

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROBERT E. FREDRICKSON

Plaintiff

v.

OHIO STATE HWY. PATROL, et al.

Defendants

Case No. 2005-04446-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

{¶ 1} On November 13, 2004, at approximately 8:10 p.m., plaintiff, Robert E. Fredrickson, was driving on US Route 23 in Delaware County when he was stopped for speeding by an employee of defendant, Ohio State Highway Patrol (“OSHP”). Incident to the traffic stop by OSHP employee, Trooper Grubb, plaintiff produced his driver’s license. Trooper Grubb took plaintiff’s driver’s license and used the personal information contained on the license to fill-out a speeding offense citation. The address listed on plaintiff’s license and recorded on the speeding citation was “9 Barr Hill Dr., Delaware, OH 43015.” The citation carried a note, “Issuing Officer Be Sure To Verify Address, If Different From License Address Write Present Address In Space Provided; Present Address.” Under this Present Address listing Trooper Grubb wrote “2208 Bruce Rd. Delaware, Oh 43015.” Trooper Grubb obtained the Present Address information from plaintiff. At the time of the November 13, 2004, traffic stop plaintiff’s address was 2208 Bruce Rd. Apt. #112 Delaware, Ohio 43015. It is unknown whether or not plaintiff provided Trooper Grubb with his apartment number when producing verbal information about his present address. Trooper Grubb checked on the citation plaintiff was being charged with one offense: SPEED traveling 60 mph in a 45 mph zone. The citation contained a listing “FINANCIAL RESPONSIBILITY PROOF SHOWN” with boxes

marked "YES", "NO." Trooper Grubb checked the box notation marked "NO." Plaintiff related that when he was stopped he provided Trooper Grubb his driver's license, vehicle registration, and car insurance information (financial responsibility proof). Plaintiff insisted he provided financial responsibility proof, but Trooper Grubb failed to record this proof was provided and, in fact, did record no financial responsibility proof was offered. Trooper Grubb wrote on the citation plaintiff was summoned to appear in the Delaware Municipal Court on November 19, 2004, although no notation was made on the citation that plaintiff's personal appearance in court was required. Apparently, plaintiff appeared at the clerk's office of the Delaware Municipal Court on November 15, 2004, and paid a fine for the speeding citation. On November 23, 2004, defendant, Bureau of Motor Vehicles ("BMV"), recorded plaintiff's speeding offense conviction listing the conviction date as November 19, 2004, and the offense date as November 13, 2004. Additionally, on or about November 23, 2004, BMV received conviction information from the Delaware Municipal Court to suspend plaintiff's driver's license for failure to produce proof of financial responsibility. BMV duly recorded plaintiff's driver's license suspension. There was no evidence plaintiff produced proof of financial responsibility to the Delaware Municipal Court when he paid his speeding ticket fine or at any other time prior to BMV receiving no proof of insurance information from the court.

{¶ 2} OSHP introduced a video/audio tape of the November 13, 2004, traffic stop incident which had been originally recorded by OSHP. The relevant portion of the tape recording depicts plaintiff receiving a traffic citation from Trooper Grubb. Much of the audio portion of the recording is inaudible, indecipherable, and indiscernible to the trier of fact. Particularly, plaintiff's speech and responses to inquiries are not audible to the trier of fact upon repeated review and listenings of the November 13, 2004, traffic

