

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

GERALD L. DAVIS

Plaintiff

v.

OHIO BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2008-08701-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Gerald L. Davis, filed this action against defendant, Bureau of Motor Vehicles (“BMV”), contending BMV improperly recorded his Ohio driver’s license as suspended; an act which directly resulted in his arrest and the impounding of his car on June 18, 2008. Plaintiff maintained he possessed a valid operator’s license at the time his car was impounded incident to a traffic stop by a patrolman of the Avon, Ohio Police Department. Plaintiff pointed out the Avon Police patrolman relied on BMV records regarding his driver’s license status when impounding his car at approximately 9:30 a.m. on June 18, 2008. Plaintiff was charged at that time with not having an operator’s license. Plaintiff insisted he possessed a valid Ohio driver’s license on June 18, 2008 and had complied with all requirements when his license was issued (April 3, 2008), but defendant failed to recognize the fact he possessed a valid operator’s license. Plaintiff implied that all information concerning the validity of his driver’s license status was on file or should have been on file with BMV at the time he was arrested and his 2005 Ford Taurus SE was impounded.

{¶ 2} Plaintiff supplied a detailed chronology of his efforts to obtain an Ohio driver's license, his subsequent communications with defendant, his arrest, and the aftermath leading up to the filing of the instant claim. Plaintiff recalled he initiated steps on March 24, 2008 to convert his Oklahoma driver's license to an Ohio resident driver's license by first having his car inspected and then being referred to the Lorain Testing Station in Elyria, Ohio, where he took a written test and an eye test. Plaintiff related he passed both tests and was then required to forward a physician statement to Elyria which he did on March 31, 2008. Plaintiff further related he did not look at the contents of the physician statement, but passed it onto representatives in Elyria unopened. On April 3, 2008, plaintiff took and passed a road and maneuverability test administered by the local exam station at the Ohio State Highway Patrol ("OSHP"). Plaintiff submitted his April 3, 2008 "Road Test Scoring Sheet," a form issued by the "State Highway Patrol," "Ohio Bureau of Motor Vehicles" and designated as form "BMV5801." Plaintiff recalled that after passing the road and maneuverability test administered by OSHP he was issued an "Ohio Driver License" by the Avon Lake Deputy Registrar. Plaintiff submitted a copy of his "Ohio Driver License" bearing the issue date of April 3, 2008. On April 16, 2008, defendant sent plaintiff a letter (copy submitted)¹ titled "Driving and

¹ The April 16, 2008 BMV letter provided the following notice and advisement:

"We have received information indicating that you have a physical condition which could possibly impair your operation of a motor vehicle. In the interest of highway safety we are requiring you to take a driver license examination to determine what aids, if any, may be necessary to ensure your safe operation of a motor vehicle. This is in accordance with Sections 4507.20 and 4507.14 O.R.C. You will have four (4) opportunities to pass the driving and maneuverability portions of the driver license examination. If you do not pass the examination in four (4) attempts, you will not be eligible for re-examination for six (6) months after the date of your fourth failure.

"Present your current driver license and this letter, within thirty (30) days from its date, at a Highway Patrol Exam Station for testing. It is necessary to contact the exam station and make an appointment. If you do not pass, your driving privileges will be immediately suspended, and no re-examination will be permitted for seven (7) days from the testing date. It is, therefore, necessary that a licensed driver accompany you to the exam station. Upon our receipt of the results of the driver license examination, you will be further advised.

"If any portions of the first test are failed, you are entitled to an administrative hearing relative to this matter. The request for a hearing must be made in writing within thirty (30) days of the date you fail the test. If a request for a hearing is made, you will be notified of the time and place. You may appear in person at the hearing, or be represented by an attorney to present evidence and examine witnesses appearing for or against you. *A request for a hearing does not stop the suspension. Also, if you do request a hearing, you will NOT be eligible to take a second examination until AFTER the hearing has been held.*

"We must advise you that failure to take the examination will result in the immediate suspension of your driving privileges. If you do not wish to undergo the driver license examination, attach your license to this letter and return it to the Ohio Bureau of Motor Vehicles in the enclosed return envelope. Your license and driving privileges will then be suspended."

Maneuverability Exam Required.” Apparently the letter was prompted by the physician statement plaintiff obtained on March 31, 2008 that was then forwarded to BMV. The April 16, 2008 BMV letter represented notice to plaintiff that he needed to take a driving and maneuverability exam (a test he had already passed) in order to obtain a valid driver’s license. Also, plaintiff was notified failure to take the exam would result in immediate suspension of his driver’s license. Plaintiff noted he responded to this letter by telephoning BMV on two occasions to explain he had already taken and passed the required maneuverability test. Plaintiff stated he was told on both occasions BMV would “look into it and ‘get back’ to me.” Apparently, plaintiff continued to driver without taking a second maneuverability test, his license was listed as suspended by BMV, and he was subsequently arrested on June 18, 2008 being charged with driving under suspension without a valid operator’s license.

{¶ 3} Plaintiff contended his car was impounded on June 18, 2008 as a proximate cause of negligence on the part of defendant in erroneously recording his driver’s license status as suspended. Plaintiff appeared in the Avon Mayor’s Court on June 25, 2008 and all charges against him were dismissed. The court found plaintiff did have a valid operator’s license on June 18, 2008, but defendant had not recorded that information into the BMV data base at the time of plaintiff’s arrest. Plaintiff submitted a copy of a “Verification Letter” from BMV dated June 19, 2008 that advised “[w]e did not receive the driving and maneuverability test results (test taken April 3, 2008) until Wednesday, June 18th, 2008.” The letter also advised plaintiff “passed (the April 3, 2008 test) with restrictions B (corrective lenses), F3 (Inside/outside mirrors).” Apparently, BMV changed their records concerning plaintiff’s driver’s license status on June 18, 2008, two months after he had obtained a valid Ohio Driver License. Plaintiff filed this complaint seeking to recover \$122.19, for towing and impound fees he incurred based on the June 18, 2008 license dispute incident. The filing fee was paid.

{¶ 4} Defendant denied any liability in this matter. Defendant acknowledged plaintiff took steps to obtain a valid Ohio driver’s license by taking and passing an eye exam and written test on March 24, 2008. Defendant explained plaintiff was then “issued a medical packet containing a Request for Statement of Physician, BMV form 231 (A)” (copy submitted) in order to continue with the license validation process. Defendant submitted a copy of the physician statement which was received on April 8,

2008, after plaintiff had taken and passed the driving and maneuverability exam on April 3, 2008. The physician statement contained the advisement that due to his longstanding medical condition plaintiff “needs to take a complete driver license examination which consists of a vision screening, written test of Ohio laws and signs, and a road test for driving and maneuverability.” The statement also contained the affirmation that “[t]his patient (plaintiff) should be required to pass a complete driver license examination which consists of a vision screening, written test of Ohio’s laws and signs, and a road test for driving and maneuverability.” Defendant denied having any knowledge at the time that plaintiff had passed all required testing including the driving and maneuverability portion on April 3, 2008. Defendant acknowledged sending plaintiff a letter on April 16, 2008 advising him he needed to pass a driving and maneuverability exam in order to receive a valid driver’s license. Defendant stated, “BMV has no record of any phone calls [p]laintiff may have made to the BMV during the eight (8) days after receiving the BMV’s letter.” Defendant contended plaintiff did not make any attempt to contact BMV until June 18, 2008 after he had been arrested and his car impounded. Defendant denied there was any improper or erroneous conduct involved when BMV did list plaintiff’s license as suspended.

{¶ 5} Defendant explained plaintiff’s “license was cancelled in accordance with the (April 16, 2008) letter which notified [p]laintiff that his license would be cancelled within 30 days.” Defendant related plaintiff’s license was cancelled on May 19, 2008. Defendant did not provide any documentation indicating plaintiff was sent a notice of suspension on or about May 19, 2008 or that defendant actually produced a notice of suspension on or about May 19, 2008. Defendant did submit a copy of a “Driver License Suspension Notice” dated June 18, 2008, which was ready to be sent to plaintiff notifying him that his driver’s license “has this day been withdrawn and suspended” for “[f]ailure to submit required medical statement and/or take required portion(s) of driver license examination.” However, also on June 18, 2008 defendant received from the Elyria Drivers Exam Station faxed results of plaintiff’s April 3, 2008 driving and maneuverability test. Defendant maintained the June 18, 2008 fax was the initial indication BMV received that plaintiff had passed a required driving and maneuverability test. Plaintiff’s license was then validated accordingly with the understanding that his particular license required him to carry a valid medical restriction card when he drove

his vehicle.

{¶ 6} Defendant contended BMV acted properly in canceling plaintiff's license due to being unaware plaintiff had passed a driving and maneuverability test as mandated by his doctor's statement. Defendant stated "[t]here is nothing in the Ohio Revised Code exempting a person from the need to re-test due to a doctor's statement because that person had recently passed a driver's examination." Defendant has seemingly argued, a person who has complied with a doctor's statement to pass a driver and maneuverability exam and has consequently been issued a valid driver's license can then be compelled by BMV to re-test because the Ohio Revised Code does not specifically prevent BMV from ordering a re-test despite the fact the first test resulted in favorable scores to the license applicant. Defendant asserted plaintiff was aware "he needed to re-take the driver's examination," regardless of the fact he had already passed the driver's examination and carried a valid license issued as a result of his passing the driver's examination. Defendant denied plaintiff ever tried to contact BMV after receiving the April 16, 2008 letter requiring him to take a driving and maneuverability examination he had taken and passed on April 3, 2008. Defendant contended that since plaintiff was notified his license would be cancelled if he did not pass a new driver examination, plaintiff by not acting to re-take a driver examination was "solely responsible for his arrest for driving without a license and the towing of his vehicle." Furthermore, defendant specifically denied receiving the results of the plaintiff's April 3, 2008 test scores until June 18, 2008 and disputes plaintiff's suggestion the April 3, 2008 scores were not found until June 18, 2008.

