

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0920

WILLIAM P. GASPARD, ET AL

VERSUS

DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS - TESS

Judgment rendered December 21, 2018.

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court No. 660516
Honorable William A. Morvant, Judge

JEROLD EDWARD KNOLL
MARKSVILLE, LA
AND
MICHAEL F. KELLY
MARKSVILLE, LA

ATTORNEYS FOR
PLAINTIFFS-APPELLANTS
WILLIAM P. GASPARD AND
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DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS-TESS

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

For Welch J. dissents and assigns reasons.

PETTIGREW, J.

In the instant case, William P. Gaspard and Jerold Edward Knoll (sometimes collectively referred to as "plaintiffs"), filed a petition for judicial review of the decisions and orders of an Administrative Law Judge ("ALJ"), affirming a civil penalty against Gaspard for an alleged violation of 49 CFR 392.16, Failing to use seat belt while operating a commercial motor vehicle ("CMV"), a \$50.00 fine; and affirming civil penalties against Knoll for alleged violations of 49 CFR 392.2, Failure to pay Unified Carrier Registration ("UCR") fee, a warning only, and 49 CFR 392.9b(a), Operating a CMV in interstate commerce without a USDOT Registration, a warning only. In a May 7, 2018 judgment, the district court affirmed the ALJ's findings, dismissing plaintiffs' petition, with prejudice. This appeal by plaintiffs followed. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

The following factual history is discernible from the June 21, 2017 ALJ hearings. Knoll owns a family farm and raises cattle in Marksville. Knoll testified that in connection with his cattle operation, he purchased a 2015 Freightliner M-2 ("Freightliner") in 2015, which he explained was described as a "pickup" truck on the registration certificate by the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles ("DMV"). Knoll further stated that the Freightliner had a DMV-issued farm license plate and, at the time of the hearing on this matter, only had approximately 6,000 miles on the odometer.

A couple of months before the traffic stop at issue, Knoll purchased a livestock trailer at an auction in Oklahoma to be used in his cattle operation. On December 16, 2016, plaintiffs travelled to Oklahoma to pick up the livestock trailer and at that time also purchased a farm truck. Plaintiffs hooked the farm truck to the livestock trailer to head back to Marksville, but the farm truck became disabled in Hooks, Texas, requiring them to leave both the livestock trailer and the farm truck behind. On the following day, December 17, 2016, Gaspard and a passenger drove to Hooks, Texas, to retrieve the disabled farm truck and the livestock trailer. Gaspard was driving the Freightliner, which was towing a 2007 Big Tex trailer with another truck on it. The plan was to use that truck

to tow the livestock trailer, and to load the disabled farm truck onto the Big Tex trailer to transport the livestock trailer and farm truck back to Marksville.

At the time of the traffic stop, Louisiana State Police Sergeant Michael Harper was working seat belt inspection with Officer John Kay of the Commercial Enforcement Division of the Louisiana Department of Public Safety and Corrections in Caddo Parish on Interstate 49. After Officer Kay spotted Gaspard driving without a seat belt, he relayed the information to Sergeant Harper, who initiated the traffic stop. Gaspard admitted to Sergeant Harper that he was not wearing a seat belt at the time; he was cited pursuant to 49 CFR 392.16 for the violation.¹ In addition to the seat belt violation, Sergeant Harper also issued two warnings to Knoll as the registered owner of the vehicle — Failure to pay UCR Fee, a violation of 49 CFR 392.2, and Operating a CMV in interstate commerce without a USDOT Registration, a violation of 49 CFR 392.9b(a).

As Gaspard was cited for operating a commercial motor vehicle without a seat belt, Sergeant Harper was asked about the nature of the vehicle Gaspard was driving at the time of the traffic stop. Sergeant Harper referred to the definition of *commercial motor vehicle* found in 49 CFR 390.5, as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle" has "a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater." Noting that the Freightliner was 19,500 pounds and the Big Tex trailer was 20,000 pounds, Sergeant Harper testified that the gross vehicle weight rating ("GVWR") was over the 10,001-pound limit for a commercial motor vehicle. Sergeant Harper further stated that Gaspard exceeded the covered farm vehicle exemption set forth in 49 CFR 390.5 because he had left from the farm in Marksville and was headed to Hooks, Texas, which was over the 150 air-mile radius in the farm vehicle exemption.

¹ As set forth in 49 CFR 392.16, Gaspard was cited for not wearing a seat belt as follows: "No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly."

On July 17, 2017, the ALJ rendered his decisions and orders, affirming the violations and penalties imposed against both Gaspard and Knoll.² Thereafter, Gaspard and Knoll filed a petition for judicial review, pursuant to La. R.S. 49:964, against the Department of Public Safety and Corrections ("Department"), seeking reversals of the ALJ's decisions. Certified copies of the administrative appeal records were filed with the district court for review. On April 2, 2018, the district court ruled from the bench, finding that at the time of the traffic stop, the vehicle Gaspard was driving was a commercial motor vehicle engaged in interstate commerce and that the covered farm vehicle exemption did not apply because Gaspard was planning on travelling well beyond the 150-mile limit established by regulation. Finding no basis to vacate, reverse, or modify the decisions by the ALJ, the district court affirmed the decisions of the ALJ, signing a judgment on May 7, 2018, dismissing plaintiffs' petition, with prejudice.

This appeal by plaintiffs followed, wherein they assign the following specifications of error for our review:

1. The [District] Court erred in finding that KNOLL and his vehicle were engaged in interstate commerce.
2. The [District] Court erred in finding that the truck and Big Tex trailer met the weight requirements of a commercial motor vehicle.
3. The [District] Court erred in finding that the Covered Farm Vehicle Exemption did not apply in Louisiana or anywhere in the United States.
4. The [District] Court erred in convicting GASPARD and KNOLL of violations under the provisions of CFR.

STANDARD OF REVIEW

The Louisiana Administrative Procedure Act ("APA"), La. R.S. 49:964(G), governs the judicial review of a final decision in an agency adjudication, providing that:

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

² See **Louisiana Department of Public Safety and Correction v. William P. Gaspard**, Docket No. 2017-3685-TESS, Report No. LACO006757D, Division of Administrative Law, State of Louisiana (July 17, 2017); **Louisiana Department of Public Safety and Correction v. Jerold Edward Knoll**, Docket No. 2017-3688-TESS, Report No. LACO006757C, Division of Administrative Law, State of Louisiana (July 17, 2017).

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Any one of the six bases listed in the statute is sufficient to modify or reverse an agency determination. **Doc's Clinic, APMC v. State ex rel. Dept. of Health and Hospitals**, 2007-0480 (La. App. 1 Cir. 11/2/07), 984 So.2d 711, 718, writ denied, 2007-2302 (La. 2/15/08), 974 So.2d 665. The APA further specifies that judicial review shall be conducted by the court without a jury and shall be confined to the record. See La. R.S. 49:964(F).

When reviewing an administrative final decision, the district court functions as an appellate court. **Doc's Clinic**, 984 So.2d at 718-719. Once a final judgment is rendered by the district court, an aggrieved party may seek review by appeal to the appropriate appellate court. See La. R.S. 49:965. The appellate court owes no deference to either the factual findings or legal conclusions of the district court when conducting its judicial review over the administrative action, just as the Louisiana Supreme Court owes no deference to the factual findings or legal conclusions of the state's courts of appeal. **Survey America, Inc. v. Louisiana Professional Engineering**, 2009-0286 (La. App. 1 Cir. 2/10/10), 35 So.3d 305, 308 n.5; **Maraist v. Alton Ochsner Medical Foundation**, 2002-2677 (La. App. 1 Cir. 5/26/04), 879 So.2d 815, 817-818. Consequently, this court will conduct its own independent review of the record and apply the standards provided by La. R.S. 49:964(G). **Doc's Clinic**, 984 So.2d at 719.