stop recording. The recording depicts Trooper Grubb explaining to plaintiff that he was stopped for failing to signal a lane change and excessive speed. Also, plaintiff can be seen offering papers to Trooper Grubb upon his approach to plaintiff's vehicle. Plaintiff's response to Trooper Grubb informing him of the reason for the stop is inaudible. Trooper Grubb, after explaining to plaintiff the reason for the stop, is heard to ask plaintiff for his insurance information and registration. Trooper Grubb says to plaintiff, "do you have your insurance card and registration information with you." Plaintiff responds, "Oh yeah, yeah I just live right here in these apartments." The tape then depicts plaintiff handing papers to Trooper Grubb. Trooper Grubb is seen examining the papers and asking plaintiff, "do you have anything that's current?" Plaintiff responds, "no sir, I have no outstanding warrants that (inaudible)." Trooper Grubb asks, "what's that?" Plaintiff responds, "no current warrants, nothing pending, no, no (inaudible)." Trooper Grubb then tells plaintiff he is going to issue him a citation for speeding. As plaintiff speaks about outstanding warrants and whatever else he was talking about, Trooper Grubb is observed looking at the documents plaintiff provided upon request, presumably insurance information, registration, etc. Trooper Grubb returns to the OSHP car with all documents provided by plaintiff and apparently filled out the speeding citation paperwork. After an interval, Trooper Grubb is seen approaching plaintiff's car and asking plaintiff about his address, "is nine Barr Hill still current?" Plaintiff is heard to respond "no, its (inaudible)." Trooper Grubb is depicted writing down on the citation the current address information being provided by plaintiff and then handing the completed citation to plaintiff. Trooper Grubb informs plaintiff the citation has a court appearance date noted of November 19, 2004, at 8:30 a.m., but tells plaintiff he is being charged with a "waiveable offense which means you don't have to appear in court if you don't want to as long as the ticket is taken care of by that time." The waiver option is further explained. Plaintiff then asks Trooper Grubb if the court is located in town (Delaware) and Trooper Grubb responds, "yes," telling plaintiff the address of the court. Plaintiff then asks about the procedure for paying his ticket and Trooper Grubb

advises him about taking care of his ticket with the court. Grubb also advises plaintiff if he has any additional questions he may contact the court at the telephone number provided. The traffic stop was then completed and plaintiff was permitted to drive away from the scene.

{¶ 3} Evidence suggests plaintiff paid his fine for the speeding violation, but did not appear in court to offer proof of financial responsibility, despite the fact the citation he was issued was clearly marked proof of financial responsibility was not shown. It is unclear what method plaintiff used to pay his speeding violation fine (check, cash, credit card). After the 8:30 a.m., November 19, 2004, court appearance date and time listed on plaintiff's citation, the Delaware Municipal Court reported to defendant, BMV, that plaintiff had failed to produce proof of financial responsibility to either the citing officer at the time of the November 13, 2004, traffic stop or to the court upon paying the speeding violation fine. Consequently, on December 1, 2004, BMV sent to plaintiff at 2208 Bruce Road, Delaware, Ohio 43015 (the address listed on the November 13, 2004 speeding citation), a Notice of Suspension to notify plaintiff his driver's license was being suspended effective December 31, 2004. This Notice of Suspension letter did not contain plaintiff's apartment number on the mailed address. The notice contained language intending to inform plaintiff he could avoid suspension of his driver's license by submitting proof of financial responsibility in effect on the date of his November 13, 2004, traffic offense. Although the suspension notice letter did not contain plaintiff's apartment number on the mailed addressed envelope, BMV denied the notice was returned to its office. BMV therefore, presumed delivery of the suspension notice was completed to plaintiff's address, despite the failure to include the apartment number on the addressed envelope. Conversely, plaintiff denied ever receiving any Notice of Suspension in his mail at his apartment delivered by the United States Postal Service ("USPS"). BMV provided a copy of a mail manifest showing a Notice of Suspension was posted through the USPS to plaintiff's listed address of 2208 Bruce Road in Delaware, Ohio 43015. USPS affixed a postmark dated December 1, 2004, verifying

mailing of this document. The suspension of plaintiff's driver's license remained on BMV records from December 31, 2004, to March 7, 2005.

{¶ 4} On March 7, 2005, plaintiff was traveling south on State Route 23 in Powell, Ohio, when he was subjected to a traffic stop by a Delaware County Deputy Sheriff. During the course of this traffic stop, BMV records of plaintiff's driving status were scanned and it was discovered plaintiff's driver's license was suspended. As a result of receiving information from BMV regarding plaintiff's driving status, plaintiff was arrested and his car was impounded. Later, on March 7, 2005, plaintiff was released from the Delaware County jail and immediately went to the BMV Reinstatement Office in Columbus where he presented proof of financial responsibility to BMV employees. Upon receiving the proof of insurance information, BMV promptly deleted plaintiff's driver's license suspension from its records and reinstated plaintiff's license.

