

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Jason Barry :  
 :  
 v. : No. 310 C.D. 2010  
 :  
 Commonwealth of Pennsylvania, : Submitted: December 3, 2010  
 Department of Transportation, :  
 Bureau of Motor Vehicles, :  
 :  
 Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge  
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
 BY JUDGE COHN JUBELIRER**

**FILED: March 24, 2011**

Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (DOT) appeals from an order (Order) of the Court of Common Pleas of Luzerne County (trial court) sustaining the appeal of Jason Barry (Licensee) and rescinding the three-month registration suspension imposed by DOT for Licensee's failure to maintain financial responsibility for his 2000 Mazda Truck (Truck) as required by Section 1786 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. § 1786(a). For the reasons that follow, we reverse the order of the trial court.

On August 25, 2009, Geico Indemnity Insurance (Insurer) terminated the liability insurance on Licensee's Truck. DOT sent a letter to Licensee on September 5, 2009, notifying Licensee of the termination of his insurance and asking him to provide information concerning the financial liability of the Truck. (Letter to Licensee from DOT (September 5, 2009), Trial Ct. Tr. Ex. 4 at 1-2, R.R. at 26a-27a.) Licensee did not open the letter until approximately one month after receiving it and failed to produce the requested information. (Trial Ct. Tr. at 2-3, R.R. at 14a-15a.) DOT sent an official notice of suspension to Licensee on October 22, 2009, stating that the Truck's registration was suspended for three months. (Letter to Licensee from DOT (October 22, 2009), Trial Ct. Tr. Ex. 1 at 1-2, R.R. at 22a-23a.)

Licensee filed a timely appeal from the suspension of his Truck's registration. The trial court conducted a de novo hearing on January 25, 2010. The trial court found that Licensee's indemnity insurance lapsed for 32 days, from August 25, 2009, until September 27, 2009, and granted Licensee's appeal. (Trial Ct. Tr. at 4-6, R.R. at 16a-18a; Trial Ct. Order at 1, February 3, 2010, R.R. at 29a.) The trial court filed the Order granting Licensee's appeal on February 3, 2010. DOT received the Order and filed an appeal to our Court. On March 26, 2010, the trial court filed an order, pursuant to Pa. R.A.P. 1925(b) (1925(b) Order), requiring DOT to file a concise statement of errors complained of on appeal (Statement); however, there is no indication on the docket that notice of the 1925(b) Order was given to the parties as required by Pa. R.C.P. No. 236. (1925(b) Order at 1, March 26, 2010, R.R. at 31a.) On May 20, 2010, the trial court, after determining that its original Order granting Licensee's appeal "was improvidently rendered," filed a

third “order” (Third Order)<sup>1</sup> requesting that this Court reverse the Order granting Licensee’s appeal. (Third Order at 1, May 20, 2010, R.R. at 32a.)

On appeal,<sup>2</sup> DOT argues that: (1) DOT was not required to file a Statement because the 1925(b) Order was not served on DOT and, therefore, the lack of a response, under the circumstances, does not warrant a dismissal of DOT’s appeal; and (2) the trial court erred by entering the Order granting a registration suspension appeal when the facts are not in dispute and the MVFRL mandates a suspension because the lapse in the Truck’s insurance was longer than 30 days.

We first address DOT’s argument that its failure to file the Statement should not be fatal to its appeal because DOT was never served with the 1925(b) Order requiring it to file a Statement. Pursuant to Rule 1925(b), a lower court may enter an order directing the appellant to file “a concise statement of the errors complained of on appeal.” Pa. R.A.P. 1925(b). Generally, an issue is considered waived on appeal where no Statement is filed or where the issue is not included in the Statement. Commonwealth v. Lord, 553 Pa. 415, 418, 719 A.2d 306, 308 (1998). However, Rule 236 of the Pennsylvania Rules of Civil Procedure requires that the Prothonotary shall give written notice of the entry of an order or judgment to each party, and shall note in the docket the giving of the notice.<sup>3</sup> Pa. R.C.P. No.

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<sup>1</sup> We note that, because the Third Order was issued more than 30 days after the original Order and after DOT filed its appeal, the trial court was without jurisdiction to issue another order pursuant to Pa. R.A.P. 1701.

<sup>2</sup> On November 17, 2010, Licensee was precluded from filing a brief in this matter after failing to comply with this Court’s October 19, 2010 order to file a brief.

