

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daryn William Fleming	:	
	:	
v.	:	No. 1610 C.D. 2010
	:	Submitted: January 7, 2011
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

**BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: May 5, 2011

Appellant Pennsylvania Department of Transportation (Department) appeals from an order of the Court of Common Pleas of Northampton County (trial court). The trial court sustained a statutory appeal filed by Daryn Fleming (Fleming) from an order of the Department suspending Fleming’s operating privileges.¹ We reverse.

The facts as revealed in the record are summarized below. On March 4, 2010, Bushkill Township police officer Ellis Pysher investigated a single-vehicle accident. (Reproduced Record (R.R.) at 16a.) During Officer Pysher’s investigation at the scene of the accident, Fleming informed Officer

¹ We note that the trial court’s opinion (and Fleming, in the first paragraph of the argument section of his brief) initially refers to this appeal as relating to a challenge to a DOT decision suspending Fleming’s vehicle registration, but the record makes clear that the subject of the appeal is DOT’s suspension of Fleming’s operating privileges (R.R. at 29a) and the trial court’s ultimate conclusions also reflect this. (R.R. at 54a-55a.)

Pysher that he, Fleming, had been operating the vehicle. (*Id.*) Officer Pysher testified that Fleming admitted to him that his automobile insurance had lapsed. (R.R. at 17a.) Fleming, however, testified that he did not realize his insurance had lapsed until later that day when he returned home and reviewed his records. (R.R. at 19a-20a.) Officer Pysher issued a citation to Fleming for alleged violation of Section 1786(f) of the Vehicle Code.² (R.R. at 32a.) DOT mailed a notice to Fleming on March 29, 2010, indicating that DOT was suspending his operating privileges for a three-month period in accordance with Section 1786(d)(1) of the Vehicle Code,³ based upon his operation of his motor vehicle without maintaining financial responsibility.⁴ (R.R. at 29a.) Fleming appealed DOT's suspension notice to the trial court, which conducted a hearing on July 8, 2010.

During that hearing, DOT questioned Fleming as on cross-examination. (R.R. at 19a-20a.) During his testimony, Fleming admitted that he had driven his vehicle on March 4, 2010, during a period when his insurance had lapsed. (*Id.*) Fleming testified that he renewed his insurance the day following the accident. (R.R. at 20a.)

Additionally, counsel for Fleming asked Officer Pysher questions regarding the proceedings relating to the summary criminal charge against Fleming for operating a vehicle without financial responsibility. (R.R. at 17a-18a.) On

² 75 Pa. C.S. § 1786(f).

³ 75 Pa. C.S. § 1786(d).

⁴ Although DOT had imposed an additional six-month suspension for Fleming's operating license based upon a reckless driving charge arising from the accident, according to DOT, Fleming filed a summary appeal of the reckless driving conviction, "which appears to have been withdrawn . . . prior to Fleming's statutory appeal" hearing in this case. (DOT's Brief at 5.) Thus, the sole license suspension at issue before the trial court related to DOT's suspension of Fleming's license for three months for operating a vehicle for which he failed to maintain insurance.

June 29th, 2010, Fleming entered a plea agreement with the Commonwealth relating to the summary criminal charges arising from the accident. (R.R. at 17a.) As part of the agreement, the Commonwealth withdrew a charge against Fleming for operating a vehicle without insurance. (R.R. at 17a-18a.) The trial court commented in response to this line of questioning: “You’re saying as a result of the negotiated plea and the impact on this citation that then the Commonwealth would be precluded from bringing a license suspension proceeding?” (R.R. at 18a.) Counsel for Fleming responded that that was her position. (*Id.*) The trial court then engaged in the following colloquy with DOT counsel:

DOT: Our position is this is a civil proceeding . . . The original basis was the conviction report, but when I found out that he . . . had pled down the violation, we decided to make our case by producing the officer to testify that he had, one, admitted he didn’t have insurance and, two, he didn’t produce it.

Trial Court: Isn’t that a little bit unfair?

DOT: No. It’s a civil suspension.

Trial Court: I understand that. Wasn’t the intent of the proceeding on the criminal side of the court here to resolve this matter?

DOT: No, your honor. In the State of Pennsylvania, it’s a very serious matter when someone drives without insurance.

Trial Court: I’m not disputing that.

DOT: Yes. And it’s a civil violation. Whether or not you’re convicted . . . , there’s a penalty to be imposed.

(R.R. at 18a-19a.) At the close of the hearing, the trial court indicated that it found Fleming's testimony credible and stated as follows:

Court finds that the defendant had a reasonable belief that the charges to which he pled guilty and otherwise negotiated a plea to would encompass a resolution of these matters. Secondly, the Court resolves issues of credibility in favor of the appellant. Third, the Court finds that the violation pertaining to the lack of financial responsibility is de minimus and accordingly sustains the appeal.

(R.R. at 21a.)

