

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cassandra Wertz	:	
	:	
v.	:	No. 903 C.D. 2010
	:	SUBMITTED: September 17, 2010
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: November 9, 2010

The Department of Transportation, Bureau of Motor Vehicles (Department) appeals from the order of the Court of Common Pleas of Mifflin County, which sustained the statutory appeal of Cassandra Wertz from a three-month suspension of the registration of her vehicle for failure to maintain insurance.¹ We reverse.

In December 2009, Victoria Fire & Casualty Company notified the Department that Wertz's automobile insurance policy had been terminated for nonpayment. In January 2010, the Department sent a letter to Wertz's last known address, requesting that she provide proof of insurance within three weeks. When

¹ Wertz was precluded from filing a brief as a result of her failure to file in the time allowed.

no such proof was forthcoming, the Department sent two notification letters indicating that her vehicle registration would be suspended in March 2010. Shortly after the final letter, Wertz filed a timely statutory appeal with common pleas.

At trial, Wertz testified that she had been unable to pay for her vehicle insurance after losing her job in late 2009. By December 2009, she had found a new job, which would not start until the next month, and she called her insurance company to request an extension on her premiums, but was turned down. Therefore, the premiums went unpaid and the coverage was cancelled. As soon as she received her first paycheck from her new job, Wertz reinstated the insurance on her vehicle. While her vehicle was uninsured, Wertz kept it in a garage, instead driving a vehicle belonging to her mother, which was insured. By Wertz's admission, her vehicle was uninsured for a period of 53 days.

In addition, Wertz testified that she had not received the first two of the three letters the Department sent, because at the time in question, she had been having difficulties with her live-in paramour, and had temporarily moved in with her mother. Common pleas found that Wertz had not received proper notice of the Department's intent to suspend her registration, and sustained her appeal. An appeal to this court followed.

On appeal, the Department argues that common pleas erred by not properly applying the statutory standard to this case, and concluding that notice of the impending suspension was lacking. Under 75 Pa. C.S. § 1786(d)(1), "[t]he 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.”²

The scope of review of a court hearing an appeal from a vehicle registration suspension is limited to determining whether:

- (i) the vehicle is registered or of a type that is required to be registered under this title; and
- (ii) there has been either notice to the department of a lapse, termination or cancellation in the financial responsibility coverage as required by law for that vehicle or that the owner, registrant or driver was requested to provide proof of financial responsibility to the department, a police officer or another driver and failed to do so. Notice to the department of the lapse, termination or cancellation or the failure to provide the requested proof of financial responsibility shall create a presumption that the vehicle lacked the requisite financial responsibility. This presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at all relevant times.

75 Pa. C.S. § 1786(d)(3).

In this case, the Department established before common pleas that Wertz’s insurance company had provided notice of cancellation, and therefore the burden shifted to Wertz to establish by clear and convincing evidence that the vehicle was insured. Wertz clearly did not meet this burden, as she acknowledged

² 75 Pa. C.S. § 1786(d)(2) requires that after a suspension, 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,” with three exceptions, none of which apply in this case. The only exception which could conceivably apply is 75 Pa. C.S. § 1786(d)(2)(i), which applies when the lapse in 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 this case, the vehicle was not used during the lapse, but Wertz admitted the lapse lasted 53 days.

in her testimony that the policy had been canceled after she had been unable to pay the premiums. For this reason, common pleas erred in sustaining the appeal.

The notice issue relied upon by common pleas is of no moment for a number of reasons. First, it is beyond the scope of review established for cases of this type by 75 Pa. C.S. § 1786(d)(3). Second, Wertz acknowledged in her testimony that she knew her insurance policy had been canceled, and that she received the third and final letter the Department sent her. Therefore, there is no question that Wertz had notice of the cancellation of her insurance, and of the impending suspension of her registration, and, indeed, had sufficient notice to file a timely statutory appeal. Finally, although Wertz did not receive the first two letters, this was not the fault of the Department. The Department correctly sent the letters to Wertz's last known address. That Wertz did not receive them was perhaps due to her failure to notify the Department of her change of address, or the failure of her paramour to forward her mail, but it was clearly not due to any error on the part of the Department.

For all the foregoing reasons, we reverse.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Appellant	:	

ORDER

AND NOW, this 9th day of November, 2010, the order of the Court of Common Pleas of Mifflin County in the above-captioned matter is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge