

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Janelle Atwell	:	
	:	
v.	:	No. 2474 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	Submitted: June 17, 2011
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: August 15, 2011**

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (DOT), appeals from the order of the Court of Common Pleas of Philadelphia County (trial court) that sustained the appeal of Janelle Atwell (Atwell), representing herself, from a three month suspension of the registration of her 2006 Honda coupe (the car), pursuant to Section 1786(d) of the Vehicle Code (Code), 75 Pa.C.S. §1786(d).<sup>1</sup> Concluding the trial court lacks discretion to rescind a mandatory suspension on grounds of fairness and equity, we reverse.

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<sup>1</sup> Section 1786(d)(1) of the Code, 75 Pa. C.S. §1786(d)(1), 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

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

On July 7, 2010, DOT informed Atwell by letter (cancellation letter) that her insurer for the coupe terminated insurance coverage for the car on July 1, 2010. The cancellation letter directed Atwell to provide DOT with proof of insurance coverage. Atwell did not provide the requested information. DOT notified Atwell in writing (suspension notice) on August 23, 2010 that it was suspending the registration for the coupe for three months because of the lapsed insurance. Atwell appealed to the trial court.

At a *de novo* hearing on October 29, 2010, DOT introduced into evidence a packet of documents: (1) electronic transmission from Progressive Preferred Insurance Company (insurance company) certifying it terminated insurance on July 1, 2010; (2) computer printout of vehicle inquiry and vehicle registration from DOT's records for the coupe; (3) cancellation letter; (4) suspension notice; and, (5) a document certification from DOT's custodian of records.

Atwell testified she first learned she was delinquent in her automobile insurance payments when she received the cancellation letter from DOT. She testified she contacted her insurance company after receiving the cancellation letter, paid the bill, and had insurance re-instated for the car as of August 5, 2010.

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**(continued...)**

the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operation privilege or vehicle registration) is paid.

The trial court sustained Atwell's appeal and rescinded the suspension:

The trial court found Ms. Atwell's testimony to be credible. Moreover, the insurance policy was reinstated well before the suspension notice was mailed to her. Under these circumstances, the Court determined that Ms. Atwell presented a valid defense. While she reinstated the insurance beyond the statutory grace period, the Court believed that equity and fairness required that the appeal be affirmed in this particular set of circumstances.

Tr. Ct. Op., February 14, 2011, (Opinion), at 2; Reproduced Record (R.R.) at 31a. DOT appealed to this Court.

On appeal,<sup>2</sup> DOT contends the trial court erred. DOT argues Atwell 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.

DOT has the initial burden of proof in a vehicle registration suspension proceeding. 75 Pa. C.S. §1786(d)(3). In order to shoulder this burden, DOT must establish the vehicle is of a type required to be registered under the Code and that the required insurance coverage has been terminated. See Fell v. Dep't. of Transp., Bureau of Motor Vehicles, 925 A.2d 232 (Pa. Cmwlth. 2007).

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<sup>2</sup> This Court's review is limited to a determination of whether the necessary findings of fact were 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. Dep't of Transp., Bureau of Driver Licensing, 555 Pa. 193, 723 A.2d 655 (1999).

DOT may meet this burden by providing documentation as described in Section 1377(b)(2) of the Code, 75 Pa. C.S. §1377(b)(2).<sup>3</sup>

Here, DOT met its burden under Section 1786 by providing documentation as required by Section 1377. DOT introduced a packet of documents which established that: 1) the car was required to be registered in the Commonwealth; and 2) DOT received a notice of a cancellation of the financial responsibility coverage.

The burden of proof then shifted to Atwell to prove she maintained financial responsibility continuously on the vehicle as required by Section 1786(a) of the Code, 75 Pa. C.S. §1786(a), or that her status as owner falls 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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<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 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, with emphasis added:

(i) The owner or registrant proves to the satisfaction of the department that the lapse in financial responsibility coverage was

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Here, Atwell did not produce any evidence showing that she had in fact continuously maintained insurance or that her status fit into one of the statutory defenses. Accordingly, Atwell failed to meet her burden.

The trial court sustained Atwell's appeal because of "equity and fairness." However, neither provides a permissible basis for the trial court to rescind a mandatory suspension under Section 1786. Banks v. Department of Transportation, Bureau of Motor Vehicles, 856 A.2d 294 (Pa. Cmwlth. 2004) (holding a trial court may not consider hardship and other equitable factors to negate a mandatory three month suspension under Section 1786). Accordingly, we are constrained to reverse.

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ROBERT SIMPSON, Judge

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**(continued...)**

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 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).

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**ORDER**

**AND NOW**, this 15<sup>th</sup> 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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ROBERT SIMPSON, Judge