The trial court issued an opinion in support of its decision sustaining Fleming's appeal in which it concluded that DOT had demonstrated a prima facie case under Section 1786(d)(3)(ii) of the Vehicle Code.⁵ The trial court, however, also concluded that Fleming:

reasonably believed that his plea bargain would end the matter, and that he would not be subject to a civil license suspension initiated by a different arm of the Commonwealth Under these circumstances, the Court concluded that it would be unfair to permit the Department to proceed with its license suspension proceeding because it would deprive [Fleming] of the benefit of his reasonable understanding of his plea bargain.

(R.R. at 54a.)

DOT appealed the trial court's order, raising the following issues for our review:⁶ (1) whether the trial court erred in concluding that Fleming's plea

⁵ 75 Pa. C.S. § 1786(d)(3)(ii). We believe the trial court intended to refer to Section 1786(d)(4)(ii) of the Vehicle Code, 75 Pa. C.S. § 1786(d)(4)(ii), which relates to a trial court's scope of review of license, rather than registration, suspensions.

⁶ Our review of a trial court's order sustaining a driver's statutory appeal of DOT's suspension of his license under Section 1786(d) is limited to considering whether the trial court

agreement precludes DOT from seeking to suspend Fleming's license; and (2) whether the trial court erred in sustaining Fleming's statutory appeal on the basis of its conclusion that Fleming's violation of Section 1786(f) of the Vehicle Code was de minimis?

Section 1786(f) of the Vehicle Code provides as follows:

Any owner of a motor vehicle for which the existence of financial responsibility is a requirement for its legal operation shall not operate the motor vehicle or permit it to be operated upon a highway of this Commonwealth without financial responsibility required by this chapter. In addition to the penalties provided by subsection (d), any person who fails to comply with this subsection commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$300.

Section 1786(d)(1) of the Vehicle Code provides as follows:

The Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter and *shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility.*

In order to establish a prima facie case under Section 1786(d)(1) of the Vehicle Code, DOT must show that (1) the vehicle is of the type that is required to be registered, and (2) the owner did not obtain or failed to maintain financial responsibility coverage for the vehicle. *Dubolino v. Dep't of Transp., Bureau of Driver Licensing*, 816 A.2d 1200 (Pa. Cmwlth. 2002). DOT may satisfy its burden through the introduction into the record of certified documents

erred as a matter of law or abused its discretion. *Todd v. Dep't of Transp., Bureau of Driver Licensing*, 555 Pa. 193, 198 n.2, 723 A.2d 655, 658 n.2 (1999).

consisting of electronic transmissions to DOT from a motor vehicle owner's insurance company indicating that the owner's insurance has lapsed. Section 1377(b)(2) of the Vehicle Code, 75 Pa. C.S. § 377(b); *Deklinski v. Dep't of Transp., Bureau of Driver Licensing*, 938 A.2d 1191, 1194 (Pa. Cmwlth. 2007), *appeal denied*, 598 Pa. 783, 959 A.2d 321 (2008). In this case, DOT introduced such documentary evidence into the record (R.R. at 23a-38a), and the trial court rejected Fleming's objection to DOT's submission of that evidence. (R.R. at 8a, 14a-15a.) Additionally, Fleming himself testified that at the time of the accident, he had operated his vehicle and he had not maintained insurance on it. (R.R. at 19a-20a.) We conclude, therefore, that the trial court correctly determined that DOT established a prima facie case under Section 1786(d)(1) of the Vehicle Code.

Once DOT established its prima facie case, the burden shifted to Fleming, who could have sought to avoid the suspension of his license by establishing either that (1) he did in fact maintain continuous insurance coverage on the vehicle, or (2) the lapse of insurance falls within one of the three exceptions identified in Section 1786(d)(2) of the Motor Vehicle Code.⁷ *Fell v. Dep't of Transp., Bureau of Driver Licensing*, 925 A.2d 232, 237-38 (Pa. Cmwlth. 2007.)

In this case, however, the trial court considered other factors in reaching its decision to sustain Fleming's appeal, including Fleming's alleged reliance upon the plea agreement and his act of renewing his lapsed insurance policy the day after his accident. DOT asserts that the trial court erred in considering these factors. In addressing DOT's arguments, we first observe that the record does not contain any testimony from Fleming regarding his expectations

⁷ 75 Pa. C.S. § 1786(d)(2). Briefly stated, these three exceptions may apply if the lapse of insurance is less than thirty-one (31) days, the owner or registrant is a member of the armed services (and certain conditions are present), or a seasonal registration is involved.

or understanding regarding the effect of his plea bargain. Although his attorney stated that she believed that the Commonwealth's decision to drop the criminal aspect of the charge would eliminate the civil consequences associated with Fleming's act of operating his vehicle without insurance, the record is devoid of any evidence regarding the nature of the plea agreement or describing Fleming's understanding of the agreement.

