

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harry Anthony Santory,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1681 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Division of Vehicle Inspection	:	
	:	
Miguel A. Aviles-Nunez,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1774 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Division of Vehicle Inspection	:	
	:	
Kost Tire & Muffler,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1775 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	Submitted: April 1, 2011
Department of Transportation,	:	
Division of Vehicle Inspection	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER

FILED: September 13, 2011

Harry Anthony Santory (Santory), Miguel A. Aviles-Nunez, and Kost Tire & Muffler (Kost), (collectively, “Appellants”), appeal from the Orders of the Court of Common Pleas of Monroe County (trial court),¹ which dismissed their Petitions for Review of the April 2010 orders by the Department of Transportation, Division of Vehicle Inspection (Department) suspending Kost’s Certificate of Appointment as an Official Safety Inspection Station, Mr. Santory’s Certificate of Appointment as an Official Safety Inspector and Mr. Aviles-Nunez’ Right to Apply for Certification as an Official Safety Inspector (Suspensions) pursuant to Sections 4724 and 4726 of the Vehicle Code, 75 Pa. C.S. §§ 4724, 4726. We affirm.

The Suspensions were imposed after Pennsylvania State Police Trooper Carl E. Mease (Trooper Mease) reported a complaint to the Department from Gary K. Marvin alleging that Kost made unnecessary repairs on a vehicle during its annual inspection. (N.T. at 9-11, R.R. at 37a-39a.) After an investigation, Trooper Mease concluded that Mr. Aviles-Nunez, who was not an Official Safety Inspector/Certified Safety Inspection Mechanic (Inspector) at the relevant time, had performed all or a part of the inspection, including the corresponding road test, on the vehicle but it was Mr. Santory, who was an Inspector, who signed the inspection sheet stating that he had performed the entire inspection. (N.T. at 12, 16-18, 30-31, R.R. at 40a, 44a-46a, 58a-59a.) On April 7, 2010, the Department sent Mr. Aviles-Nunez official notice that his right to apply for certification as an Inspector was suspended for four months. (Letter from Department to Mr. Aviles-Nunez (April 7, 2010) at 1, R.R. at 112a.) On April 20, 2010, the Department sent Mr. Santory official notice that his certification

¹ At the request of the appellants, the trial court consolidated their appeals by its Order dated October 15, 2010.

as an Inspector was suspended for one year for fraudulent record keeping. (Letter from Department to Mr. Santory (April 20, 2010) at 1, R.R. at 111a.) Also, on April 20, 2010, the Department sent official notice to Kost that it was suspending Kost's Certification of Appointment as an Official Safety Inspection Station for a total of sixteen months, four months for the inspection conducted by Mr. Aviles-Nunez and twelve months for fraudulent record keeping. (Letter from Department to Kost (April 20, 2010) at 1, R.R. at 109a.)

The Appellants appealed to the trial court for a de novo hearing regarding the Suspensions. On April 26, 2010, the trial court granted a supersedeas of the Department's orders pending the outcome of the de novo hearing. At the de novo hearing, the Department offered the testimony of Trooper Mease and Mr. Marvin. Trooper Mease testified that Mr. Marvin contacted him to report a complaint that Kost made unnecessary repairs on a vehicle during its annual inspection.² (N.T. at 9-11, R.R. at 37a-39a.)

Trooper Mease stated that, upon his investigation, Mr. Santory informed Trooper Mease that Mr. Aviles-Nunez had inspected the vehicle. (N.T. at 17, R.R. at 45a.) Trooper Mease further testified that Mr. Aviles-Nunez told Trooper Mease that Mr. Aviles-Nunez inspected and performed a road test on the vehicle, (N.T. at 12, 30-

² The repairs consisted of replacing four rotors on the vehicle because Kost would not pass the vehicle under state inspection without the rotor replacement. (N.T. at 36, R.R. at 64a.) Upon investigation, Trooper Mease, who has specialized training as an automobile mechanic, holds a position as vehicle fraud investigator, and holds a current Pennsylvania State Inspection License, determined that the rotors did not need to be replaced for the vehicle to pass state inspection. (N.T. at 8, 12-13, R.R. at 36a, 40a-41a.) However, while there was much testimony about this at the hearing, the resolution of this issue is not relevant to this appeal.

31, R.R. at 40a, 58a-59a), and that Mr. Santory informed Trooper Mease that Mr. Santory reinspected the vehicle after Mr. Aviles-Nunez made certain repairs. (N.T. at 17, R.R. at 45a.)

Appellants offered the testimony of Messrs. Santory and Aviles-Nunez. Mr. Santory testified that he conducted the entire inspection and the road test for the vehicle and that Mr. Aviles-Nunez merely assisted Mr. Santory. (N.T. at 44, R.R. at 72a.) Mr. Santory admitted that Mr. Aviles-Nunez performed a road test on the vehicle, stating that it was only done to be sure the vehicle was “in proper safe working order” after the repairs, but that Mr. Santory conducted the road test specifically for the inspection which was separate from the road test conducted by Mr. Aviles-Nunez. (N.T. at 44, R.R. at 72a.) Mr. Aviles-Nunez testified that he did not inspect the vehicle, but performed repairs only, and that he performed the road test only after completing repairs to make sure everything was done correctly and not for the purpose of the state inspection. (N.T. at 59-61, R.R. at 87a-89a.) Mr. Aviles-Nunez further testified that English is not his first language and he meant to tell Trooper Mease that he did not do the inspection, but only did the work incident to the inspection. (N.T. at 58-59, 61, R.R. at 86a-87a, 89a.)

The trial court “found, after hearing [Appellants’] and the Department’s testimony, that Trooper Mease’s testimony was more credible than [Appellants’] testimony based on each witness’ respective demeanor while testifying, interest in the matter, and ability to provide accurate and specific answers.” (Trial Ct. Op. at 7.) The trial court, therefore, concluded that Mr. Aviles-Nunez had performed all or part of the inspection and the test drive, which was a violation of the Department’s

regulations³ because Mr. Aviles-Nunez was not an Official Safety Inspector/Certified Inspection Mechanic. The trial court, therefore, concluded that the respective suspensions were proper, but maintained the supersedeas pending this appeal.⁴

Appellants filed a Concise Statement of Matters Complained of on Appeal (Concise Statement) pursuant to the trial court's Order dated August 17, 2010 and Pa. R.A.P. 1925(b). Appellants raised fourteen issues but the trial court, noting overlapping arguments, consolidated these issues into the following three: (1) "that the evidence does not support a finding that Mr. Aviles-Nunez conducted the inspection of the vehicle"; (2) "that the evidence does not support a finding that [Mr.] Santory fraudulently kept records"; and (3) the Department's "complaint/report" should not have been admitted "because it was never served upon the [Appellants] and was requested prior to the hearing." (Trial Ct. Op. at 4.)

³ The Department's regulations provide, in relevant part: "Every inspection shall be performed by a certified inspection mechanic. The mechanic shall only inspect the type of vehicle for which he is certified. The mechanic signing the inspection sticker shall conduct and be responsible for the entire inspection of the vehicle, including the road test." 67 Pa. Code § 175.28(a). The Department's regulations further mandate that the owners of an inspection station have the obligation to "assume full responsibility, with or without actual knowledge, for . . . [e]very inspection conducted by an employee of the inspection station" and to "assure that each inspection is performed by an inspection mechanic certified to inspect that type of vehicle." 67 Pa. Code § 175.29(a)(6)(i), (7).

⁴ "Our review is limited to determining whether the trial court's findings of fact are supported by competent evidence and whether it committed an error of law or abuse of discretion in reaching its decision." Mihadas v. Commonwealth of Pennsylvania, Department of Transportation, 741 A.2d 249, 252 n.3 (Pa. Cmwlth. 1999.)

Before this Court, Appellants essentially raise issues (1) and (2) stated above,⁵ along with a new issue, which is whether the trial court erred when it prepared an opinion rather than findings of fact and conclusions of law pursuant to Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704.

We first address Appellants' new issue, in which they argue that we must reverse the trial court's Orders in this case because the trial court did not comply with Section 704 of the Administrative Agency Law when it issued an opinion in support of its orders dismissing Appellants' appeals rather than issuing findings of fact and conclusions of law. Appellants argue that, pursuant to Section 704, the trial court must make specific findings of fact and conclusions of law after its de novo review. In support, Appellants cite Department of Transportation, Bureau of Traffic Safety v. Hays, 388 A.2d 1126 (Pa. Cmwlth. 1978), and Department of Transportation, Bureau of Traffic Safety v. Kobaly, 347 A.2d 759 (Pa. Cmwlth. 1975).

