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NO. COA08-908

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2009

WEST SIDE HEAVY HAULING, INC.,  
Plaintiff

v.

Wake County  
No. 07 CVS 12920

NORTH CAROLINA DEPARTMENT OF  
CRIME CONTROL & PUBLIC SAFETY,  
DIVISION OF STATE HIGHWAY  
PATROL, MOTOR CARRIER  
ENFORCEMENT SECTION,  
Defendant

# Court of Appeals

Appeal by defendant from an order entered 16 April 2008 by Judge A. Leon Stansack, Jr. in Wake County Superior Court. Heard in the Court of Appeals 3 December 2008.

## Slip Opinion

*Parker Poe Adams & Bernstein LLP, by Kevin L. Chignell and Susan L. Dunathan, for plaintiff-appellee.*

*Attorney General Roy A. Cooper, III, by Assistant Attorneys General John W. Congleton and Tamara S. Zmuda, 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 \$500.00 for an operational violation of a special permit and \$24,911.65 for an overweight 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 \$24,911.65

overweight 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 overweight fee plus interest. Defendant appeals the order granting summary judgment for plaintiff. We affirm.

#### I. Background

On 24 April 2007, West Side Heavy Hauling, Inc. ("plaintiff"), obtained a special "single trip permit" ("the permit") from the North Carolina Department of Transportation, Division of Highways to transport a truck and trailer with a gross weight of no more than 232,000 pounds through North Carolina. Without this permit, the truck and trailer could not legally exceed 80,000 pounds. N.C. Gen. Stat. § 20-118(b)(3). The permit required plaintiff's truck and trailer to be accompanied by two certified escorts if its gross weight exceeded 149,999 pounds.

On 24 April 2007, plaintiff's driver, George E. Higdon ("the driver"), stopped at a weigh station in Hendersonville, North Carolina, accompanied by only one escort vehicle, which was not certified in North Carolina. The gross weight of the truck and trailer was 195,980 pounds; thus, plaintiff was required to utilize certified rear and front escorts.

An officer with the Division of State Highway Patrol, Motor Carrier Enforcement Section issued plaintiff two civil citations. The first citation fined plaintiff \$500.00 pursuant to N.C. Gen. Stat. § 20-119(d)(1) for failing to comply with the permit's escort requirement. In addition, plaintiff was fined \$24,911.65 for an

overweight violation pursuant to N.C. Gen. Stat. §§ 20-119(d) and 20-118(e) (1) and (e) (3). This overweight violation was calculated based on the difference between 80,000 pounds (the statutory pound limit for a truck without a special permit) and the 195,980 pounds it actually weighed. Plaintiff's truck was not in excess of the 232,000 pounds listed on the special permit. After plaintiff's driver secured a second escort and arranged for payment of the fines, he was allowed to resume the remainder of the trip with the original permit.

On 25 May 2007, plaintiff's counsel faxed a letter to defendant protesting the overweight penalty. On 1 June 2007, defendant informed plaintiff that its administrative review revealed that the officer "followed State law and Patrol policy" in issuing the citations and penalties.

Plaintiff filed a complaint in Wake County Superior Court on 13 August 2007 seeking a refund of the \$24,911.65 overweight penalty plus interest. Plaintiff filed a motion for summary judgment on 15 February 2008 alleging, *inter alia*, the State had no authority to impose the overweight citation under the statutory scheme set out in section 20-119(d) and section 20-118(e). Defendant filed a motion for summary judgment on or about 20 March 2008 claiming the issued citations were authorized by law.

On 16 April 2008, the trial judge entered an order granting summary judgment in plaintiff's favor, concluding that:

There is no legal basis for [defendant] to issue citations and impose penalties for overweight violations based on the statutory license weight 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. [And t]he penalty provisions of N.C. Gen. Stat. § 20-119(d) and § 20-118(e)(1) and (3) do not authorize [defendant] to impose penalties on vehicles for exceeding the statutory weight limitations in situations where the vehicle is properly permitted, and does not exceed the weight limitations set out in the permit, even if operation of the vehicle violates other non-weight related aspects of the permit addressed by § 20-119(d).

Having concluded that the imposition of the overweight penalty was "outside [defendant's] statutory authority[,]" the court ordered defendant to refund the overweight penalty plus interest to plaintiff. Defendant appeals.

## II. Analysis

Pursuant to our holding in *Daily Express, Inc. v. N.C. Dep't of Crime Control & Public Safety*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (No. COA08-562 filed 3 February 2009), we affirm the trial court's order granting summary judgment for plaintiff.

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).