

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**ARDEN E. FREDEKING and
GEICO INDEMNITY COMPANY**

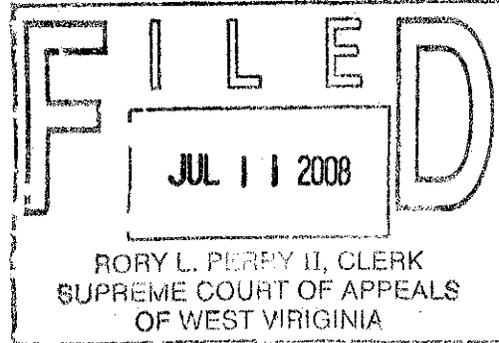
Appellees,

APPEAL NO. 073805

v.

**MARLISE TYLER and BRADFORD TYLER
as parents and next friends of ARIANA TYLER,
an infant under the age of eighteen (18) and
MALISE TYLER AND BRADFORD TYLER,
individually,**

Appellants.



APPELLANTS' APPEAL BRIEF

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I. INTRODUCTION

This proceeding is an appeal of an Order dated November 7, 2007 entered by the Circuit Court of Cabell County, West Virginia in which the trial court vacated the verdict of the jury and ordered, as a matter of law, in favor of the Plaintiff in regard to the issue of ownership of a 1985 BMW 535i. In addition, the trial court ordered a new trial on the issue of damages only. Your Appellants did thereafter appeal the decision of the trial court to this Honorable Court.

This civil action arises from a motor vehicle accident which occurred on July 22, 2003 in Huntington, West Virginia. This matter ultimately resulted in a trial pertaining to the Plaintiff's property damage claim and, more particularly, a determination as to whether she owned the motor vehicle for which she was claiming property damage at the time of the subject accident.

In her original Complaint, Arden Fredeking, represented by attorney Paul Biser of Fredeking & Fredeking law offices, alleged that the Fredeking & Fredeking law firm owned the 1985 BMW 535i which was involved in the subject accident. At that time, the law firm, also represented by Mr. Biser, asserted its property damage claim as well as a third-party bad faith claim against GEICO, the defendants' insurance carrier. Subsequently, the law firm voluntarily dismissed its claims, and the plaintiff Arden Fredeking, still represented by Mr. Biser and the Fredeking & Fredeking law firm, did then amend her Complaint to assert that she owned the vehicle. In her Amended Complaint, Ms. Fredeking claimed that as a result of the accident, her vehicle was rendered a total loss for which the Defendants were liable. The Defendants did not oppose the issue of liability at trial, but rather argued that the Plaintiff was not the owner of the vehicle at the time of the accident made the basis of this civil action.

During the Plaintiff's case in chief, the jury was shown, among other things, a copy of the title to the vehicle which, on its face, listed the Fredeking & Fredeking law firm as the owner of the vehicle. This title was admitted into evidence without objection, and is attached hereto as *Exhibit A*. In addition, the jury was shown a copy of the accident report and post-accident storage bills, attached hereto as *Exhibits B* and *C*, respectively, which were also introduced into evidence without objection. These documents also list the owner of the subject vehicle as the Fredeking & Fredeking law firm. Further, the jury heard testimony from the Plaintiff that for every year from 1998, the year of the alleged transfer of ownership of the vehicle from the law firm to the Plaintiff, through the date of the accident in 2003, the Plaintiff never renewed the registration in her name but, rather, the law firm renewed the registration in its name. Further, the jury heard undisputed testimony that during the years 1998 through 2003, the vehicle was registered in the State of Florida. However, the

Plaintiff claimed that she was a resident of West Virginia during those years. Moreover, the jury heard testimony that Plaintiff never even sought or requested to have the title to the vehicle transferred from the law firm into her name prior to the date of the accident.

Following the trial, the jury returned a verdict in favor of the Defendants. The jury specifically found that the Plaintiff and her father, R.R. Fredeking, II¹ did not own the 1985 BMW at the time of the accident made the basis of this civil action and, therefore, the Defendants were not liable to the Plaintiff for her property damage claim. As fully discussed below, the evidence with which the jury was presented provided a solid foundation upon which it could base a determination that none of the Defendants were liable to Ms. Fredeking for her property damage claim because (1) the vehicle was titled in the name of the law firm during the time in which the Plaintiff contends she owned the vehicle; (2) despite language on the title from which the Plaintiff claims she derived her title which required a new title be issued, the Plaintiff never sought to have the title transferred into her name; and (3) for every year between 1998 and the date of the accident in 2003, the law firm renewed the registration to the vehicle in its name, all with the consent and acquiescence of the Plaintiff.

The Plaintiff subsequently filed a Motion for Judgment as a Matter of Law or in the Alternative Motion for a New Trial pursuant to Rules 50 and 59 of the *West Virginia Rules of Civil Procedure*. The trial court entered an order granting the Plaintiff's motion, concluding, among other things, "all the testimony at trial showed that the vehicle was properly signed over to and owned by Arden Fredeking. The only evidence at trial concerning ownership of the vehicle was that the

¹Although Mr. Fredeking was allegedly listed on the back of the title as co-transferee of the vehicle, he did not personally seek any compensation or present a claim for any property damage.

plaintiff's father signed the title over to the plaintiff, gave her possession of the title, and gave her possession of the vehicle prior to the motor vehicle accident in question. . . ." The trial court went on to find "the only evidence presented at trial indicated that the plaintiff intended the vehicle to be her own and used it as such from the time of the transfer of ownership until the time of the motor vehicle accident."

The Appellants contend that the Plaintiff did *not* present a *prima facie* case of ownership of the subject vehicle but, rather, the Plaintiff should have been estopped from asserting ownership of vehicle based upon her representations made to this State - that as a West Virginia resident she did not own the vehicle and thus had no obligation to register the same in this State - and the State of Florida - that the law firm continued to own the vehicle from 1998 through 2003. Thus the jury's verdict on the issue of ownership of the subject vehicle is *not* contrary to the clear weight of the evidence. Accordingly, the Appellants appeal the Circuit Court's Order which vacated the jury's verdict and which held, as a matter of law, that the Plaintiff owned the subject vehicle at the time of the accident.

Entry of the order setting aside the jury's verdict is a blatant abuse of discretion on the part of the trial court. There was conflicting evidence presented during the trial as to the ownership of the vehicle, including admissions on the part of the Plaintiff that she did not seek or attempt to transfer the title of the vehicle in her name, and testimony on the part of other witnesses that the law firm renewed the registration to the vehicle in its name, all with the Plaintiff's acquiescence. In addition, after the subject collision, the accident report and the storage bills each listed the owner of the vehicle as the Fredeking & Fredeking law firm, and *not* the Plaintiff. As such, the clear weight of the evidence which was admitted during the trial called into question not only Ms. Fredeking's

credibility, but also supported the jury's well-reasoned verdict. Consequently, the Appellants request that this Honorable Court reverse the trial court's decision to grant the Appellee's motion and reinstate the jury verdict.

II. STATEMENT OF FACTS

On July 22, 2003, Arden Fredeking was driving a 1985 BMW 535i when Arianna Tyler caused an accident at the intersection of 13th Avenue and 8th Street in Huntington, West Virginia. As a result of this accident, Arden Fredeking sustained personal and bodily injuries.² In addition, the 1985 BMW was rendered a total loss as a result of the subject accident. In the original claim filed against the Defendants' insurance carrier, Fredeking & Fredeking Law Offices, represented by attorney Dick Fredeking of that firm, asserted a property damage claim on behalf of the law firm. When the property damage claim could not be resolved based upon the law firm's terms, Paul Biser, an attorney working for the Fredeking & Fredeking law firm serving as counsel for both the law firm and Ms. Fredeking, filed a Complaint on September 12, 2003, less than three months after the motor vehicle accident. In the original Complaint, the law firm alleged that it owned the vehicle while Ms. Fredeking alleged that she sustained bodily injuries from the accident.

On October 16, 2003, your defendant appellants filed an Answer to the Complaint as well as a Counterclaim against Arden Fredeking preserving their claim for contribution from Ms. Fredeking for any potential negligence on her part as it pertains to the property damage claim asserted by the law firm. On November 5, 2003, Arden Fredeking filed her Motion to Amend Complaint. At the same time, the law firm sought to voluntarily dismiss its property damage claims

² The bodily injury claims were previously resolved by the parties. Thus, the only issues which were subject to the trial of this matter pertained to the property damage claim.

it had asserted in the original Complaint. It seems the law firm maintained it made a mistake in asserting that it owned the vehicle. Yet, in the Motion to Amend Complaint, Ms. Fredeking acknowledges that the law firm is the owner of the vehicle, but states that she is the proper owner. Over your Appellants' objection, by Order dated December 11, 2003, the trial court granted the Motion to Amend Complaint, effectively permitting Ms. Fredeking to then assume the claims for property damage and third-party bad faith which had been previously asserted by the law firm.

At the trial of this matter, the Defendants maintained that the Plaintiff did not own the subject BMW at the time of the accident made the basis of this civil action. In support thereof, the Defendants vigorously cross-examined various witnesses regarding the payment of taxes and title fees, repair bills, the accident report, the title itself and even post-accident documents which showed the law firm as the owner of the vehicle. The Defendants pointed out, among other things, that Ms. Fredeking had not taken any steps since the alleged transfer in 1998 to put the vehicle in her own name and, further, that the law firm had continued to renew the annual registration and license in its name for each year beginning in 1998 through 2003 in the name of the law firm. Yet, she continued to drive the vehicle and put the registration listing the law firm of the vehicle in the vehicle for each year from 1998 to 2003. Implicit with this evidence was the fact that the Plaintiff, as a West Virginia resident, had not registered the BMW with the State of West Virginia.

