[Cite as *Paldino v. Champion Quick Lube Plus*, 2012-Ohio-4008.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ANTHONY PALDINO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-T-0114**
- vs -	:	
CHAMPION QUICK LUBE PLUS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Warren Municipal Court, Case No. 2010 CVE 1912.

Judgment: Affirmed.

Matthew J. Blair, Blair & Lattell Co., L.P.A., 724 Youngstown Road, Niles, OH 44446 (For Plaintiff-Appellee).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Champion Quick Lube Plus ("Champion") appeals from a judgment of the Warren Municipal Court awarding Anthony Paldino $1,982.77 for damage to his vehicle while the vehicle was at Champion for repair service. At trial, Champion did not present any evidence to deny liability. Instead, it sought a directed verdict on the ground that Mr. Paldino did not submit a certificate of title to prove his ownership of the vehicle.

{¶2} The case law is well settled that a plaintiff need not present a certificate of title to prove ownership in an action seeking recovery for damage to a vehicle, unless

there is a genuine dispute about the ownership of the vehicle. Ownership of the vehicle was never at issue. Accordingly, the trial court properly denied Champion's request for directed verdict.

Substantive Facts and Procedural Background

{¶3} In April 2009, Mr. Paldino took his vehicle, a 1995 Chevy pick-up truck, to Champion for brake repair. While in the shop, the vehicle was damaged by another vehicle.

{¶4} On July 30, 2010, Mr. Paldino, pro se, filed two small claims complaints in Warren Municipal Court: Case No. 2010-CVE-1911 for damage to his vehicle, and Case No. 2010-CVE-1912 for lost wages. He sought $3,000 under each complaint. This appeal is based on the latter case number only, and the complaint for No. 2010-CVE-1911 is not part of the record. The hand-written complaint for Case No. 2010-CVE-1912 states, "lose [sic] of wages - self employed – due to auto accident at Champion Quick Lube plus plus [sic] court costs and interests. Accident date 4-17-2009. Wage loss due to scheduling for repair."

{¶5} Champion moved the court to transfer Case No. 2010-CVE-1912 to the regular docket. It also filed an answer, which stated "Defendant denies all allegations of Plaintiff's Complaint," and asserted the defense of comparative negligence. The court granted the transfer request. Apparently, the court then dismissed Case No. 2010-CVE-1911; the record for that case is not before us.

{¶6} After Champion filed discovery requests, Mr. Paldino retained counsel. The matter was then tried to a magistrate. Mr. Paldino testified that in April 2009, he took his 1995 Chevrolet pickup truck to Champion for brake repair. When he went back

to check on his vehicle, he learned from a Champion employee that his vehicle had been hit by a box truck.

{¶7} Andy Srbinovich from Brian's Automotive corroborated Mr. Paldino's testimony. He testified that he had provided an estimate to a Champion employee regarding the damages to Mr. Paldino's vehicle. Mr. Srbinovich also provided Mr. Paldino himself an estimate, which showed damages to the vehicle in the amount of $1,982.77.

{¶8} After Mr. Paldino presented his case, Champion offered no testimony or evidence in defense, but moved to dismiss the case on the sole ground that the plaintiff failed to provide a certificate of title to prove his ownership of the vehicle pursuant to the requirement of R.C. 4545.04.

{¶9} The magistrate issued his findings of fact and conclusions of law, awarding $1,982.77 in damages to Mr. Paldino. Champion filed objections to the magistrate's decision. It claimed the magistrate's decision was improper on two grounds: (1) the claim regarding the damages to the vehicle was not before the trial court as the complaint heard by the magistrate sought only lost wages; and (2) the plaintiff did not present a certificate of title to show he was the owner of the vehicle.

