

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ann Marie Medina :
 :
 v. : No. 2589 C.D. 2010
 : Submitted: October 21, 2011
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: November 18, 2011

The Department of Transportation, Bureau of Driver Licensing (Department) appeals from an order of the Court of Common Pleas of Lackawanna County (trial court) sustaining the *pro se* statutory appeal of Ann Marie Medina (Medina) from a three-month suspension of her vehicle registration for failure to maintain the required financial responsibility.

Medina is the registered owner of a 1999 Ford sedan, title number 54671333 (vehicle), which was insured by Permanent General Assurance Company (Permanent General). By letter dated July 8, 2010, the Department notified Medina that it had received information from Permanent General that the

insurance policy covering her vehicle was cancelled on June 28, 2010. The letter requested that Medina provide verification of insurance coverage on the vehicle within three weeks or otherwise her vehicle registration would be suspended for three months. Medina failed to provide the requested information and by official notice dated August 24, 2010, the Department informed Medina that the registration for the vehicle would be suspended for three months effective September 28, 2010, as authorized by Section 1786(d) of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. §1786(d).¹ Medina appealed the suspension to the trial court.

At the hearing before the trial court, the Department offered into evidence the following documents in support of its position that Medina failed to maintain the required financial responsibility on her vehicle: (1) the Department's

¹ Section 1786(a) of the MVFRL mandates that “[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility.” 75 Pa. C.S. §1786(a). Section 1786(d)(1) provides for the suspension of registration and operating privilege for failure to maintain the required financial responsibility, 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. The operating privilege shall not be restored until the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operating privilege or vehicle registration) is paid.

75 Pa. C.S. §1786(d)(1).

initial letter to Medina dated July 8, 2010; (2) the official notice of suspension of registration dated August 4, 2010; (3) an electronic transmission from Permanent General regarding the termination of insurance, titled “Suspension Inquiry Detail;” (4) the Department’s computer printout of the vehicle’s details; and (5) the certification of Anita M. Wasko, Director of the Bureau of Motor Vehicles, certifying that all of the Department’s submitted documents were true and correct.

In response, Medina testified that she was not made aware that her insurance policy had been cancelled by Permanent General until she received the Department’s July 8, 2010 letter. She stated that she was never notified by Permanent General that her policy had been cancelled, and as soon as she became aware of the cancellation, she obtained insurance from Geico, which became effective August 5, 2010. She offered a copy of her new insurance policy into evidence. She also stated that while she was without auto insurance, she never drove her car because it was being repaired for several months.

The trial court reversed the Department’s suspension of Medina’s driving privileges because she testified that she did not operate her vehicle during the lapse in coverage and she presented evidence of reinstatement of auto insurance. The trial court judge specifically noted in his Pa. R.A.P. 1925(a) opinion that “the fact that Ms. Medina’s policy had lapsed was not in dispute.” (Reproduced Record at 46a.) This appeal by the Department followed.²

² Our review of a trial court’s order sustaining an appeal from a registration suspension is limited to determining whether the trial court committed a reversible error or abused its discretion and whether the necessary findings of fact are supported by substantial evidence. **(Footnote continued on next page...)**

The Department contends³ that the trial court erred by sustaining Medina's statutory appeal because the lapse of financial responsibility on her vehicle was for more than 30 days and it was irrelevant that she did not drive her vehicle during that time despite obtaining other auto insurance. We agree.

In a registration suspension case arising under Section 1786 of the MVFRL, the Department bears the initial burden of proving that a lapse in the required financial responsibility has occurred. Section 1377(b)(2) provides that "the [D]epartment'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" of a lapse in coverage. 75 Pa. C.S. §1377(b)(2); *accord Delinski*, 938 A.2d at 1194 (citing *Fagan v. Department of Transportation, Bureau of Motor Vehicles*, 875 A.2d 1195, 1198 (Pa. Cmwlth. 2005)).

The Department's certification of the electronic transmission received by Permanent General stating that Medina's coverage was terminated established its *prima facie* case, creating a presumption that Medina lacked the necessary insurance coverage. The burden then shifted to Medina to rebut this presumption "by presenting clear and convincing evidence of record 'that financial responsibility was continuously maintained on the vehicle . . . or that [she] fits

(continued...)

