

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence Armstrong, :
Appellant :
 :
v. : No. 1354 C.D. 2007
 : Submitted: February 29, 2008
Commonwealth of Pennsylvania, :
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: May 12, 2008

Lawrence Armstrong (Licensee) appeals an order of the Court of Common Pleas of Philadelphia County (trial court) dismissing his statutory appeal of a one-year suspension of his operating privileges imposed by the Pennsylvania Department of Transportation, Bureau of Driver Licensing (Department). The Department initially suspended Licensee's license in August 2001 as a result of his July 2001 New Jersey conviction for driving while intoxicated. Licensee appealed, and a hearing was held in November 2001; however, the trial court did not render a decision. In November 2006, the Department issued a new notice of suspension to Licensee based on his July 2001 New Jersey conviction. Asserting unreasonable delay by the Department, Licensee again appealed, but it was denied. We are asked to consider whether the trial court erred in concluding that Licensee, and not the

Department, was responsible for the delay in the proceedings. Finding no error, we affirm.

The essential facts are not in dispute, having been established by stipulation of the parties. On July 10, 2001, Licensee was convicted in New Jersey of driving while intoxicated. The Department issued Licensee a notice suspending his license for one year, in accordance with the Driver's License Compact, 75 Pa. C.S. §1581.¹ Licensee appealed, and a hearing was held before the trial court on November 30, 2001, and at the conclusion of the hearing, the court announced that it was taking the matter under advisement. Other than requesting additional information regarding Licensee's employment, which was provided, the trial court did not take any further action.

In November 2006, as a result of its "clerical review of cases," the Department issued Licensee a new notice reinstating the 2001 suspension. Licensee

¹ It states:

The Driver's License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

75 Pa. C.S. §1581, Article IV (a)(2).

appealed, asserting that the delay of five years in suspending his operating privilege was unreasonable and chargeable to the Department.

A second hearing was conducted by a different trial court judge. Licensee, who is a delivery driver for the Philadelphia Coca Cola Bottling Company, credibly testified that he would be prejudiced by the loss of his operating privileges. He explained that in the intervening years, he had purchased a new home with a longer commute to his workplace; he did not know whether the workplace was served by public transportation from his home. In any case, Licensee stated that his employer could use him only as a driver. After reviewing the evidence and briefs submitted on the issue of judicial delay, the trial court denied Licensee's appeal.

The trial court reviewed the court's docket. It showed that after the hearing in 2001, there was no further activity on Licensee's appeal until August 29, 2005. At that point, an entry was made as follows: "disposed – case closed." The parties could not offer any information on this entry, and the docket did not show that the written notice of this disposition was ever sent to the parties or their counsel. This notice is required by Pennsylvania Rule of Civil Procedure 236.² The next docket entry shows that the record of Licensee's appeal was destroyed on May 5, 2006. In the absence of this record, the trial court was unable to determine whether Licensee had won or lost his appeal or whether the appeal was closed because of an administrative error.

With respect to the effect of a delay in implementing Licensee's suspension, the trial court found that Licensee proved prejudice. However the trial court concluded that this delay was attributable to Licensee, not to the Department.

² PA R.C.P. No. 236(a)(2) requires the prothonotary of a court to provide notice of entry of any "order or judgment to each party's attorney of record...."

The holdings of the Pennsylvania Supreme Court and this Court in *Terraciano v. Department of Transportation, Bureau of Driver Licensing*, 562 Pa. 60, 753 A.2d 233 (2000), *Department of Transportation, Bureau of Driver Licensing v. Gombocz*, 589 Pa. 404, 909 A.2d 798 (2006), and *Orloff v. Department of Transportation, Bureau of Driver Licensing*, 912 A.2d 918, 924 (Pa. Cmwlth. 2006), place the responsibility upon the moving party to move the case forward where there is judicial delay. Accordingly, Licensee, as the moving party, bore the burden here. Notwithstanding the unfortunate consequences to Licensee resulting from the delay, the trial court held that it could not attribute the delay to the Department and, thus, denied Licensee's appeal.

This appeal followed.³ Licensee asserts that the trial court erred in concluding that the Department was not responsible for the delay in the proceedings.

After a review of the record, the trial court's findings and conclusions of law, we conclude that the trial court thoroughly, ably and correctly disposed of the issue raised by Licensee before this Court. Accordingly, we affirm on the basis of the Honorable Lisa M. Rau's opinion set forth at *Lawrence Armstrong v. Commonwealth of Pennsylvania*, No. 1401 (Court of Common Pleas of Philadelphia County, filed September 4, 2007).

MARY HANNAH LEAVITT, Judge

³ Our review is limited to determining whether the trial court's findings of fact are supported by competent evidence and whether the trial court has committed an error of law or an abuse of discretion. *Conrad v. Department of Transportation, Bureau of Driver Licensing*, 856 A.2d 199, 201 n.1 (Pa. Cmwlth. 2004).