{¶ 5} Plaintiff contended that the erroneous acts of both OSHP and BMV in regard to the issue of proof of insurance caused him to suffer substantial damages. Plaintiff claimed OSHP employee, Trooper Grubb, negligently recorded on the November 13, 2004, speeding citation that plaintiff failed to produce proof of financial responsibility. Then, plaintiff alleged BMV, acting upon erroneous information initially supplied by Trooper Grubb, improperly suspended plaintiff's driver's license and compounded the error by sending the suspension notice to the wrong address. Plaintiff insisted he provided proof of financial responsibility to Trooper Grubb, who mismarked the speeding citation. Plaintiff also insisted he never received service of the notice of suspension mailed by BMV. Plaintiff has maintained both BMV and OSHP should bear liability for damages he suffered associated with his March 7, 2005, arrest for driving under a suspended license. Therefore, plaintiff filed this claim seeking to recover \$2,500.00, the statutory maximum amount recoverable under R.C. 2743.10. Plaintiff noted his damages included claims for work loss, impound fees, travel expenses, and emotional distress. The filing fee was paid.

{¶ 6} OSHP has asserted plaintiff has failed to offer sufficient proof Trooper Grubb made any errors when he issued plaintiff a speeding violation citation on November 13, 2004. OSHP contended plaintiff did not produce a current proof of insurance card upon request during the November 13, 2004, traffic stop and consequently, Trooper Grubb properly noted proof of insurance was not shown. OSHP referenced the submitted video/audio tape of the relevant traffic stop to the portion where Trooper Grubb asked plaintiff for his proof of insurance card and vehicle registration. OSHP pointed out the tape depicts Trooper Gruff looking at the offered papers and asking, “do you have anything that’s current?,” where upon plaintiff responds, “no sir, I have no outstanding warrants that (inaudible).” OSHP argued this recorded dialogue constitutes proof plaintiff did not produce a current insurance card to Trooper Grubb, and, “the traffic citation issued to the plaintiff was properly checked as providing no proof of financial responsibility proof shown.”

{¶ 7} Additionally, OSHP asserted proper care and procedure was followed during the November 13, 2004, traffic stop when Trooper Grubb handed plaintiff a waiver document and explained the waiver. The video/audio tape submitted depicts Trooper Grubb giving and explaining the waiver document to plaintiff. Plaintiff was informed he could use this waiver to pay the fine for his speeding violation and therefore, avoid a court appearance. Apparently, plaintiff used this waiver option to pay the fine for the traffic offense, but he failed to offer proof of insurance to the court when he submitted payment. OSHP submitted a copy of the type of waiver document Trooper Grubb handed to plaintiff. Pertinent language in this waiver documents provides:

{¶ 8} “ENTERING A PLEA/PAYING A WAIVER

{¶ 9} “PROOF OF INSURANCE

{¶ 10} “You may appear in court on your scheduled court date . . . -OR- you may plead guilty in advance by signing the back of the ticket and enclosing it with payment of the pre-determined amount. This is called paying a waiver . . .

{¶ 11} “You must provide proof of insurance. If you fail to provide adequate proof of insurance (a bill is not sufficient) covering your operation of the vehicle at the time of the offense, your license will be suspended by the Bureau of Motor Vehicles . . .”

{¶ 12} OSHP maintained plaintiff was informed on the speeding citation he did not produce proof of insurance and was notified by the waiver document what would happen if he did not provide insurance proof to the court. OSHP related plaintiff did not provide adequate proof of insurance to Trooper Grubb and did not provide this proof to the court, despite being informed of the consequences. OSHP implied plaintiff’s failure to produce adequate proof of insurance was the proximate cause of any subsequent difficulty he encountered.

{¶ 13} OSHP also submitted a copy of the November 13, 2004, speeding citation issued by Trooper Grubb. This citation is marked: Financial Responsibility Proof shown - No. The citation also contains the address listing plaintiff gave to Trooper Grubb, 2209 Bruce Rd., Delaware, OH 43015. No apartment number is recorded. Plaintiff’s signature appears on the face of the citation near both the address listing and the caption reading Financial Responsibility Proof Shown-No. Plaintiff acknowledged he did not read the citation except for noting he had been charged with a speeding violation.

