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NO. COA08-1100

NORTH CAROLINA COURT OF APPEALS

Filed: 16 June 2009

GUY M. TURNER, INCORPORATED,
Plaintiff,

v.

Guilford County
No. 07 CvS 2285

BRYAN E. BEATTY, SECRETARY
NORTH CAROLINA DEPARTMENT OF
CRIME CONTROL AND PUBLIC
SAFETY,
Defendant

Court of Appeals

Appeal by defendant from judgment entered 13 May 2008 by Judge John O. Craig in Guilford County Superior Court. Heard in the Court of Appeals 25 March 2009.

Slip Opinion

Keziah, Gates & Samet, L.L.P., by Andrew S. Lasine, for plaintiff-appellant.

Attorney General Roy A. Cooper, III, by Assistant Attorney General John W. Congleton, for defendant-appellant.

HUNTER, ROBERT C., Judge.

This case arises out of a violation of N.C. Gen. Stat. § 20-119 (2007), whereby plaintiff trucking company was fined \$250 for violation of a travel restriction within a special permit and \$22,840 for a weight violation based on the statutory weight parameters of N.C. Gen. Stat. § 20-118 (2007). Pursuant to litigation, the trial court interpreted these two statutes, held that the \$22,840 fine was unlawful, granted summary judgment for

plaintiff, and ordered defendant North Carolina Department of Crime Control & Public Safety ("defendant" or "NCDCCPS") to reimburse plaintiff the \$22,840. Defendant appeals this grant of summary judgment for plaintiff. (R pp. 128-129). After careful review, we affirm.

Background

On 5 September 2007, Guy M. Turner, Inc. ("plaintiff" or "Turner"), obtained a special "Single Trip Permit" (the "permit") from the North Carolina Department of Transportation, Division of Highways, to transport a truck and trailer in North Carolina with a gross weight of no more than 186,000 pounds through the state. Without this permit, the truck and trailer could not legally exceed 80,000 pounds. N.C. Gen. Stat. § 20-118(b)(3). The permit dictated the following: "TRAVEL AUTHORIZED MONDAY THROUGH SATURDAY SUNRISE TO SUNSET."

On the morning of 6 September 2007, at approximately 6:43 a.m., plaintiff's driver was stopped by State Trooper M.C. Davis ("Trooper Davis") on Interstate Highway 40 in Haywood County, North Carolina. Trooper Davis issued a Permit Violation Civil Fine Assessment for traveling before sunrise in violation of the permit. The gross weight of the truck and trailer at the time was 166,400 pounds.

Plaintiff was fined \$250 pursuant to N.C. Gen. Stat. § 20-119(d)(2) for operating in violation of the travel restrictions listed in the permit. In addition, plaintiff was penalized \$22,840 as a weight violation based on the time of travel violation

pursuant to N.C. Gen. Stat. §§ 20-119(d) and 20-118(e)(1) and (e)(3). This weight violation was calculated based on the difference between 80,000 pounds (the statutory pound limit for a truck without a special permit) and the 166,400 pounds it actually weighed. Plaintiff's truck was not in excess of the 186,000 pounds listed on the special permit.

Plaintiff paid the \$22,840 penalty under protest.¹ On 24 October 2007, NCDCCPS informed plaintiff that an administrative review revealed that the officer who issued the citations followed state law and patrol policy.

Plaintiff filed a complaint in Guilford County Superior Court on 4 December 2007 seeking a refund of the \$22,840 penalty and alleging, *inter alia*, that the State had no authority to impose the weight citation under the statutory scheme set out in § 20-119(d) and § 20-118(e). Plaintiff filed a motion for summary judgment on 5 March 2008. Defendant filed a motion for summary judgment on 12 May 2008 claiming that the citations issued were authorized by law.

On 13 May 2008, the trial judge ordered summary judgment in favor of plaintiff, concluding as a matter of law:

There is no legal basis for the State Highway Patrol to impose assessments for overweight violations by calculating penalties based on the statutory scheme set forth in N.C. Gen. Stat. §20-118 when the vehicle operator has a lawfully acquired special permit exempting the vehicle from those limitations. The penalty provision in N.C. Gen. Stat. §20-119(d), when viewed in the context of the weight limitation

¹Though the letter plaintiff wrote to defendant protesting the penalty states that \$22,820 was paid, the actual overweight penalty was \$22,840.

provisions in 118(e)(1) and (3), does not authorize the State Highway Patrol to impose penalties on vehicles for exceeding the statutory weight limitations in situations where the vehicle is properly permitted and within the permit weight limitations but the operation of the vehicle violates other non-weight related parts of §20-119(d).

Having found that defendant unlawfully cited plaintiff for the weight violation, the court ordered defendant to refund plaintiff the amount of \$22,840, plus interest. Defendant appeals this order.

Analysis

Pursuant to our holding in *Daily Express, Inc. v. N.C. Dep't of Crime Control & Public Safety*, ___ N.C. App. ___, 671 S.E.2d 587 (2009), we affirm the trial court's grant of summary judgment for plaintiff.

Affirmed.

Judges CALABRIA and HUNTER, ROBERT N. concur.

Report per Rule 30(e).