<sup>3</sup> Rule 236 provides in relevant part:

236. Where the docket does not show that notice of the entry of a Rule 1925(b) order was provided to an appellant as required under Rule 236, this Court will not conclude that the appellant's issues have been waived for failure to file a Statement. Schlag v. Department of Transportation, Bureau of Driver Licensing, 963 A.2d 598, 601 (Pa. Cmwlth. 2009). In Schlag, the licensee failed to file a timely Statement in response to the trial court's order. This Court held that the licensee's issues were not waived on appeal where the docket did not show that the trial court's Rule 1925(b) order was served on the appellant without regard to whether the appellant actually received notice of the entry of the Rule 1925(b) order. Id. at 601-02. In this case, there is no indication on the record that the Prothonotary provided DOT with notice of the entry of the 1925(b) Order pursuant to Rule 236. (Docket at 1; R.R. at 1a.) Therefore, in accord with Schlag, we find

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(a) The prothonotary shall immediately give written notice of the entry of

(1) a judgment entered by confession to the defendant by ordinary mail together with a copy of all documents filed with the prothonotary in support of the confession of judgment. The plaintiff shall provide the prothonotary with the required notice and documents for mailing and a properly stamped and addressed envelope; and

(2) any other order or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order or judgment.

....

(b) The prothonotary shall note in the docket the giving of the notice and, when a judgment by confession is entered, the mailing of the required notice and documents.

that DOT did not waive its issues raised on appeal due to failure to file a Statement.

Having determined that DOT's issues raised on appeal have not been waived, we now address DOT's second argument that the trial court erred by sustaining Licensee's registration suspension appeal when the facts are not in dispute and the MVFRL mandates a suspension when the Truck's insurance coverage lapsed for more than 30 days. Section 1786(d)(1) of the MVFRL provides that DOT "shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured." 75 Pa. C.S. § 1786(d)(1). To show the suspension was warranted, DOT has the burden to prove that: (1) the vehicle is registered or of a type required to be registered; and (2) DOT received notice of the cancellation from Licensee's Insurer. 75 Pa. C.S. § 1786(d)(3). When DOT meets this burden, a presumption arises that: (1) "the cancellation was effective under [75 Pa. C.S. §] 1377(b)(2);" and (2) "the vehicle in question lacks the requisite financial responsibility under Section 1786(d)(3)(ii)." Eckenrode v. Department of Transportation, Bureau of Driver Licensing, 853 A.2d 1141, 1144-45 (Pa. Cmwlth. 2004). A licensee can overcome these presumptions by "producing clear and convincing evidence that the vehicle was insured at all relevant times." 75 Pa. C.S. § 1786(d)(3)(ii). Additionally, an exception to the imposition of a three-month registration suspension for a lapse in insurance coverage exists if the licensee proves to the satisfaction of DOT that the lapse in insurance *was for less than 31 days* and that the licensee did not operate the vehicle during the lapse. 75 Pa. C.S. § 1786(d)(2)(i).

Here, DOT met its burden by producing documents showing that the Truck is a vehicle required to be registered and DOT received notice from Licensee's Insurer of the cancellation of the Truck's insurance. (Suspension Inquiry Detail at 1; R.R. at 24a.) Because DOT met its burden, a presumption arose that the cancellation was effective and that the Truck lacked the requisite financial responsibility. Although Licensee stated that he did not operate the Truck during the lapse in insurance coverage, Licensee, the trial court, and DOT agreed that Licensee's indemnity insurance lapsed for 32 days. (Trial Ct. Tr. at 4-5; R.R. at 16a-17a.) Because the insurance lapsed for more than 31 days, Licensee did not meet his burden of proving that he is entitled to an exception. We, therefore, agree with the trial court that its Order sustaining Licensee's appeal was "improvidently rendered." (Third Order at 1, R.R. at 32a.)

Accordingly, we must reverse the Order of the trial court and reinstate Licensee's three-month registration suspension.

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**RENÉE COHN JUBELIRER, Judge**

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 Appellant :

**ORDER**

**NOW**, March 24, 2011, the Order of the Court of Common Pleas of Luzerne County in the above-captioned matter is hereby **REVERSED** and the registration suspension is hereby reinstated.

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**RENÉE COHN JUBELIRER, Judge**