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# Commonwealth of Kentucky

## Court of Appeals

NO. 2019-CA-001084-MR

CHARLES ARMSTRONG, ADMINISTRATOR  
OF THE ESTATE OF CRAIG ARMSTRONG

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN R. GRISE, JUDGE  
ACTION NO. 14-CI-00954

THE ESTATE OF JONATHAN ELMORE  
AND TERREZ DEWALT D/B/A  
DEWALT AUTO SALES

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS AND JONES, JUDGES; BUCKINGHAM,<sup>1</sup> SPECIAL JUDGE.

BUCKINGHAM, SPECIAL JUDGE: This case arose out of an automobile accident in 2014 in which two individuals died. The case has previously been the subject of an opinion by the Kentucky Supreme Court wherein issues concerning the ownership of a vehicle were determined. *Travelers Indemnity Company v.*

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<sup>1</sup> Special Judge David C. Buckingham sitting as Special Judge pursuant to assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

*Armstrong*, 565 S.W.3d 550 (Ky. 2018). Following that opinion, further litigation ensued that has resulted in the case again being before this Court, this time with a new party. After a thorough consideration of the record, the briefs, the prior Supreme Court opinion, and other applicable law, we affirm.

## **FACTS**

In the early morning hours of April 5, 2014, Craig Armstrong was riding as a passenger in a 1996 Chevrolet Cavalier owned and driven by Jonathan Elmore. Elmore, who was delivering newspapers at the time, pulled into the path of another vehicle at an intersection and was hit by the oncoming vehicle. Both Armstrong and Elmore were fatally injured, and it is not disputed that Elmore was at fault and the driver of the oncoming vehicle was blameless. The estate of Craig Armstrong, through its administrator, Charles Armstrong,<sup>2</sup> brought a wrongful death lawsuit against multiple parties in the Warren Circuit Court.

The history of the title of the Elmore vehicle is important. On November 30, 2013, nearly five months before the accident, Martin Cadillac, a licensed motor vehicle dealer, traded for the 1996 Chevrolet Cavalier that Elmore would later drive. On December 6, 2013, Martin Cadillac sold the vehicle for \$600 to Terrez DeWalt, d/b/a DeWalt Auto Sales, through an auction conducted by Auction Broadcasting Company (ABC), and DeWalt took possession of it. On

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<sup>2</sup> Charles Armstrong was the father of Craig Armstrong.

January 19, 2014, DeWalt sold the vehicle to Elmore for cash. As required by KRS<sup>3</sup> 186A.220(5), DeWalt required Elmore to provide written proof of insurance before allowing Elmore to take possession. Elmore obtained a policy with Nationwide that had \$50,000 per person/\$100,000 per incident policy limits, and he took possession of the vehicle on January 24, 2014. This policy was in force on the date of the accident.

DeWalt did not possess the title certificate when it sold the vehicle to Elmore. When Martin Cadillac sold it to DeWalt, it never transferred the title to DeWalt. Rather, it contends it transferred the title to ABC at some point in January 2014. ABC's records show it received the title on March 18, 2014, but it apparently received it in January. Regardless, on April 5, 2014, the date of the accident, the title had not been received by DeWalt or Elmore; rather, Martin Cadillac was still the certificate title owner. Martin Cadillac had two insurance policies with Travelers Insurance Company, a general liability policy with a \$1,000,000 limit and an umbrella policy with a \$20,000,000 limit.

After Armstrong filed wrongful death claims in the Warren Circuit Court, the main issues quickly became who was the statutory owner of the Elmore vehicle and whose insurance was potentially responsible for damages resulting from the accident. Martin Cadillac acknowledged that the title to the vehicle

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<sup>3</sup> Kentucky Revised Statutes.

reflected it was still the owner, and Armstrong began to look to Elmore/Nationwide and Martin Cadillac/Travelers for damages to which the estate claimed entitlement.

At the circuit court level, Armstrong contended that Martin Cadillac had not complied with KRS 186A.220(5) which requires a dealer assigning a vehicle to a “purchaser for use” to require proof of insurance before transferring the vehicle. Armstrong argued that because Martin Cadillac had not required proof of insurance by DeWalt before transferring possession, Martin Cadillac was still the owner. Armstrong relied on *Calhoun v. Provence*, 395 S.W.3d 476 (Ky. App. 2012), and believed it to be directly on point.

