

February 13, 2004

The Honorable Martin Frantz
Wayne County Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691

SYLLABUS:

2004-007

1. R.C. 317.13(A) requires a county recorder to accept for filing a child support lien that arises under R.C. 3123.67 and that is presented to the recorder for recording.
2. Should a child support enforcement agency that has a child support lien arising under R.C. 3123.67 also have possession of the certificate of title to the delinquent obligor's motor vehicle, R.C. 4505.13(B) entitles the child support enforcement agency to present evidence of the child support lien, together with the certificate of title and the necessary fee, to the clerk of courts and have such lien noted in the clerk's motor vehicle title records.
3. When a child support enforcement agency presents to a clerk of courts by electronic means evidence of a child support lien arising under R.C. 3123.67, R.C. 4505.13(C)(1) requires the clerk to enter that information into the automated title processing system.



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OPINION NO. 2004-007

The Honorable Martin Frantz
Wayne County Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691

Dear Prosecutor Frantz:

You have requested an opinion concerning the duties of the county recorder and the clerk of courts when the Wayne County Child Support Enforcement Agency (CSEA) presents a lien on the personal property of a child support obligor under R.C. 3123.66-.67. You ask: "If a CSEA makes a final and enforceable determination that an obligor is in default under a support order, and, is thereby authorized to assert a lien on the obligor's personal property, specifically motor vehicles, located in the State of Ohio, may the county recorder or the [Registrar of Motor Vehicles] deny the recording of the lien proffered by the Agency?"

Let us begin by examining the duties of the county recorder with respect to accepting information for filing. Pursuant to R.C. 317.13(A):

Except as otherwise provided in division (B) of this section, the county recorder *shall record* in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic or electronic process, all deeds, mortgages, plats, or other *instruments of writing that are required or authorized by the Revised Code to be recorded and that are presented to the recorder for that purpose*. The recorder shall record the instruments in regular succession, according to the priority of presentation, and shall enter the file number at the beginning of the record. On the record of each instrument, the recorder shall record the date and precise time the instrument was presented for record. (Emphasis added.)

With limited exceptions,¹ R.C. 317.13(A) thus imposes upon a county recorder a duty to record, among other things, any instrument of writing that is authorized or required by the Ohio Revised Code to be recorded and that is presented to him for that purpose.

Whether a county recorder may refuse to record a child support lien presented to him for recording thus depends upon whether a child support lien is required or authorized by statute to be recorded. We must, therefore, examine the statutory scheme governing child support enforcement liens such as you describe.

As mentioned in your opinion request, a CSEA is “responsible in the county it serves for the enforcement of support orders and shall perform all administrative duties related to the enforcement of any support order,” R.C. 3125.11. One of the duties of a CSEA is to investigate defaults under child support orders. R.C. 3123.02. Upon identification of a default, a CSEA must send the defaulting obligor a notice containing the information described in R.C. 3123.031. R.C. 3123.03. Included within such notice is “[a] statement that the obligor may file with the child support enforcement agency, within seven business days after the date on which the default notice is sent, a written request for an administrative hearing under [R.C. 3123.04].” R.C. 3123.031(G). At the administrative hearing, the CSEA must determine whether a mistake of fact was made in the default notice, and must then notify the obligor of its determination. R.C. 3123.04. The CSEA’s determination is final and enforceable by a court unless, “within seven business days after the agency makes its determinations, the obligor files a written motion with the court for a court hearing to determine whether a mistake of fact still exists in the default notice.” *Id.*² In the event that an obligor who receives a default notice under R.C. 3123.03 does not timely request an administrative hearing, “the default notice becomes a final and enforceable determination by the child support enforcement agency that identified the default of both of the following: (1) The obligor is in default under the support order. (2) The amount of the arrearage owed as a result of the default.” R.C. 3123.032(A).

Pursuant to R.C. 3123.04, once a CSEA makes a final and enforceable determination of child support default, the CSEA must take further action in accordance with R.C. 3123.06, including, among other things, the issuance of various withholding and deduction notices as

¹ Pursuant to R.C. 317.13(B):

The county recorder may refuse to record an instrument of writing presented to the recorder for recording if the instrument is not required or authorized by the Revised Code to be recorded or the recorder has reasonable cause to believe the instrument is materially false or fraudulent. This division does not create a duty upon a recorder to inspect, evaluate, or investigate an instrument of writing that is presented for recording.