Following submission of evidence, the jury returned a verdict finding that the 1985 BMW 535i was not owned by Arden Fredeking at the time of the accident. Accordingly, the jury also failed to award Ms. Fredeking any damages on her property damage claim. By Order dated November 1, 2007, the trial court set aside the jury's verdict and, further, directed verdict in favor of Ms. Fredeking on the issue of ownership of the vehicle.

III. ASSIGNMENTS OF ERROR

- A. The trial court improperly applied West Virginia law to the alleged transaction between Arden Fredeking and the Fredeking & Fredeking law firm, and should have applied Florida law regarding the same.**
- B. The trial court abused its discretion by setting aside the jury’s verdict, as the clear weight of the evidence supported the jury’s verdict.**
- C. The trial court abused its discretion by finding that the clear weight of the evidence rendered the Plaintiff Arden Fredeking the owner of the 1985 BMW 535i at the time of the subject accident in spite of the fact that she had never attempted to have title to the vehicle transferred into her name for over five years.**
- D. The trial court abused its discretion by usurping the province of the jury and impermissibly substituting its judgment for that of the finders of fact.**

IV. POINTS AND AUTHORITIES RELIED UPON

West Virginia Cases:

Akers v. Cabell Huntington Hosp., Inc., 215 W. Va. 346, 599 S.E.2d 769 (2004) 14

Alexander v. Jennings, 150 W. Va. 629, 149 S.E.2d 213 (1966) 15

Andrews v. Reynolds Mem. Hosp., Inc., 201 W. Va. 624, 499 S.E.2d 846 (1997) 13

Arbogast v. Mid-Ohio Valley Med. Corp., 214 W. Va. 356, 362, 589 S.E.2d 498, 504 (2003). . 28

Bronson v. Riffe, 148 W. Va. 362, 135 S.E.2d 244 (1964) 13

Foster v. Sakhai, 210 W. Va. 716, 727, 559 S.E.2d 53, 64 (2001) 11

General Elec. Co. v. Keyser, 166 W. Va. 456, 275 S.E.2d 289 (1981). 17

Gerver v. Benavides, 207 W. Va. 228, 530 S.E.2d 710 (1999) 12, 31

Howe v. Howe, 218 W. Va. 638, 625 S.E.2d 716 (2005). 16

In re State Public Building Asbestos Litigation, 193 W. Va. 119, 454 S.E.2d 413 (1995) 12

<i>Keesee v. General Refuse Service, Inc.</i> , 216 W. Va. 199, 604 S.E.2d 449 (2004)	13
<i>Kizer v. Harper</i> , 211 W. Va. 47, 561 S.E.2d 368 (2001)	14
<i>Lee v. Saliga</i> , 179 W. Va. 762, 373 S.E.2d 345 (1988)	16
<i>Morgan v. Bottome</i> , 170 W. Va. 23, 289 S.E.2d 469 (1982)	15
<i>Morrison v. Sharma</i> , 200 W. Va. 192, 488 S.E.2d 467 (1997)	12
<i>Nadler v. Liberty Mut. Fire Ins. Co.</i> , 188 W. Va. 329, 424 S.E.2d 256 (1992)	16
<i>New v. Tac & C Energy, Inc.</i> , 177 W. Va. 648, 355 S.E.2d 659 (1987)	17
<i>Orr v. Crowder</i> , 173 W. Va. 335, 315 S.E.2d 593 (1983)	13
<i>Pauley v. Bays</i> , 200 W. Va. 459, 464, 490 S.E.2d 61, 66 (1997)	14, 31
<i>Rodriguez v. Consolidation Coal Co.</i> , 206 W. Va. 317, 524 S.E.2d 672 (1999)	14
<i>Sanders v. Georgia-Pacific Corp.</i> , 159 W. Va. 621, 225 S.E.2d 218 (1976)	13
<i>Sias v. W-P Coal Co.</i> , 185 W. Va. 569, 408 S.E.2d 321 (1991)	15
<i>Tanner v. Rite Aid of West Virginia, Inc.</i> , 194 W. Va. 643, 461 S.E.2d 149 (1995)	13-14
<i>Tennant v. Marion Health Care Foundation, Inc.</i> , 194 W. Va. 97, 459 S.E.2d 374 (1995)	11, 12
<i>Toler v. Hager</i> , 205 W. Va. 468, 519 S.E.2d 166 (1999)	13, 14-15
<i>Walker v. Monongahela Power Co.</i> , 147 W. Va. 825, 131 S.E.2d 736 (1963)	13
<i>Ware v. Howell</i> , 217 W. Va. 25, 614 S.E.2d 464 (2005)	13
<u>West Virginia Code:</u>	
<i>W. Va. Code</i> § 17A-3-1 (2002)	21, 24, 26, 30
<i>W. Va. Code</i> § 58-5-1 (1998)	11
<u>West Virginia Rules of Civil Procedure</u>	
<i>W. Va. R. Civ. P.</i> Rule 50	14, 15

W. Va. R.Civ.P. Rule 59 13

United States Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). 14, 31

Foreign Cases

Green Tree Acceptance, Inc. v. Zimmerman, 611 So.2d 608 (Fla. 1993). 25, 27

In re Coburn, 250 B.R. 401 (M.D. Fla 1999). 25

Foreign Statutes

Fla. Stat. Ann. § 319.22(1) 25, 26, 27

Fla. Stat. Ann. § 320.0609(2)(a) 25-26

V. DISCUSSION OF LAW AND ARGUMENT

A. STANDARD OF REVIEW

1. Standard of review for granting a new trial

West Virginia Code § 58-5-1 states “[a] party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment. . . .” This Court previously stated “we do not believe that *W. Va. Code § 58-5-1* (1998) forecloses us from hearing the appeal of an order granting a new trial. Accordingly, we hold that one may appeal to this Court a circuit court’s order granting a new trial and one may appeal such an order without waiting for a new trial to be had.” *Foster v. Sakhai*, 210 W. Va. 716, 727, 559 S.E.2d 53, 64 (2001). Consequently, this appeal to this Honorable Court is proper.

An appellate court reviews a circuit court’s ruling on a motion for a new trial under an abuse of discretion standard. *Tennant v. Marion Health Care Foundation, Inc.*, 194 W. Va. 97, 459 S.E.2d

374 (1995). This Court discussed the applicable standard for reviewing a lower court's ruling on a motion for a new trial in *In re State Public Building Asbestos Litigation*, 193 W. Va. 119, 454 S.E.2d 413 (1995) when it stated, in Syllabus Point 3:

[a] motion for a new trial is governed by a different standard than a motion for a directed verdict. When a trial judge vacates a jury verdict and awards a new trial pursuant to Rule 59 of the *West Virginia Rules of Civil Procedure*, the trial judge has the authority to weigh the evidence and consider the credibility of the witnesses. If the trial judge finds the verdict is against the clear weight of the evidence, is based on false evidence, or will result in a miscarriage of justice, the trial judge may set aside the verdict, even if supported by substantial evidence, and grant a new trial. A trial judge's decision to award a new trial is not subject to appellate review unless the trial judge abuses his or her discretion.

This Court has also held that trial judges should rarely grant new trials. *Morrison v. Sharma*, 200 W. Va. 192, 488 S.E.2d 467 (1997); *Gerver v. Benavides*, 207 W. Va. 228, 530 S.E.2d 710 (1999), cert. den. 529 U.S. 1131, 120 S.Ct. 2008, 146 L.Ed.2d 958. Specifically, a new trial should be granted "only where it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done." *Morrison*, 200 W. Va. at 195, 488 S.E.2d at 470. In further support of this proposition, this Court has stated that, absent a showing of bias or prejudice, a new trial is unwarranted when: (1) there has been a full trial on the merits, (2) there is no obvious error during the original proceedings, and (3) the record shows it is extremely unlikely that prejudice could have affected the trial. See, *Tennant*, 194 W. Va. 97, 459 S.E.2d 374 (1995).

The *Tennant* Court reaffirmed the *Asbestos Litigation* standard of review when it stated that "when a trial court abuses its discretion and grants a new trial on an erroneous view of the law, a clearly erroneous assessment of the evidence, or on an error that had no appreciable effect on the outcome, it is this Court's duty to reverse. *Tennant*, 194 W. Va. at 106, 459 S.E.2d at 383. Further,

a trial court's ruling granting a new trial will be reversed on appeal when it is clear that the trial court has acted under some misapprehension of law or evidence. *Ware v. Howell*, 217 W. Va. 25, 614 S.E.2d 464 (2005); *Keesee v. General Refuse Service, Inc.*, 216 W. Va. 199, 604 S.E.2d 449 (2004); *Andrews v. Reynolds Mem. Hosp., Inc.*, 201 W. Va. 624, 499 S.E.2d 846 (1997); *W.Va.R.Civ.P.* 59(a). In that regard, it has been a long-standing rule that a trial court's award of a new trial should be reversed if consideration of the evidence shows that the case was a proper one for jury determination. Syl. pt. 1, *Andrews*, supra; Syl. pt. 4, *Sanders v. Georgia-Pacific Corp.*, 159 W. Va. 621, 225 S.E.2d 218 (1976). Finally, this Court has also stated "[w]here the trial court improperly sets aside a verdict of a jury, such verdict will be reinstated by this Court and judgment rendered thereon." *Bronson v. Riffe*, 148 W. Va. 362, 135 S.E.2d 244 (1964).