DISCUSSION

Did the Truck/Trailer Used by Gaspard Meet the Requirements of a Commercial Motor Vehicle Under the Federal Motor Carrier Safety Regulations ("FMCSR") (Assignment of Error No. 2)

The definition of a *commercial motor vehicle* is set forth in 49 CFR 383.5, in pertinent part, as follows:

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—

(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater[.]

Additionally, 49 CFR 390.5 defines *commercial motor vehicle*, in pertinent part, as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers" that "[h]as a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater[.]"

Moreover, pursuant to La. R.S. 32:401(13), *Gross vehicle weight rating*, or GVWR, of a combination (articulated) vehicle is defined as "the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units."

Plaintiffs argue that the Freightliner and the Big Tex trailer do not meet the weight requirements of a commercial motor vehicle. Plaintiffs point to the FMCSR Handbook, which they contend contains questions and answers interpreting the provisions of the FMCSR.³ Citing Question 6 under 49 CFR 383.5, plaintiffs argue that same is dispositive

³ We note that both the Department and plaintiffs refer in brief to these questions contained in the FMCSR Handbook and that the arresting officer discussed one such question during the administrative hearing. Moreover, the district court judge, in his reasons for judgment, refers to several questions from the handbook as argued by the plaintiffs. However, none of these questions from the FMCSR Handbook appear in the record before us. There is a presumption that judicial proceedings were conducted in a regular, legal and valid manner. **Barr v. Freeman**, 175 So.2d 649, 654 (La. App. 1 Cir. 1965). There is the additional presumption that comes into play when evidence is missing from the record, that in rendering a judgment, the trial judge proceeded on proper evidence. **Raia v. WWL-TV**, 176 So.2d 390, 391 (La. 1965). Pursuant to La. Code Civ. P. art. 2164, the "appellate court shall render any judgment which is just, legal, and proper upon the record on appeal." It is the appellant's responsibility to ensure the appellate record is complete. **Shannon v. Vannoy**, 2017-1722 (La. App. 1 Cir. 6/1/18), 251 So.3d 442, 450 n.7. Since plaintiffs failed to do so in the instant case, we must presume that any rulings by the district court pertaining to the questions found in the FMCSR Handbook are correct.

of this case and supports their position that the Freightliner and Big Tex trailer are not commercial motor vehicles. The Department maintains that plaintiffs have misread the guidance provided by Question 6 in their argument that the truck and trailer used in the transportation at issue did not meet the requirements of commercial motor vehicles.

According to the parties, Question 6 under 49 CFR 383.5 provides as follows in the FMCSR Handbook:

Question 6: A driver operates a tractor of exactly 26,000 pounds (GVWR), towing a trailer of exactly 10,000 pounds (GVWR) for a GCWR of 36,000 pounds. Is it a CMV and does the driver need a CDL?

Guidance: No to both questions. Although the vehicle has a GCWR of 36,000 pounds, it is not a CMV under any part of the definition of that term in §383.5, and a CDL is not federally required.

In ruling on this issue, the district court made the following findings:

As to whether or not the truck and trailer constitute a commercial vehicle[,] under either [La. R.S. 32:401(13)] or 49 [CFR] 390.5, the facts of this case, based on the established weights of the vehicle, require the adding of the gross vehicular weight of both vehicles and arrive at a gross combined weight rating of 39,500. Since that's over the 26,001 pounds, it clearly constitutes a commercial vehicle.

We agree with the district court's ruling on this issue. According to 49 CFR 383.5, the GVWR of the towed unit is added to the GVWR of the tractor if the towed unit has a GVWR of more than 10,000 pounds. As per Sergeant Harper's inspection report, the trailer has a GVWR of 20,000 pounds, well in excess of 10,000 pounds. Thus, the GVWR of the tractor/Freightliner (19,500 pounds) and the GVWR of the trailer (20,000 pounds) must be combined (see 49 CFR 383.5), resulting in a gross combined weight rating of 39,500 pounds, well over the 26,001-pound limit set forth in the definition of a commercial motor vehicle as provided for in 49 CFR 383.5.