{¶10} The trial court held a hearing on Champion's objections and affirmed the magistrate's decision. In its decision, the trial court noted that Case No. 2010-CVE-1911 was dismissed at the time Case No. 2010-CVE-1912 was transferred from small claims to the court's regular civil docket. The trial court also noted when Case No. 2010-CVE-1912 was tried before the magistrate, counsel for Champion did not object to the court proceeding on the property damage claim. The court in addition noted that Mr. Paldino's responses to discovery requests put Champion on notice that the matter

would proceed as a property damage claim; however, we note that these discovery responses are not a part of the trial court record before us. The trial court concluded its judgment entry overruling the objections to the magistrate's decision by determining that "[d]ue to the lack of surprise or any showing of prejudice" to Champion, "substantial justice was done." Regarding Champion's contention that Mr. Paldino could not succeed in his claim because he failed to provide a certificate of title to prove his ownership of the vehicle, the trial court rejected that claim, citing well-established case law for the proposition that proof of ownership by a certificate of title is unnecessary when ownership is not disputed.

{¶11} Champion now appeals. Its sole assignment of error states:

{¶12} "The trial court erred in holding that the Appellee could recover damages to a motor vehicle which he did not allege in his complaint that he owned and did not provide proof of ownership via a certificate of title as required by R.C. 4505.21 [sic]."

{¶13} Champion maintains the trial court should have granted its request for a directed verdict because Mr. Paldino failed to provide a certificate of title to prove his ownership of the vehicle.[1]

Standard of Review

{¶14} "According to Civ.R. 50(A)(4), a motion for directed verdict is granted if, after construing the evidence most strongly in favor of the party against whom the motion is directed, 'reasonable minds could come to but one conclusion upon the

1. Champion does not contest the determination of the property damage claim under Case Number 2010 CV 1912. We note, in passing, the applicability of Civ.R. 15(B) here. That rule states, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Here, although Case No. 2010-CVE-1912 only referenced consequential damages of lost wages, at trial, the plaintiff presented evidence regarding the damages to his vehicle without any objection from the defendant; therefore, the issue of damages to the vehicle was appropriately treated by the trial court as if it had been raised in the pleadings.

evidence submitted and that conclusion is adverse to such party.'" *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, ¶3. A motion for directed verdict presents a question of law, and therefore, a reviewing court applies a *de novo* standard of review. *Id*. at ¶4.

Whether Proof of Ownership by Certificate of Title is Necessary in Property Damage Claim

{¶15} Citing R.C. 4505.04, Champion claims Mr. Paldino's failure to establish the ownership of the motor vehicle by a certificate of title was fatal to his claim seeking recovery for damage to the vehicle. That statute states:

{¶16} "(A) No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or there is delivered to the person a manufacturer's or importer's certificate for it, or a certificate of title to it is assigned as authorized by section 4505.032 [4505.03.2] of the Revised Code; and no waiver or estoppel operates in favor of such person against a person having possession of the certificate of title to, or manufacturer's or importer's certificate for, the motor vehicle, for a valuable consideration.

{¶17} "(B) Subject to division (C) of this section, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle sold or disposed of, or mortgaged or encumbered, unless evidenced:

{¶18} "(1) By a certificate of title * * * issued in accordance with sections 4505.01 to 4505.21 of the Revised Code[.]"

{¶19} Previously, Ohio courts had not interpreted the statute and its predecessor G.C. 6290-4 uniformly. *See Hardy v. Kreis*, 6th Dist. No. L-97-1352, 1998 Ohio App. LEXIS 2825, *9-10 (June 26, 1998). Over the last 30 years, however, the case law has become settled, beginning with the Sixth District's well-reasoned analysis in *Grogan v. Chrysler-Plymouth, Inc*., 59 Ohio App.2d 91 (6th Dist.1978). In that case, the plaintiff changed its corporate name after it filed suit to recover damages to a vehicle it owned. Because of the name change, plaintiff was not the vehicle's certificate holder at the time of the accident. The defendant claimed the plaintiff could not recover due to R.C. 4545.04. The Sixth District rejected that argument, explaining as follows:

{¶20} "R.C. 4505.04 was intended to apply to litigation where the parties were rival claimants to title, i.e., ownership of the automobile; to contests between the alleged owner and lien claimants; to litigation between the owner holding the valid certificate of title and one holding a stolen, forged or otherwise invalidly issued certificate of title; and to similar situations." *Id.* at 94. "The reason for the statute is to determine what proof, i.e., certificate of title, should be required where a plaintiff is asserting some right pertaining to his allegedly owned automobile and defendant's defense or claim is based upon a claimed right, title or interest in the same automobile. The reason ceases when the defendant's defense is not based upon some claimed right, title or interest in the same automobile." *Id*. at 96.

