

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Marquetta Whiten :  
 :  
 v. :  
 :  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, :  
 Bureau of Motor Vehicles, : No. 2473 C.D. 2010  
 Appellant : Submitted: June 17, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE McGINLEY

FILED: August 2, 2011

The Pennsylvania Department of Transportation (DOT), appeals from the order of the Court of Common Pleas of Philadelphia County (trial court) which sustained the appeal of Marquetta Whiten (Whiten), *pro se*, from a three-month suspension of the registration of her 1995 Buick sedan (the “Sedan”), pursuant to Section 1786(d) of the Vehicle Code (Code), 75 Pa.C.S. §1786(d).<sup>1</sup>

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<sup>1</sup> Section 1786(d)(1) of the Code provides:

(1) 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 he required financial responsibility. The operating privilege shall not be restored until the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operation privilege or vehicle registration) is paid.

By official notice dated August 4, 2010, DOT informed Whiten that the registration for the Sedan was to be suspended for three months because the insurance policy covering the vehicle had been terminated on June 10, 2010. Whiten appealed to the trial court.

At a *de novo* hearing on October 29, 2010, DOT introduced into evidence a packet of documents that established Whiten's violation of Section 1786(d) of the Code, 75 Pa.C.S. §1786(d) and, also, that she was notified of the suspension.

Whiten testified to the conditions that precluded her from receiving any notification of the termination of her automobile insurance and the suspension of the Sedan's registration:

THE PETITIONER: I wasn't home to get any information that I was sent.

THE COURT: Where were you?

THE PETITIONER: I had to be with my mom. She's like everything in on one floor. I have a heart murmur. I had heart failure.

THE COURT: You had heart failure? You don't get that from a murmur.

THE PETITIONER: Yes, you do.

THE COURT: You do?

THE PETITIONER: That was the whole thing. I wasn't receiving any mail. I was at my mom's house until I recovered.

THE COURT: What do you have to show as far as documentation?

THE PETITIONER: I have a doctor's note I can provide

....

THE COURT: ....The letter from Dr. Penz states diagnosis is heart failure. She's on medication. And she

shouldn't be alone. It's dated April 26<sup>th</sup>. How long were you with your mother?

THE PETITIONER: Until August.

....

THE COURT: When did you go back home?

THE PETITIONER: Like August 28<sup>th</sup> or 29<sup>th</sup>.

THE COURT: And you mailed this letter to your insurance company?

THE PETITIONER: As soon as I got back into the house that Wednesday.

....

THE COURT: During that period of time did you use this vehicle?

THE PETITIONER: No. I wasn't allowed to drive. I was on medication.

Notes of Testimony, October 29, 2010, (N.T.) at 3-4, 6; Reproduced Record, (R.R.) at 23a-24a, 26a.

In its opinion dated February 14, 2011, the trial court sustained Whiten's appeal and rescinded the suspension:

The Court found Ms. Whiten's testimony to be credible. She took ill without time to get her affairs in order, and was not able to properly attend to them either. Under these circumstances, the Court determined that Ms. Whiten presented a valid defense. The Court believes that *equity and fairness* required that the appeal be affirmed in this particular set of circumstances.

Trial Court Opinion, February 14, 2010, (Opinion), at 2; R.R. at 47a. (Emphasis added).

DOT contends that the trial court erred when it sustained Whiten's registration suspension appeal, and that Whiten is ineligible for an exemption from

the suspension because she failed to prove she is entitled to one of the Section 1786(d)(2) exceptions.<sup>2</sup>

DOT has the initial burden of proof in a vehicle registration suspension proceeding pursuant to Section 1786(d)(3) of the Code, 75 Pa. C.S. §1786(d)(3). In order to shoulder this burden, DOT must establish that the vehicle is registered or of a type that is required to be registered under this title, and either that DOT received a notice of a lapse, termination, or cancellation in the financial responsibility coverage or that the owner, registrant or driver was requested to provide proof of financial responsibility to DOT, a police officer or another driver and failed to do so. See Fell v. Department of Transportation, Bureau of Motor Vehicles, 925 A.2d 232 (Pa. Cmwlth. 2007).

To establish its initial burden of proof for a vehicle registration suspension, the Department must submit the necessary documentation as set forth in Section 1377(b)(2) of the Code, 75 Pa. C.S. §1377(b)(2).<sup>3</sup> This Court agrees with DOT that it shouldered its burden.

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<sup>2</sup> This Court's review is limited to a determination whether necessary findings of fact are supported by substantial evidence of record, whether the trial court committed an error of law, and whether the trial court abused its discretion. Todd v. Department of Transportation, Bureau of Driver Licensing, 555 Pa. 193, 723 A.2d 655 (1999).

<sup>3</sup> Section 1377(b)(2) of the Code, 75 Pa. C.S. §1377(b)(2) provides:

(b) DOCUMENTATION

....

(2) In a proceeding relating to the suspension of the registration of a motor vehicle imposed under section 1786 (relating to required financial responsibility), the department's certification of its receipt of documents or electronic transmission from an insurance company informing the department that the person's coverage has lapsed, been canceled or terminated **(Footnote continued on next page...)**

Here, DOT introduced a packet of documents which established the rebuttable presumption that 1) the vehicle was required to be registered in the Commonwealth; and 2) DOT received a notice of a cancellation in the financial responsibility coverage. This constituted prima facie proof of the cancellation of Whiten's policy.