This Court has also offered guidance with regard to determining whether a verdict is supported by the evidence introduced at trial. This Court has previously declared "[i]n determining whether the verdict of a jury is supported by the evidence, every reasonable and legitimate inference, fairly arising from the evidence in favor of the party for whom the verdict was returned, must be considered, and those facts, which the jury might properly find under the evidence, must be assumed as true. *Walker v. Monongahela Power Co.*, 147 W. Va. 825, 131 S.E.2d 736 (1963). Further, this Court explained in Syllabus Point 7 of *Toler v. Hager*, 205 W. Va. 468, 519 S.E.2d 166 (1999)

[i]n determining whether there is sufficient evidence to support a jury verdict, the court should (1) consider the evidence most favorable to the prevailing party; (2) assume that all conflicts in the evidence were resolved by the jury in favor of the prevailing party; (3) assume as proved all facts which the prevailing party's evidence tends to prove; and (4) give to the prevailing party the benefit of all favorable inferences which reasonably can be drawn from the facts proved.

(citing Syl. pt. 5, *Orr v. Crowder*, 173 W. Va. 335, 315 S.E.2d 593 (1983); *Tanner v. Rite Aid of*

West Virginia, Inc., 194 W. Va. 643, 461 s.E.2d 149 (1995).

Finally, this Court has weighed in on the critical role of the jury in the context of deciding whether it is appropriate to set aside a jury verdict and grant a new trial. In *Pauley v. Bays*, 200 W. Va. 459, 464, 490 S.E.2d 61, 66 (1997), this Court stated “[w]e have . . . consistently held that the function of the jury is to weigh the evidence with which it is presented and to arrive at a conclusion.” In performing this task, the jury must analyze the evidence and determine the credibility to be assigned to various components of that evidence. *Id.*

Moreover, in *Anderson v. Liberty Lobby, Inc.*, the United States Supreme Court agrees that the jury is the ultimate trier of fact. In that case, the Supreme Court explained “credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” See, *Pauley*, 200 W. Va. at 464, 490 S.E.2d at 66, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In fact, where a civil action has been fairly tried before a competent jury, it is an abuse of a trial judge’s discretion to vacate the verdict and grant a new trial. See generally, *Pauley*, 200 W. Va. 459, 490 S.E.2d 61.

2. Standard of review for judgment as a matter of law

The appellate standard of review for a judgment as a matter of law made pursuant to Rule 50(b) of the *West Virginia Rules of Civil Procedure* is de novo. *Akers v. Cabell Huntington Hosp., Inc.*, 215 W. Va. 346, 599 S.E.2d 769 (2004). In determining whether a Rule 50(b) motion should be granted, the evidence should be considered in a light most favorable to the non-moving party. *Kizer v. Harper*, 211 W. Va. 47, 561 S.E.2d 368 (2001); *Rodriguez v. Consolidation Coal Co.*, 206 W. Va. 317, 524 S.E.2d 672 (1999). This standard is consistent with the above cited Syllabus Point 7 of *Toler*, 205 W. Va. 468, 519 S.E.2d 166 (1999), which states:

[i]n determining whether there is sufficient evidence to support a jury verdict, the court should (1) consider the evidence most favorable to the prevailing party; (2) assume that all conflicts in the evidence were resolved by the jury in favor of the prevailing party; (3) assume as proved all facts which the prevailing party's evidence tends to prove; and (4) give to the prevailing party the benefit of all favorable inferences which reasonably can be drawn from the facts proved.

When ruling on a motion brought under Rule 50(b), the trial court must apply the same factors as to the sufficiency of the evidence as it would when deciding a motion for directed verdict. *Morgan v. Bottome*, 170 W. Va. 23, 289 S.E.2d 469 (1982). Thus, in cases where the evidence is such that the jury could have properly found for either party upon the factual issues in the case, a motion brought under Rule 50 of the *West Virginia Rules of Civil Procedure* should not be granted. *Id.* at 24, 470 (citing *Alexander v. Jennings*, 150 W. Va. 629, 149 S.E.2d 213 (1966)). Stated similarly, a trial court is not entitled to substitute its opinion for the opinion of the jury on evidence giving rise to inferences about which reasonable minds could differ. *Sias v. W-P Coal Co.*, 185 W. Va. 569, 408 S.E.2d 321 (1991). Therefore, if the moving party is unable to overcome the assumptions and inferences favoring the non-moving party and, thus, the jury's verdict, then the movant's motion seeking a judgment as a matter of law must be denied.

Based upon the foregoing tenets relating to both the Plaintiff's Motion for New Trial and/or in the Alternative Motion for Judgment as a Matter of Law, the trial court's Order granting the Plaintiff's motion for a new trial should be reviewed under an abuse of discretion standard, while the Order granting the Plaintiff's motion seeking judgment as a matter of law should be reviewed de novo. As will be shown, the Plaintiff failed to assert that there was any prejudicial error during the trial that affected the outcome. Further, the clear weight of the evidence, including all reasonable inferences made therefrom, supports the jury's verdict. Given that the jury, after hearing the same

evidence as the trial judge, arrived at a different conclusion than the trial court as to the issue of ownership of the vehicle, it is apparent reasonable minds differed as to the application of the facts and the inferences drawn therefrom. Consequently, the trial court abused its discretion in issuing the Order which not only vacated the jury's verdict but also found, as a matter of law, that the subject vehicle was owned by the Plaintiff. Based upon the foregoing, and as discussed more thoroughly below, it is the duty of this Honorable Court to reverse the trial court's decision and reinstate the jury's verdict.

B. The trial court improperly applied West Virginia law to the alleged transaction between Arden Fredeking and the Fredeking & Fredeking law firm but, rather, should have applied Florida law regarding the same.

In setting aside the jury's verdict, and in finding that the BMW was owned by Arden Fredeking, the trial applied the laws of West Virginia regarding the alleged transaction between the law firm and Ms. Fredeking. However, applying West Virginia's laws regarding this alleged transaction, rather than Florida law, was in error.

Under West Virginia choice of law principles, generally the law of the state where the contract is made and to be performed governs the construction of a contract. See, Syl. pt. 3, *Howe v. Howe*, 218 W. Va. 638, 625 S.E.2d 716 (2005); *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988). Further, "[t]he mere fact that the substantive law of another jurisdiction differs from or is less favorable than the law of the forum state does not, by itself, demonstrate that application of the foreign law under the recognized conflict of laws principles is contrary to the public policy of the forum state." Syl. pt. 3, *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992).

No doubt that the alleged transaction between the Appellee and the law firm is rooted in

contract as a transaction between two parties for the exchange of personal property. In *General Elec. Co. v. Keyser*, 166 W. Va. 456, 275 S.E.2d 289 (1981), this Court held in syllabus point 2 “[t]he law of the state in which a contract is made and to be performed governs the construction of a contract when it is involved in litigation in the courts of this state.” Further, in 1987, West Virginia adopted the “more significant relationship” test in *New v. Tac & C Energy, Inc.*, 177 W. Va. 648, 355 S.E.2d 659 (1987) to determine a conflict of laws.

In the instant matter, the vehicle was licensed and registered in Florida at all times between approximately 1985, when the law firm purchased the vehicle, and 1998, when the vehicle was allegedly transferred. *Trial Trans.* at 109-111, 199-200. In addition, at the time of the alleged transaction, Ms. Fredeking was a student attending school in Florida. *Trial Trans.* at 108. The vehicle was allegedly transferred to her for her 16th birthday. *Trial Trans.* at 58. While she was 16 and still attending school in Florida, she obtained a Florida driver’s license. *Trial Trans.* at 108. Then, for every year thereafter between 1998 and 2003, the vehicle continued to be titled, registered and licensed in Florida in the name of the law firm, using a Florida address. Thus, Ms. Fredeking in the very least acquiesced to the ongoing registration of the vehicle based upon Florida law and, further, acquiesced to the ongoing control the State of Florida maintained on said vehicle as to the license, title and registration of the same.

In 2004, after the accident, Ms. Fredeking obtained a Certificate of Title for the vehicle, providing a Florida address for herself for the registration of the BMW. Interestingly, the address Ms. Fredeking provided to the Florida Division of Motor Vehicles for the Certificate of Title to the

vehicle in 2004 was the same address listed for the law firm in the accident report.³

Thus, the operative facts which mandate that Florida law apply to the alleged 1998 transaction by and between the law firm, as transferor, and Ms. Fredeking, as transferee, include: (a) the seller/transferor was a Florida law firm, located in Florida; (b) at the time of the alleged transaction, Ms. Fredeking was residing in and attending school in Florida; (c) when she turned 16 at about the time of the alleged transaction, Ms. Fredeking obtained a Florida driver's license; (d) for every year between 1985, when the law firm purchased the vehicle, and 1998, when the law firm allegedly transferred the vehicle, the BMW was licensed and registered in Florida; and (e) for every year between 1998 and the date of the accident in 2003, the vehicle continued to be licensed and registered in Florida; (f) at no time prior to the accident in 2003 had the vehicle ever been licensed, registered or titled in the State of West Virginia; and (g) the Plaintiff sought and obtained title to the vehicle in 2004, after the accident, from the State of Florida.

To find that West Virginia law applies to the alleged transaction, rather than Florida law, would most certainly turn the law of contracts and transactions on its head. If this Court were to uphold the trial court's decision to apply West Virginia law to this alleged transaction, it would equate to a holding which would permit a person to purchase a vehicle in Texas, live in Texas and drive the vehicle while living there, then later move to West Virginia and drive that vehicle to West Virginia, but maintain a Texas registration for that vehicle for years after having moved to West

³There is little doubt that Florida law applied to the alleged transaction in 1998. Otherwise, there would be no reason for the Plaintiff to apply for a new Certificate of Title in her name in 2004, or for the law firm to continue to renew the registration in its name for every year between 1998 and 2003. The fact that the Plaintiff sought and obtained a Certificate of Title from the State of Florida for this vehicle in 2004 must be construed as Plaintiff's concurrence that Florida law applies to the alleged 1998 transaction.