{¶ 14} Plaintiff provided documentation from his insurance company verifying he was covered under an automobile insurance policy on November 13, 2004, at the time he was stopped by Trooper Grubb. However, plaintiff did not provide evidence, other than his own assertion, to prove he gave Trooper Grubb a valid current proof of insurance paper when he was asked to produce his insurance card and automobile registration. Plaintiff professed, “no one talks or mentions my car insurance, a valid policy, coverage,” at the time he was stopped for speeding. Despite plaintiff’s assertion, the trier of fact finds Trooper Grubb, in the tape recorded traffic stop, requested plaintiff produce an insurance card. Plaintiff noted he keeps his proof of insurance card, “in my glove box and wallet.” Plaintiff explained he has worked, “with law enforcement in

safety and security for 21 yrs,” and implied he is familiar with law enforcement jargon.¹ Plaintiff stated if a law enforcement officer makes a reference about anything current, the officer is talking about, “ a warrant, etc.” Therefore, according to plaintiff, after he gave Trooper Grubb requested proof of insurance coverage and auto registration papers and Trooper Grubb upon examining the offered papers asked if he had “anything current,” plaintiff assumed he was being asked if he was wanted by police. Notwithstanding plaintiff’s assertion regarding the connotation of “anything current” in a collegial law enforcement atmosphere, the trier of fact finds that under the circumstances presented, when Trooper Grubb asked if plaintiff had “anything current,” the Trooper was referring to proof of insurance papers. Plaintiff stated there was, “[c]learly no mention of insurance validation,” when Trooper Grubb issued him the citation. However, the citation itself bears the clear notation proof of financial responsibility was not shown. Plaintiff observed he should have been told the No box on the Financial Responsibility Proof Shown was being checked on the citation. Although plaintiff may not have been verbally informed about a failure to show proof of financial responsibility he was informed in writing on the face of the citation he was issued.

{¶ 15} Defendant, OSHP, has a duty to exercise reasonable care when conducting official acts, including business involving motorists and traffic stops. See *Hamlet v. Ohio State Highway Patrol*, 2002-05409-AD, 2002-Ohio-6410; *Vastine v. Ohio State Highway Patrol*, 2002-10305-AD, 2003-Ohio-1681. However, plaintiff must prove, by a preponderance of the evidence, OSHP breached its duty of reasonable care and damages resulted from OSHP’s improper act or omission when conducting traffic stops. See *James v. Ohio State Highway Patrol*, 2003-02403-AD, 2003-Ohio-3728; *Fuciarella v. Ohio State Patrol Marion Post*, 2002-03911-AD, 2002-Ohio-4627. Plaintiff, in the

¹ At the time of the November 13, 2004, incident plaintiff was employed as a security officer at a Columbus hospital.

instant claim, has failed to produce sufficient evidence to prove OSHP employee, Trooper Grubb, committed any negligent acts or omissions on November 13, 2004, in relation to the traffic stop and subsequent issuance of a speeding citation. The audio/video tape of the November 13, 2004, traffic stop depicts Trooper Grubb asking plaintiff for proof of insurance and plaintiff handing over a document, whereupon Trooper Grubb examined the handed document and asked if plaintiff had "anything current." The trier of fact determined this question was related to current insurance coverage proof. Sufficient evidence has been submitted to establish plaintiff did not produce current proof of insurance on November 13, 2004, and the citation he was issued was clearly marked he did not provide current proof of insurance. A casual perusal of the citation would have put anyone on notice that the Financial Responsibility Proof Shown Box was marked, No. A review of the waiver submitted would have notified the reviewer of the notation: "You Must Provide Proof Of Insurance." Plaintiff claimed to be familiar and well versed from experience on law enforcement lexicon, but seemingly admits to being deficient in police procedure and rudimentary knowledge regarding citations and the consequences involved in providing proof in compliance with financial responsibility laws. Plaintiff failed at the time of the traffic stop to produce proof of current insurance coverage on November 13, 2004.