² R.C. 3123.05 provides an obligor the opportunity to have a court determine whether there is a mistake of fact in the default notice. The court’s determination is final and enforceable, and the court must then proceed under R.C. 3123.06. R.C. 3123.05.

described in R.C. 3121.03, requiring a delinquent obligor to notify the CSEA of the receipt of any income, or, if a delinquent obligor is receiving unemployment compensation, notifying the Department of Job and Family Services to withhold or deduct an amount from the obligor's unemployment compensation benefits for the payment of child support obligations.³ See R.C. 3123.18 (once a CSEA's action becomes final and enforceable, "each payment or installment that was due and unpaid under the support order that is the basis for the default determination plus any arrearage amounts that accrue after the default determination and during the period of default shall be a final judgment which has the full force, effects, and attributes of a judgment entered by a court of this state for which execution may issue under [R.C. Title XXIII]").⁴

Another mechanism by which a determination of child support default may be enforced is described in R.C. 3123.66, as follows:

If a court or a child support enforcement agency makes a final and enforceable determination pursuant to [R.C. 3123.01-.07] that an obligor is in

³ R.C. 3123.06 states, in part:

(A) If either a court, under [R.C. 3123.05], or child support enforcement agency, under [R.C. 3123.032 or R.C. 3123.04], makes a final and enforceable determination that an obligor is in default under a support order, one of the following shall apply:

(1) If no withholding notice was issued in accordance with [R.C. 3123.021] with respect to the order, the court or agency shall issue one or more notices requiring withholding or deduction of income or assets of the obligor in accordance with [R.C. 3121.03], or the court shall issue one or more court orders imposing other appropriate requirements in accordance with [R.C. 3121.03, R.C. 3121.035, R.C. 3121.04-.08, and R.C. 3121.12].

(2) If a withholding notice was issued in accordance with [R.C. 3123.021] with respect to the order and [if] the final and enforceable determination of default altered the arrearage amount stated in the default notice, the court or agency, whichever made the determination, shall revise the withholding notice and may issue, as appropriate, any of the notices or orders described in division (A)(1) of this section.

(3) If a withholding notice was issued in accordance with [R.C. 3123.021] with respect to the order but the final and enforceable determination of default did not alter the arrearage amount stated in the default notice, the withholding notice shall remain in effect. The court or agency, in addition and as appropriate, may issue any other notice or order described in division (A)(1) of this section.

⁴ See generally R.C. 2327.01 (stating, in part, "[a]n execution is a process of a court, issued by its clerk, and directed to the sheriff of the county"); R.C. 2327.02 (describing the three kinds of execution).

default under a support order, *the agency administering the support order may assert a lien on real and personal property* of the obligor located in this state. (Emphasis added.)

The creation of a child support lien and the placement of such lien on the personal property of a defaulting obligor is prescribed by R.C. 3123.67, which states, in pertinent part:

The amount of the arrearage due under the support order determined to be in default pursuant to [R.C. 3123.01-.07], and any amounts due for current support that become an arrearage after the date the default determination was made, *shall be a lien against all personal property*, including after-acquired property, of the obligor that is situated in this state. *The lien may be filed with the county recorder in each county of the state in which the personal property is located.* (Emphasis added.)⁵

R.C. 3123.67 thus expressly authorizes the filing of a child support lien with the county recorder of any county in which personal property of the delinquent obligor is located.

In answer to the first part of your question, we conclude, that, because R.C. 317.13(A) requires a county recorder to accept for recording any written instrument that is authorized by the Ohio Revised Code to be recorded and that is presented to the recorder for that purpose, and because R.C. 3123.67 authorizes the filing of a child support lien with the county recorder of any county in which real or personal property of a delinquent obligor is located, the recorder of a county in which a delinquent obligor has personal property has a duty to accept for recording a child support lien that arises under R.C. 3123.67 and that is presented to the recorder for recording.

The second part of your question asks whether the Registrar of Motor Vehicles may refuse to record a child support lien. Pursuant to R.C. 4501.02(A), included among the duties of the Registrar of Motor Vehicles is the administration of “the laws of the state relative to the registration of and certificates of title for motor vehicles.” The Registrar’s duties regarding the titling of motor vehicles, as described in R.C. Chapter 4505, are carried out by the various clerks of the common pleas courts throughout the state. *See generally* R.C. 4505.02 (stating, in part, “[t]he registrar of motor vehicles shall issue rules as the registrar determines necessary to ensure uniform and orderly operation of this chapter, and the clerks of the courts of common pleas shall

⁵ R.C. 3123.67 also establishes a lien on the defaulting obligor’s real property, and states, in part, “[a] lien may be filed with the county recorder in each county of the state in which real property of the obligor is located.” Similar provision is made in R.C. 3123.68 for the filing of qualifying child support liens issued by other states in the office of the county recorder of a county in which real or personal property of the defaulting obligor is located. Pursuant to R.C. 3123.68, “[o]nce filed, the lien shall be against all real and personal property, including after-acquired property, of the obligor that is situated in that county.”

conform thereto”). For ease of discussion, we will, therefore, address this portion of your question in terms of the duties of a clerk of courts with respect to liens on motor vehicles.

