

A Galactic Oversight

Putting The Cart Before The Horse

One of the most poignant images in the film version of *Oliver* is the appealing orphan pleading to the authority to be given "some more."

Although the context is far different, there are some parallels in this month's case, *Oliver vs. Oliver*, decided on February 19, 2002, by the Court of Appeals of Mississippi.

According to the Court, Barclay Atwood Oliver owned an "antique" 1966 Ford Galaxie 500. Although the car exceeded its generally expected lifetime, Barclay unfortunately did not.

Barclay's son James Roger (Roger) claimed that he and Barclay had an oral agreement that Roger would receive the car upon Barclay's death. There were no documents or wills to verify this agreement, only Roger's own testimony and that of his sister Betty repeating what Roger told her. On the other hand, Barclay's widow Helen believed the car to be hers upon Barclay's death. Claiming she did not need it, Helen sold the car for \$800, without first consulting with her stepson Roger.

Roger asserted that he and Betty were owed a third of the fair market value of the car at the time it was sold.

The chancery (trial-level) court awarded Roger and Betty each a third of the sale price, \$266.66. However, Roger had produced a witness experienced in appraisals of antique vehicles who testified that the fair market value of the car when it was sold was approximately \$3,400. Roger therefore claimed on appeal that he was entitled to a third of that amount rather than a third of the selling price because Helen did not sell the vehicle at its true value.

The Court of Appeals reversed the lower court's ruling on this point, but noted that issues remained to be resolved.

"For this Court to come to a final conclusion in the dispute over the value of the 1966 antique Ford Galax[i]e, we would be putting the cart before the horse. First and foremost, this Court has not been informed through any documents submitted in the record as to who was named as the administrator of [Barclay]'s estate. Whoever this person may be, if there is one, he or she is charged with having [Barclay]'s estate appraised before any property belonging to [Barclay] may change hands between any of his heirs.

"After submitting an inventory, the administrator must then collect all of this appraised property and keep it in his care until such time as it is to be distributed equally to the lawful heirs of the deceased.

"Had the proper steps been taken by the court, an administrator would have been appointed to discover the value of everything in [Barclay]'s estate, including the Ford Galaxie....

Helen should not have had possession of the car, nor should she have been allowed to sell the car before an assessment was made as to its value and its rightful owner.... We do not know whether, at the time of [Barclay]'s death, the Ford Galaxie would have been valued at \$800 or \$3,400, more or less, or somewhere in between. If there was a proper inventory taken after [Barclay] died, the value of the car should be included and that amount shall serve as the amount to be divided between Helen, Roger and Betty.

"As such, we also remand [send back] this issue to the chancery court for a hearing on whether a proper inventory was taken of the entirety of [Barclay]'s estate, including the Ford Galaxie. If there was no inventory taken of [Barclay]'s estate, and no reason given as to why not, then we instruct the chancery court to appoint an administrator immediately to take inventory of what remains. Further, in the absence of a previous inventory, we instruct the chancery court to seek further evidence, such as expert testimony, to determine the fair market value of the car at the time of [Barclay]'s death. When evaluating this expert testimony, all repairs, damage and defects of the car present at the time of the sale should be taken into account before the court rules on a fixed value. Although John Anderson, an expert on antique vehicles, did testify at the original lower court hearing, his was the only testimony to this effect and no rebuttal testimony or corroborating testimony was sought or used in the court's decision. The chancery court should access all channels of information in coming to a decision on the value of the Ford Galaxie since the car itself is no longer in the possession of the Oliver family and cannot now be retrieved for purposes of appraisal.

"After uncovering the appropriate value of the vehicle,...the chancery court is instructed to award a third of that value each to Helen, Roger and Betty."

Among other things what this case illustrates is the importance of having a valid will specifying the disposition of property, including collector cars, to maximize the chance that your final wishes will be fulfilled.



Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars In Law" articles—as well as "The Lawyer's Holiday Humor Album," a unique holiday gift item composed and performed by the author—can be found online at www.lawrencesavell.com