{¶ 16} Furthermore, the November 13, 2004, audio/video tape demonstrates plaintiff provided Trooper Grubb with his current address, which Trooper Grubb wrote on the speeding citation. It is unclear whether or not plaintiff provided his apartment number. However, it is clear no apartment number was written on the citation and plaintiff apparently did not attempt to clarify his complete address with Trooper Grubb. Plaintiff has failed to produce sufficient proof to show he gave his complete address to Trooper Grubb and Trooper Grubb failed to note a complete address on the citation. Additionally, plaintiff had some responsibility in this matter to verify his address as written on the citation considering the consequences involved. Plaintiff has therefore, failed to prove he suffered any damage as a proximate cause of any negligent act or

omission on the part of OSHP employee Trooper Grubb. Moreover, evidence has shown plaintiff's own negligence in failing to read and comply with the directions of the citation and waiver was the sole proximate cause of any subsequent damage he suffered. All claims against OSHP are denied.

{¶ 17} Defendant, BMV, insisted proper action was taken in suspending plaintiff's driver's license due to the fact he failed to present proof of financial responsibility prior to the suspension action. BMV pointed out, not only did plaintiff fail to produce proof of current insurance coverage when such proof was requested by Trooper Grubb on November 13, 2004, but proof of insurance coverage was never submitted to the Delaware Municipal Court despite plaintiff being placed on notice through the citation that he was required to produce this proof or face subsequent license suspension. Additionally, BMV asserted plaintiff failed to establish he did not receive the notice of his license suspension, although evidence has shown the notice contained an address which did not include plaintiff's apartment number. Since the suspension notice was not returned to BMV, the assumption was made the notice was delivered to plaintiff by USPS. BMV for all reasons mentioned, denied any liability for any loss plaintiff may have suffered resulting from his March 7, 2005, arrest for driving under suspension.

{¶ 18} In his response to defendant's investigation report, plaintiff insisted he never received a notice of suspension letter from BMV in his mail. Plaintiff argued his notice of suspension letter should have been sent by certified mail-return receipt requested. Plaintiff reasserted he is entitled to all damages claimed and BMV should bear liability for erroneously suspending his license and for failure to actually serve him with this notice of suspension.

{¶ 19} Chapter 4507.09 of the Revised Code pertains to the "expiration, renewal of license; notice of change of address; nonrenewable license for temporary resident," of licensed drivers in the state. R.C. 4507.09(C) states:

{¶ 20} "Each person licensed as a driver under this chapter shall notify the registrar of any change in the person's address within ten days following that change.

The notification shall be in writing on a form provided by the registrar and shall include the full name, date of birth, license number, county of residence, social security number, and new address of the person.”

{¶ 21} Plaintiff, in the instant claim, was charged with a statutory duty to notify BMV of his address change, including his apartment number, within ten days after he moved to 2208 Bruce Road Apt. #112, Delaware, Ohio 43015. There is no evidence plaintiff filed a change of address form. Although the issue of whether plaintiff ever received the notice of suspension from BMV remains in dispute, the court finds plaintiff’s failure to notify BMV of his full address change as required by statute is the sole proximate cause of any failure of service and loss resulting from this real or perceived failure. See *Spinner v. Bureau of Motor Vehicles*, 2004-09401-AD, 2005-Ohio-2487. Plaintiff’s claim based on failure of service is denied.

{¶ 22} Resulting monetary damages are recoverable when plaintiff proves, by a preponderance of the evidence, defendant erroneously records driver’s license information. *Ankney v. Bureau of Motor Vehicles* (1998), 97-11045-AD; *Serbanescu v. Bureau of Motor Vehicles* (1994), 93-15038-AD; *Black v. Bureau of Motor Vehicles* (1996), 95-01441-AD. In the instant action, plaintiff has failed to prove that defendant erroneously recorded his driver’s license status. Evidence indicates defendant’s records were accurate under the circumstances when this cause of action accrued. *Elliott v. Bureau of Motor Vehicles* (2001), 2001-02104-AD, jud.

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ROBERT E. FREDRICKSON

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Defendants

Case No. 2006-04446-AD

Daniel R. Borchert
Deputy Clerk

ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert E. Fredrickson
2208 Bruce Road #112
Delaware, Ohio 43015

Plaintiff, Pro se

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|------------------------|-------|-------|
| Case No. 2005-04446-AD | - 2 - | ENTRY |
|------------------------|-------|-------|

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