In addressing cross-motions for summary judgment by Martin Cadillac and Travelers, the circuit court rejected Armstrong’s argument that Martin Cadillac was the vehicle’s owner despite the fact it held legal title and had transferred possession to DeWalt without obtaining proof of insurance. Rather, the circuit court held that Elmore was the owner of the vehicle for all purposes as he was a “purchaser for use” and DeWalt had complied with KRS 186A.220(5) by requiring him to show proof of insurance before taking possession. The court stated that “DeWalt had the primary duty to verify that Elmore had insurance before selling him the car, which DeWalt did.” The court further stated that “the clear purpose of the statute at issue is to assure that a car buyer who is going to use

the vehicle for transportation on the highways has insurance, rather than a presumed purpose to simply create a cause of action against an upstream seller after the true purpose has been accomplished.” The court held *Calhoun* to be distinguishable.

On Armstrong’s appeal to this Court, the matter was viewed in a much different light. *Armstrong v. Martin Cadillac, Inc.*, No. 2015-CA-001892-MR (Ky. App. Dec. 22, 2016) (not to be published). This Court held in relevant part that Martin Cadillac, the title holder, failed to validly transfer ownership to DeWalt because it failed to comply with KRS 186A.220(5) by transferring the vehicle to DeWalt without requiring proof of insurance. This Court relied on the precedent of *Calhoun*.

This Court further remanded the case to the circuit court for a determination of whether either Martin Cadillac or DeWalt complied with the promptness requirement of KRS 186A.215(3) by promptly transferring the title documents to the county clerk. This Court held that “if either Martin Cadillac or DeWalt Auto failed to transfer the title documents promptly, then that dealer remains the owner for insurance purposes.” Opinion at 17. *See Ellis v. Browning Pontiac-Chevrolet-GMC Truck-Geo, Inc.*, 125 S.W.3d 306 (Ky. App. 2003).

Our Supreme Court accepted discretionary review and reversed this Court’s decision. *Travelers Indemnity Company v. Armstrong*, 565 S.W.3d 550

(Ky. 2018). The Court held that “[t]he circuit court correctly found that Martin was not the owner of the vehicle and we reinstate its order granting summary judgment on all claims against Martin and Travelers.” *Id.* at 569.

The Court framed the issue before the circuit court as “who was the statutory ‘owner’ of the vehicle at the time of the collision, and thus, which insurance company was primarily responsible for liability coverage.” *Id.* at 554. In reversing this Court, our Supreme Court overruled *Calhoun* and held that “in a sale from licensed dealer to licensed dealer for the sole purpose of resale, the seller is not required to verify proof of insurance.” *Id.* at 565.

The Court did, however, reaffirm its decision in *Gainsco Companies v. Gentry*, 191 S.W.3d 633 (Ky. 2006), where it held that liability coverage by a dealer’s policy was primary where the dealer failed to obtain proof of insurance before transferring a truck to a consumer buyer. *Id.* at 637. In short, the Court held that a “purchaser for use” in KRS 186A.220(5) is a consumer buyer and that the term “does not include licensed motor vehicle dealers that are purchasing vehicles for the sole purpose of resale.” *Travelers*, 565 S.W.3d at 558.

Further, the Court held that Martin Cadillac had substantially complied with the promptness requirement of KRS 186A.215, although it had not strictly complied. It thus held that Martin Cadillac was not the owner of the

vehicle at the time of the accident, and it reinstated the circuit court's dismissal. *Id.* at 567-68.

Upon remand, Armstrong filed a motion to amend the complaint to assert a claim against DeWalt, who had not been a party to the litigation. The circuit court granted the motion, and Armstrong, while acknowledging that DeWalt had met the requirement in KRS 186A.220(5) by requiring Elmore to demonstrate proof of insurance, asserted a claim against DeWalt for damages based on alleged noncompliance with the promptness requirements of KRS 186A.215(3). Armstrong contended that DeWalt's failure to comply with the statute should result in DeWalt being declared to be the statutory owner of the vehicle. He cited our Supreme Court's language in *Travelers*. 565 S.W.3d at 567.

DeWalt filed a motion to dismiss, which the circuit court granted.

The court held:

Because Elmore purchased the Cavalier in a bona fide sale, because DeWalt verified his insurance as required by statute, and because the Kentucky Supreme Court affirmed this Court's prior holdings, Elmore is the owner of the Cavalier.

The circuit court further stated that collateral estoppel precluded Armstrong's relitigation of the issue. It noted that the Supreme Court had determined "Elmore was the statutory 'owner' of the vehicle, even though title was still in Martin's name." *Id.* at 555. The circuit court explained that because the

Supreme Court had held that Martin Cadillac was not the owner and was not responsible for insurance coverage, it had indicated the circuit court's determination that Elmore was the statutory owner was correct. The circuit court further stated:

The Kentucky Supreme Court did not explicitly address whether DeWalt or ABC was the owner because that issue was not presented. By reinstating this Court's summary judgment, however, the Kentucky Supreme Court made clear that Elmore was the owner of the vehicle at the time of the fatal accident. Citation omitted. Because the issue of ownership of the vehicle was actually litigated in this Court, and reaffirmed by the Kentucky Supreme Court, it is ripe for the application of collateral estoppel.

