellee contacted the Cecil County Sheriff to inform it the vehicle had been towed and provided the vehicle identification number in case it was reported stolen. After contacting the Cecil County Sheriff, Appellee contacted the Delaware Division of Motor Vehicles ("DMV") to obtain a title search. The title search revealed that the vehicle belonged to Christopher J. Ware ("Appellant"). Appellee then contacted Appellant using the address obtained through the DMV. On April 13, 2005, Appellant sent a letter to Appellee indicating his intent to reclaim the vehicle but never appeared. After the letter, Appellee never had any additional contact with Appellant.

On February 14, 2006, the vehicle was sold through a lienholder's sale. The notice sent to Appellant regarding the sale went to his address on record with the

DMV. Appellant filed this appeal alleging notice was improper because he moved and notified Appellee of his new address. Appellee contends, in order to sell the vehicle through a lienholder's sale, it was required to send notice to the address on record with the DMV. The Justice of the Peace Court would not accept any other address. Based on the record, it does not appear as though Appellant ever notified the DMV of his new address. In its opinion, the Court of Common Pleas notes the April 13, 2005 letter indicates Appellant relocated and his new address is listed on the outside envelope. While the letter was introduced into evidence as Joint Exhibit 2, the envelope was not introduced. As the court notes, the new address is not listed within the body of the letter.[1]

Appellee conducted the sale of the vehicle approximately two weeks after the Justice of the Peace Court granted it title. The sale of the vehicle was to satisfy a towing lien of approximately $125 and storage fees of approximately $3,000. The vehicle was sold for about $800. At trial, the Appellant did not introduce any damages; only the Appellee introduced the costs of towing and storage.

Parties' Contentions

Appellant alleges notice was insufficient violating the Due Process clauses of the Delaware and federal constitutions, removal of the vehicle was improper, and the storage fees were excessive. The only issue before the Court of Common

[1] *Ware v. Ewing's Towing Service, Inc.*, 2009 WL 2778654, *9 (Del. Com. Pl. June 24, 2009).

Pleas was whether notice of the lienholder sale was proper, so it is the only argument that will be addressed on appeal. Even if the other arguments had been raised at trial, the Court finds they are without merit.[2]

Standard of Review

A civil appeal from the Court of Common Pleas is on the record and not *de novo*.[3] The Court will review the record for errors of law and determine whether the decision is based on substantial evidence.[4] Substantial evidence is evidence a reasonable mind consider adequate to support the conclusion.[5] The Court will not determine the credibility of the witnesses, make factual findings, or weigh

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[2] Appellant argues removal of his vehicle was improper because it was not conducted by the police in Cecil County, Maryland and further, Maryland law, and not Delaware law, should apply. Even if this issue had been raised at trial, the contention is without merit. Maryland law prohibits a person from abandoning a vehicle on private property, such as Persimmon Creek Development. Md. Code Ann., Transp. § 25-202 (West). Additionally, Cecil County Code § 262-23 states:

> It shall be unlawful for any person to park, store or leave or to permit the parking, storing or leaving of any motor vehicle or part thereof which is in a wrecked, junked, partially dismantled, inoperative or abandoned condition, whether or not attended, upon any private property or any public property in the county.

Therefore, Persimmon Creek was permitted to call Ewing's Towing Service, Inc. to remove the abandoned vehicle from the property.

Appellant also asserts for the first time that the storage fees charged by Appellee, approximately $3,000, were excessive, by law. However, he does not cite any case law or statute setting a maximum limit for storage fees. Further, after Appellee received the letter from Appellant dated April 13, 2005, expressing his intent to reclaim the vehicle, Appellee held onto the vehicle for almost one year before selling it. Since the vehicle was in Appellee's possession for approximately eighteen months, including ten months after receiving Appellant's letter, Appellant is responsible for those additional storage fees because his letter prevented Appellee from selling the vehicle at an earlier time.

[3] 10 *Del. C.* § 1326; *See also* Super. Ct. Civ. R. 72.

[4] *Burris v. Beneficial Delaware, Inc.*, 2011 WL 2420423, *1 (Del. Super. Ct. June 9, 2011) (citations omitted).

[5] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (citation omitted).

evidence.[6] Since the appeal is on the record, the Court will only consider issues that were raised at trial.[7] The only issue raised at trial was whether notice of the lienholder sale was proper.

Discussion

I. The Court of Common Pleas Did Not Commit An Error of Law When It Found Appellant Received Proper Notice of the Lienholder's Sale.

The Court of Common Pleas did not err when it found notice of the lienholder's sale was proper. As a towing company in possession of the vehicle, it was entitled to place a lien against it.[8] Appellee was then entitled to sell the property once a judgment was entered in its favor, pursuant to 25 *Del. C.* § 3903. Appellant contends notice of the sale under 25 *Del. C.* § 3905 was not satisfied because Appellee was aware of his new address. However, under 25 *Del. C.* § 3906, notice of the sale to satisfy a lienholder "shall be given to the registered owners and known lienholders at their addresses of record *with the Division of Motor Vehicles* or similar agency."[9] Appellee complied with the statute when it

[6] *Burris*, 2011 WL 2420423, at *1.
[7] *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1255 (Del. 2011).
[8] 25 *Del. C.* § 3901 states in relevant part: "Any . . . person who keeps . . . [an] establishment and . . . has the custody or care of any . . . motor vehicle . . . or stores, safekeeps, or tows any . . . motor vehicle . . . shall have a lien upon such . . . motor vehicle . . . and the right to detain the same to secure the payment of such price or reward."
[9] Emphasis added.

mailed notice to the Appellant's address on record with the DMV.[10] Therefore, the Court of Common Pleas did not err in finding notice was proper in this instance.

II. The Decision of the Court of Common Pleas is Based on Substantial Evidence.

The decision of the Court of Common Pleas that notice was proper is supported by substantial evidence in the record. At no point during the trial did Appellant state he notified the DMV of his new address, only that he sent a letter to Appellee on April 13, 2005, with his new address. Appellee correctly states the Justice of the Peace Court would not allow notice to be sent to an address other than the one listed in DMV records. As previously stated, notice of a lienholder's sale "shall" only be sent to the address on record with the DMV. Since it is undisputed that the Appellee sent notice to the address on record with the DMV, there is substantial evidence in the record to support the decision of the Court of Common Pleas finding notice was proper.

Conclusion

Based on the forgoing, the decision of the Court of Common Pleas is **AFFIRMED.**

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

[10] Appellant was required to keep the vehicle registered pursuant to 21 *Del. C.* § 2115 and the address up-to-date pursuant to 21 *Del. C.* § 2104.