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MOTOR VEHICLE—WHERE CLERK OF COURTS ISSUES CERTIFICATE OF TITLE TO A MOTOR VEHICLE AND ERRONEOUSLY FAILS TO NOTE THEREON VALID LIENS ON RECORD IN HIS OFFICE, DUTY OF REGISTRAR OF BUREAU OF MOTOR VEHICLES TO MAKE PROPER NOTATION —SECTION 6290-7 G. C.

SYLLABUS:

Where a clerk of courts issues a certificate of title to a motor vehicle and erroneously fails to note thereon valid liens on record in his office, the Registrar of the Bureau of Motor Vehicles should, and it is his duty, under the provisions of Section 6290-7 of the General Code, to do so.

Columbus, Ohio, December 22, 1949

Hon. Frank M. Quinn, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Please advise me with reference to the following situation:

The Clerk of Courts of Cuyahoga County issued an Ohio certificate of title receiving as supporting evidence of ownership a transcript of a Bailiff's Bill of Sale from the Cleveland Municipal Court. At the time of issue of the Certificate of Title the issuing clerk failed to check the previous record on this car with the result that it was subsequently discovered there are two uncancelled liens recorded against the car.

An effort has been made to have the new owner of the vehicle return the title. This he refuses to do.

The question now is: Does the Registrar of Motor Vehicles have the authority, as provided for in Section 6290-7 G. C., to order that this certificate of title be cancelled?"

I am assuming that the sale by the bailiff of the municipal court was to satisfy a judgment procured by a general creditor of the owner of the motor vehicle. Your letter does not disclose that the first lien holder has the original certificate of title, but I will also assume that he has.

The certificate of title law contemplates that there shall be only one valid certificate of title for each motor vehicle. Liens upon motor vehicles can be placed thereon by the clerk of courts as prescribed in Section 6290-9 of the General Code which reads in part as follows:

"* * * *or in the case of a certificate of title if a notation of same has been made by the clerk of courts on the face thereof, shall be valid as against the creditors of the mortgagor whether armed with process or not, and subsequent purchasers, mortgagees and other lien holders or claimants but otherwise shall not be valid against them.* All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the clerk of courts. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against the creditors of such owner, or holders of subsequent liens, mortgages or encumbrances upon such motor vehicle."

(Emphasis added.)

Thus it seems clear that where liens are noted on a valid certificate of title they are valid and take priority according to the order of time in which the same are noted thereon by the clerk of courts, and are valid against the creditors of the mortgagor whether armed with a process or not. The legislature clearly and emphatically meant that any order or proceedings of a court could not affect a lien properly noted on a certificate of title, and by issuing a new certificate of title to the purported purchaser at a judicial sale clearly violates the intent of the legislature and destroys the security of valid lien holders, which security was one of the paramount objects the legislature intended to establish.

Section 6290-4 of the General Code reads in part as follows:

"* * * No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any

motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued, in accordance with the provisions of this chapter."

In the case of Mielke, et al., Appellants, v. Leeberson, Appellee, 150 O. S. 528, the syllabus reads as follows:

"Under the plain and unambiguous language of Section 6290-4, General Code, a court cannot recognize the right, title, claim or interest of any person in or to any motor vehicle, without the production of a certificate of title or manufacturer's or importer's certificate duly issued in accordance with the Certificate of Title Law, and any other evidence of ownership is not of sufficient weight to sustain a verdict or judgment where title must be proved as a condition precedent for the validity of such verdict or judgment."

It is very evident that in this case the original certificate of title was not properly before the court when and if an order to sell was issued. If such was before the court then it seems to me such evidence should have been presented to the clerk when the application for a new certificate was made. If such had been done it is very evident the clerk would not have been convinced that the new certificate should be issued unless it was made to appear to him that the valid liens thereon had been extinguished. See Section 6290-10 of the General Code which reads in part as follows:

"* * * If, from the records in the office of said clerk of courts, there appear to be any lien or liens on said motor vehicle, such certificate of title shall contain a statement of said liens *unless such application is accompanied by proper evidence of their satisfaction or extinction.*" (Emphasis added.)

Section 6290-7, General Code, reads in part as follows:

"* * * If it appear that a certificate of title has been improperly issued the registrar shall have the power and it shall be his duty to cancel same. Upon cancellation of any certificate of title the registrar shall notify the clerk of courts, who issued same, and said clerk of courts shall thereupon enter said cancellation upon his records. The registrar shall also notify the person to whom such certificate of title was issued, as well as any lien holders appearing thereon, of said cancellation and shall demand the surrender of such certificate of title, but said cancellation shall not affect the validity of any lien noted thereon. The

holder of such certificate of title shall return same to the registrar forthwith. If a certificate of registration has been issued to the holder of a certificate of title so cancelled the registrar shall immediately cancel same and demand the return of such certificate of registration and license plate or tags, and the holder of such certificate of registration and license plates or tags shall return same to the registrar forthwith. * * *"

On the basis of the facts submitted and the assumptions above noted and in the light of the law referred to, I am of the opinion that the registrar has a mandatory duty, where a certificate of title is issued in error by a clerk of courts to order such certificate cancelled and to proceed as directed by Section 6290-7 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.