Delinski v. Department of Transportation, Bureau of Motor Vehicles, 938 A.2d 1191 (Pa. Cmwlth. 2007).

³ Medina has been precluded from filing a brief in this matter.

within one of the three statutorily defined defenses outlined in Section 1786(d)(2)(i-iii).” *Delinski*, 938 A.2d at 1194 (quoting *Fell v. Department of Transportation, Bureau of Motor Vehicles*, 925 A.2d 232, 237-38 (Pa. Cmwlth. 2007) (en banc)).

Medina admitted that she did not continuously maintain financial responsibility on the vehicle because it had been terminated in June and she did not obtain new insurance until August. In order to sustain her appeal, she had to provide clear and convincing evidence⁴ that she fit one of the statutory exceptions. Section 1786(d)(2)(i-iii) of the MVFRL outlines these exceptions, in pertinent part, as follows:

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.

(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 had lapsed while the owner or registrant was on temporary, emergency duty and the vehicle was not operated during the period of lapse in financial responsibility. . .

⁴ Clear and convincing evidence “is defined as testimony 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) (citations omitted).

(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).

75 Pa. C.S. §1786(d)(2)(i-iii). (Emphasis added.)

Medina admitted that her insurance coverage lapsed from June 28, 2010, through August 5, 2010, and the trial court judge specifically stated that the lapse in policy was not in dispute. Because the lapse was more than 31 days, she does not fit the first exception regardless of the fact that she testified that she did not drive her car during that period of time.⁵ The record is devoid of any evidence that Medina was a member of the armed services or that she maintained only a seasonal registration on the vehicle; therefore, she could not meet either of the two remaining exceptions.

However, we have held that where, as here, a licensee is challenging the validity of an insurer's cancellation of a policy, such a challenge is properly brought before the Insurance Commissioner. *See Webb v. Department of*

⁵ The Department relies on *Burton v. Department of Transportation, Bureau of Motor Vehicles*, 973 A2d 473 (Pa. Cmwlth. 2009), for the proposition that it was not a valid defense under 75 Pa. C.S. §1786(d)(2)(i) that Medina did not drive her vehicle during the 38-day lapse. However, *Burton* does not stand for that proposition. In *Burton*, the trial court reversed the Department's suspension of Burton's driving privileges due to her lack of insurance coverage. Burton testified that she did not operate her car during the time she was without coverage. However, that fact was not relevant on appeal. What was at issue was whether the lapse in coverage was for more or less than 31 days, and it was proven that it was for exactly 31 days. Similarly, here, the only issue is whether Medina had coverage for more or less than 31 days, and it was proven that she had a lapse in coverage for more than 31 days.

Transportation, Bureau of Motor Vehicles, 870 A.2d 968 (Pa. Cmwlth. 2005). Because Medina was challenging just that through her appeal, and the Department is not opposed, we will afford Medina the opportunity to pursue this avenue of review. *Webb*, 870 A.2d at 975.

Accordingly, the order of the Court of Common Pleas of Lackawanna County is vacated and the matter is remanded with instructions to the trial court to hold the suspension appeal of Ann Marie Medina in abeyance pending Medina's request for *nunc pro tunc* relief pursuant to this opinion and disposition of any such request by the Insurance Commissioner. If Medina fails to seek *nunc pro tunc* relief with the Insurance Commissioner within 30 days of the date of this order or such relief is denied by the Insurance Commissioner, the trial court shall reinstate the vehicle registration suspension upon praecipe of the Department of Transportation.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 18th day of November, 2011, the order of the Court of Common Pleas of Lackawanna County is vacated and the matter is remanded with instructions to the trial court to hold the suspension appeal of Ann Marie Medina in abeyance pending Medina's request for *nunc pro tunc* relief pursuant to this opinion and disposition of any such request by the Insurance Commissioner. If Medina fails to seek *nunc pro tunc* relief with the Insurance Commissioner within 30 days of the date of this order or such relief is denied by the Insurance Commissioner, the trial court shall reinstate the vehicle registration suspension upon praecipe of the Department of Transportation.

Jurisdiction relinquished.

DAN PELLEGRINI, JUDGE