

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Gayle M. Keyes

v.

Commonwealth of Pennsylvania,  
Department of Transportation,

Appellant

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No. 1082 C.D. 2010

Submitted: January 28, 2011

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: April 13, 2011**

The Commonwealth of Pennsylvania, Department of Transportation (DOT), appeals from the Order of the Court of Common Pleas of Philadelphia County (trial court) sustaining the appeal of Gayle M. Keyes (Licensee) and rescinding the three-month registration suspension imposed by DOT for Licensee's failure to maintain financial responsibility for her 2005 Toyota station wagon (Vehicle) as required by Section 1786 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. § 1786. For the reasons that follow, we are constrained to reverse the Order of the trial court.

The facts in the case are undisputed. On December 18, 2009, Mercury Insurance Company of Florida (Insurer) terminated the liability insurance on the Vehicle. DOT sent a letter, dated January 6, 2010, to Licensee notifying her of the termination of her insurance and asking her to provide information concerning the insurance on her Vehicle. Thereafter, DOT sent an official notice of suspension to Licensee, dated February 22, 2010, stating that the Vehicle's registration was suspended for three months because either no response was received to DOT's January 6, 2010, letter or the information provided was not acceptable.

Licensee filed a timely statutory appeal from the suspension of her Vehicle registration. The trial court conducted a de novo hearing on May 7, 2010. Licensee testified that she had placed her 17 year old son on her insurance, but could not afford to pay for the increased cost of the insurance. Licensee admitted that she did not obtain new insurance within the time period required and testified that she did not drive the Vehicle during the lapse in insurance. Licensee also testified that she subsequently went to an insurance broker and obtained new insurance. The trial court credited Licensee's testimony that she did not drive the Vehicle during the lapse in insurance and acknowledged that Licensee's insurance coverage lapsed for more than 31 days.<sup>1</sup> (Trial Ct. Op. at 1-2.) The trial court stated that those two factors "led the court to consider the equities of a three-month suspension vis-à-vis the detriment to [Licensee] in not having use of her car,"

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<sup>1</sup> The lapse of insurance ran from December 18, 2009, until January 23, 2010. DOT stated at trial that Licensee's insurance coverage lapsed for 35 days. Pursuant to Section 1908 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1908, however, the correct period of lapse was actually 36 days.

(Trial Ct. Op. at 2), and, accordingly, the trial court sustained Licensee’s appeal of the registration suspension, (Trial Ct. Order at 1).

On appeal,<sup>2</sup> DOT argues that the trial court erred as a matter of law and abused its discretion by sustaining Licensee’s appeal based upon “equities” when the facts are not in dispute and the MVFRL mandates a suspension because the lapse in the Vehicle’s insurance was longer than 31 days.<sup>3</sup>

The MVFRL provides that DOT “*shall* suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured.” 75 Pa. C.S. § 1786(d)(1) (emphasis added). To show the suspension was warranted, DOT has the burden to prove that: (1) the Vehicle is registered or of a type required to be registered, and (2) that DOT received notice of the cancellation from the insurance company or that proof of financial responsibility was not provided when requested. 75 Pa. C.S. § 1786(d)(3)(i)-(ii). When DOT meets this burden, a presumption arises that: (1) the cancellation was effective under Section 1377(b)(2), 75 Pa. C.S. § 1377(b)(2), and (2) the vehicle in question lacks the requisite financial responsibility under Section 1786(d)(3)(ii), 75 Pa. C.S. § 1786(d)(3)(ii). Eckenrode v. Department of Transportation, Bureau of

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<sup>2</sup> “Our scope of review of a trial court’s decision sustaining a motorist’s appeal from the suspension of vehicle registration for failure to insure is limited to determining whether the trial court’s findings of fact are supported by competent evidence and whether the trial court made an error of law or abused its discretion.” Banks v. Department of Transportation, Bureau of Motor Vehicles, 856 A.2d 294, 295 (Pa. Cmwlth. 2004).

<sup>3</sup> Licensee was precluded from filing a brief in this matter after failing to comply with this Court’s order to file a brief.