Virginia but to demand that West Virginia law applies to the original purchase of the vehicle in Texas. Not only does that impede upon the rights of the Texas transferor, who may very well have no connection whatsoever to this State, but it also then negates the rights of the State of Texas to regulate motor vehicle sales within its state boundaries. Obviously, taking Ms. Fredeking's position to its logical conclusion would produce an absurd result unsupported by any significant legal argument whatsoever. Given the foregoing facts, as it pertains to the alleged transaction between Arden Fredeking and the law firm, Florida law must apply.

C. The trial court abused its discretion by setting aside the jury's verdict.

1. The clear weight of the evidence supported the conclusion that the vehicle was not owned by Arden Fredeking at the time of the accident.

The trial court found, in error, "all the testimony at trial showed that the vehicle was properly signed over to and owned by Arden Fredeking. The only evidence at trial concerning ownership of the vehicle was that the plaintiff's father signed the title over to the plaintiff, gave her possession of the title, and gave her possession of the vehicle prior to the motor vehicle accident in question. . . ." The trial court went on to find "the only evidence presented at trial indicated that the plaintiff intended the vehicle to be her own and used it as such from the time of the transfer of ownership until the time of the motor vehicle accident." However, based upon the evidence and all reasonable inferences made therefrom, the trial court has clearly abused its discretion in setting aside the jury's verdict, as the clear weight of the evidence supports the jury's decision regarding ownership.

In the instant matter, both prior to trial and during the trial, but before the matter was submitted to the jury for its consideration, the trial court found that the issues presented at the trial of this matter regarding the ownership of the vehicle were a question of fact for the jury. In

particular, and in response to both the Plaintiff and Defendants' respective motions seeking a Directed Verdict, the trial court simply held up the title to the subject vehicle, and indicated that the title, still in the name of the law firm and which had never been put into the name of Arden Fredeking prior to the accident, even though the same was allegedly transferred to her more than five years earlier, was enough to create a question of fact as to the ownership of the vehicle at the time of the accident.

Further, and in addition to the title, the jury also had before it numerous other facts and evidence to consider when determining the issue of ownership of the BMW. This evidence include:

- (1) At the time of the accident, the BMW was still titled in the name of the law firm, *Trial Trans.* at 109-110, 199-200, *Def. Tr. Ex. 1*;
- (2) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, submitted the Certificate of Title showing transfer of title from the law firm to Arden or Dick Fredeking to any Florida county tax collector or authorized tag agent, as required by Florida law as set forth on the back of the Certificate of Title,⁴ *Trial Trans.* at 111, 113, 203-04;
- (3) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, submitted the \$6.00 fee or a Sales Tax Receipt or Exemption form to any Florida county tax collector or authorized tag agent, as required by Florida law as set forth on the back of the Certificate of Title; *Trial Trans.* at 201-02, 203-04;
- (4) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, applied for a new Certificate of Title to have the vehicle placed in Arden Fredeking's name in the State of Florida, *Trial Trans.* at 113; 203-04;
- (5) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, applied for a new Certificate of Title to have the vehicle placed in Arden

⁴Under Florida law, in order to transfer or change ownership of a vehicle, the transferee or purchaser must submit the certificate of title to a county tax collector or authorized tag agent along with the fee, and then present the certificate of title along with the receipt showing that the payment of taxes to the Florida Division of Motor Vehicles. This information is clearly printed on the back of the Certificate of Title to the vehicle from which Ms. Fredeking has asserted her ownership in the vehicle.

Fredeking's name in the State of West Virginia; *Trial Trans.* at 108.

- (6) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, applied for a new registration for the vehicle to have the vehicle placed in Arden Fredeking's name in the State of Florida, *Trial Trans.* at 113, 203-04;
- (7) Prior to the accident, neither Arden Fredeking nor Dick Fredeking, nor anyone on their behalf, applied for a new registration for the vehicle to have the vehicle placed in Arden Fredeking's name in the State of West Virginia; *Trial Trans.* at 108.
- (8) The law firm affirmatively renewed the vehicle's registration for each of the years 1998, 1999, 2000, 2001, 2002 and 2003, maintaining the registration of the vehicle in the State of Florida and in the name of the law firm, representing to the State of Florida and to the world that the law firm owned the vehicle, *Trial Trans.* at 113;
- (9) For each year between 1998 and 2003, Arden Fredeking received the renewed registration for the BMW in the name of the law firm and placed the registration listing the law firm as the owner of the vehicle in her car; *Trial Trans.* at 205-06;
- (10) For each year between 1998 and 2003, Arden Fredeking received the decal accompanying the renewed registration for the BMW which was registered in the name of the law firm and placed the decal on the vehicle's Florida license plate; *Trial Trans.* at 205-07;
- (11) The BMW was licensed in the State of Florida at all relevant times prior to the accident in July 2003, *Trial Trans.* at 108;
- (12) Arden Fredeking was a resident of or attended school in Florida in 1998 but did then return to West Virginia to complete her high school education, graduating from St. Joseph's High School in Huntington, West Virginia;⁵
- (13) Even though she claimed to be a West Virginia resident, Arden Fredeking never sought to have the title to the car transferred to West Virginia (as required by West Virginia Code § 17A-3-1 (2002));
- (14) Arden Fredeking acquiesced and/or consented to maintaining the vehicle's

⁵Ms. Fredeking alleged she was a West Virginia resident in her original Complaint and Amended Complaint, and did then take issue with the appellants/respondents' denial of the same. Interestingly, after this accident, in February 2004, Ms. Fredeking applied for and received a new Certificate of Title for the subject vehicle listing she and her father as the owners of the vehicle. However, rather than listing a West Virginia address, the new Certificate of Title issued in 2004 listed a Ponte Vedra Beach, Florida address for Ms. Fredeking and her father.

registration under the name of the law firm and in the State of Florida;

- (15) The plain language of the title upon which the plaintiff relies in forming her claim to ownership of the vehicle requires the submission of the title for transfer or change of ownership within 20 days after it is purportedly transferred;⁶
- (16) The repair estimate and storage bills were written for and in the name of the law firm, and not Arden Fredeking or Dick Fredeking; *Trial Trans.* at 130, *Plain. Tr. Ex. 1, Def. Tr. Exs. 2 & 3*; and
- (17) The accident report listed the vehicle as being licensed and registered in Florida, with the law firm listed as the owner of the vehicle.

Thus, the evidence presented to the jury, and that evidence which is undisputed, is that prior to the July 22, 2003 accident made the basis of this civil action, the vehicle was never titled in West Virginia, even though Arden Fredeking maintains that she lived in West Virginia. Rather, from the time the law firm purchased the BMW in 1985, *Trial Trans.* at 105, through the date of the accident made the basis of this civil action in July 2003, the car was licensed, titled and registered in the State of Florida. Further, during that same time span, the BMW was licensed and registered to and titled in the name of the law firm, and not Arden Fredeking. See, *Exhibit A*. In fact, at no time prior to the July 22, 2003 motor vehicle accident was the vehicle ever titled in the name of Arden Fredeking. Rather, Ms. Fredeking did not obtain title to the vehicle in her name until February 5, 2004, more than six months after the subject accident. See, Certificate of Title, attached hereto as *Exhibit D*.

It is also worthwhile to point out that when Ms. Fredeking first filed her lawsuit, she was

⁶Under Florida law, in order to transfer or change ownership of a vehicle, the transferee or purchaser must submit the Certificate of Title to any county tax collector or authorized agent with a \$6.00 fee. This information is clearly printed on the back of the Certificate of Title to the vehicle. Afterwards, the purchaser or transferee then sends the title, along with the sales tax receipt, to the Florida Division of Motor Vehicles in obtaining a new Certificate of Title in his or her name. In the instant matter, Ms. Fredeking did not do any of this until February 2004, more than 6 months after the accident made the basis of this civil action.

represented by Paul Biser, a lawyer with the Fredeking & Fredeking law firm. In her Complaint, in which the law firm was a co-plaintiff, Ms. Fredeking included the allegation that the law firm owned the vehicle. *Compl.* ¶ 4. While Ms. Fredeking was presenting a claim for her bodily injury claim, the law firm was attempting to recover its property damage against the Tylers, asserting that it, and not Arden Fredeking, owned the vehicle! Only later did the law firm move to dismiss its Complaint and did Ms. Fredeking then seek permission to amend her Complaint to include a claim of property damage. However, even in her Motion to Amend Complaint, Ms. Fredeking, by counsel, acknowledged that the law firm was the record owner at the time of the accident! Thus, through her own admissions and pleadings, Ms. Fredeking has maintained that the law firm owned the vehicle. Further, it must not be overlooked that these allegations were made by an attorney representing Ms. Fredeking from her father's law firm, the same law firm which had initially asserted its ownership of the vehicle. Accordingly, one must presume that law firm was well aware that it owned the vehicle as it had alleged in the original Complaint.