To successfully defend an appeal of a vehicle registration suspension once DOT establishes its prima facie burden of proof, a vehicle owner must prove that financial responsibility was continuously maintained on the vehicle as required by Section 1786(a) of the Code, 75 Pa. C.S. §1786(a), or that the vehicle owner fits within one of the three statutorily defined defenses outlined in Section 1786(d)(2)(i-iii) of the Code, 75 Pa. C.S. §1786(d)(2)(i-iii).<sup>4</sup>

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**(continued...)**

shall also constitute prima facie proof that the lapse, cancellation or termination of the policy of insurance described in the electronic transmission was effective under the laws of this Commonwealth.

<sup>4</sup> The three statutorily defined defenses set forth in Section 1786(d)(2)(i-iii) of the Code, 75 Pa. C.S. §1786(d)(2)(i-iii), are:

(i) The owner or registrant proves to the satisfaction of the department that the lapse in financial responsibility coverage was for a period of less than 31 days and that the owner or registrant did not operate or permit the operation of the vehicle during the period of lapse in financial responsibility.

(ii) The owner or registrant is a member of the armed services of the United States, the owner or registrant has previously had the financial responsibility required by this chapter, financial responsibility has lapsed while the owner or registrant was on temporary, emergency duty and the vehicle was not operated during the period of lapse in financial for 30 days after the owner or registrant returns from duty as long as the vehicle is not

**(Footnote continued on next page...)**

The burden then shifted to Whiten to rebut the presumption by clear and convincing evidence. Whiten does not deny that her vehicle insurance lapsed, but contends that her medical condition precluded her from acting on the mailed notices from DOT regarding this matter. The trial court acknowledged that DOT's evidence established a valid cancellation of Whiten's insurance and subsequent registration suspension notification. However, the trial court determined that Whiten's illness left her unable to attend to her affairs and was an equitable excuse. Opinion at 2; R.R. at 47a.

In Banks v. Department of Transportation, Bureau of Motor Vehicles, 856 A.2d 294 (Pa. Cmwlth. 2004), this Court held that a trial court does not have discretion to sustain an appeal of a vehicle registration suspension under Section 1786 based on hardship to the licensee. "This is not a case where the trial court has discretion to consider the hardship *and other equitable factors* involved. A three-month suspension is mandatory." Banks, 856 A.2d at 297. (Emphasis added).

Here, it is undisputed that DOT established Whiten's failure to maintain financial responsibility on the Sedan. Furthermore, Whiten failed to

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**(continued...)**

operated until the required financial responsibility has been established.

(iii) The insurance coverage has terminated or financial responsibility has lapsed simultaneously with or subsequent to expiration of a seasonal registration, as provided in section 1307(a.1) (relating to period of registration).

present any evidence that she fit within one of the statutory defenses. Whiten testified that she did not operate the vehicle during the period of lapse in insurance. However, because the period was greater than thirty-one days she did not establish a valid defense under Section 1786(d)(2)(i) of the Code, 75 Pa.C.S. §1786(d)(2)(i). The trial court sustained Whiten's appeal because of "equity and fairness." Unfortunately, this was not within the trial court's authority.

Accordingly, this Court must reverse.

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BERNARD L. MCGINLEY, Judge

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**ORDER**

AND NOW, this 2nd day of August, 2011, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is reversed.

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BERNARD L. MCGINLEY, Judge



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OPINION NOT REPORTED

CONCURRING OPINION  
BY JUDGE LEAVITT

FILED: August 2, 2011

I concur in the result, which is dictated by the plain language of Section 1786(d) of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. §1786(d). I write separately to note my disappointment that PennDOT chose to exercise its prosecutorial discretion to pursue this appeal.

The purpose of the MVFRL is not to force people to adopt tidy habits with respect to their financial affairs. It is to keep uninsured motorists off the road.<sup>1</sup> The trial court found, as fact, that Marquetta Whiten did not operate her

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<sup>1</sup> Section 1786(d) states, in relevant part, as follows:

- (1) 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

**(Footnote continued on the next page . . .)**

vehicle at any time after its insurance lapsed because she was incapacitated by heart failure and living in her mother's home. Her serious illness was documented by her medical records. During this stressful time, Whiten did not arrange for the collection of her mail from her own home and, thus, did not pay her insurance premium on time. Standing down in this case would have preserved PennDOT's resources to pursue other more egregious violations of the Vehicle Code. That decision, like any agency's decision not to prosecute or enforce, is committed to PennDOT's absolute discretion and not subject to judicial review. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *Lerro ex rel. Lerro v. Upper Darby Township*, 798 A.2d 817, 821 (Pa. Cmwlth. 2002).

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MARY HANNAH LEAVITT, Judge

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operated or permitted the operation of the vehicle without the required financial responsibility....

- (2) Whenever the department revokes or suspends the registration of any vehicle under this chapter, the department shall not restore the registration until the vehicle owner furnishes proof of financial responsibility in a manner determined by the department and submits an application for registration to the department, accompanied by the fee for restoration of registration provided by section 1960. This subsection shall not apply in the following circumstances:
  - (i) The owner or registrant proves to the satisfaction of the department that the lapse in financial responsibility coverage was for a period of less than 31 days and that the owner or registrant did not operate or permit the operation of the vehicle during the period of lapse in financial responsibility.

\* \* \*

75 Pa. C.S. §1786(d).