

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0760

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ESTATE OF JOHN W. ERNST,

Plaintiff-Appellant,

v.

AMERICAN STANDARD INSURANCE,

Defendant-Appellant,

BERNDT BUICK COMPANY,

Defendant-Respondent,

**KEITH D. THORNTON and
LAURIE THORNTON,**

Third Party Plaintiffs-Co-Appellants,

**ESTATE OF ANTHONY M. REHBEIN,
GLORIA ERICKSON and LEE REHBEIN,**

Third Party Plaintiffs,

**WEST BEND MUTUAL INSURANCE COMPANY and
BERNDT BUICK CO.,**

Third Party Defendants-Respondents,

v.

**AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN and ESTATE OF JOHN W. ERNST,**

Third Party Defendants-Appellants,

**AMERICAN FAMILY MUTUAL INSURANCE CO. and
ESTATE OF ANTHONY M. REHBEIN,**

Third Party Defendants.

ESTATE OF JOHN W. ERNST,

Plaintiff-Appellant,

v.

BERNDT BUICK COMPANY,

Defendant-Respondent,

**KEITH D. THORNTON and
LAURIE THORNTON,**

Third Party Plaintiffs-Co-Appellants,

**LEE REHBEIN, GLORIA ERICKSON and
ANTHONY M. REHBEIN (ESTATE OF),**

Third Party Plaintiffs,

v.

**WEST BEND MUTUAL INS. CO. and
BERNDT BUICK CO.,**

Third Party Defendants-Respondents,

**AMERICAN STANDARD INSURANCE
COMPANY OF WISCONSIN,**

Third Party Defendant-Appellant,

**AMERICAN FAMILY MUTUAL INSURANCE CO.,
JOHN W. ERNST and
ANTHONY M. REHBEIN (ESTATE OF),**

Third Party Defendants.

APPEAL from an order and a judgment of the circuit court for Milwaukee County: THOMAS P. DOHERTY, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. At issue in this appeal is the ownership of an automobile at the time of a fatal traffic accident. John W. Ernst had agreed to trade the automobile to Berndt Buick Company as partial payment for another vehicle. While driving the trade-in vehicle, Ernst was involved in an automobile accident that resulted in the death of Anthony M. Rehbein and injury to Keith D. Thornton.

The Estate of John W. Ernst, American Standard Insurance Company, which provided liability insurance to Ernst, Thornton, and Laurie Thornton, appeal from an order dismissing their claims against Berndt Buick, and its insurer, West Bend Mutual Insurance Company, and a judgment assessing costs. They contend that the undisputed facts establish that ownership of the trade-in vehicle was transferred to Berndt Buick when Ernst endorsed and delivered the vehicle's certificate of title to Berndt Buick's salesman. They argue that delivery of possession is not required to transfer

ownership, or if it is required, Berndt Buick's salesman waived delivery or acquired constructive possession. Finally, Ernst and American Standard argue that, at a minimum, a jury issue remains on the question of ownership.¹ We conclude that a question of material fact is in dispute. Therefore, we reverse the order and the judgment and remand the case for a new trial.

Eighty-five-year-old Ernst visited Berndt Buick and discussed the purchase of a used Buick with Carlos Micale. Ernst intended to trade-in a car he owned, and Micale gave Ernst an approximate trade-in value. Two days later, and at Ernst's request, Micale drove the Buick to Ernst's place of business. Ernst apparently wanted the opinion of David Gilpatrick, his business associate. Gilpatrick test drove the vehicle, and Micale inspected the proposed trade-in vehicle. After Ernst and Micale negotiated the final terms of the sale, which were approved by Micale's supervisor, they executed a motor vehicle purchase agreement for the sale of the Buick to Ernst. Without entering the buyer's name, Ernst also signed the assignment on the certificate of title for the trade-in vehicle and gave the certificate to Micale. There is a dispute as to whether Micale asked Ernst to complete and deliver the title at that time. In addition, Ernst gave Micale a check for the remainder of the purchase price. Ernst did not disclose the odometer reading on the title or on the special form automobile dealers are required to use.

After signing the purchase contract and receiving the title certificate and check, Micale returned to Berndt Buick to have the Buick "finished." This customary practice involved a pre-delivery inspection, as well as washing and cleaning the car. The Buick was to be ready for Ernst to pick up approximately three hours later.