As discussed above, Ms. Fredeking has readily acknowledged that for over five years she did not seek to have the vehicle registered in her name and the title to the BMW transferred from the law firm into her name. *Trial Trans.* at 113, 201-04. She has also acknowledged to the trial court in her Motion to Amend Complaint, filed in 2003 just months after the accident, that the law firm was the owner of the vehicle at the time of the accident. These two factors alone, when considering the amount of time which lapsed between the alleged transfer in 1998 and the date of the accident in 2003, serve to prohibit, with all due respect, this Court or any other court to recognize any right, title

or interest Ms. Fredeking may have in the subject car.⁷

Yet, despite all of the evidence regarding Arden Fredeking's continued representation to the State of Florida, the trial court and, implicitly, the State of West Virginia, that the law firm owned the BMW, as well as evidence pertaining to the Florida license plate and registration, the accident report and even post-accident repair and storage bills noting the law firm as the owner of the vehicle, the trial court nonetheless set aside the jury's verdict concluding that the Appellee did not own the vehicle. In doing so, the trial court substituted its own judgment for that of the jury on this question of fact, even when the trial court's conclusions mean that both Arden Fredeking and Dick Fredeking violated criminal code sections in Florida and West Virginia.⁸ The Appellants aver that the trial court committed error in making such a conclusion which served to set aside the jury's verdict, and respectfully demand that the trial court's Order be reversed and the jury's verdict be reinstated.

⁷ While one could foresee an argument regarding ownership if a purchaser/transferee had not yet had time to send in for a new title or had sent the title in requesting a new title be issued. However, such is not the case here, where Ms. Fredeking had 5 ½ years between the time of the alleged transfer and the accident.

⁸ *West Virginia Code* § 17A-3-1 provides "[i]t is unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered under this article which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required under this article. . . ." Undoubtedly, if Arden Fredeking and Dick Fredeking are residents of West Virginia, as both testified, and if Ms. Fredeking and her father did in fact own the vehicle, as alleged, then they are obligated by West Virginia law to register the vehicle in their name with the State of West Virginia. *W. Va. Code* § 17A-3-1, et seq. Their failure to do so is a violation of the statutory registration requirements, including the criminal penalties sections regarding the same.

Furthermore, as indicated in the back of the Certificate of Title listing the law firm as the title owner, a transferee must submit the title and a fee to a Florida tax collector or tag agent within 20 days of the transfer; otherwise, there was a penalty for not having timely done so.

2. Florida law precludes Arden Fredeking from asserting any right, title or interest to the vehicle.

Furthermore, because the Appellee did not perform the essential acts necessary to perfect title of the vehicle in her name, under applicable Florida law, she cannot now maintain any right, title or interest in said vehicle as a matter of law.

In Florida, “a person acquiring a motor vehicle . . . from the owner thereof, whether or not the owner is a licensed dealer, shall not acquire marketable title to the motor vehicle . . . until he or she has had issued to him or her a certificate of title to the motor vehicle. . . Except as provided herein, no court shall recognize the right, title, claim or interest of any person in or to any motor vehicle sold, disposed of, mortgaged or encumbered, unless evidenced by a certificate of title duly issued to that person, in accordance with this chapter.” Fla. Stat. Ann. § 319.22(1) (2002). (Emphasis added). Furthermore, while an owner of a motor vehicle can transfer his or its interest in a motor vehicle simply by endorsing the back of the vehicle’s certificate of title, the transferee does not obtain title to the vehicle until the transfer is registered with the State of Florida and a new certificate of title is issued in the transferee’s name. *In re Coburn*, 250 B.R. 401 (M.D. Fla. 1999); *Green Tree Acceptance, Inc. v. Zimmerman*, 611 So.2d 608 (Fla. 1993). Thus, under the clear mandate of Florida law pertaining to the alleged transaction between the Florida law firm and Ms. Fredeking, the Appellee does not obtain right, title, claim or interest to the vehicle when she does not seek to have the same put into her name for over 5 years after the alleged transaction.

Further evidencing the fact that the Appellee has no right, title, claim or interest in the subject vehicle is the simple fact that, had there been a valid transfer of ownership between the law firm and Ms. Fredeking, then the law firm would have been required by law to remove the license plate and either return it to the State of Florida or transfer it to a replacement vehicle owned by the law firm.

Fla. Stat. Ann. § 320.0609(2)(a) (1990). Here, the license plate which had been used by and registered to the law firm was still on the BMW at the time of the accident. Indeed, this was presumably the same license plate registered in the name of the law firm. Thus, when Ms. Fredeking testified that she owned the vehicle, then she was likewise testifying that she violated Florida law by improperly operating the vehicle with a license plate registered not to her but to the law firm. This is yet another factor in showing that the vehicle was, at the time of the accident, owned by the law firm, and not Arden Fredeking and her father.

Between 1998 and the July 2003 accident, Ms. Fredeking took no steps to put title of the vehicle in her name. *Trial Trans.* at 108-111, 201-207. During those years, the license and registration continued to be renewed in the name of the law firm, and not Ms. Fredeking. *Trial Trans.* at 113. After the registration had been renewed in the name of the law firm, Ms. Fredeking would take the decal which accompanies the renewed registration and place the decal on the Florida license plate registered in the name of the law firm. *Trial Trans.* at 205-06. Thus, for every year between 1998 and 2003, Ms. Fredeking expressly represented to the State of Florida that the law firm owned the vehicle!⁹ Further, during that time, Ms. Fredeking implicitly represented to the State of West Virginia, where she testified she resided, that the vehicle was owned by the law firm; otherwise, she would have been required to register the vehicle in West Virginia. See, *W. Va. Code* § 17A-3-1, providing criminal penalties for the failure to timely and properly register the vehicle.

Indeed, there is little doubt that the precise situation facing the parties in this litigation is one of the motivating factors behind Florida's statute § 319.22(1) which prohibits any court from

⁹ Interestingly, more than six months after the accident, Ms. Fredeking found it necessary to obtain a Certificate of Title to the BMW putting the same into her name.

recognizing a person's claim, interest or ownership in a vehicle unless evidenced by a certificate of title issued to that person. Otherwise, a transferee, required to pay a tax upon the transfer of the vehicle to her much like we have here in West Virginia, would have no incentive to promptly obtain a certificate of title in her name. However, § 319.22(1) imposes the requirement that should a transferee or purchaser wish to assert any ownership rights to or interests in the vehicle, that person must take steps to make sure the vehicle is registered with the State of Florida in the name of the transferee. Otherwise, by statute the courts are prohibited from recognizing that transferees right or claim of ownership or any interest in the vehicle. Because the Appellant failed to take the steps necessary to place title to the vehicle in her name prior to the accident, as required by Florida law, she is now prohibited from maintaining a claim for the damage done to such vehicle in the July 22, 2003 accident.

Thus, comparing the undisputed facts of this civil action to controlling Florida law regarding the transfer of ownership of the vehicle, it is actually improper for the Circuit Court of Cabell County, or any other court including, with all due respect this Honorable Court, to recognize any claim Ms. Fredeking has or may have as it pertains to this particular vehicle as it pertains to the July 22, 2003 accident. Fla. Stat. Ann. § 319.22(1) (2002). Further, no court should recognize any right, title or interest Ms. Fredeking has or may have to the vehicle given the undisputed admissions on the part of she and her father that neither of them applied for or sought to have title put into their names between February 1998 (the time of the purported transfer of title) and July 22, 2003 (the date of the accident). See, *Id.* As such, and in accordance with *Green Tree Acceptance, Inc. v. Zimmerman*, Arden Fredeking did not possess right to, or title or interest in the vehicle at the time of the accident made the basis of this civil action. Indeed, rather than directing verdict in favor of

Ms. Fredeking, the trial court should have applied Florida law and, in doing so, directed verdict in favor of the Tylers as to Ms. Fredeking's claim of ownership.

- D. The trial court abused its discretion by finding that the clear weight of the evidence rendered the Plaintiff Arden Fredeking the owner of the 1985 BMW 535i at the time of the subject accident in spite of the fact that she had never attempted to have the vehicle transferred into her name.**

In determining that the Plaintiff had essentially put on a *prima facie* case of ownership of the vehicle, the trial court ignored the fact that the record was replete with sharply conflicting evidence regarding the issue of ownership. Assuming *arguendo* that the Plaintiff did establish a *prima facie* case that she owned the vehicle - which the Appellants contend she did not - through cross-examination of the Plaintiff and other witnesses called by the Plaintiff the Defendants rebutted the Plaintiff's case by presenting strong, uncontroverted evidence that the Plaintiff did not own the vehicle at the time of the accident. This evidence militates against the trial judge setting aside the jury's verdict. In fact, if there is conflicting testimony or evidence on a material element of a plaintiff's claim, the trial judge "cannot substitute his conclusion for that of the jury" merely because he disagrees with the jury's interpretation of the evidence. *Arbogast v. Mid-Ohio Valley Med. Corp.*, 214 W. Va. 356, 362, 589 S.E.2d 498, 504 (2003). In fact, the weight of the jury's verdict, when there is credible evidence upon which it can be based, is not overborne by the trial judge's disapproval. *Id.*

Applying the foregoing criteria to the trial court's findings in its Order, this Court should find that the trial court erroneously determined that the Plaintiff presented a *prima facie* case of ownership of the 1985 BMW. At the time of the accident, the BMW was still titled in the name of the law firm. *Trial Trans.* at 109-110, 199-200. Further, although there was testimony that the vehicle had been transferred from the law firm to Arden Fredeking and Dick Fredeking in 1998, at

no time between 1998 and the date of the accident in 2003 did Ms. Fredeking, or anyone else, submit the Certificate of Title showing transfer of title from the law firm to Arden or Dick Fredeking to any Florida county tax collector or authorized tag agent, *Trial Trans.* at 111, 113, 203-04, or submit the \$6.00 fee or a Sales Tax Receipt or Exemption form to any Florida county tax collector or authorized tag agent, *Trial Trans.* at 201-02, 203-04, as required by Florida law as clearly set forth on the back of the very title from which the Plaintiff claims ownership. Further, prior to the accident, neither Ms. Fredeking, nor anyone else, applied for a new Certificate of Title to have the vehicle placed in Ms. Fredeking's name in the State of Florida. *Trial Trans.* at 113; 203-04. In addition, prior to the accident, neither Ms. Fredeking nor anyone else applied for a new Certificate of Title to have the vehicle placed in Arden Fredeking's name in the State of West Virginia, *Trial Trans.* at 108, even though the Plaintiff claimed she was a West Virginia resident.

