

RENDERED: JULY 25, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000780-MR

JASON B. TINGLE

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY  
NO. 2002-SC-000392-D

v. ON APPEAL FROM HENRY CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 01-CI-000014

BROWNING PONTIAC-CHEVROLET-GMC  
TRUCKS-GEO, INC

APPELLEE

OPINION  
REVERSING AND REMANDING  
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BEFORE: KNOPF AND SCHRODER, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

KNOPF, JUDGE: On November 1, 1998, the appellant, Jason Tingle, was injured in an automobile accident. Ricky L. Perryman, the driver of the truck which struck Tingle's vehicle, purchased the truck from Browning-Pontiac-Chevrolet-GMC Trucks-Geo, Inc.

(Browning Pontiac) on September 28, 1998. After presenting

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

proof of insurance to Browning Pontiac, Perryman was given possession of the truck and advised that Browning Pontiac would transfer title. However, the title was not transferred until November 2, 1998, thirty-nine days after Perryman took possession. The trial court found Perryman to be the owner of the vehicle for insurance purposes. On appeal, we held that, although our titling statutes permit a dealer such as Browning Pontiac to obtain proof of insurance from the purchaser and deliver title to the clerk, the delivery to the clerk in this case was not sufficiently prompt. Therefore, this Court deemed Browning Pontiac to be the owner of the vehicle on the date of the accident.

Browning Pontiac filed a motion for discretionary review with the Supreme Court. After rendering its opinion in Auto Acceptance Corporation v. T.I.G. Insurance Company,<sup>2</sup> the Supreme Court vacated this Court's opinion and remanded the case to us to reconsider in light of Auto Acceptance, *supra*. We have done so and reach the same result.

Auto Acceptance involved the issue of when title to a motor vehicle passes from a commercial dealer to a purchaser. In that case, the purchaser executed a retail sales contract for purchase and a Kentucky application for title and registration

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<sup>2</sup> Ky., 89 S.W.3d 398 (2002).

on January 21, 1997. At that time, the purchaser offered proof of insurance and the dealer agreed to present the documents necessary to transfer title. The certificate of title from the previous owner was not received until January 30, 1997, and the documents were not presented until February 4, 1997. In the meantime, the accident occurred on January 22, 1997.

Recognizing the 1994 revision to KRS 186A.220, the Supreme Court held that Auto Acceptance was not the legal owner of the vehicle merely because title had not been transferred. Under the statute, if the dealer verifies that the buyer is insured, the dealer may relinquish control to the purchaser without immediately tendering the title documents. Under such circumstances, the dealer may retain the title documents and subsequently file them with the county clerk on behalf of the purchaser, but ownership of the vehicle passes immediately to the purchaser.<sup>3</sup>

Browning Pontiac focuses on the last sentence of KRS 186A.220(5), which states, "*Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215 and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession*

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<sup>3</sup> Id. at 401.

until the certificate of title is obtained" (*Emphasis added*). Based upon this "notwithstanding" language, Browning Pontiac argues that if the dealer elects to retain the title documents and application and deliver them to the clerk on behalf of the purchaser, then none of the other provisions of KRS 186A.215 apply, including the promptness requirement of KRS 186A.215(3).

But while this portion of KRS 186A.220(5) is inarticulately phrased, Browning Pontiac focuses too narrowly on the "notwithstanding" language to the exclusion of the rest of the statutory scheme. Auto Acceptance and this Court's prior opinion each recognized the 1994 revisions to KRS 186A.220(5) and the exception created for commercial dealers to retain title to the vehicle but not possession. As we expressly stated, the statute contemplates the custom of a dealer's taking the applicable title documents to the county clerk and gives the dealer the option of either delivering the documents to the clerk or giving them to the purchaser for delivery. Clearly, if the dealer has not received a clear certificate of title from a prior owner, it cannot deliver the title documents and application to the clerk on the purchaser's behalf. KRS 186A.220(5) protects the dealer from being deemed to be the owner of the vehicle during this period.

The promptness requirement of KRS 186A.215(3) is not inconsistent with the purpose of KRS 186A.220(5). Indeed, in

our prior opinion, we did not hold Browning Pontiac to be the owner of the vehicle because it retained possession of the title documents. Rather, we found that Browning Pontiac failed to act promptly and with due diligence to deliver the necessary documents to the county clerk. In contrast, the dealer in Auto Acceptance did not have the documents until nine days after the sale and four days later it presented the documents to the county clerk. No question of the dealer's promptness arose in that case.

In our prior opinion in this case, we stated that the issue is whether dealers who retained the certificate of title are required to "promptly" transfer title to avoid being deemed the owner for insurance purposes. We held that the promptness requirement of KRS 186A.215(3) applied to all transfers, including those covered by KRS 186A.220. A delay of thirty-nine days, for no stated valid reason, was deemed not prompt and Browning Pontiac was held to be the owner. We specifically noted that unjustified delays in transferring title could potentially result in uninsured drivers on our roadways because those who presented proof at the time of purchase may become uninsured during the delay in transfer of title.

Thus, we conclude that our prior result is consistent with the result reached in Auto Acceptance. Under KRS 186A.220, Browning Pontiac could relinquish possession of the vehicle

before taking the necessary title-transfer documents to the county clerk. However, to comply with the language and intent of the entire titling scheme, it was required to deliver those documents as promptly as possible under the circumstances. Having failed to proffer any reason for its failure to do so, Browning Pontiac is deemed to be the owner of the vehicle on the date of the accident.

Accordingly, the judgment of the Henry Circuit Court is reversed and this case is remanded for further proceedings.

HUDDLESTON, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS.

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