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FILED
IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ARDEN E. FREDEKING,

2007 NOV -1 A 11: 38

Plaintiffs,

ADELL CHANDLER
CIRCUIT CLERK
CABELL WV

v.

Civil Action No. 03-C-0811
Judge John L. Cummings

MARLISE TYLER AND BRADFORD TYLER as
parents and next friends of ARIANNA TYLER, an
infant under the age of eighteen (18) and MARLISE
TYLER AND BRADFORD TYLER, individually,
and GEICO INDEMNITY COMPANY,
Defendants.

ORDER GRANTING A NEW TRIAL

On April 2, 2007 came the parties, the plaintiff, by counsel, Bill Mundy, Mundy & Nelson, and the defendant, by counsel, Brian D. Morrison, Schumacher, Francis & Nelson, for a hearing on Plaintiffs Motion for Judgment as a Matter of Law or in the Alternative for a New Trial. After submission of briefs and- hearing oral argument of counsel, and relying on the Courts own independent research, the Court hereby grants the plaintiffs Motion for Judgment as a Matter of Law on the issue of ownership of the plaintiffs vehicle and Motion for a New Trial on damages.

This Court hereby finds that it did err concerning presentation of the issue of ownership of a motor vehicle to the jury and allowing the jury to decide that issue and further incorrectly instructed the jury regarding ownership.

To the extent that the Court's previous Order of January 12, 2007, entering the jury verdict, indicates that the evidence presented at trial was consistent with the verdict, that portion of the said order is hereby vacated as being clearly wrong.

The Court further finds that its rulings concerning submission of the issue of ownership to the jury as well as the instructions given to the jury caused confusion in the jury's mind between registration and ownership. The Court further finds that the defendant presented no evidence, if any, that Arden Fredeking did not own the vehicle either through equitable title, legal title, or both and that no reasonable juror could have properly found that the plaintiff was not the owner of this vehicle.

The Court further finds that 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. Therefore, ownership was properly transferred. Likewise, 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 Court further finds that prejudicial error was committed based upon the evidence at trial as well as the instructions provided to the jury.

When considering the evidence presented at trial, the Court finds that there could be but one reasonable conclusion as to the proper judgment of the jury. The Court further finds that there was such an overwhelming amount of evidence in favor of the plaintiff that reasonable and fair-minded jurors could not have arrived at the verdict at which they arrived. Therefore, the Court finds the arguments of the plaintiff, as indicated in her-post-trial briefs as well as-oral argument, well founded and persuasive.

During argument, Counsel for defendant moved that certain evidentiary ruling of the court concerning the exclusion of a witness be re-examined if the Court granted any portion of the motion to set aside or give judgment as a matter of law.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Court hereby grants the Plaintiffs Motion for Judgment as a Matter of Law as to the issue of the proper ownership of the vehicle and finds that all the evidence presented at trial demonstrated that Arden Fredeking was the rightful owner of the motor vehicle.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the jury's verdict be set aside and a new trial awarded on damages only. The defendants' objections and exceptions to this Order are noted and preserved herein. It is FURTHER ORDERED that defendant's motion be held in abeyance until a new trial on the issue of damages.

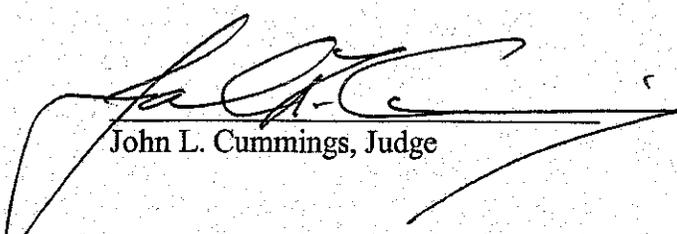
The Circuit Clerk of Cabell County shall distribute a copy of this order to the following:

William L. Mundy, Esquire
James Spenia, Esquire
P.O. Box 2986
Huntington, West Virginia 25728

Brian Morrison, Esquire
P.O. Box 1386
Charleston, West Virginia 25331

Stuart A. McMillan, Esquire
P.O. Box 1386
Charleston, West Virginia 25325

Entered this 1st day of November, 2007.


John L. Cummings, Judge

ENTERED Circuit Court Civil Order Book
No. 208 Page 631 this
NOV 1 - 2007

STATE OF WEST VIRGINIA
COUNTY OF CABELL,

I, ADELL CHANDLER, CLERK OF THE CIRCUIT COURT
FOR THE COUNTY AND STATE AFORESAID DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE
RECORDS OF SAID COURT ENTERED ON 11/1/07

GIVEN UNDER MY HAND AND SEAL OF SAID
COURT THIS NOV - 9 2007
 CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA