

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Mon B. Siwa	:	
	:	
v.	:	No. 501 C.D. 2011
	:	SUBMITTED: August 26, 2011
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: October 28, 2011**

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (Department) appeals from the order of the Court of Common Pleas of Erie County (trial court) which sustained the appeal of Mon B. Siwa (Siwa) and reversed the Department's suspension of Siwa's registration privileges.

On May 15, 2010, Siwa purchased a 2005 Hyundai Elantra sedan. Through Viking Insurance Company of Wisconsin (Viking) he obtained and paid in full for six months of insurance effective May 29, 2010 through November 29, 2010. On or about June 15, 2010, Siwa realized that Viking had improperly listed his address as 507 East 27<sup>th</sup> Street, when his correct address was 507 East 23<sup>rd</sup>

Street. Siwa contacted his insurance agent and informed him of the mistake. He never received a new insurance card from Viking. By letter dated November 13, 2010, the Department informed Siwa that Viking had notified them that Siwa's insurance had been cancelled as of October 30, 2010. The notice informed Siwa that if he did not obtain insurance for his vehicle within 30 days from the date his insurance lapsed, his vehicle registration would be suspended for 30 days. On December 16, 2010, the Department sent Siwa an official notice of suspension which informed Siwa that the registration of his 2005 Hyundai sedan was being suspended for three months, effective January 20, 2011, as mandated by 75 Pa. C.S. § 1786(d). Siwa filed a timely statutory appeal of the registration suspension with the trial court.

The trial court held a *de novo* hearing at which Siwa, proceeding *pro se*, testified.<sup>1</sup> Siwa testified that he never received any communications from Viking about the cancellation of his insurance. He stated that he did not realize that his insurance had expired until December 2, 2010, when he checked his insurance card. He contacted Viking which informed him that all correspondence had been sent improperly to 507 East 27<sup>th</sup> Street as opposed to 507 East 23<sup>rd</sup> Street. Siwa obtained a new insurance policy for his vehicle from Viking on December 2. The new insurance card reflected the proper mailing address. Siwa also provided evidence that he had paid for six months of insurance coverage effective May 29, 2010, through November 29, 2010.

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<sup>1</sup> Siwa, who is a Butonese immigrant, was accompanied by Paul Jericho of the Erie Multi-Cultural Community Resource Center. Apparently, Mr. Jericho assists Siwa with acclimating to the language and culture of the United States.

In support of its case, the Department offered the following documents: (1) official notice of suspension dated and mailed December 16, 2010; (2) electronic transmission from Viking certifying the termination of insurance on October 30, 2010; (3) Department printout of vehicle inquiry detail by title screen; (4) letter dated November 13, 2010 regarding notification of insurance cancellation; and (5) the registration record for Siwa's vehicle. Reproduced Record (R.R.) at 22a.

The trial court sustained Siwa's appeal finding that the Department had not provided *prima facie* proof that Viking's cancellation was legally effective. The trial court found that the Department's notice of suspension was erroneous because it stated that Siwa's insurance had terminated on October 30, 2010. The trial court also found that Viking had sent correspondence to the wrong address, and that there was no evidence that Siwa had operated his vehicle during the two-day time period that he did not have insurance. The Department appealed.

The Department asserts that the trial court erred because Siwa acknowledged that he was without insurance for two days and he failed to offer any evidence to prove that his vehicle was not operated during that time period.<sup>2</sup> The Department requests that this court reverse the trial court's order or in the alternative, vacate the trial court's order, direct the trial court to hold the suspension appeal in abeyance and direct Siwa to pursue *nunc pro tunc* relief before the Insurance Commissioner as provided by *Webb v. Department of Transportation, Bureau of Motor Vehicles*, 870 A.2d 968 (Pa. Cmwlth. 2005).<sup>3</sup>

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<sup>2</sup> Siwa failed to file a brief and has been precluded from participation in this appeal.