Instead, the law firm affirmatively renewed the registration for the vehicle in its name for each of the years 1998, 1999, 2000, 2001, 2002 and 2003. *Trial Trans.* at 113. In doing so, the law firm represented to the State of Florida - and the rest of the world- that it continued to own the vehicle. Meanwhile, during each of the years 1998, 1999, 2000, 2001, 2002 and 2003, Ms. Fredeking seemingly agreed with the law firm's assertion and representation that it owned the subject vehicle, as she took no steps to place title to the vehicle in her name. Moreover, during those years, Ms. Fredeking received the renewed registration, along with the accompanying decal, for the BMW in the name of the law firm and placed the registration listing the law firm as the owner of the vehicle in the car. *Trial Trans.* at 205-06. During that time, she placed the decal included with the registration listing the law firm as the owner of the vehicle on the Florida license plate to the vehicle. *Trial Trans.* at 205-07.

Furthermore, the Plaintiff contends she was a resident of West Virginia during the time when the BMW was licensed, titled and registered in the State of Florida. *Trial Trans.* at 108. Thus, even though she claimed to be a West Virginia resident, Arden Fredeking never sought to have the title to the car transferred to West Virginia as required by *West Virginia Code* § 17A-3-1 (2002). Rather, she acquiesced and/or consented to maintaining the vehicle's registration under the name of the law firm and in the State of Florida.

Furthermore, the plain language of the title from which the Plaintiff relies in forming her claim to ownership of the vehicle requires the submission of the title for transfer or change of ownership within 20 days after it is purportedly transferred. However, as we know, the Plaintiff never sought to have the title to the vehicle put into her name until February 2004, more than 6 months after the accident (and six years after the purported transfer). In addition, the repair estimate procured for the damage to the vehicle as well as the storage bill for the vehicle listed the owner as the law firm, and not Ms. Fredeking. *Trial Trans.* at 130. Similarly, the accident report also listed the law firm as the owner of the vehicle. All of this evidence screams that the Plaintiff did not own the vehicle at the time of the accident. As such, it is obvious that the clear weight of the evidence supported the conclusion that Ms. Fredeking did not own the subject vehicle at the time of the accident. As ownership of the vehicle is a critical element to her claim for damages for loss of the same, Plaintiff's claim failed as the jury correctly found. Consequently, the trial court's finding that the Plaintiff had presented a *prima facie* case of negligence is patently incorrect and contrary to the clear weight of the evidence.

E. The trial court abused its discretion by usurping the province of the jury and impermissibly substituting its judgment for that of the finders of fact.

It has long been said that the jury is one of the most important institutions in the American

legal system. In his concurring opinion in *Gerver v. Benavides*, 207 W. Va. 228, 530 S.E.2d 701 (2000), Justice Starcher wrote “[w]e have decided to give the ultimate say-so in our justice system to a diverse group of ordinary citizens. . . . We have decided that it is better to place our faith in the common-sense of ordinary citizens than in a trained class of professional jurors.” The critical role of the jury in the context of deciding whether it is appropriate to set aside a verdict and grant a new trial has been fully discussed above. As mentioned in *Anderson v. Liberty Lobby, Inc.*, the United States Supreme Court explained “[c]redibility determinations, the weight of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . .” *Anderson*, 477 U.S. 242 (1996). This Court extended the holding in *Anderson* by stating that, where a civil action has been fairly tried before a competent jury, it is an abuse of a trial judge’s discretion to encroach upon th province of the jury and vacate the verdict and grant a new trial. *Pauley v. Bays*, 200 W. Va. 459, 490 S.E.2d 61.

As set forth more fully herein, the record in this matter is replete with sharply conflicting evidence regarding the ownership of the subject vehicle. The Plaintiff admitted that the law firm continued to renew the registration in its name from 1998 to 2003, representing to all the world that it owned the vehicle, and that this was all done with the Plaintiff’s approval. The Plaintiff further admitted that she did nothing to see that the vehicle was then put in her name at any point in time prior to the accident. Of course, it is of no surprise that the Plaintiff would concede this point, as in both her original Complaint and then again in her Motion to Amend Complaint the Plaintiff alleged and admitted that the law firm owned the subject vehicle. The fact that the Complaint and the Motion to Amend Complaint alleging that the law firm owned the vehicle were both filed by an attorney with that very law firm cannot be understated.

The jury bore the responsibility at trial of evaluating the evidence and arriving at a conclusion regarding the credibility of witnesses and the weighing of evidence. Absent some form of prejudicial error, whatever determination the jury reached should have been beyond the grasp of the trial court's purview. In light of the foregoing, it is apparent that the trial judge abused his discretion by substituting his opinion for that of the jury, and thus committed error by not only setting aside the jury's verdict but by then holding, as a matter of law, that the 1985 BMW was owned by the Plaintiff at the time of the accident.

VI. RELIEF PRAYED FOR

The Appellants respectfully request that this Honorable Court find that the Circuit Court of Cabell County abused its discretion by setting aside the jury's verdict and finding, as a matter of law, that Arden Fredeking owned the subject vehicle at the time of the accident made the basis of this civil action. The Appellants further request that this Honorable Court find that the Circuit Court of Cabell County abused its discretion by awarding a new trial to the Plaintiff. Finally, the Appellants further request that this Honorable Court reinstate the jury's verdict which was legitimately reached at the lower court.

**ARIANNA TYLER, MARLISE
TYLER and BRADFORD TYLER**

By Counsel



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Bailey & Wyant, PLLC
P.O. Box 3710
Charleston, WV 25337
304/345-4222

CERTIFICATE OF TITLE

HSMV 82251 (REV. 7/84)

STATE OF FLORIDA

MOTOR NUMBER ALL MAKES THROUGH 1954 - IDENTIFICATION NUMBER 1955 AND LATER

MAKE BMW	BODY 40	IDENTIFICATION NUMBER WBADCT402F0651325	TITLE NUMBER 42295613
ODOMETER - DATE READ		DMV USE ONLY 3230	THIS VEHICLE IS OR HAS PREVIOUSLY BEEN USED AS A
YEAR MAKE 85	USE PVT	STATE/REV/REG NEW	PREV. ISSUED DATE

REGISTERED OWNER - LAST NAME FIRST

DATE OF ISSUE
MO. DAY YR
11 18 85

FREDEKING & FREDEKING LEGAL CORP

2160 S E OCEAN BLVD

STUART, FL 33494-3306

SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER SECTION 318.23 FLORIDA STATUTES THAT TITLE TO THE MOTOR VEHICLE DESCRIBED ABOVE IS VESTED IN THE OWNER(S) NAMED HEREIN THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE.

DIVISION OF MOTOR VEHICLES

TALLAHASSEE



DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

CHARLES J. BRANDELY
DIRECTOR

CONTROL NUMBER
B-170-12250

EXHIBIT

A

VOID IF ALTERED

INSTRUCTIONS FOR CHANGE IN OWNERSHIP

1. Seller completes FORM 1 below. 2. Submit Certificate to any County Tax Collector or authorized Tag Agent with \$6.00 fee. 3. Additional \$2.00 fee required for each lien recorded. 4. Sales Tax Receipt or Exemption form must be attached. 5. If co-owner's names are joined by "and", all co-owners must sign to transfer title to the vehicle. Co-ownership includes right of survivorship only when "or" is used to join co-owners names, or if co-owners are husband and wife.

FORM NO. 1 - TRANSFER OF TITLE BY SELLER

For value received the motor vehicle described on the face of this certificate is hereby sold and delivered to:

Arden E. Fredelking or R.R. Fredelking

(Print or type name of dealer or purchaser(s))

Selling Price: Meter Reading: 75067 Date Read: 2/2/98

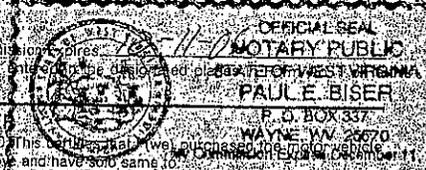
Claims except as noted on the face of this certificate of title:

SIGNED BY: R.R. Fredelking

(Seller - Registered Owner's Signature as Shown on Front)

Notary Public:

ATTN: No notary public shall notarize a title transfer unless the name of the buyer and selling price are duly shown on the certificate of title.



RE-ASSIGNMENT BY LICENSED DEALER

ANY SUBSEQUENT RE-ASSIGNMENT MADE BY A LICENSED DEALER SHOULD BE MADE ON FORM 910. This certificate of title is transferred to the person described on the face of this certificate from the title owner named thereon and who executed FORM 1 above and have sold same to:

Vender who has executed FORM 2 below or dealer. See attached dealer's reassignment. I (we) warrant the title to be clear and free of liens except as indicated. (Further certify that the Sales Tax imposed by Chapter 212, Florida Statutes upon Motor Vehicles has been paid by the Purchaser on the Motor Vehicle described on reverse side.)

Amount: Sales Tax Collected: Dealer's Reg. No.: Dealer's Address (St.): City: Dealer License Number: Sworn to and subscribed before me this: My Commission Expires: Notary Public or Other Officer Having a Seal: Affix Seal:

FORM NO. 2 - APPLICATION FOR TITLE BY PURCHASER

Having acquired the motor vehicle described in this certificate of title by:

I make application for a new certificate of title and vehicle registration transfer, if applicable, for said motor vehicle which now has liens, encumbrances, or adverse claims as follows: (Date, name and address of each lien holder or claimant. If no lien or claim, write "NONE".)

Lienholder's Name: Date of Lien:

Address: City: State: Zip:

THIS VEHICLE WILL [] WILL NOT [] BE USED FOR HIRE

Sex: Date of Birth: Of First Purchaser: 19: Tag No. (Current tag Number Must Be Shown)

Signature of 1st Purchaser: (First Name, Middle Initial, Last Name) Florida Drivers License Number:

Signature of Co-Purchaser: (First Name, Middle Initial, Last Name) Florida Drivers License Number:

(Print or type name of Purchaser(s) identically as signed above) (Address of 1st Listed Purchaser, Street Address Must Be Shown)

Address of 1st Listed Purchaser: City: State: Zip:

Sworn to and subscribed before me this: 19: Notary Public or Other Officer Having a Seal:

My Commission Expires: Affix Seal:

NOTICE: \$10.00 PENALTY IS REQUIRED BY LAW IF NOT SUBMITTED FOR TRANSFER WITHIN 20 DAYS AFTER DATE OF PURCHASE

WEST VIRGINIA UNIFORM TRAFFIC CRASH REPORT

Date of Crash: 02/22/03
 Time of Crash: 1849 HRS
 CRASH REPORTED BY: 2 City Police
 Type of Notification: 1849 HRS
 Time of Arrived: 1858 HRS
 COUNTY: CABELL
 CITY OR TOWN: HUNTINGTON
 HIGHWAY CLASSIFICATION: 1 Interstate, 3 HWY, 2 U.S., 4 County, 5 City, 6 Other
 IF ON CONTROLLED ACCESS HIGHWAY, FILL IN ONE:
 1 Main Road, 2 Main Road at Interchange, 3 Entrance Ramp On, 4 Exit Ramp On
 RELATION TO ROADWAY (Location of First Impact): 1 On Road, 2 Median, 3 Shoulder, 4 Outside of Shoulder, 5 Other

DRIVER'S FULL NAME: FREDERICK ARDEN E.
 ADDRESS: 1 PROSPECT DRIVE
 CITY: HUNTINGTON STATE: WV ZIP: 25701
 DATE OF BIRTH: 02/07/82
 SOCIAL SECURITY NUMBER: [REDACTED]
 DRIVER LICENSE NUMBER: F632005825470
 STATE LICENSE RESTRICTIONS VIOLATED: FL
 SOBRIETY TEST GIVEN: Yes
 TYPE OF TEST GIVEN: FIELD BLOOD, BREATH PBT, URINE OTHER
 DRIVER CONDITION: 1 Normal, 2 Fatigued, 3 Asleep, 4 Drunk, 5 Medication, 6 Other

OWNER'S FULL NAME: FREDERICK & FREDERICK LEGAL CORP.
 ADDRESS: 1313 PONTE VEDRA BLVD
 CITY: PO BOX 164 PONTE VEDRA BEACH FL 32004
 STATE: FL ZIP: [REDACTED]
 YEAR: 85 MAKE: BMW MODEL: 535i STYLE: 45 COLOR: Black
 LICENSE PLATE NUMBER: A45AWG STATE: FL YEAR: 04 VEHICLE IDENTIFICATION NUMBER: WBA0C7402 F0L51325

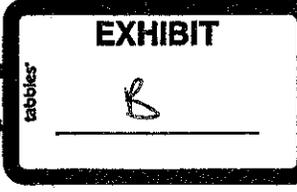
DIRECTION TRAVEL: N, S, E, W, ON ROUTE 1, 2 ABOVE
 TOTAL OCCUPANTS OF THIS VEHICLE: 1
 EXTENT OF DAMAGE: 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
 DAMAGED AREAS: 1 UNDERCARRIAGE, 2 NON-MENTIONED, 3 APPARENT, 4 OTHER UNKNOWN, 5 ALL AREAS
 TOWED DUE TO DAMAGE: Yes
 TOWED BY: RIVER CITIES TOWED TO: RIVER CITIES
 AUTO LIABILITY INSURANCE: Yes
 INSURANCE COMPANY: RIVER CITIES POLICY NO.: AGENT:

CONTRIBUTING CIRCUMSTANCES: 1 No Improper Driving, 2 Exceeding Speed Limit, 3 Exceeding Safe Speed, 4 Changing Lanes Improperly, 5 Following Too Closely, 6 Disregarded Traffic Control, 7 Did Not Have Right of Way, 8 Failure to Maintain Control, 9 Driving Under Minimum Speed, 10 No Signal or Improper Signal, 11 Turning Improperly, 12 Passing Improperly, 13 Parking Improperly, 14 Backing Improperly, 15 Avoiding Animal or Vehicle, 16 Distraction Inside Vehicle, 17 Weaving Violation, 18 Driver Under Influence, 19 Pedestrian Under Influence, 20 Slippery Pavement, 21 Other Roadway Defects, 22 Previous Accident, 23 Left of Center, 24 Other (SEE NARRATIVE)

DRIVER'S FULL NAME: TYLER ARIANNA C.
 ADDRESS: 416 GALE E.
 CITY: HUNTINGTON STATE: WV ZIP: 25701
 DATE OF BIRTH: 10/21/76
 SOCIAL SECURITY NUMBER: [REDACTED]
 DRIVER LICENSE NUMBER: F263885
 STATE LICENSE RESTRICTIONS VIOLATED: WV
 SOBRIETY TEST GIVEN: Yes
 TYPE OF TEST GIVEN: FIELD BLOOD, BREATH PBT, URINE OTHER
 DRIVER CONDITION: 1 Normal, 2 Fatigued, 3 Asleep, 4 Drunk, 5 Medication, 6 Other

OWNER'S FULL NAME: TYLER MARLISE / BRADFORD
 ADDRESS: [REDACTED]
 CITY: STATE: ZIP: [REDACTED]
 YEAR: 91 MAKE: CHEVY MODEL: LUMINA STYLE: 25 COLOR: BURG.
 LICENSE PLATE NUMBER: 46L539 STATE: WV YEAR: 04 VEHICLE IDENTIFICATION NUMBER: 2G16W1472P9182928
 DIRECTION TRAVEL: N, S, E, W, ON ROUTE 1, 2 ABOVE
 TOTAL OCCUPANTS OF THIS VEHICLE: 2
 EXTENT OF DAMAGE: 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
 DAMAGED AREAS: 1 UNDERCARRIAGE, 2 NON-MENTIONED, 3 APPARENT, 4 OTHER UNKNOWN, 5 ALL AREAS
 TOWED DUE TO DAMAGE: Yes
 TOWED BY: RIVER CITIES TOWED TO: RIVER CITIES
 AUTO LIABILITY INSURANCE: Yes
 INSURANCE COMPANY: RIVER CITIES POLICY NO.: AGENT:

DRIVER'S PHONE: (304) 535-0644 WORK PHONE: (304) 535-0644





RUPY'S INC.
 525 4th Avenue
 HUNTINGTON, WV 25701
 (304) 522-3314

**ESTIMATE AND
 REPAIR ORDER**

SHEET NO. 1 OF 1 SHEETS

Car Owner Fredeking + Fredeking Legal Corp. Business Phone 525-7901 Date 9/23/03
 Address 511 8th Street Hunt. W.Va 25701 Home Phone _____
 Insurance Co. _____ Phone _____ Repair Order No. _____
 I.D. WBADC7402F0651325 Adjuster _____
 Retain Parts Customer Initial _____
 Destroy Parts

YEAR	MAKE	MODEL	LICENSE NO.	SPEEDOMETER	LABOR HRS.	PARTS	LABOR	SUBLET-NET & PAINT
85	BMW	535	4 Door Sedan	A45-AWG	118076			
<p>Please Note that of Today Sept. 23, 2003 Your vehicle that is listed above has accumulated a Storage Bill of 9 days in July. 31 days in August and 23 days in September Total 63 days @ 20⁰⁰ per day Total \$ 126000 You paid me \$ 230⁰⁰ for the Weekly + Storage Bill & paid to Rent City Service as per my check # 7254 on July 22nd 2003. when your car was brought to my place of Business for Estimate and Repair. As of today no one has authorize the repair of the vehicle or pay the storage.</p>								
<p><i>R. Robbair</i></p>								

above estimate is based on our inspection and does not cover additional parts or labor which may be
 found after the work has started. Worn or damaged parts, not evident on first inspection, may be discov-
 ered and you will be contacted for authorization for additional work. Parts prices subject to change without
 notice. This estimate is good for _____ days.

Insurance Deductible _____ Estimator _____
 (KNOWLEDGMENT: I have read and understand the above estimate and authorize repair service to be
 performed, including sublet work and acknowledge receipt of this estimate. An express mechanic's lien is
 hereby acknowledged on above car, truck, or vehicle to secure the amount of repairs thereto.)

