

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher L. Mullens :  
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 v. : No. 1075 C.D. 2010  
 : Submitted: November 12, 2010  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, :  
 Bureau of Motor Vehicles, :  
 :  
 Appellant :  
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BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: December 29, 2010

The Department of Transportation, Bureau of Motor Vehicles (Department) appeals from an order of the Court of Common Pleas of Lancaster County (trial court) which sustained the appeal filed by Christopher L. Mullens (Mullens) and rescinded the three month suspension of the registration of his 1996 Chevrolet truck. We reverse.

On January 19, 2010, the Department notified Mullens that his motor vehicle registration would be suspended for a period of three months pursuant to Section 1786(d) of The Motor Vehicle Financial Responsibility Law (Law), 75 Pa. C.S. §1786(d), for his failure to maintain insurance on his vehicle. Mullens appealed to the trial court which conducted a hearing.

At the hearing, the Department introduced documents showing that on October 31, 2009, Erie Insurance Exchange (Erie) terminated a policy of motor vehicle liability insurance issued to Mullens that covered his 1996 Chevrolet truck. Erie reported the termination of the liability insurance policy to the Department as is required by 75 Pa. C.S. §1786(e).

Mullens testified that he paid Erie in full, but then cancelled the coverage in late November of 2009. He claimed that Erie incorrectly dropped his insurance on October 31, 2009. Mullens obtained insurance through State Farm Insurance on January 12, 2010. Mullens also testified that he did not drive the truck for two months.

Counsel for the Department then advised the trial court that “I’ve discussed very briefly with him the possibility of him following up on any issues that he has with his insurance company through the Insurance Commission. That is not before the Court today.” (R.R. at 11a.) Counsel for the Department further advised the trial court that if the Insurance Commissioner were to determine that Erie had cancelled Mullens liability policy improperly, the Insurance Commissioner could order Erie to provide coverage for Mullens’ truck. (R.R. at 12a.)

At the conclusion of the hearing, the trial court sustained Mullens’ appeal. Thereafter, the trial court issued an opinion. The trial court stated that the Department received notice that Mullens’ insurance was cancelled effective October 31, 2009 and that Mullens did not obtain replacement insurance until January 12, 2010.

Additionally, the trial court noted that Mullens testified that Erie cancelled his insurance on October 31, 2009, but that he actually

cancelled his insurance with Erie in late November of 2009. The trial court further stated:

Regrettably, he [Mullens] does not fit any of the exceptions in 75 Pa. C.S.A. [§] 1786(d)(2) and the Court should not have summarily reversed the revocation. The proper remedy would have been to hold the suspension appeal in abeyance pending a review by the Insurance Commission of his insurance cancellation as suggested by the attorney for the Commonwealth.

(R.R. at 42a.)

On appeal, the Department argues that the trial court erred in sustaining Mullens' appeal because 75 Pa. C.S. §1786(d)(1) mandates a three month suspension of the vehicle registration upon a lapse in financial responsibility.<sup>1</sup>

Initially, we observe that the Department's burden in an appeal of a registration suspension imposed in accordance with 75 Pa. C.S. §1786(d) is to show that the vehicle is of a type required to be registered that the Department has received notice that financial responsibility on the vehicle has been terminated. Deklinski v. Department of Transportation, Bureau of Motor Vehicles, 938 A.2d 1191 (Pa. Cmwlth. 2007), petition for allowance of appeal denied, 598 Pa. 783, 959 A.2d 321 (2008).

Here, there is no dispute that the vehicle is of a type requiring registration. Additionally, the Department met its burden through the

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<sup>1</sup> This court's review is limited to determining whether the trial court committed an error of law, or manifestly abused its discretion in reaching its decision. Eckenrode v. Department of Transportation, 853 A.2d 1141 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 689, 870 A.2d 324 (2005).

introduction of certified documents that coverage on the vehicle had been terminated. “The Department may satisfy this burden by certifying its receipt of documents or of an electronic transmission from an insurance company stating that the registrant’s financial responsibility coverage has been terminated. Section 1377(b)(2) of the Vehicle Code, 75 Pa. C.S. §1377(b)(2).” Fagan v. Department of Transportation, Bureau of Motor Vehicles, 875 A.2d 1195, 1198 (Pa. Cmwlth. 2005). “Once DOT [Department] establishes its prima facie burden of proof, a vehicle owner must prove that financial responsibility was continuously maintained on the vehicle as required by Section 1786(a) of the ... [Law], 75 Pa. C.S. §1786(a), or that the vehicle owner fits within one of the three statutorily defined defenses outlined in Section 1786(d)(2)(i-iii) of the ... [Law], 75 Pa. C.S. §1786(d)(2)(i-iii).” Fell v. Department of Transportation, Bureau of Motor Vehicles, 925 A.2d 232, 237-238 (Pa. Cmwlth. 2007).

Here, Mullens did not rebut the Department’s evidence nor did he satisfy any of the statutory exceptions contained in 75 Pa. C.S. §1786(d)(2)(i-iii).

We further note that although the trial court in its opinion suggested that the proper remedy in this case would be to hold the suspension appeal in abeyance pending a review by the Insurance Commission of Mullens’ insurance cancellation, we conclude that such a remedy is not warranted in this case.

This court has previously stated that in accordance with 75 Pa. C.S. §1786(d)(5), a challenge to an insurance cancellation, or termination may only be brought before the Insurance Commissioner. Webb v.

Department of Transportation, Bureau of Motor Vehicles, 870 A.2d 968 (Pa. Cmwlth. 2005). In that case, the Department suspended Webb's vehicle registration on the grounds that his vehicle insurance had been cancelled. Webb testified before the trial court that he never received notification from his insurer that his insurance had been cancelled and the first notice he received as to the cancellation was when the Department issued him a suspension notice. The trial court granted Webb's appeal.

On appeal, this court determined that under the narrow facts of the case, Webb intended to challenge the validity of the cancellation of his insurance policy on the grounds that he did not receive proper notice of the cancellation. We then determined that such challenge could only be brought with the Insurance Commissioner pursuant to Section 1786(d)(5) of the Law. This court then ordered that the appeal be dismissed without prejudice to afford Webb the opportunity to request review of his policy cancellation by the Insurance Commissioner.

In this case, Mullens argued before the trial court that although Erie purportedly terminated his insurance on October 31, 2009, in actuality, he cancelled the policy in late November of 2009. Even if Mullens could prove to the Insurance Commissioner that he did not cancel his insurance with Erie until late November, Mullens did not acquire replacement insurance until January 12, 2010. Although Mullens testified that the truck wasn't driven for two months, such does not negate the fact that he had a lapse of insurance for more than thirty days and to negate the three-month suspension, an owner, under 75 Pa. C.S. §1786(d)(2)(i), must prove not only

that he did not operate the vehicle during the lapse in insurance, but that the lapse in insurance was for a period less than thirty days.

In accordance with the above, the decision of the trial court is reversed.

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JIM FLAHERTY, Senior Judge

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v.	:	No. 1075 C.D. 2010
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Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
	:	
Appellant	:	
	:	

**ORDER**

Now, December 29, 2010, the order of the Court of Common Pleas of Lancaster County, in the above-captioned matter, is reversed.

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JIM FLAHERTY, Senior Judge