{¶ 7} Plaintiff filed a response insisting defendant erroneously recorded his driver's license status, had knowledge he possessed a valid license, refused to correct any error, and consequently should be liable for the damages claimed. Plaintiff explained again that after he passed a written exam and eye test on March 24, 2008, he informed the examiner he was a diabetic and was informed he needed to take a maneuverability exam based on this medical disclosure. Plaintiff then complied taking and passing the maneuverability exam on April 3, 2008. Plaintiff related that on that same day he was given a "Statement of Physician Packet" which he forwarded to his doctor and then returned to the Elyria Highway Patrol Testing Station on April 8, 2008. Plaintiff acknowledged receiving the April 16, 2008 "Driving and Maneuverability Exam

Required” letter from BMV and responded by telephoning the BMV at the number provided (614) 752-7500 (on April 16, 2008 letter). Plaintiff recalled that the BMV employee he talked to “assured me that she would look into my situation and ‘get back to’ me.” Plaintiff denied receiving a follow-up call from BMV so he responded by telephoning BMV again on April 28, 2008. Plaintiff stated he spoke to another BMV employee who “listened to my situation, did some checking, and said she would ‘take care of it and get back to’ me.” Plaintiff denied receiving any response from this second call. Plaintiff submitted copies of his phone records establishing he called the phone number provided by BMV and spent a total of twenty-three minutes in connection with BMV personnel on the two occasions mentioned, April 18, 2008 and April 28, 2008. Plaintiff also provided phone records showing BMV did not make any follow-up calls to him.

{¶ 8} Furthermore, plaintiff questioned defendant’s apparent delay in cancelling his license on May 19, 2008, but not making written documentation of this cancellation until June 18, 2008. Plaintiff also questioned the timing of BMV’s written notice of June 18, 2008, pointing out the notice was generated “just hours after I was arrested.” Plaintiff denied he ever was informed by BMV that he may have to “re-test” to assure his driver’s license remained valid. Plaintiff related that BMV did respond to his situation when he called for a third time on June 18, 2008 after his arrest and his car had been impounded. Plaintiff disputed defendant’s argument that BMV first received notice on June 18, 2008 that he had passed a driving and maneuverability exam on April 3, 2008. Plaintiff argued “I contend that the Ohio State Highway Patrol testing station is the BMV to any reasonable Ohio resident.” Plaintiff pointed out his test score sheet for his driving and maneuverability exam designates both the Ohio State Highway Patrol and the Ohio Bureau of Motor Vehicles as mutual agencies (under the Ohio Department of Public Safety) or as plaintiff professed “one and the same.” Plaintiff asserted that “[a]t the very least the Highway Patrol is acting agent for the BMV.” Therefore, plaintiff suggested defendant “had constructive receipt of the scores” of his driving and maneuverability exam on April 3, 2008. The trier of fact agrees.

{¶ 9} Resulting damages may be recovered when a plaintiff proves, by a preponderance of the evidence, his driver’s license was erroneously listed a suspended by defendant. *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. These damages must directly flow from defendant's failure to provide accurate information to authorities. *Henighan v. Ohio Dept. of Public Safety* (1997), 97-01619-AD; *Jordan v. Bureau of Motor Vehicles* (1998), 97-10341-AD.

{¶ 10} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The trier of fact finds plaintiff's assertions persuasive in regard to the fact he telephoned defendant on two occasions during April 2008. The evidence establishes defendant was notified plaintiff had complied with all requirements to possess a valid driver's license and defendant refused to correct BMV records to reflect the fact plaintiff did indeed possess a valid license. Conversely, the trier of fact does not find defendant's assertions persuasive regarding lack of notice plaintiff passed a driving and maneuverability test to comply with the requirements for being issued a license. Defendant was notified of this fact on April 18, 2008 and April 28, 2008 by plaintiff. Furthermore, the court finds defendant first received notice of plaintiff's test scores when he took the driving and maneuverability exam at the OSHP testing station on April 3, 2008. The court agrees with plaintiff's contention that in the area involving Ohio driver's license requirements and all that entails, OSHP and BMV are "one and the same."

{¶ 11} Plaintiff has proven his driver's license was improperly cancelled in records maintained by defendant. *Dean v. Ohio Bur. of Motor Vehicles*, Ct. of Cl. No. 2006-06001-AD, 2007-Ohio-1272. Defendant is liable to plaintiff for damages plaintiff can prove resulted from defendant's negligence. *Parlow v. Bureau of Motor Vehicles* (1997), 97-07820-AD. Plaintiff has proven that he incurred towing and impound fees as a result of BMV's record keeping. Plaintiff has suffered damages in the amount of \$122.19, plus the \$25.00 filing fee, which may be reimbursed as compensable costs pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.



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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 plaintiff in the amount of \$137.19, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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