

69,286

IN THE SUPREME COURT OF FLORIDA

Case No.

LAWSON L. LAMAR, SHERIFF
OF ORANGE COUNTY, FLORIDA,

Petitioner/Appellee,

v.

WHEELS UNLIMITED, INC.,

Respondent/Appellant.

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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ARGUMENT

The Supreme Court of Florida has jurisdiction to hear this matter pursuant to Florida Rule of Appellate Procedure 9.030(a)(2), as the opinion of the Fifth District Court of Appeal is in direct conflict with decisions of other district courts of appeal. These opinions set forth the principle that an owner or lienholder interest which has not been perfected according to the appropriate statutory procedure is not subject to the protection afforded by Florida Statute 932.703(2).

The Fifth District Court of Appeal, in the case sub judice, reversed the trial court's order granting summary judgment as to Wheels Unlimited, Inc.'s, claim in favor of Lawson L. Lamar, Sheriff of Orange County, Florida, (Petitioner/Appellee/Cross-Appellant). The Court's reasoning was that in forfeiture proceedings, Section 319.22(1), Florida Statutes, does not bar the assertion of a title or lien interest not based on a recorded certificate of title duly issued.

In reversing the trial court, the Fifth District Court of Appeal reasoned that the legislature did not intend to prohibit courts from recognizing equitable liens or ownership claims in motor vehicles and, therefore, legal and equitable principles must be applied independent of Florida Statute 319.22.

By recognizing such "equitable interests" in motor vehicles, the Fifth District Court of Appeal has adopted a position that

directly conflicts with numerous district courts of appeal that hold that a claimant's failure to comply with the appropriate title statutes bars the claim and said claim is not subject to the protection of Florida Statute 932.703(2). See In re: Forfeiture of One 1979 Chevrolet C10 Van, VIN CGU1590137222, Fla. Tag BXF922; and One 1980 Buick Century, VIN 4H69AAG156802, Fla. Tag BDT700, 490 So.2d 240 (2d DCA 1986); In re: Forfeiture of One 1946 Lockheed L-18 Loadstar, Right 1820-A105A Engines, Visible ID #N43WZ, 11 FLW 1537 (2d DCA, July 18, 1986); and Smith v. City of Miami Beach, 440 So.2d 611 (3rd DCA 1983).

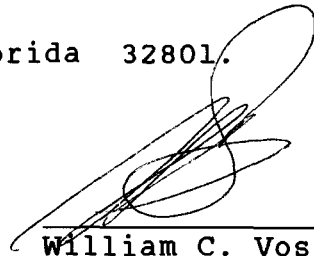
At least one district court of appeal has expressly held that it is inappropriate to consider a claimant's equitable lien in a forfeiture action because Florida Statute 932.703 (3) protects only those liens that have been perfected in the manner prescribed by law. See In re: Forfeiture of One 1979 Chevrolet C10 Van, VIN CGU1590137222, Fla. Tag BXF922; and One 1980 Buick Century, VIN 4H69AAG156802, Fla. Tag BDT700, supra.

CONCLUSION

The Fifth District Court of Appeal's ruling in the instant case directly conflicts with the holding of several other district courts of appeal that address the same issue.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 4 day of September, 1986, to Marc L. Lubet, Esquire, 209 E. Ridgewood Street, Orlando, Florida 32801.



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