The court also held that the law-of-the-case doctrine bars relitigation of the issue because the Supreme Court had determined that Elmore was the statutory owner of the vehicle.

This appeal by Armstrong followed.

### **ANALYSIS**

“Kentucky is a certificate of title state for the purposes of determining ownership of a motor vehicle and requiring liability insurance coverage.” *Id.* at 556 (quoting *Potts v. Draper*, 864 S.W.2d 896, 898 (Ky. 1993)). While the title owner would normally be considered the statutory owner of the vehicle and the owner's insurance company liable in certain circumstances, “in 1994, the legislature added the language at issue in this case in KRS 186A.220(5), ‘creat[ing]



an exception to the general statutory scheme that makes the title holder the owner of a vehicle for insurance purposes.”” *Id.* (quoting *Auto Acceptance Corp. v. T.I.G. Ins. Co.*, 89 S.W.3d 398, 401 (Ky. 2002)).

KRS 186A.220(5) provides, in relevant part, as follows:

(a) When a dealer assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon.

(b) The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle.

Further, KRS 186.010(7)(c) states that “[a] licensed motor vehicle dealer who transfers physical possession of a motor vehicle to a purchaser pursuant to a bona fide sale, and complies with the requirements of KRS 186A.220, shall not be deemed the owner of that motor vehicle solely due to an assignment to his dealership or a certificate of title in the dealership’s name.” Our Supreme Court held in *Travelers* that “[t]his creates a clear exception to the certificate of title holder being the legal owner of a vehicle.” 565 S.W.3d at 557. This exception only applies to licensed motor vehicle dealers. *Id.*

Armstrong begins his arguments in his brief by arguing that DeWalt was the statutory owner of the vehicle driven by Elmore. We must first address, however, whether Armstrong is barred, as the circuit court maintains, from further arguing the ownership of the vehicle by the doctrine of collateral estoppel or the law-of-the-case doctrine. We thus direct our attention to those issues first.

The essence of the competing arguments made by DeWalt and Armstrong is that DeWalt contends the circuit court, based on the holding by our Supreme Court in *Travelers*, correctly held that Elmore was the owner of the vehicle at the time of the accident, while Armstrong contends that only the issue of who did **not** own the vehicle was decided by our Supreme Court rather than who actually did.

In its order granting DeWalt's motion to dismiss, the circuit court stated that the Supreme Court determined "Elmore was the statutory 'owner' of the vehicle, even though title was still in Martin's name." (Quoting *Travelers*, 565 S.W.3d at 555.) In deciding that the Supreme Court had determined the ownership issue, the circuit court reasoned:

The Supreme Court held that Martin was *not* the owner of the vehicle and was *not* responsible for insurance coverage of the vehicle, thus indicating the correctness of this Court's ruling that Elmore was the statutory owner.

(Emphasis in original.) The circuit court directly addressed Armstrong's argument that the Supreme Court had merely determined who the owner was **not**, when it

said it “disagrees as the plain language of the Supreme Court’s opinion holds otherwise.”

### **Collateral Estoppel**

In holding that Armstrong is barred from litigating the issue of whether DeWalt was the owner of the vehicle, the circuit court held that the doctrine of defensive collateral estoppel was applicable. Defensive collateral estoppel applies “when a defendant seeks to prevent a plaintiff from asserting a claim the . . . plaintiff had previously litigated and lost against another defendant.” *Price v. Yellow Cab Co. of Louisville*, 365 S.W.3d 588, 592 (Ky. App. 2012) (quoting *City of Covington v. Board of Trustees of Policemen’s and Firefighters’ Retirement Fund of City of Covington*, 903 S.W.2d 517, 521 (Ky. 1995)).

Here, Armstrong initially litigated a claim against Martin Cadillac concerning whether it was the statutory owner of the vehicle. Armstrong lost that battle in *Travelers*, and he now pursues a claim against a different defendant (DeWalt) on a different basis (non-compliance with KRS 186A.215(3)).

The preclusion doctrine was adopted by Kentucky’s highest court in *Sedley v. City of West Buechel*, 461 S.W.2d 556 (Ky. 1970). The Court first addressed estoppel in general in this manner:

The general rule is that a judgment in a former action operates as an estoppel only as to matters which were necessarily involved and determined in the former action, and is not conclusive as to matters which were

immaterial or unessential to the determination of the prior action or which were not necessary to uphold the judgment. The rule has been applied although such matters were presented in the former action and actually determined therein, and although they may affect the ultimate rights of the parties.