WORK AUTHORIZED BY _____ DATE _____
 ACCEPTED BY: _____ DATE _____

HRS. OF LABOR @ \$ _____ PER HR. \$ _____

ESTIMATE AMOUNT \$ _____ PARTS _____
 Revised Estimate \$ _____ MATERIALS _____
 Customer's O.K. _____ BODY _____
 Time _____ Da _____ MATERIALS _____
 Deposit \$ _____ SUBLET _____
 Chgs. if not Re _____ TAX _____
 ADVANCE CHARGES _____
 TOTAL _____

EXHIBIT

C



RUPY'S INC.
 525 4th Avenue
 HUNTINGTON, WV 25701
 (304) 522-3314

**ESTIMATE AND
 REPAIR ORDER**

SHEET NO. 1 OF 1 SHEETS

Car Owner Fredaking & Fredaking Legal Corp. Business Phone Richard Fredaking Date 12/22/03
 Address 511-8th Street Hunt. W. Va. 25701 Home Phone 525-7702 Est. No. _____
 Insurance Co. GEICO Phone 304-344-2669 Repair Order No. _____
 I.D. WBADC7402F0651325 Adjuster Robert Hendrick 10/10/03. Retain Parts Customer Initial _____
 Destroy Parts

YEAR 85 MAKE BMW MODEL 535i LICENSE NO. A45-AWG SPEEDOMETER 118076

Repair	Replace	DESCRIPTION OF LABOR OR MATERIAL	LABOR HRS.	PARTS	LABOR	SUBLET-NET & PAINT
		<u>Wrecker Service - (River Cities + 2 Day Storage) INV# 22135</u> <u>Received Vehicle 7/22/03. Paid River Cities Ch# 7254.</u> <u>Storage at Rupy's Auto Body, Inc.</u>				<u>230.00</u>
		<u>9 Days in July @ 20.00 per Day.</u>				<u>180.00</u>
		<u>31 Days in August @ 20.00 " "</u>				<u>620.00</u>
		<u>30 Days in September @ 20.00 " "</u>				<u>600.00</u>
		<u>31 Days in October @ 20.00 " "</u>				<u>620.00</u>
		<u>30 Days in November @ 20.00 " "</u>				<u>600.00</u>
		<u>22 Days in December @ 20.00 " "</u>				<u>440.00</u>
						<u>\$3060.00</u>
		<u>GEICO Policy # 631-94-43.</u> <u>Insured in Bradford & Melissa Tyler</u> <u>of 416-9th Ave East Hunt. WVA 25701.</u> <u>Serial # 2E1WN14T2P9182928</u> <u>1993 Chevrolet Lumina</u>				
		<u>R. Roboteau</u> <u>Payment by Order Fredaking \$1830.00</u> <u>Balance Due - \$2230.00</u>				

HRS. OF LABOR @ \$ _____ PER HR. \$ _____

ESTIMATE AMOUNT \$ _____
 Revised Estimate \$ _____
 Customer's O.K. By _____

Time _____ Date Called _____ By Whom _____

Deposit \$ _____
 Chgs. if not Repaired \$ _____

PARTS _____
 PAINT _____
 MATERIALS _____
 BODY _____
 MATERIALS _____
 SUBLET _____
 TAX _____
 ADVANCE CHARGES _____
 TOTAL _____

The above estimate is based on our inspection and does not cover additional parts or labor which may be required after the work has started. Worn or damaged parts, not evident on first inspection, may be discovered and you will be contacted for authorization for additional work. Parts prices subject to change without notice. This estimate is good for _____ days.

\$ _____ Insurance Deductible Estimator _____

ACKNOWLEDGMENT: I have read and understand the above estimate and authorize repair service to be performed, including sublet work and acknowledge receipt of this estimate. An express mechanic's lien is hereby acknowledged on above car, truck, or vehicle to secure the amount of repairs thereto.

THIS WORK AUTHORIZED BY _____ DATE _____
 WORK ACCEPTED BY _____ DATE _____

STATE OF FLORIDA

LIEN SATISFACTION

IDENTIFICATION NUMBER WBADC7402F0651325	YR 1985	MAKE BMW	MODEL	BODY 4D	WT-L-BHP 3230	VESSEL REGIS. NO.	TITLE NUMBER 42295613
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REGISTERED OWNER
 ARDEN ELIZABETH FREDEKING OR
 ROBERT R FREDEKING
 1313 PONTE VEDRA BLVD
 PONTE VEDRA BCH FL 32082

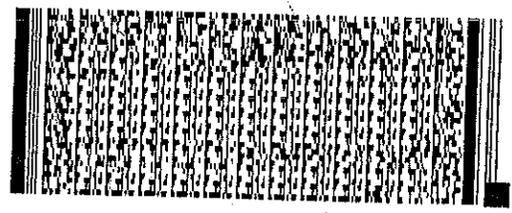
DATE OF ISSUE
 06/24/2005

LIEN RELEASE
 INTEREST IN THE ABOVE DESCRIBED VEHICLE IS
 HEREBY RELEASED

BY _____

MAIL TO:
 ARDEN ELIZABETH FREDEKING
 1313 PONTE VEDRA BLVD
 PONTE VEDRA BCH FL 32082-4503

TITLE _____ DATE _____



CERTIFICATE OF TITLE

SATISFACTORY PROOF OF OWNERSHIP HAS BEEN FURNISHED UNDER SECTION 319.22, 319.03, FLORIDA STATUTES, TITLE 707, MOTOR VEHICLE OR VESSEL DESCRIBED BEING IN THE OWNERSHIP NAMED HEREIN. THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE OR VESSEL.

IDENTIFICATION NUMBER WBADC7402F0651325	YR 1985	MAKE BMW	MODEL	BODY 4D	WT-L-BHP 3230	VESSEL REGIS. NO.	TITLE NUMBER 42295613
PREV STATE FL	COLOR BLK	PRIMARY BRAND	SECONDARY BRAND	NO OF BRANDS	USE PVT	PREV ISSUE DATE 02/05/2004	DATE OF ISSUE 06/24/2005
ODOMETER STATUS OR VESSEL MANUFACTURER OR OH USE EXEMPT	HOLD MATERIAL		PROP				

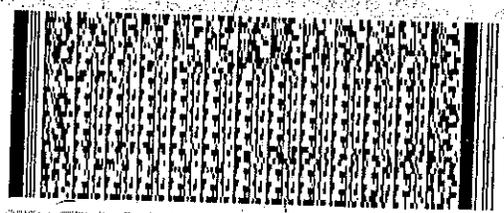
REGISTERED OWNER
 ARDEN ELIZABETH FREDEKING OR
 ROBERT R FREDEKING
 1313 PONTE VEDRA BLVD
 PONTE VEDRA BCH FL 32082

DUPLICATE

LIEN RELEASE
 INTEREST IN THE ABOVE DESCRIBED VEHICLE IS
 HEREBY RELEASED

BY _____

TITLE _____ DATE _____



LIENHOLDER
 NONE

DIVISION OF MOTOR VEHICLES TALLAHASSEE FLORIDA

DEPARTMENT OF HIGHWAYS AND MOTOR VEHICLES

Carl A. ...
 EARL ...
 DIRECTOR

Control Number: 72953825

Paul O. ...
 PAUL O. ...
 EXECUTIVE DIRECTOR

TRANSFER OF TITLE BY SELLER (THIS SECTION MUST BE COMPLETED AT THE TIME OF SALE)
 ODOMETER CERTIFICATION - Federal and state law require that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.
 This title is warranted and certified to be free from any liens except as noted on the face of this certificate and the motor vehicle or vessel described is hereby transferred to

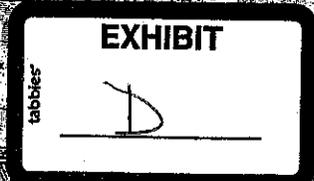
Purchaser: _____ Address: _____

If VW state that this is or 6-digit odometer now reads (in tenths) Selling Price: _____ Date Sold: _____
 miles, date read _____ and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless the odometer or odometer blocks is checked. CAUTION: DO NOT CHECK BOX IF ACTUAL MILEAGE _____
 I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits. I hereby certify that the odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Purchaser: _____ Printed Name of Purchaser: _____
 Signature of Co-Purchaser: _____ Printed Name of Co-Purchaser: _____
 Signature of Seller: _____ Printed Name of Seller: _____
 Signature of Co-Seller: _____ Printed Name of Co-Seller: _____

When Applicable: _____ Tax No. _____
 Selling Dealer's License Number: _____ License Number: _____
 Auction Name: _____



VOID IF ALTERED

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS
CHARLESTON, WV

**ARDEN E. FREDEKING and
GEICO INDEMNITY COMPANY**

Appellees,

APPEAL NO. 073805

v.

**MARLISE TYLER and BRADFORD TYLER
as parents and next friends of ARIANA TYLER,
an infant under the age of eighteen (18) and
MALISE TYLER AND BRADFORD TYLER,
individually,**

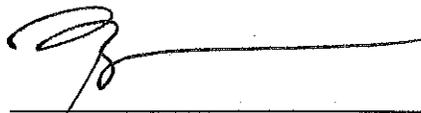
Appellants.

CERTIFICATE OF SERVICE

I, Brian D. Morrison, do hereby certify that on this 11th day of July, 2008, I served the "APPELLANTS' APPEAL BRIEF" upon counsel by depositing a true copy thereof in the United States Mail, postage prepaid, addressed as follows:

William L. Mundy, Esq.
P. O. Box 2986
Huntington, WV 25728
Counsel for Plaintiff

Stuart A. McMillan, Esq.
Bowles Rice McDavid
Graff & Love, PLLC
P O. Box 1386
Charleston, WV 25325-1386
*Counsel for Defendant GEICO
Indemnity Company*



Brian D. Morrison, Esquire (WV Bar No. 7489)
BAILEY & WYANT, P.L.L.C.
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222