Was Gaspard Engaged in Interstate Commerce at the Time of Traffic Stop (Assignments of Error Nos. 1 and 4)

Pursuant to 49 CFR 390.5, *interstate commerce* is defined, in pertinent part, as "trade, traffic, or transportation in the United States ... [b]etween a place in a State and a place outside of such State (including a place outside of the United States)[.]"

Plaintiffs argue that Knoll's "small cattle operation" and the "pickup truck" being driven by Gaspard at the time of the traffic stop were in no way engaged in interstate

commerce. Plaintiffs further contend the exception found in 49 CFR 390.3(f)(3) is applicable to this case and places it outside the ambit of the provisions of the FMCSR applying to interstate commerce. As set forth in 49 CFR 390.3(f)(3), "The occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise," is exempt from the applicability of the rules provided for in the FMCSR. Plaintiffs assert that Gaspard's use of the Freightliner should certainly fall within the ambit of "occasional transportation of personal property ... not for compensation nor in the furtherance of a commercial enterprise" as he was simply utilizing the Freightliner for the sole purpose of delivering another truck to retrieve the disabled farm truck and livestock trailer in Hooks, Texas. Plaintiffs maintain, therefore, that this can in no way be deemed a commercial mission.

Plaintiffs also question the district court's analysis of Question 6 of the FMCSR Handbook under 49 CFR 390.3 as it related to this case. Question 6 provides as follows:

Question 6: How does one distinguish between intra- and interstate commerce for purposes of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifest by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Plaintiffs argue that the essential character of the movement is not the final destination as the district court found. Rather, plaintiffs assert, it is the intent based on all facts and circumstances surrounding the shipment, which plaintiffs contend support a finding that this was a farming operation that was local in nature. Plaintiffs state in brief that Knoll does not sell cattle outside of Louisiana and note that Knoll is engaged in this cattle operation as one of his hobbies.

In response, the Department maintains that there is no evidence in the record to support the plaintiffs' position that the cattle ranch owned and operated by Knoll is not a commercial enterprise and, thus, the exception found in 49 CFR 390.3(f)(3) is

inapplicable to this case. The Department argues that the admission by Knoll that he does not sell cattle outside of Louisiana is tantamount to an implication that he sells cattle in Louisiana and, thus, an admission that his cattle operation is a commercial enterprise. The Department further asserts that in the absence of manifest error, we should defer to the district court's factual findings with regard to Gaspard's travel at the time of the traffic stop meeting the definition of interstate commerce.

In ruling on the question of whether Gaspard was engaged in interstate commerce at the time of the traffic stop, the district court made the following findings:

The first argument that petitioner makes is, in which he claims is dispositive of this case, is that, they were not engaged in interstate commerce. 49 Code of Federal Regulation Section 390.5 interstate commerce means: trade, traffic or transportation in the United States between a place in a state and a place outside such state. Moreover, Question Six under Section 30 -- 390.3, interstate commerce is determined by the essential character of the movement manifested by the [shipper's] fixed and persistent intent at time of shipping and all facts and circumstances surrounding the transportation. Here, the record is clear and it's actually based on plaintiff's testimony and there's no dispute the plaintiff's intent was to transport a truck and a trailer from Louisiana to retrieve a disabled truck and trailer that plaintiff had purchased in Oklahoma to transport back to this state. And I think that that clearly meets both the definition and the intent of interstate travel under the Code of Federal Regulations. Therefore, I think that it was engaged in interstate traffic.

Based on our review of the record before us, and considering the deference owed to the ALJ's credibility determinations below, we conclude that this finding by the district court is supported and sustainable by a preponderance of the evidence and the applicable law. We find no merit to the plaintiffs' arguments to the contrary.

