

# BREAKING UP IS HARD TO DO

BY LAWRENCE SAVELL

One way to increase the enjoyment of being a car collector is to share your hobby with someone close to you. Thus, many couples jointly purchase, maintain, and/or take pride in their beloved old cars.

Unfortunately, like some cars, not all relationships last forever. Along with all the other difficult considerations in such circumstances, there may be a dispute as to who gets "custody" of the couple's prized vehicle.

Many cases have addressed whether a particular collector car was an item of communal/marital property or was the separate/personal property of one party. In *Slyder v. Slyder*, decided on December 29, 1993 by the Court of Appeals of Ohio, the dispute involved a 1963 Ford pickup truck. Although the husband had acquired the vehicle prior to the marriage, the evidence indicated that (1) at least \$1,000 of marital funds were invested to repair the vehicle, and (2) the vehicle's value at the time of the divorce was only \$500. The Court of Appeals upheld the trial court's determination that "the truck was transmuted into marital property because of the parties' intention to use the truck during the marriage and use marital funds to fix the truck."

In *Webster v. Webster*, decided on January 31, 1994 by the Court of Appeals of Texas, the court upheld the determination that a 1961 Thunderbird was the wife's separate property. The court noted that, under Texas law, property acquired by a spouse during marriage by gift is his or her own separate property. This rule includes gifts from one spouse to the other. It concluded that the wife's testimony that her husband had said to her with regard to the automobile, "Honey, look what I bought you," supported the lower court's ruling in her favor.

A somewhat more complex situation was presented in *Brooks v. Brooks*, decided by the Missouri Court of Appeals on October 27, 1993. The dissolution decree had awarded the wife, among other property, a 1959 Chevrolet Corvette. She claimed, however, that her husband had not delivered the complete automobile to her, in particular, its original carburetion system, wheels, tires, hubcaps, and detachable hardtop.

When the Brooks' purchased the Corvette in 1989, the seller had included two carburetion systems. As the seller testified, the car originally had a dual carburetion system, which he had removed to reduce gas consumption and minimize the need for tune-ups while he drove it on the street. When he sold it to the Brooks', he included the single four-barrel manifold he had installed in the vehicle, plus the uninstalled original dual intake, two quad-fours, and air cleaner system. The seller further testified that, for purposes of showing the car or maximizing its value, the owner would want to put back in all the equipment that had been originally installed (including the original hardtop, wheels, tires, and hubcaps — all of which he had given to the Brooks').

Following the divorce, when the Corvette was picked up from the husband, those items were not with the car. The wife claimed that the husband had wrongly retained them. Agreeing with her, the trial court awarded her their fair market value of \$5,000. The husband appealed.

Affirming the trial court's ruling for the wife, the Court of Appeals rejected the husband's argument that, because the decree of dissolution of marriage made no specific mention of items that were not attached to the Corvette, it had not awarded them to her and she had

no right to them. Focusing on the couple's original purchase of the vehicle, the court explained: "The parts and equipment were part of the purchase of the 1959 Corvette automobile. One price was paid for the vehicle and the items ancillary to it. Part of the funds used to purchase the Corvette was obtained from a loan that the parties secured for that purpose. At the time of the dissolution of their marriage, that loan had not been repaid. The dissolution court ordered [the wife] to pay that indebtedness. The trial court's determination that the equipment and parts for the Corvette were included in the marital property that had been awarded to [the wife] was supported by substantial evidence."

The court thus ruled that the wife owned the parts and equipment in question, and was therefore entitled to payment for her ex-husband's withholding of them.

These cases illustrate a familiar point: regardless of the context, the best way to protect your understanding of the rights to a particularly valuable piece of property is (when feasible) to express that understanding in a clear writing signed by all involved. Otherwise, the nature and terms of a disputed agreement or transaction may have to be discerned by a court, to the likely disappointment of one of the parties.

*Lawrence Savell is an attorney with the law firm of Chadbourne & Parke in New York City. This column provides general information and cannot substitute for consultation with a lawyer.*