{¶21} The Supreme Court of Ohio, in *State v. Rhodes*, 2 Ohio St.3d 74, 75 (1982), which involved a motor vehicle theft, quoted the Sixth District's interpretation of R.C. 4505.04 with approval. Since then, the principle of law that R.C. 4505.04 only applies where parties assert competing rights or competing interests in a motor vehicle

has become well settled. The Sixth District, in *Hardy*, summarized the development of the case law regarding the statute post *Grogan* and *Rhodes*:

{¶22} "Recent decisions suggest that requiring a certificate of title to prove ownership at a trial to recover property damages arising out of an accident or collision is not necessary where there [sic] the tortfeasor is not claiming an interest in the plaintiff's vehicle or raising a serious dispute about ownership of the vehicle. *See Hoegler v. Hamper* (1992), 79 Ohio App.3d 280, 607 N.E.2d 89 (statute precluding court from recognizing right of person to motor vehicle unless evidenced by stipulation of parties, admission, or certificate, did not preclude plaintiff from recovering damages against negligent motorist in absence of parties asserting competing claims to [the] same motor vehicle even though no certificate of title was produced); *Calderone v. Jim's Body Shop* (1991), 75 Ohio App. 3d 506, 510, 599 N.E.2d 848 ("Proof of title requirements set forth in R.C. 4505.04 apply only in cases where there are competing claims to a motor vehicle."); *Davco Const. Co. v. Dom Italiano's Used Car Corner, Inc.* (July 24, 1997), 1997 Ohio App. LEXIS 3446, Mahoning App. No. 92 C.A. 131, unreported (R.C. 4505.04 does not require that a party alleging odometer fraud must hold title at time complaint filed or produce certificate of title at trial); *Hershey-Regec v. Arnold* (Sep. 20, 1995), 1995 Ohio App. LEXIS 4162, Summit App. No. 17032, unreported (plaintiffs seeking to recover property damage to vehicles in small claims court may prove ownership by oral testimony because requiring certificate of title in compliance with R.C. 4505.04 would be unduly restrictive)." *Hardy* at *15-16.

{¶23} The circumstances in *Hardy* are identical to the instant case. There, the plaintiff filed a complaint alleging defendants damaged his vehicle. After the plaintiff introduced its evidence of negligence at trial, the defendants moved for a directed

verdict, on the ground that the plaintiff had not submitted a certificate of title to establish ownership as required by the statute. The Sixth District held that the plaintiff/appellant need not prove ownership by a certificate of title, providing the following well-reasoned analysis:

{¶24} "[A]ppellees' boilerplate general denial of appellant's allegation in the complaint does not raise a bona fide issue of competing claims to title or ownership of appellant's car. Appellees have never specifically contended that they, or any other persons, have any competing interest, claim, or title to appellant's damaged vehicle, as envisioned in R.C. 4505.04. While appellees have an interest in determining whether the party with proper standing has brought suit to recover for property damage to a motor vehicle, we have previously emphasized the need to raise such issues early in the proceedings. *See Snyder v. Lee* [,6th Dist. No. L-94-131, 1995 Ohio. App. LEXIS 928 (Mar. 17, 1995)]; *Smith v. Clark* [,6th Dist. No.S-86-87, 1998 Ohio App. LEXIS 1521 (Apr. 29, 1988)]. Genuine questions of ownership which may affect whether a tortfeasor may be sued by the owner of the damaged vehicle as well as the driver are matters that may be resolved through pretrial discovery and motion practice. Such genuine disputes about ownership should not be resolved by waiting until the day of trial to request a directed verdict because plaintiff did not submit a certificate of title into evidence during trial. * * * [R]equiring a plaintiff to produce a certificate of title at trial to prove ownership as a prima facie element of a negligence suit for property damage where no bona fide dispute exists regarding plaintiff's ownership of a damaged vehicle permits a tortfeasor to evade not only the obligation of early resolution of ownership issues, but to evade liability. The legislative intent behind R.C. 4505.04 was to protect vehicle owners from fraudulent or rival claims to title – not to protect tortfeasors who damaged vehicles

where there is no legitimate dispute about who owns title to the damaged vehicle. Unless theft or fraud of title is a genuine issue in a property damage case arising from an automobile accident, in which case production of a certificate of title would be required to establish plaintiff's ownership of the vehicle, production of a certificate of title is not the only evidence which may be used to establish ownership. We find that in an action to recover for damages to a motor vehicle, a certificate of title need not be presented as proof of ownership in the absence of an affirmative issue of ownership having been raised in the pleadings. Consequently, the trial court erred by directing a verdict in favor of appellees solely because appellant had not produced a certificate of title where oral testimony established that appellant owned the vehicle." *Hardy* at *16-18.

{¶25} *See also Rucker v. Alston*, 2d Dist. No. 19959, 2004-Ohio-2428, ¶8 (a certificate of title is required where a plaintiff asserts a right in an automobile and where a defendant's defense or claim is based on an interest in the same automobile; R.C. 4505.04's purpose terminates when the defense is not based upon some claimed right, title, or interest in the same automobile); *Samblanet v. Stephen*, 5th Dist. No. 2001CA00094, 2001 Ohio App. LEXIS 4704, (Oct. 5, 2001) (the vehicle owner was not required to present a certificate of title to prove ownership under R.C. 4505.04(B) in order to recover in an action for damages to his motor vehicle); *Lumpp Rent-A-Car v. Morton*, 11th Dist. No. 3709, 1987 Ohio App. LEXIS 8507, *4-5 (Aug. 28, 1987) (R.C. 4505.04 was intended to apply to litigation where the parties were rival claimants to title).

{¶26} In this case, Champion did not claim an interest in the subject vehicle nor raise a genuine dispute about the ownership of the vehicle. Its general denial of Mr.

Paldino's complaint – "Defendant denies all allegations of Plaintiff's Complaint" – did not raise a bone fide issue of competing claims to title or ownership of the subject vehicle. As in *Hardy*, defendant Champion did not raise the ownership issue in any pretrial proceeding; neither did it object when Mr. Paldino testified that he was the owner of the truck.[2] Rather, it raised the issue of a lack of certificate of title for the first time after Mr. Paldino presented his case at trial, without alleging Champion or any other person had a competing claim or title to the damaged vehicle.

{¶27} Thus, the trial court appropriately found that Champion, in not raising the ownership issue until its request for a direct verdict after the plaintiff had presented its case a trial, failed to place ownership at issue. Applying the well-established case law, the trial court properly denied Champion's motion for a directed verdict grounded exclusively on a lack of certificate of title for a proof of ownership.[3] The assignment of error is without merit.

{¶28} Judgment of the Warren Municipal Court is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.

2. Our review of the trial transcript shows that Champion objected only when Mr. Paldino testified about his conversation with Champion's employees regarding how his truck was damaged while in the shop.

3. All but one case cited by Champion predated *Rhodes*, and were no longer good law. The only post-*Rhodes* decision cited by Champion is *Snyder*, *supra*, also a Sixth District case. *Snyder* was distinguished by the Sixth District itself in *Hardy*, where the court explained that the *Snyder* defendant raised the ownership issue early in the proceedings by moving to dismiss for the plaintiff's failure to prove ownership.