The trial court did not err in issuing an opinion in support of its Orders. Section 704 does not apply to appeals from a Commonwealth agency action taken initially to a court of common pleas. See Section 701(b)(2) of the Administrative

⁵ Appellants set out four issues, the first three of which can be consolidated into (1) and (2) as set out above, and the fourth issue being the new issue. As stated by Appellants, the first three issues are: (1) "Whether there is substantial evidence produced by the Commonwealth that supports dismissing the appeals of the suspensions of certificates of appointment of the inspection station and the inspectors"; (2) "Whether the actions of the inspection station and inspectors constituted fraudulent record keeping when this determination is not supported by substantial evidence"; and (3) "Whether there was the requisite intent to deceive supported by substantial evidence to dismiss the appeals of the inspection station and inspector for fraudulent record keeping." (Appellants' Br. at 2.)

Agency Law, 2 Pa. C.S. § 701(b)(2) (describing the scope of Subchapter A of Chapter 7 of Title 2 of the Pennsylvania Consolidated Statutes, which includes Section 704). The appeal of this matter was taken directly from the Department to the trial court; therefore, Section 704 does not apply.⁶ Neither case cited by Appellants stands for the principle that an order of a court of common pleas disposing of an appeal pursuant to Section 4724 or Section 4726 must be supported by findings of fact and conclusions of law rather than by an opinion. Instead, these cases stand for the principle that an opinion submitted by court of common pleas must contain legal conclusions supporting its disposition of such an appeal, which in turn must be supported by factual determinations in the opinion that are supported by substantial evidence. Hays, 388 A.2d at 1127; Kobaly, 347 A.2d at 760. In this case, the trial court clearly stated its factual findings and legal conclusions in its opinion. We, therefore, reject Appellants' argument on this issue.

We have carefully considered the remaining issues set forth by each party in their respective briefs⁷ and conclude that those issues were fully and ably analyzed by the trial court in its opinion. Because the trial court's findings of fact are supported by competent evidence, based upon the trial court's determinations of credibility in

⁶ For a discussion of the jurisdiction of the courts of common pleas over appeals from Department actions pursuant to Section 4726, see Mohamed v. Department of Transportation, 973 A.2d 453 (Pa. Cmwlth.), appeal granted, 603 Pa. 136, 982 A.2d 1218 (2009).

⁷ The Department argues on appeal that it is entitled to the award of reasonable counsel fees pursuant to Pa. R.A.P. 2744 (authorizing an appellate court to award certain costs, including reasonable attorney's fees, "if it determines that an appeal is frivolous or taken solely for delay or that the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious"), because Appellants' arguments are basically a challenge to credibility determinations and, thus, are frivolous. Although we ultimately find in the Department's favor, we do not believe Appellants' arguments are frivolous and, therefore, will not order the payment of counsel fees.

this case, and because there was no error of law or abuse of discretion, we affirm on the basis of the well-reasoned opinion issued by the Honorable Margherita Patti Worthington, Judge of the Court of Common Pleas of Monroe County, in Kost Tire & Muffler, et al. v. Commonwealth of Pennsylvania, Department of Transportation, Division of Vehicle Inspection, (Monroe County, No. 3580 Civil 2010, filed October 15, 2010).

RENÉE COHN JUBELIRER, Judge

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Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Division of Vehicle Inspection	:	
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Kost Tire & Muffler,	:	
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Appellant	:	
	:	
v.	:	No. 1775 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Division of Vehicle Inspection	:	

ORDER

NOW, September 13, 2011, the Orders of the Court of Common Pleas of Monroe County in the above-captioned matter, dated July 20, 2010, are hereby **AFFIRMED** on the basis of the well-reasoned opinion of the Honorable Margherita

Patti Worthington of the Court of Common Pleas of Monroe County in Kost Tire & Muffler, et al. v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Vehicle Inspection, (Monroe County, No. 3580 Civil 2010, filed October 15, 2010).

RENÉE COHN JUBELIRER, Judge