Covered Farm Vehicle Exemption (Assignment of Error No. 3)

The "covered farm vehicle" exemption set forth in 49 CFR 390.5 provides as follows:

Covered farm vehicle—

(1) Means a straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Plaintiffs argue on appeal that not only does the Freightliner clearly qualify as a farm vehicle, but that because Gaspard was stopped while still in Louisiana, the exemptions of 49 CFR 390.5 apply to this case. Plaintiffs maintain that the 150-air mile restriction found in the exemption only applies when an operator crosses the State line. Finally, plaintiffs contend the record is void of any evidence as to the actual number of air miles from the Knoll farm in Marksville to Hooks, Texas. Noting that the ALJ and the district court relied on internet sources to determine that the distance was 207 miles, plaintiffs assert that this was error as the accuracy of same can be reasonably questioned. See La. Code Evid. art. 201(B).⁴

The Department argues that the destination of the vehicle is determinative of both the covered farm vehicle exemption's applicability and the question of interstate commerce. And because the subject vehicle's destination in this case was Hooks, Texas,

⁴ Article 201 provides as follows with regard to judicial notice:

B. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) Generally known within the territorial jurisdiction of the trial court; or

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

well over the 150-air mile radius allowed in the covered farm vehicle exemption of 49 CFR 390.5, the Department asserts the exemption does not apply. We agree with the Department and find no error in the district court's decision on this issue.

As noted by the district court below, although the vehicle Gaspard was driving at the time of the traffic stop does qualify as a farm vehicle, the covered farm vehicle exemption does not apply. The district court noted:

[T]he exemption for a farm vehicle only applies within 150 air miles from the farm or the ranch when it's leaving this State. Here, the record, and it's not disputed, reflects that the air miles from plaintiff's farm to Hooks, Texas was well beyond the 150-mile limit; and therefore, the exemption does not apply. Plaintiff also made the argument that: well, you caught me too soon because I hadn't left the State. But Mr. Gaspard testified both when stopped and at the hearing that his destination was in fact Hooks, Texas, which means that it would be outside the range of a farm vehicle.

Citing Article 201(B)(2) in its decisions, the ALJ acknowledged its use of internet sources to confirm the distance to Hooks, Texas, from Knoll's farm in Marksville, noting that "[t]he calculation of air miles between two geographic locations ... can be determined through the use of a number of internet based web-services." According to the record, Sergeant Harper testified that he put in his notes for this traffic stop that the destination was beyond the covered farm vehicle exemption. He stated that he spoke with Gaspard, who stated "that they were doing some farm-related stuff, going to pick up a truck." Sergeant Harper added, "[m]y notes indicate that he was in route to Hooks, Texas." Sergeant Harper noted in his testimony and in his vehicle examination report that Gaspard's destination was beyond the covered farm vehicle exemption, approximately 242 miles away.

CONCLUSION

For the above and foregoing reasons, we affirm the district court's May 7, 2018 judgment, dismissing, with prejudice, plaintiffs' petition for judicial review. We assess all costs associated with this appeal against plaintiffs-appellants, William P. Gaspard and Jerold Edward Knoll.

AFFIRMED.

WILLIAM P. GASPARD, ET AL.

NUMBER: 2018 CA 0920

VERSUS


COURT OF APPEAL

**DEPARTMENT OF PUBLIC
SAFETY & CORRECTIONS**

FIRST CIRCUIT

STATE OF LOUISIANA

WELCH, J., dissents.

 I respectfully disagree with the majority's opinion that the covered farm vehicle exemption set forth in 49 CFR 390.5 does not apply in this instance. The record establishes that Gaspard was operating the farm vehicle, *i.e.*, the Freightliner, when he was spotted by officers, located on the Flourney Lucas Overpass in Shreveport, who eventually stopped him on I-49 in southern Shreveport, Caddo Parish, Louisiana. While the record does not indicate the exact location of Gaspard's traffic stop in southern Shreveport, we can approximate that the location was within 150 air-miles of Marksville, Avoyelles Parish, Louisiana, where Knoll's cattle farm is located, using "a number of internet based web-services." Accordingly, I find that the covered farm vehicle exemption applies because at the time of the traffic stop, the farm vehicle was "[b]eing used within 150 air-miles of the farmer's farm." I do not agree with the ALJ's conclusion that the destination of the farm vehicle was determinative of the applicability of the covered farm vehicle exemption. There is nothing in 49 CFR 390.5 to indicate that the destination of the covered farm vehicle sets the parameters of the 150 air-mile radius. Accordingly, I dissent.