

A Model Disagreement

Sometimes You Can't Take It With You

With proper attention and care, a collector car can last a very long time. It can outlive its contemporaries, its successors, its manufacturer, and even its owners.

It can also outlive its owners' marriages. When it does, there may be disagreements as to the rights to and value of such treasured property. Disputes may persist even after a divorce decree is issued, as in *Willborn vs. McBride*, decided on August 23, 2000, by the Court of Appeals of Texas.

According to the Court, John McBride and Janice Willborn's decree divided and distributed the couple's marital estate, including a 1929 Ford Model A. The decree "ORDERED that the 1929 Ford of the parties be sold for [\$12,000] as valued, and the net proceeds minus the costs of sale are to be divided equally....The parties may agree to sell for less than this value if mutually agreeable. If the parties cannot sell at the stated value or cannot agree to sell below the value; then, the 1929 Ford Model A is to be sold at a public auction...."

After the divorce, Janice maintained possession of the Ford and rejected John's requests to sell it. John asked the

court to intervene. John was then shown a bill of sale alleging the car had been sold for \$3,000. John sued Janice for breach of contract and Janice and Richard Willborn for conversion (unjustified withholding of property) and civil conspiracy.

The jury ruled for John. The Willborns moved for judgment notwithstanding (contrary to) the verdict. The trial court granted the Willborns's motion as to breach of contract, but upheld the other rulings for John. The Willborns appealed.

The Court of Appeals upheld the trial court's judgment, thus upholding John's conversion and conspiracy claims against Janice and Richard.

The appellate court noted that, "[t]o prove conversion, John had the burden to prove: 1) he had title to the Ford; 2) he had a right to its possession; and 3) he made a demand for return of the Ford unless the Willborns' acts evidence a clear denial of his rights.... John held title to the Ford.... However, after their divorce, John and Janice became tenants in common, sharing equal interests in the Ford. As tenants in common, both John and Janice had an equal right to possess the Ford."


“In Texas, a tenant in common may maintain a suit for conversion against another tenant in common ‘who appropriates to his own use and benefit the entire property owned in common between them.’...The evidence indicates that is what happened here. During trial, John testified that he asked Janice to sell the vehicle on several different occasions, but that she never agreed to do so. John further testified that when he asked Janice for the Ford so he could sell the vehicle, Janice refused. John explained that after he filed his petition to compel the sale of the asset, the Ford disappeared from the Willborns’ garage where it had been stored previously, and that he received a copy of the bill of sale evidencing the sale of the Ford for \$3,000. John stated that he did not authorize the sale of the Ford.”

“[T]he evidence shows that Richard, without John’s consent, authorized the use of the Ford for his niece’s wedding. [H]e took the Ford to a mechanic for several repairs in preparation for the wedding. Richard explained that he had the Ford re-keyed and did not give a copy of the key to John. After repairs were completed, the Ford was used in the

wedding and then returned to one of Richard’s business warehouses. However, sometime after, the mechanic who made the repairs demanded payment for the repair work and instead of paying the bill, Richard gave the mechanic the Ford to hold on to until it was determined who owned the car because he believed that whoever owned the car should pay the bill. Richard stated that the mechanic possessed the Ford at the time of trial by virtue of a mechanic’s lien. These acts evidence a clear denial of John’s right to possess the vehicle...”

In ruling for John on his conversion and conspiracy claims, the appellate court rejected the Willborns’s contention that John did not sustain any damages because the car was never actually sold. “John’s interest in the Ford was based solely on the value of the vehicle. The Willborns’ actions, as well as inactions, damaged John’s interest in the Ford. John’s damages are reflected in the deteriorated condition of the Ford. At the time of trial, the mechanic who repaired the Ford still possessed the vehicle. The mechanic had stored the Ford in his vehicle lot, unprotected from the weather, for

over one year. John testified that the Ford would have been worth about \$17,000 to \$18,000 had it been in the same condition as when he possessed the vehicle. Janice admitted that after the Ford was repaired, it was worth \$5,000. She further admitted that if a car is left outside, as was the Ford, its value decreases because of the effect of the weather. Certainly, an antique vehicle would deteriorate if left outside for over a year, and as a result, the jury could reasonably assume that the vehicle further depreciated beyond the amount Janice claimed the Ford was worth after the repair work.”

The Court of Appeals thus upheld the jury’s verdict requiring Janice and Richard to pay money damages to John—although the court’s opinion did not indicate what that amount had been. 

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