Driver Licensing, 853 A.2d 1141, 1144-45 (Pa. Cmwlth. 2004). A licensee may rebut these presumptions by “producing clear and convincing evidence that the vehicle was insured at all relevant times.”<sup>4</sup> 75 Pa. C.S. § 1786(d)(3)(ii). Additionally, an exception to the imposition of a three-month registration suspension for a lapse in insurance coverage exists if the licensee proves to the satisfaction of DOT that the lapse in insurance *was for less than 31 days* and that the licensee did not operate the vehicle during the lapse. 75 Pa. C.S. § 1786(d)(2)(i).<sup>5</sup>

Here, DOT met its burden by producing certified documents showing that the Vehicle is a vehicle required to be registered and DOT received notice from Licensee’s Insurer of the termination of the Vehicle’s insurance.<sup>6</sup> Because DOT met its burden, a presumption arose that the termination was effective and that the Vehicle lacked the requisite financial responsibility. Eckenrode, 853 A.2d at 1144-45. The burden then shifted to Licensee to rebut the presumption, by clear and

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<sup>4</sup> Clear and convincing evidence is defined as evidence “that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” Fagan v. Department of Transportation, Bureau of Motor Vehicles, 875 A.2d 1195, 1199 (Pa. Cmwlth. 2005.) Whether evidence meets this standard is a question of law, and evidence may be substantial yet fail to meet the more stringent standard of clear and convincing. Id.

<sup>5</sup> There are three exceptions to the imposition of a three-month registration suspension for a lapse in insurance coverage; however, only this exception is relevant to Licensee. 75 Pa. C.S. § 1786(d)(2)(i)-(iii).

<sup>6</sup> DOT is permitted to “satisfy its burden by certifying that it received documents or electronic transmissions from the insurance company informing DOT that the [Licensee’s] insurance coverage has been terminated.” Fell v. Department of Transportation, Bureau of Motor Vehicles, 925 A.2d 232, 237 (Pa. Cmwlth. 2007).

convincing evidence, that the Vehicle was insured at all relevant times, or that she fit within one of the statutorily defined defenses outlined in Section 1786(d)(2)(i)-(iii) of the MVFRL. Although Licensee credibly stated that she did not operate the Vehicle during the lapse in insurance coverage and argued that she was only a few days late in obtaining new coverage, Licensee admitted that her indemnity insurance lapsed for more than 31 days. Where the lapse in insurance is greater than 31 days, whether Licensee drove the Vehicle during the lapse is irrelevant to a registration suspension case. Banks v. Department of Transportation, Bureau of Motor Vehicles, 856 A.2d 294, 296 (Pa. Cmwlth. 2004) (stating that the exception “is inapplicable where the lapse in financial responsibility is not within 31 days even if the licensee did not operate the vehicle during the lapse”).<sup>7</sup> Because the insurance lapsed for more than 31 days, Licensee could not prove by clear and convincing evidence that her vehicle was insured at all relevant times or that she was entitled to the exception found in Section 1786(d)(2)(i).

This Court can not affirm the grant of Licensee’s appeal based on the equities of the matter. Pursuant to Section 1921(b) of the Statutory Construction Act of 1972, “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b). Because Section 1786(d)(1) is not ambiguous and clearly mandates a three-month registration suspension where, as here, the necessary conditions are met, the three-month registration suspension is mandatory and

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<sup>7</sup> In a situation where insurance lapsed and the licensee did not drive her vehicle, the General Assembly has provided a remedy in Section 1786(g)(2), 75 Pa. C.S. § 1786(g)(2), which provides that if the licensee surrendered her registration plate and card, she will not be penalized for maintaining a registered motor vehicle without financial responsibility.

neither DOT, this Court, nor the trial court have discretion to consider any equitable factors involved. Banks, 856 A.2d at 297.

Accordingly, although we sympathize with Licensee, we must reverse the trial court's Order and reinstate the Vehicle's registration suspension.

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**RENÉE COHN JUBELIRER, Judge**

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**ORDER**

**NOW**, April 13, 2011, the Order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is hereby **REVERSED**, and the three-month registration suspension in this matter is **REINSTATED**.

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**RENÉE COHN JUBELIRER, Judge**