*Id.* at 558 (footnote and citation omitted). The Court then further explained the issue preclusion rule it was adopting as follows:

The rule contemplates that the court in which the plea of res judicata is asserted shall inquire whether the judgment in the former action was in fact rendered under such conditions that the party against whom res judicata is pleaded had a realistically full and fair opportunity to present his case. . . . It would seem that the rule would embody the qualification, hereinbefore mentioned, that the adjudication of the issue was essential to the determination of the former case.

*Id.* at 559 (citations omitted).

In this case, the issues of whether DeWalt complied with the promptness requirement of KRS 186A.215 and whether he was the statutory owner were not “necessarily involved and determined” by the Supreme Court in *Travelers*. See *Sedley*, 461 S.W.2d at 558. Further, those issues were “immaterial or unessential to the determination of the prior action or . . . were not necessary to uphold the judgment.” *Id.* (footnote omitted). In addition, Armstrong never “had a realistically full and fair opportunity to present his case[,]” as Armstrong was focusing on Martin Cadillac based on *Calhoun*, which the Supreme Court decided to overrule. *Id.* at 559 (citations omitted).

We conclude, based on the principles of *Sedley*, that the doctrine of collateral estoppel does not preclude Armstrong from asserting his claim against DeWalt.

### **Law-of-the-Case**

In addition to the doctrine of collateral estoppel, the circuit court also granted DeWalt's motion to dismiss on the grounds of the law-of-the-case doctrine. The court reasoned that "the Kentucky Supreme Court determined Elmore was the statutory owner of the vehicle by reinstating this Court's decision that was originally appealed."

In *St. Clair v. Commonwealth*, 455 S.W.3d 869 (Ky. 2015), our Supreme Court held as follows:

Under the law-of-the-case doctrine, an appellate court, on a subsequent appeal, is bound by a prior decision on a former appeal in the same court. The rule means that issues decided in earlier appeals should not be revisited in subsequent ones.

*Id.* at 887 (citations and internal quotation marks omitted).

Further, our Supreme Court stated in *Brown v. Commonwealth*, 313 S.W.3d 577 (Ky. 2010), as follows:

"Law of the case" refers to a handful of related rules giving substance to the general principle that a court addressing later phases of a lawsuit should not reopen questions decided by that court or by a higher court during earlier phases of the litigation. One of the rules, for example, the so-called mandate rule, provides that on

remand from a higher court a lower court must obey and give effect to the higher court's express or necessarily implied holdings and instructions. Where multiple appeals occur in the course of litigation, another law-of-the-case rule provides that issues decided in earlier appeals should not be revisited in subsequent ones.

*Id.* at 610 (citations omitted). *Brown* also held that “an extension of the core law-of-the-case doctrine is the rule that precludes an appellate court from reviewing not just prior appellate rulings, but decisions of the trial court which could have been but were not challenged in a prior appeal.” *Id.*

We believe the law-of-the-case doctrine is applicable in this case. Our Supreme Court clearly stated in *Travelers* that “Elmore was the statutory ‘owner’ of the vehicle, even though title was still in Martin’s name.” 565 S.W.3d at 555. That it believed Elmore to be the statutory owner of the vehicle was not essential to the Court’s determination; it was essential to the Court’s ruling to determine only that Martin Cadillac was not the owner. Nevertheless, the Court made that determination, and we conclude we are bound by it.<sup>4</sup>

Citing *Inman v. Inman*, 648 S.W.2d 847 (Ky. 1982), Armstrong contends that the law-of-the-case doctrine is applicable only to “determination of questions of law and not questions of fact.” *Id.* at 849. While Armstrong has

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<sup>4</sup> DeWalt has also argued that Armstrong is barred by the law-of-the-case doctrine because Armstrong did not appeal from the portion of the circuit court’s 2015 original order wherein it stated “DeWalt has thus complied with the statute, and cannot be deemed an owner.” As we affirm based upon the language in *Travelers*, we will not address this argument.

accurately stated the legal principle in *Inman*, the Supreme Court's determination that Elmore was the statutory owner was a determination of a question of law, not a question of fact. The facts were undisputed.

### **CONCLUSION**

We affirm the circuit court's order dismissing DeWalt as a party on the ground that Armstrong is barred from re-litigating the ownership of the vehicle based on the clear language of our Supreme Court in *Travelers*.

ALL CONCUR.

**BRIEFS FOR APPELLANT:**

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