It appears that your question arises from your interest in assuring that a child support lien obtained by a CSEA under R.C. 3123.67 attaches to any motor vehicles owned by the delinquent obligor. Because R.C. Chapter 4505 establishes a system specifically for maintaining information concerning title to, and other interests in, motor vehicles, you question whether a clerk of courts must accept a child support lien that is presented to him for notation in his motor vehicle title records.⁶

By way of background, we begin by noting that the certificate of title is the means by which a person acquires a “right, title, claim, or interest in or to” a motor vehicle. R.C. 4505.04(A).⁷ R.C. 4505.03 prohibits the sale or transfer of a motor vehicle without delivery to

⁶ R.C. 3123.67 states that a child support lien such as you describe “shall be a lien against *all* personal property,” (emphasis added), and authorizes the filing of such lien with the appropriate county recorders. Because you have not asked, we express no opinion on the question whether a child support lien filed in accordance with R.C. 3123.67 operates as a lien against a motor vehicle owned by a delinquent obligor. Instead, our discussion is limited to the question whether a clerk of courts may refuse to accept a child support lien presented for notation on the clerk’s certificate of title records.

⁷ R.C. 4505.04 states, in pertinent part:

(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 [R.C. 4505.032]; 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.

(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:

(1) By a certificate of title, an assignment of a certificate of title made under [R.C. 4505.032], a manufacturer’s or importer’s certificate, or a certified receipt of title cancellation to an exported motor vehicle issued in accordance with [R.C. 4505.01-.21];

(2) By admission in the pleadings or stipulation of the parties;

the buyer or transferee “a certificate of title with an assignment on it as is necessary to show title in the buyer or transferee.” As explained by the court in *Stackhouse Oldsmobile, Inc. v. Petry*, 12 Ohio App. 2d 68, 231 N.E.2d 71 (Mahoning County 1967) (syllabus, paragraph two):

The plain purpose of the certificate of title law is to make the certificate of title a complete statement of the title of any motor vehicle with notations of all liens and claims against it, and any person purchasing a motor vehicle has the right to rely on the certificate of title for those facts.

Thus, the intent in the enactment of R.C. Chapter 4505 in 1937-1938 Ohio Laws 373, Am. H.B. 514 (eff., in part, Jan. 1, 1938) was that each vehicle’s certificate of title evidence ownership of, and interests in, that vehicle.⁸

Recently, R.C. Chapter 4505 was amended by Sub. S.B. 59, 124th Gen. A. (2001) (eff. Oct. 31, 2001), in part, to allow various actions relating to the titling of motor vehicles and the recording of security interests therein to be accomplished by electronic means in addition to the then-existing methods of conducting such transactions.⁹ As described in R.C. 4505.08(F),¹⁰ a

(3) In an action by a secured party to enforce a security interest perfected under [R.C. Chapter 1309] in accordance with [R.C. 4505.13(A)], by an instrument showing a valid security interest.

⁸ There are certain liens, however, which, whether or not noted on a motor vehicle certificate of title, take priority over liens noted as described in R.C. 4505.13(B). *See, e.g., Hardware Mutual Casualty Co. v. Gall*, 15 Ohio St. 2d 261, 240 N.E.2d 502 (1968) (certain vehicles whose titles are issued by foreign states); *Nelson Sand & Gravel, Inc. v. Erie Shores Resort & Marina, Inc.*, 91 Ohio App. 3d 649, 654, 633 N.E.2d 557 (Ashtabula County 1993) (“[a] federal tax lien attaches upon assessment and is effective against all persons, even if the lien is not recorded”).

⁹ *See generally, e.g.,* R.C. 4505.021 (stating, in part, “[e]xcept as otherwise specifically provided in this chapter, any provision of this chapter relating to the cancellation, issuance, or surrender of a certificate of title, including, but not limited to, provisions that contain a phrase such as ‘when a certificate of title is issued,’ ‘the clerk shall issue a certificate of title,’ or ‘the person shall obtain a certificate of title to the motor vehicle,’ or another phrase of similar import, shall include those circumstances when a clerk enters certificate of title information into the automated title processing system, but does not take any further action relating to a physical certificate of title for the motor vehicle”); R.C. 4505.09(C) and (D) (automated auto title processing system).