When Micale returned to Berndt Buick, he gave the certificate of title for the trade-in vehicle and Ernst's check to Robin Wistl, title and billing clerk. Wistl testified that she completed the buyer information on the certificate of title by writing in Berndt Buick's name. She recorded the certificate in the

¹ Berndt Buick argues that after the need for a mistrial became known, all parties stipulated to the facts, thus allowing the trial court to decide the issue of ownership as a matter of law. Our review of the record convinces us that Ernst's Estate and American Standard did not stipulate to the facts and they did not waive their right to have the case retried if a question of fact remained.

company's title book and placed the certificate in the safe. She testified that she followed these procedures to prevent theft of the certificate of title.

Wistl also testified that the Department of Motor Vehicles would not issue a new certificate of title for the trade-in vehicle unless the application was accompanied by Ernst's certificate of title and a completed odometer disclosure statement signed by Ernst. Micale testified that office personnel generally typed the seller's name and address on the odometer form before it was completed. Micale also testified that had Ernst brought the trade-in vehicle to Berndt Buick to complete the transaction, the form would have been completed and signed by Ernst at that time.

When Micale left Ernst's place of business, Ernst retained the trade-in vehicle. There was no testimony that Ernst had offered Micale the keys or that he had removed any personal items from the vehicle. Also, Gilpatrick was to obtain a Buick tire rim and mount the spare tire from the trade-in vehicle onto the rim. He did so because Ernst wanted a full-sized spare tire.

Ernst did not go to the dealership. Several hours after he was to do so, he was involved in the fatal accident. The sale of the Buick was never completed, and several months later Berndt Buick refunded the amount of the check and, later, returned the certificate of title.

Ernst subsequently brought a declaratory judgment action seeking to have Berndt Buick declared the owner of the trade-in vehicle. Because the insurance policy carried by Berndt Buick provided greater liability coverage than the one issued by American Standard, Thornton, his wife, and the Estate of Rehbein, intervened as third-party plaintiffs and, on the issue of ownership, sided with Ernst. Ernst died prior to trial, and his estate replaced him as plaintiff.

At trial, the parties were not in agreement as to whether the ownership issue presented an issue of law or a question of fact. The trial court had denied summary judgment and set the case for a jury trial because Ernst's Estate and American Standard argued that Ernst had constructively delivered the trade-in vehicle or, alternatively, that Berndt Buick had waived delivery. In

any event, after the close of testimony, the trial court was forced to declare a mistrial when a juror became ill. Prior to the court's declaring a mistrial, all parties had moved for a directed verdict in their favor. The court subsequently decided the motions for directed verdict, ruling in favor of Berndt Buick as a matter of law. The court reasoned that because Ernst never transferred possession of the trade-in vehicle, legal title never passed to Berndt Buick.

Title to an automobile is evidenced by a certificate of title issued by the Department of Motor Vehicles pursuant to ch. 342, STATS. The statute identifies the information to be included in an application for a certificate of title, *see* § 342.06, and the grounds the department may use to reject an application, *see* § 342.11.

The statute also includes a specific provision that identifies when transfer of ownership is complete for purposes of owner liability to third parties. Section 342.15(3), STATS., provides, in part, that "[a]n owner who **has delivered possession** of the vehicle to the transferee and has complied with the provisions of this section requiring action by him or her is not liable as owner for any damages thereafter resulting from operation of the vehicle." (Emphasis added.) Section 342.15(1), STATS., provides that an owner transferring an interest in a vehicle, except a security interest, shall execute the assignment and warranty of title contained on the certificate of title and deliver or mail the certificate to the transferee at the time of delivery of the vehicle. Additionally, the owner must make a written disclosure of the vehicle's mileage to the transferee by specifying the odometer reading and whether the reading is the actual mileage. Sections 342.15(1) and 342.155(1).

Delivery of possession and compliance with the requirements of § 342.15, STATS., create a conclusive presumption of a change of ownership. *Bachelor v. Employers Mut. Liab. Ins. Co.*, 93 Wis.2d 564, 573a, 287 N.W.2d 817, 290 N.W.2d 872, 873 (1980). The title certificate is only evidentiary, however. *Id.* at 573b-73c, 290 N.W.2d at 874. Where the statute's requirement of endorsement and delivery of the certificate of title has not been strictly complied with, the parties' intent and conduct govern the question of whether ownership has been transferred. *Id.* at 573c, 290 N.W.2d at 874.

Essentially, the present case presents the question of whether an automobile owner who executes an assignment of title, thereby complying with the assignment of title requirements of § 342.15, STATS., but who retains possession of a motor vehicle, is relieved of liability as an owner for damages caused while he or she retained control of the vehicle.² The reported cases do not provide guidance on this question. In *Bachelor*, as in other cases, the transferee had taken possession of the vehicle and was driving it at the time of the relevant event. *Bachelor*, 93 Wis.2d at 567, 287 N.W.2d at 819. See also *Tesky v. Tesky*, 110 Wis.2d 205, 206, 327 N.W.2d 706, 706-07, (1983); *National Exchange Bank v. Mann*, 81 Wis.2d 352, 356, 260 N.W.2d 716, 717 (1978); *Knutson v. Mueller*, 68 Wis.2d 199, 202-03, 228 N.W.2d 342, 344 (1975); *Loewenhagen v. Integrity Mut. Ins. Co.*, 164 Wis.2d 82, 86, 473 N.W.2d 574, 575 (Ct. App. 1991). Thus, we are presented with the need to determine whether the first prong of the dual requirements of § 342.15(3), can be ignored when the second prong is satisfied.

The construction of a statute presents a question of law. *De Bruin v. State*, 140 Wis.2d 631, 635, 412 N.W.2d 130, 131 (Ct. App. 1987). Statutory analysis begins with an examination of the language of the statute to determine whether the language is clear or ambiguous. *Id.* Where the language is clear and has a plain meaning, no construction is permitted; a court must give effect to the plain meaning. *City of Milwaukee v. Lindner*, 98 Wis.2d 624, 632, 297 N.W.2d 828, 832 (1980). We keep in mind, however, that we construe statutes to reach a common sense meaning and to avoid unreasonable or absurd results. *State v. Britzke*, 108 Wis.2d 675, 681, 324 N.W.2d 289, 291 (Ct. App. 1982), *aff'd*, 110 Wis.2d 728, 329 N.W.2d 207 (1983).

The language of § 342.15(3), STATS., is plain. For transfer of ownership to be complete for purposes of tort liability, both the transfer of possession of the vehicle and execution of the documents transferring title must have occurred. Execution of the transferring documents alone does not satisfy the statute. Therefore, we reject the contention that delivery of possession of the trade-in vehicle was not necessary to transfer ownership for purposes of third-party liability.

² Although the disclosure of the odometer reading was not completed, this is considered a minor provision of § 342.15, STATS. See *Bachelor v. Employers Mut. Liab. Ins. Co.*, 93 Wis.2d 564, 573c n.2, 287 N.W.2d 817, 290 N.W.2d 872, 874 n.2 (1980).

Bachelor holds, however, that the second prong of § 342.15(e), STATS., (execution and delivery of assignment of title) is not sacrosanct and may be replaced by evidence of intent and conduct. Ernst's Estate, American Standard, and the Thorntons argue that the requirement of the transfer of possession can occur constructively or it can be waived by the transferee. Ernst's Estate and American Standard suggests that the present case is comparable to the situation where a customer uses one of several "loaner" vehicles owned by Berndt Buick.

The possession component of § 342.15(3), STATS., focuses on the transferor: the language is "[a]n owner who has delivered possession of the vehicle" The obvious purpose of the requirement for transfer of possession is the termination of the transferor's control over the vehicle. Once the transferee accepts control of the vehicle, the transferee may, as an exercise of that control, grant other parties, including the transferor, permission to use the vehicle. First, however, transfer of control of the vehicle must have been offered and accepted.

In the present case, a question of material fact exists concerning when Ernst was to transfer possession of the trade-in vehicle. The transfer of the trade-in vehicle was part of the purchase of the Buick, but the Buick was not available for delivery when the contract and assignment of the certificate of title were signed. Micale had to return the car to Berndt Buick for "finishing." Delivery was planned for later the same day. A buyer usually accepts delivery of a newly purchased car and surrenders a trade-in vehicle at the same time. Micale's testimony concerning completion of the odometer disclosure form supports a reasonable inference that the transfer of possession of the trade-in vehicle was to occur later when the purchase transaction was completed. Micale's expectation that Ernst would drive the trade-in vehicle until then, whether expressed or unexpressed, is consistent with this inference. On the other hand, Gilpatrick's testimony that Micale asked Ernst to complete the title assignment and told Ernst he could use the trade-in vehicle arguably supports an inference that an immediate transfer of possession of the trade-in vehicle was contemplated, thereby making Ernst a permissive driver of Berndt Buick. Because a question of material fact exists, we must reverse the order and the judgment and remand the case for a new trial.

By the Court. – Order and judgment reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.