STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM KNAPP,

Plaintiff-Appellee,

v

DOUGLAS A. KLAHN, individually and as Personal Representative of the Estate of FREDERICK KLAHN,

Defendant-Appellant.

UNPUBLISHED
August 22, 2000

No. 217179
Ionia Circuit Court
LC No. 97-018517-PD

Before: McDonald, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from a court order granting to plaintiff possession and clear title to a truck and trailer in a suit for claim and delivery. Defendant had removed the vehicles from plaintiff's possession, alleging that they belonged to his father's estate. We affirm.

Plaintiff had been in possession of the vehicles for several years before this dispute arose. Frederick Klahn, who owned them, signed and mailed the vehicles' certificates of title to plaintiff, who ran a trucking business. Defendant asserts that his father, Frederick Klahn, never effectively transferred titles to the vehicles because he did not follow the steps required by the Motor Vehicle Code, and that the law requires strict compliance with the statute or the transfer is void. Defendant does not dispute that plaintiff had both the vehicles and their certificates of title at the time defendant took the vehicles. We review questions of law de novo. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The trial court's findings of fact are reviewed for clear error. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000), lv pending.

Plaintiff had possession and use of the vehicles for several years under a lease agreement with Klahn. Klahn did not write anything about liens on the certificates when he signed over the titles, although there was notice of a lien printed on the certificates. The lien on the vehicles was held by Klahn's bank, which had security interests in the vehicles as part of a blanket loan which was used to finance Klahn's farm operations and was secured by many different pieces of farm equipment. Klahn

did not clear the lien from the titles before he signed them over to plaintiff, and he died soon afterward. Plaintiff attempted to complete the registration in his own name, but was unable because of the outstanding lien. Neither the creditor bank nor defendant would give him information about how to pay off or clear the lien. In addition, defendant told the Secretary of State's office that he had lost the titles and got new ones issued in the name of the farm and himself.

The title transfer section of the Motor Vehicle Code describes a valid title transfer as one in which

> [t]he owner shall indorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title. [MCL 257.233(8); MSA 9.1933(8).]

The statute requires that the certificates of title be signed and delivered to the transferee. The certificates must show any outstanding liens, and if there are liens which have been satisfied. The vehicles themselves must also be delivered to the transferee. Once this is accomplished, the statutory requirements are met. Defendant notes that case law extending back some seventy years states that failure to comply strictly with the statutory requirements results in a void transfer. *Endres v Mara-Rickenbacker*, 243 Mich 5, 9; 219 NW 719 (1928); *Drettmann v Marchand*, 337 Mich 1, 6; 59 NW2d 56 (1953); *Bayer v Jackson Bank & Trust*, 335 Mich 99, 105; 55 NW2d 746 (1952); *Michigan Mut Auto Ins Co v Reddig*, 129 Mich App 631, 635; 341 NW2d 847 (1983); *Messer v Averill*, 28 Mich App 62, 66; 183 NW2d 802 (1970); *Waldron v Drury's Van Lines, Inc*, 1 Mich App 601, 608; 137 NW2d 743 (1965). However, in each of the cases there was no delivery of the certificate of title, and the rule that can be drawn from these cases is that the transferee must receive delivery of both the vehicles and valid certificates of title in order for the transfer to be valid. These cases, cited by defendant, therefore do not apply to the facts here because delivery of both the vehicles and the certificates of title had occurred.

Klahn signed and delivered the certificates. The lien was printed on the certificates, and its satisfaction was not shown. Plaintiff had possession of the vehicles. The only reason he could not complete the transaction according to the statute was defendant's withholding information about the lien. Under these circumstances, the trial court did not err in finding that Klahn's attempt to transfer the titles did not follow the letter of the statute, but was sufficiently in compliance to be effective.

The trial court also found that the facts supported plaintiff's receiving titles clear of the lien. The evidence showed that the lien did not finance the purchase of the vehicles but provided capital for defendant's farm operations. The lien was secured by other farm equipment as well as the vehicles. The creditor was not a party to the suit, and its interest was not substantially affected by the disposition of the two vehicles. The loan was not delinquent. The trial court properly held that because of these

facts, the farm, which had received the benefit of the loan, should retain liability for the payment and security of the loan. We find no error in the trial court's conclusion that plaintiff should receive the vehicles free of the lien.

Finally, defendant attempts to argue that this is a contract case, and that the trial court erroneously applied the equitable remedy of specific performance – delivery of the vehicles – rather than money damages. However, plaintiff brought the case as a claim and delivery action, for which the statute specifically provides recovery of the disputed property. MCL 600.2920(1); MSA 27A.2920(1) states:

> A civil action may be brought to recover possession of any goods or chattels which have been unlawfully taken or unlawfully detained and to recover damages sustained by the unlawful taking or unlawful detention, subject to the following conditions:
>
> (a) An action may not be maintained under this section to recover possession of or damages for goods or chattels taken by virtue of a warrant for the collection of a tax, assessment, or fine in pursuance of a statute of this state.
>
> (b) An action may not be maintained under this section to recover possession of or damages for goods or chattels seized by virtue of an execution or attachment at the suit of the defendant in the execution or attachment unless the goods or chattels are exempted by law from execution or attachment.
>
> (c) An action may not be maintained under this section by a person who, at the time the action is commenced, does not have a right to possession of the goods or chattels taken or detained.
>
> (d) A writ, order, or process for delivery of goods or chattels before judgment may not be issued unless the court, after notice and a hearing and under procedures provided by rules of the supreme court, determines that the claim for recovery is probably valid and unless the party claiming a right to recover possession of the goods or chattels files a sufficient bond.

The language is clear that recovery is the proper remedy for this kind of claim. Defendant brought no counterclaims on a contract theory, and any issues relating to whether there was a valid contract, and if so what its terms were, was not litigated at trial and cannot now be raised.

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Brian K. Zahra