¹⁰ Pursuant to R.C. 4505.08(F):

The clerk shall issue a physical certificate of title to an applicant unless the applicant specifically requests the clerk not to issue a physical certificate of title

certificate of title need not always be issued in physical form. When a physical certificate of title is not issued, the entry of the title information into the clerk's automatic title processing system serves as an electronic certificate of title. R.C. 4505.08(F). Under either method, however, the clerk of courts' title records indicate ownership of, and other interests in, motor vehicles.

R.C. 4505.13, which authorizes the notation of security interests on the clerk of courts' title records and establishes the priority of liens so noted, establishes two methods by which security interests in motor vehicles may be noted. Pursuant to R.C. 4505.13(B), a "secured party, upon presentation of evidence of a security interest to a clerk of a court of common pleas, *together with the certificate of title if a physical certificate of title for the motor vehicle exists*, and the fee prescribed by [R.C. 4505.09], may have a notation of the security interest made." (Emphasis added.) Should a CSEA have possession of the certificate of title of a delinquent obligor's motor vehicle, R.C. 4505.13(B) entitles the CSEA to present evidence of the child support lien, together with the certificate of title and the necessary fee, and have such lien noted in the clerk's motor vehicle title records.¹¹

The second method for noting such interests is prescribed by R.C. 4505.13(C)(1), which grants all secured parties the option of submitting evidence of a security interest in a motor vehicle to a clerk of courts "via electronic means."¹² When evidence is presented to the clerk in such manner, R.C. 4505.13(C)(1) requires the clerk to enter that information into the automated title processing system. *See generally* R.C. 4505.13(G) (requiring the Registrar of Motor Vehicles to adopt rules "governing the electronic transmission of security interest and other information under this section").

and instead to issue an electronic certificate of title. The fact that a physical certificate of title is not issued for a motor vehicle does not affect ownership of the vehicle. In that case, when the clerk completes the process of entering certificate of title application information into the automated title processing system, the effect of the completion of the process is the same as if the clerk actually issued a physical certificate of title for the motor vehicle.

¹¹ As a practical matter, it is unlikely that a CSEA would be in possession of a delinquent obligor's motor vehicle certificate of title. The method described in R.C. 4505.13(B) for the notation of liens is available, however, should a CSEA possess such a certificate of title.

¹² R.C. 4505.13(C)(1) states:

In all cases, a secured party may choose to present a clerk with evidence of a security interest via electronic means, and the clerk *shall* enter the security interest into the automated title processing system. A secured party also may choose to notify a clerk of the discharge of its security interest via electronic means, and the clerk shall enter the cancellation into the automated title processing system. (Emphasis added.)

Unlike R.C. 4505.13(B), R.C. 4505.13(C)(1) does not require that evidence of a security interest that is presented to a clerk of courts by electronic means be accompanied by a certificate of title. In the absence of language imposing that requirement, we believe that, pursuant to R.C. 4505.13(C)(1), evidence of a security interest that is presented to a clerk of courts by electronic means need not be accompanied by a certificate of title. *See generally Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (the General Assembly, “[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”). R.C. 4505.13(C)(1) thus establishes a mechanism by which a secured party that does not possess the certificate of title to a motor vehicle in which he has a security interest may have that interest noted in the clerk’s motor vehicle title records.

In the event that a CSEA does not possess the certificate of title to a motor vehicle owned by a delinquent obligor with respect to whom the agency has made a child support default determination that has become a lien in accordance with R.C. 3123.67, R.C. 4505.13(C)(1) authorizes the CSEA to present evidence of that lien to the clerk of courts by electronic means for notation in the clerk’s motor vehicle title records. In answer to the second portion of your question, we conclude, therefore, that a clerk of courts may not refuse to accept a child support lien that is presented to him by electronic means for notation in the clerk’s motor vehicle title records.

It is, therefore, my opinion, and you are hereby advised that:

1. R.C. 317.13(A) requires a county recorder to accept for filing a child support lien that arises under R.C. 3123.67 and that is presented to the recorder for recording.
2. Should a child support enforcement agency that has a child support lien arising under R.C. 3123.67 also have possession of the certificate of title to the delinquent obligor’s motor vehicle, R.C. 4505.13(B) entitles the child support enforcement agency to present evidence of the child support lien, together with the certificate of title and the necessary fee, to the clerk of courts and have such lien noted in the clerk’s motor vehicle title records.

3. When a child support enforcement agency presents to a clerk of courts by electronic means evidence of a child support lien arising under R.C. 3123.67, R.C. 4505.13(C)(1) requires the clerk to enter that information into the automated title processing system.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General