Even if Fleming had offered testimony in support of his alleged understanding of the plea bargain, we would conclude that the trial court still erred. As DOT points out, under Section 1786(d)(4) of the Vehicle Code, a trial court's scope of review in considering a statutory appeal of a license suspension under Section 1786(d)(1) of the Vehicle is limited to the following: (1) whether the vehicle was registered or is of a type required to be registered; and (2) whether the owner of the vehicle operated the vehicle when the vehicle was not covered by financial responsibility. The failure of an owner to provide competent evidence that he had insurance when he was operating a vehicle creates a presumption that the vehicle lacked the requisite financial responsibility. Section 1786(d)(4)(ii) of the Vehicle Code. The trial court's duty once DOT establishes that fact is limited to considering whether the owner/operated has rebutted that presumption with evidence that he did, in fact, maintain required insurance. *See id.*

In *Department of Transportation, Bureau of Driver Licensing, v. Lefever*, 533 A.2d 501 (Pa. Cmwlth. 1987), this Court explored the limits of a trial court's scope of review when a licensee argues that the disposition of related criminal charges through plea bargaining precludes DOT from imposing civil sanctions, as follows:

The mandatory civil penalties of the Vehicle Code are not subject to the terms of a plea agreement arising from

related criminal charges. Regardless of the disposition of the criminal charge, the suspension resulting from a refusal to submit to a blood alcohol test is an independent civil proceeding.

Further . . . neither the district attorney in plea bargaining, nor the court of common pleas when deciding a criminal matter, has jurisdiction to bind DOT to withdraw a civil suspension. The statutory suspensions following a refusal to submit to a blood alcohol test or a conviction for driving under the influence are not bargaining chips to be traded in exchanged for criminal convictions; rather they are mandatory civil penalties, imposed not for penal purposes, but “to protect the public by providing an effective means of denying an intoxicated motorist the privilege of using our roads.”

Id., 533 A.2d at 503 (citations omitted). Although *Lefever* arose in the context of a case involving the suspension of a licensee’s driving privileges based upon his refusal to submit to chemical testing, the same doctrine is applicable in this case, especially in light of the General Assembly’s language in Section 1786(d)(1) which expressly provides that DOT *shall* suspend a driver’s privileges, and, where, in Section 1786(d)(4), the General Assembly clearly limited the scope of a trial court’s review in a statutory appeal under Section 1786 of the Vehicle Code. DOT’s duty to suspend in such circumstances is mandatory, and the trial court lacks the power to engage in discretion. *Banks v. Dep’t of Transp., Bureau of Driver Licensing*, 856 A.2d 294, 297 (Pa. Cmwlth. 2004).

DOT also contends that the trial court erred in basing its decision upon its perception of Fleming’s violation as “de minimis,” and upon the fact that Fleming renewed his insurance the day after the accident. We agree with DOT for the same reasons we expressed above relating to the trial court’s scope of review and the mandatory nature of DOT’s duty to suspend driving privileges under Section 1786(d)(1). The statutory appeal process described in Section 1786(d) of

the Vehicle Code leaves no room for such considerations. For example, in one case upon which DOT relies, *Department of Transportation, Bureau of Traffic Safety v. Hill*, 543 A.2d 211 (Pa. Cmwlth. 1988), this Court confirmed DOT's three-month suspension of a driver's operating privileges where a driver was not aware that his insurance had lapsed and innocently relied upon that lack of knowledge. We observed that, once a trial court determines that a licensee has violated the insurance requirements by driving a vehicle for which he has failed to maintain insurance, the trial court commits an abuse of discretion by modifying the mandatory penalty. *Id.*, 543 A.2d at 213.⁸

As DOT ultimately points out, based upon Fleming's own admissions that his insurance had lapsed and that he was driving his vehicle during a period when he did not maintain insurance for the vehicle, DOT had no discretion as to whether to suspend Fleming's license. *Koller v. Dep't of Transp., Bureau of Driver Licensing*, 670 A.2d 215, 217 (Pa. Cmwlth. 1996). Additionally, Fleming's act of renewing his insurance the day after the accident has no bearing on the result here, as the demonstration by a licensee that he obtained insurance after having violated Section 1786 of the Vehicle Code is not an available defense. *Wenglicki v. Dep't of Transp., Bureau of Driver Licensing*, 712 A.2d 355, 356 (Pa. Cmwlth. 1998).

Accordingly, because the trial court erred as a matter of law and abused its discretion in sustaining Fleming's statutory appeal from DOT's order

⁸ See also *Banks*, 856 A.2d at 297 (holding that hardship and other equitable factors are not relevant to trial court's evaluation of license suspension).

suspending Fleming's operating privileges for a three-month period, we reverse the trial court's order.

P. KEVIN BROBSON, Judge

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Bureau of Driver Licensing,	:	
Appellant	:	

ORDER

AND NOW, this 5th day of May, 2011, the order of the Court of Common Pleas of Northampton County is REVERSED.

P. KEVIN BROBSON, Judge