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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001472-MR

HUNTINGTON NATIONAL BANK, AS SUCCESSOR IN INTEREST TO THE HUNTINGTON STATE BANK — APPELLANT

v.

APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE DANIEL SPARKS, JUDGE
ACTION NO. 01-CI-00043

BURKE'S WRECKER SERVICE — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY[1] SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: This is an appeal from a judgment of the Martin Circuit Court which found that the appellant bank was responsible for storage fees on a vehicle that had been towed to appellee's lot. Finding that the circuit court erred in its interpretation of the applicable statute, we reverse.

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

There is no dispute about the relevant facts giving rise to this controversy. In early October of 1998, Daniel Meggitt was operating a 1997 Ford pickup truck in Martin County, Kentucky. Meggitt was arrested and the the arresting officer made arrangements with Michael Burke, owner of appellee Burke's Wrecker Service, to tow the vehicle to Burke's storage lot. The vehicle had previously been pledged as collateral for a promissory note and security agreement in favor of the bank, which was recorded on the vehicle's Certificate of Title. It is clear from the evidence, and the circuit court found "[t]hat the records of Huntington National Bank clearly indicate that they knew the location of the vehicle, they knew who had the vehicle in storage, and they know that money was due for wrecker bill and storage as early as October 16, 1998." The bank, however, made no effort to pick up the vehicle.

On December 15, 2000, Burke's advised the bank that it had filed a mechanic's lien on the vehicle, which at that point had been stored for 775 days, and that there was a storage bill due of $5,550. In response, the bank filed this action in the circuit court against Meggitt and Burke's, seeking monetary damages and a writ of possession. The trial court granted the bank's motion for a pre-judgment writ and the bank posted a bond and took possession of the vehicle, which was sold at auction for $1,750.00. The proceeds from the sale were applied to Meggitt's debt to the bank. The case was then tried before the court, which found for Burke's, holding that the statute relied upon by the bank, Kentucky Revised Statutes (KRS) 376.275, "does not apply in this matter for actual notice was had by Huntington National Bank and they either failed

or refused to act on same." The trial court then found for Burke's on its counterclaim and awarded $5,500 in storage fees, along with costs and reasonable attorney's fees. We find that the statute does apply to these facts and that its provisions prevent Burke's from recovering against the bank.

KRS 376.275 allows the owner of a garage or other storage facility to obtain a lien on a vehicle "for the reasonable or agreed charges for storing or towing the vehicle, as long as it remains in his possession." KRS 376.275(3). In order to do so, however, the owner of the storage facility must comply with the statute, which requires an attempt to give notice, by certified mail, to the registered owner of the location of the vehicle and the requirements for securing its release. Burke's made no effort to comply with this requirement. The statute provides that "[w]hen the owner of the facility fails to provide notice as provided herein, the motor vehicle storage facility shall forfeit all storage fees accrued after ten (10) business days from the date of tow." KRS 376.275(2). The statute further states that any lien in favor of the storage facility is subject to prior recorded liens. There is no dispute that the bank's lien was prior to and would take precedence over any lien Burke's may have obtained. The trial court held that this statute simply did not apply to this situation because the bank had actual notice of the vehicle's location shortly after it was towed and failed to take any action to retrieve it for over two years. While the bank certainly did not move with dispatch to enforce its lien, we find that its failure to act did not create a legal obligation making it liable for the storage fees.

The provisions of the statute are clear. If a storage facility fails to comply with the notice requirements, then it may charge storage fees for only ten days. We note that we are not confronted with a situation with lack of required notice to a vehicle owner who had actual notice of the location of the vehicle. Those circumstances are not before us and we express no opinion on them. Under the facts of this case, due to its failure to comply with KRS 376.275, Burke's may charge storage fees for only ten days from the date of towing the vehicle. Further, there is no legal basis to require the bank to pay those fees. As the prior lien holder, the bank was entitled to the proceeds of the sale of the vehicle.

The judgment of the Martin Circuit Court is reversed and this matter is remanded to the circuit court with directions to dismiss Burke's counterclaim against the bank.

VANMETER, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS AND FILES SEPARATE OPINION.

THOMPSON, CONCURRING: I concur that the court has followed the letter of this law.

KRS 376.275(3) clearly states: "This lien shall be subject to prior recorded liens." Therefore, any payment due to a tow operator who tows a vehicle will be owed to him by either the owner, or after a bank who holds the lien on the vehicle has been paid after the sale of the vehicle.

It is my belief this legislation is unfair to tow operators who routinely are requested by police to tow vehicles. On those occasions when the vehicle is not reclaimed by the owner, many tow operators will be paid nothing for their towing services and storage fees on the vehicle. The failure to pay these small businessmen for their services and storage costs is unjust; however, this is the law.

BRIEF FOR APPELLANT:

Glenn E. Algie
Cincinnati, Ohio

BRIEF FOR APPELLEE:

John R. Triplett
Inez, Kentucky