



2-10-2009

DEPARTMENT OF SAFETY vs. One 1979
Chevrolet Scottsdale Truck D.O.S. Case # H6986,
VIN: CCU149S201358, Seized From: Kenneth H.
Davis, Seizure Date: 9/9/05, Claimant: Edward
Brown, Lien Holder: None Filed, Seizing Agency:
Johnson City P.D.

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**BEFORE THE COMMISSIONER
OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.05-101848J
One 1979 Chevrolet Scottsdale Truck]	D.O.S. Case # H6986
VIN: CCU149S201358]	
Seized From: Kenneth H. Davis]	
Seizure Date: 9/9/05]	
Claimant: Edward Brown]	
Lien Holder: None Filed]	
Seizing Agency: Johnson City P.D.]	

INITIAL ORDER

This contested administrative case was heard in Fall Branch, Tennessee on February 10, 2009, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. The Seizing Agency was represented by Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety. The Claimant appeared *pro se*.

This hearing was convened to consider the proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUI”). After a Forfeiture Warrant was issued, the Claimant filed a claim for the property, and this hearing was scheduled to consider his claim. Upon full consideration of the pleadings, the evidence submitted and the parties’ arguments, it is determined that the Claimant failed to prove that he has legal standing to pursue the claim filed in this case, and that his claim should therefore be dismissed. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On September 9, 2008, a police officer with the Johnson City Police Department stopped a truck driven by Kenneth Davis, and determined that Mr. Davis' vehicle operator's license had been revoked for driving under the influence of an intoxicant ("DUI"). Based on that information, the vehicle was seized, and a Forfeiture Warrant was issued for the truck.

2. Upon learning of the seizure and proposed forfeiture, Edward Brown ("Claimant") filed a claim for the vehicle, and this hearing was convened to consider his claim. As a preliminary matter, the State challenged his assertion of ownership of the vehicle and, thus, his legal standing to pursue his claim for its return.

3. Department of Safety records show that the titled owner of the truck on September 9, 2008 was Farrell Perrigan. The Claimant testified that he purchased the truck from Perrigan more than a year before it was seized, and that he had subsequently sold it to Kenneth Davis, who was driving it at the time of the seizure. Neither the Claimant nor Davis had obtained a State-issued title for the truck. He further said that Kenneth Davis did not pay him the \$800.00 that he agreed to pay for the truck, so the Claimant asserted that he still owned the truck when it was seized. To further complicate matters, the Claimant appeared at the hearing with a title to the truck that was issued in his name eight (8) days after the vehicle was seized. Since it was issued after the seizure, it does nothing to establish his interest in the truck on the date of seizure. He produced no other documents in support of his claim of ownership, such as proof of required liability insurance on the vehicle, or a sales tax receipt, bill of sale, or proof of maintenance expenditures.

4. Neither Kenneth Davis, the driver, nor Farrell Perrigan, the titled owner, testified at the hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. The State challenged the Claimant's legal standing to assert a claim for the seized property. The Department of Safety's *Rules of Procedure for Asset Forfeiture Hearings* provide that, once the issue is raised, the claimant has the burden of proving legal standing to pursue a claim. Rule 1340-2-2-.15(3), TENN. COMP. R. & REGS.; *see also* TENN. CODE ANN. §53-11-201(f)(A). Also pursuant to Departmental Regulations, once it is properly raised, the issue of legal standing must be determined prior to a ruling on the merits of a contested case. If standing is not proven, the claim may be dismissed, and, where otherwise appropriate, the property may be forfeited to the State. Rule 1340-2-2-.16(1)(g)(3), TENN. COMP. R. & REGS.; *See also, Jones v. Greene*, 946 S.W.2d 817 (Tenn. App. 1996).

2. To prove legal standing, the Claimant must establish an ownership interest in the seized property that was acquired in good faith. TENN. CODE ANN. § 53-11-201(f)(1). Without such an ownership interest, a party lacks standing to challenge the forfeiture. *See Jones v. Greene, supra; U.S. v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 497(6th Circuit 1998).

3. The primary proof of automobile ownership in this state is the title issued by the Tennessee Department of Safety. The seized vehicle's Title established its owner, at the time of its seizure, as Farrell Perrigan. However, other factors may also be taken into account when determining ownership.¹ One of those factors is the intention of the parties involved.² In the instant case, the Claimant testified that the titled/registered owner of the vehicle sold it to him. But, since Farrell Perrigan did not testify, it is not possible to determine the true intention of all of the parties involved in that purported transaction. And, the Claimant offered no evidence bearing on the other statutorily-listed factors. Consequently, the only link between the Claimant and the seized property is the Claimant's own self-serving testimony.

¹ See list of factors at TENN. CODE ANN. § 40-33-204(d).

² See, *Smith v. Smith*, 650 S.W.2d 54 (Tenn. Ct. App. 1983)

4. Additionally, the Claimant was not in possession of the truck at the time of the seizure, and admitted that he had sold the truck to the person who was driving it when it was seized. By selling the truck to Davis, the Claimant passed his ownership interest, if any, to Davis. There was apparently no legal document evidencing any such transaction, just as the Claimant did not title or register the truck during the year that he claims to have owned it. So, although the Claimant asserts that ownership of the truck reverted to him when Davis failed to pay him, he has no proof of such an agreement, just as he has no documentary proof that he ever owned the truck in the first place.

5. It appears then, that there is no competent evidence in the record confirming the Claimant's asserted ownership interest in the seized vehicle. Without substantial corroborating evidence, a Claimant's self-serving assertion of ownership is insufficient to confer legal standing to pursue a claim for property. Were it otherwise, even a perfect stranger with knowledge that property had been seized could simply assert his ownership of the property and force the State to convene a contested administrative hearing. The law does not contemplate such a waste of limited State resources. In the absence of competent proof of the Claimant's ownership interest in the seized property, it is therefore concluded that the Claimant has failed to prove that he has legal standing to pursue his claim.

Accordingly, it is hereby determined that the Claimant lacks legal standing to file or pursue his claim for the seized vehicle. The Claimant having failed to prove his legal standing, the merits of the case need not be addressed.

IT IS THEREFORE ORDERED that the Claim filed by Edward Brown is hereby Dismissed.

IT IS FURTHER ORDERED that, there being no other claims filed for the property, the seized vehicle is hereby forfeited to the Seizing Agency, the Johnson City Police Department, for disposition as provided by law.

This Order is entered and effective this 3rd day of March, 2009.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 3rd day of March, 2009.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial "T".

Thomas G. Stovall, Director
Administrative Procedures Division