

VALERIE THRASHER §
1405 Eastwood Drive §
Dothan, AL 36301, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner, §

vs. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

DOCKET NO. MV. 94-449

FINAL ORDER

The Revenue Department issued a certificate of title for a 1986 Nissan 300-ZX to Danielle B. Smith. Valerie Thrasher ("Petitioner") appealed the issuance of the certificate of title to the Administrative Law Division. A hearing was conducted in the matter on February 15, 1995. Danielle B. Smith and her present husband, Billy Coulter, appeared at the hearing. The Petitioner and her husband, Jay Thrasher, also appeared. Assistant counsel John Breckenridge represented the Department.

The issue in this case is whether the Department properly issued the certificate of title in question to Danielle B. Smith.

Danielle B. Smith applied for a certificate of title for the vehicle in question on October 24, 1994. In support of the application, she also submitted the outstanding certificate of title for the vehicle issued in the name of Lawrence R. Smith, an Alabama certificate of death indicating that Lawrence R. Smith had died on August 8, 1994, and an affidavit indicating that Lawrence Smith had died without a will and that she, Danielle B. Smith, was the rightful heir of the deceased. Based on the above application

and supporting documents, the Department issued an Alabama certificate of title to Danielle B. Smith on November 7, 1994.

Valerie Thrasher subsequently appealed to the Administrative Law Division by letter dated November 28, 1994. Valerie Thrasher is the daughter of Lawrence B. Smith and Danielle B. Smith. She claims that the certificate of title issued to Danielle B. Smith should be revoked because she is the rightful heir of Lawrence R. Smith. Valerie Thrasher's claim is based on the fact the Lawrence R. Smith and Danielle B. Smith divorced in 1985. Danielle B. Smith admits that she divorced Lawrence R. Smith in 1985, but argues that she is still the rightful heir and should have title to the car because the last will and testament of Lawrence R. Smith gives the car to her. A copy of the last will and testament was admitted at the administrative hearing. The will was executed in 1967 and leaves the vehicle in question to Danielle B. Smith. However, the will has not been probated.

Both parties offered testimony concerning their relationship with the deceased and who he wanted to have the vehicle in question. However, the only issue before the Administrative Law Division is whether the certificate of title issued to Danielle B. Smith was properly issued. If so, then no further action is necessary. However, if the certificate was procured by fraud or a material misstatement of fact, then it must be revoked pursuant to Code of Ala. 1975, §32-8-49.

As stated, Danielle B. Smith submitted to the Department an

affidavit for assignment of title for a vehicle when deceased owner dies without a will. That document is erroneous for two reasons. First, it erroneously claims that Lawrence R. Smith died without a will. He did have a valid will, although it has never been offered for probate. Second, and importantly, the affidavit erroneously states that Danielle B. Smith is the rightful heir of the deceased. She is not under Alabama law.

Danielle B. Smith, as the ex-wife of Lawrence R. Smith, is not a legal heir of Lawrence R. Smith under Alabama law pursuant to Code of Ala. 1975, §43-8-42. In addition, Code of Ala. 1975, §43-8-137 provides that a divorce revokes any disposition of property made by the will of a former spouse. Thus, even if the 1967 will had been probated, Danielle B. Smith would still not be entitled to the car under the will. The above conclusion is not altered by the fact that Danielle B. Smith is still a beneficiary of the United States military retirement of Lawrence R. Smith, or that the couple continued to own a house jointly.

Based on the above, the Department is directed to revoke the certificate of title previously issued for the vehicle to Danielle B. Smith. Upon application, the Department should issue a new certificate of title for the vehicle to Valerie Thrasher, the rightful heir of Lawrence R. Smith under Alabama law.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 24, 1995.

BILL THOMPSON
Chief Administrative Law Judge