<sup>3</sup> In *Webb*, this court held that the registrant attempted to challenge the validity of the insurance company's cancellation of his policy on the grounds of lack of proper notice through the appeal of his registration suspension. This court dismissed without prejudice the **(Footnote continued on next page...)**

In vehicle registration suspension cases, “the Department has the initial burden of showing that a registrant’s vehicle is registered or is a type of vehicle that must be registered and that the Department received notice that the registrant's financial responsibility coverage was terminated.” *Fagan v. Dep’t of Transp., Bureau of Motor Vehicles*, 875 A.2d 1195, 1198 (Pa. Cmwlth. 2005) [citing 75 Pa. C.S. § 1786(d)(3)]. The Department’s certification of its receipt of documents or electronic transmissions from an insurance company which inform the Department that the person’s coverage has either lapsed, been canceled or terminated, shall constitute *prima facie* proof of such termination. 75 Pa. C.S. § 1377(b)(2); *Fagan*.

Once the Department meets its burden, a presumption arises that the registrant lacked the necessary financial responsibility coverage. *Fagan*, 875 A.2d at 1198. The registrant may rebut this presumption by presenting clear and convincing evidence that he has maintained financial responsibility continuously on the vehicle as required by Section 1786(a) of the Vehicle 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).<sup>4</sup> Section 1786 of the Vehicle Code also

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**(continued...)**

Department’s appeal and ordered the registrant to file a *nunc pro tunc* appeal before the Insurance Commissioner. 870 A.2d at 975.

<sup>4</sup> Section 1786(d)(2) of the Vehicle Code sets forth the three statutorily defined defenses as follows:

(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

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requires that all challenges to the improper termination of insurance by an insurance company must be brought before the Insurance Commissioner.

The Department met its prima facie burden of proving that Siwa's vehicle was not properly insured by submitting into evidence Siwa's certified driving record, the notice of suspension and Viking's notice of termination. The burden then shifted to Siwa to show that the vehicle was insured at all times or that the lapse in insurance was for less than 31 days and that the vehicle was not operated during the lapse. Siwa admitted that his insurance lapsed for two days before he obtained new insurance. However, there is no evidence in the record regarding whether Siwa operated his vehicle during those two days. Thus, the Department is correct that Siwa did not demonstrate that he fell within the exception provided by Section 1786(d)(2)(i) of the Vehicle Code.

However, given the unusual circumstances of this case, we agree with the Department's proposed alternative resolution.

Accordingly, we vacate the trial court's order and remand the matter to the trial court with instructions to hold Siwa's suspension appeal in abeyance pending Siwa's filing of a *nunc pro tunc* application for review of his insurance policy cancellation and the Insurance Commissioner's review and disposition of

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**(continued...)**

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. . . .

(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).

this request. Siwa shall have thirty days from the date of this order to file his request.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

**ORDER**

AND NOW, this 28th day of October, 2011, the order of Court of Common Pleas of Erie County is hereby VACATED and this matter is REMANDED to the trial court. The trial court shall hold the appeal in abeyance pending further action by Appellee Siwa.

Within 30 days of the date of this order, Appellee Siwa may file with the Insurance Commissioner an application to appeal *nunc pro tunc* from the cancellation of his insurance policy. If Appellee Siwa does not file an application, the trial court shall dismiss this appeal. If Appellee Siwa does file such a *nunc pro tunc* appeal with the Insurance Commissioner, the trial court shall continue to hold this appeal in abeyance pending notice of final disposition of the appeal to the Insurance Commissioner. Upon final notice of disposition from the Insurance Commissioner, the trial court shall take appropriate action on Siwa's initial appeal to it from the Department's suspension of his vehicle registration.

Appellee Siwa shall serve on the trial court and the Department a copy of any *nunc pro tunc* appeal of the cancellation of his insurance policy as well as the Insurance Commissioner's disposition of his appeal, if one is taken.

Jurisdiction relinquished.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge