IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jenna Renee Garwood	:	
	:	No. 1761 C.D. 2010
v.	:	
	:	Submitted: March 4, 2011
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: August 16, 2011

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (DOT), appeals the July 28, 2010, order of the Court of Common Pleas of Berks County (trial court), which granted Jenna Renee Garwood's "Petition for Relief of Driver's Restoration Requirements" (Petition) and determined that she was not required to maintain an ignition interlock system in her vehicle.[1] We vacate the trial court's order and direct the trial court to transfer this matter to our original jurisdiction.

On February 13, 2002, Garwood was arrested for driving under the influence (DUI) of alcohol in violation of the former section 3731 of the Vehicle

[1] By order dated February 23, 2011, Garwood was precluded from filing a brief in this matter.

Code, 75 Pa. C.S. §3731.[2] (Reproduced Record (R.R.) at 47a.) Garwood was subsequently admitted into the Accelerated Rehabilitative Disposition (ARD) program, which she successfully completed. Because of her participation in the ARD program, Garwood's driver's license was suspended for 180 days pursuant to section 3731(e)(6)(ii) of the Vehicle Code, 75 Pa. C.S. § 3731(e)(6)(ii). (R.R. at 44a.) In addition, DOT suspended Garwood's driver's license for one year for refusing chemical testing on the day of her arrest pursuant to section 1547 of the Vehicle Code, 75 Pa. CS. §1547. (R.R. at 47a, 49a.) Garwood served her suspensions and her driving privileges were restored on April 7, 2004.

On January 1, 2008, Garwood was arrested and charged with DUI in violation of section 3802 of the Vehicle Code, 75 Pa. C.S. §3802, (R.R. at 43a), and she pled guilty to that offense on May 29, 2008. (R.R. at 4a.) Consequently, on July 4, 2008, DOT notified Garwood that her driving privileges were suspended for a period of eighteen months in accordance with section 3804(e)(2)(ii) of the Vehicle Code, 75 Pa. C.S. §3804(e)(2)(ii). (R.R. at 40a-42a.) The suspension notice also stated that, pursuant to section 3805(a)(1) of the Vehicle Code, 75 Pa. C.S. §3805(a)(1), Garwood was required to install an ignition interlock system in every vehicle that she owned before her driver's license could be restored.[3] (Id.) Although

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[2] Section 3731 of the Vehicle Code was repealed by the Act of September 30, 2003, P.L. 120, effective February 1, 2004. The provisions of section 3731 are now found in section 3802 of the Vehicle Code, 75 Pa. C.S. §3802, which relate to driving under the influence of alcohol or a controlled substance.

[3] Section 3805(a)(1) of the Vehicle Code provides:

> **(a) General rule.--**If a person violates section 3802 (relating to driving under influence of alcohol or controlled substance) and, within the past ten years, has a prior offense as defined in section 3806(a) (relating to prior offenses) or has had their operating privileges suspended pursuant to

(Footnote continued on next page…)

the suspension notice informed Garwood that she had the right to appeal the suspension within thirty days, Garwood did not file an appeal.

On November 25, 2009, DOT sent a Restoration Requirements Letter informing Garwood that she was required to install an ignition interlock system in all her vehicles before her driver's license could be restored. (R.R. at 11a.) She complied with DOT's instructions and installed an ignition interlock system in her automobile. Garwood satisfied her suspension and, on December 18, 2009, DOT issued Garwood a restricted license allowing her to drive vehicles equipped with the ignition interlock system. (R.R. at 49a.)

On February 17, 2010, this Court decided Whalen v. Department of Transportation, 990 A.2d 826 (Pa. Cmwlth. 2009), appeal granted, ___ Pa. ___, 10 A.3d 900 (2010), where we held that the licensee's acceptance into an ARD program was not a conviction for purposes of Section 3805 of the Vehicle Code and therefore the licensee was not required to install an ignition interlock system.[4]

(continued…)

> section 1547(b)(1) (relating to chemical testing to determine amount of alcohol or controlled substance) or 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and the person seeks a restoration of operating privileges, the department shall require as a condition of issuing a restricted license pursuant to this section that the following occur:
>
> (1) Each motor vehicle owned by the person or registered to the person has been equipped with an ignition interlock system and remains so for the duration of the restricted license period.

75 Pa.C.S. §3805(a)(1).

[4] In Whalen, the licensee was convicted in 1998 by Florida authorities of violating that state's general impairment statute, and his driving privileges were suspended for one year. In 2007,

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On April 6, 2010, Garwood filed the Petition with the trial court arguing that, under Whalen, she was permitted to remove the interlock system from her vehicle. (R.R. at 3a-5a.) DOT moved to quash the Petition claiming that Garwood had filed an untimely statutory appeal; however, the trial court denied the motion and

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the licensee was arrested in Pennsylvania and charged with two counts of DUI, and the licensee was subsequently accepted into the ARD program. Thereafter, DOT determined that the licensee was required to install an ignition interlock system on all of his vehicles. The licensee appealed to the trial court, which sustained his appeal.

After review, we affirmed the trial court. Observing that the parties agreed that admission to ARD was not a conviction, and also observing that section 3805 of the Vehicle Code does not equate acceptance into ARD with a conviction, we reasoned as follows:

> Had the General Assembly intended to equate acceptance into an ARD program with a violation of 75 Pa. C.S. §3802 for purposes of the interlock law, it would have expressly done so. The maxim "expressio unius est exclusio alterius" is applicable here. The maxim essentially provides that where certain things are specifically designated in a statute, all omissions should be understood as exclusions. Mohamed v. Dep't of Transp., Bureau of Motor Vehicles, 973 A.2d 453 (Pa. Cmwlth.), appeal granted, ___ Pa. ___, 982 A.2d 1218 (2009). Where the General Assembly specified those instances where acceptance of an ARD program affects a licensee's driving record, we must conclude the General Assembly intended its omission from 75 Pa. C.S. § 3805 to be an exclusion. Any legislative oversight is for the legislature to fill, not the courts. Cf. Harding v. City of Phila., 777 A.2d 1249 (Pa. Cmwlth. 2001) (where the Unemployment Compensation Law identified two classes of benefit year maximum entitlements, Part D and Part E, and a different section specifically mentioned Part D but not Part E, the Court concluded that the Legislature intended the omission to be an exclusion). See also 1 Pa. C.S. § 1928(b) (providing that penal provisions must be strictly construed).

Whalen, 990 A.2d at 831-32 (footnote omitted).

proceeded to decide the merits of the Petition. On July 28, 2010, the trial court granted Garwood's Petition based on our decision in Whalen and ordered Garwood's driving privileges immediately restored without the ignition interlock requirement. (R.R. at 30a, 53-54a.) The trial court subsequently issued a second order, dated August 12, 2010, stating that "upon consideration of the evidence, it is hereby ORDERED and DECREED that the appeal is granted." (R.R. at 56a.) DOT moved for reconsideration, which the trial court denied. (R.R. at 57a, 62a.)

On appeal to this Court,[5] DOT contends that the trial court erred in granting Garwood's Petition because the Petition is an untimely statutory appeal and Whalen is inapplicable to the instant case.

Regarding the procedural issue, an appeal from a driver's license suspension must be commenced within thirty days. Baum v. Department of Transportation, Bureau of Driver Licensing, 949 A.2d 345 (Pa. Cmwlth. 2008). Here, the record establishes that Garwood did not file a timely appeal from DOT's July 4, 2008, suspension; nor did she request permission to appeal that suspension *nunc pro tunc*. Instead, long after the time to appeal the suspension had expired, Garwood filed the instant Petition, captioned Jenna Renee Garwood, Petitioner v Commonwealth of Pennsylvania, Department of Transportation, Respondent, (R.R. at 3a), the nature of which her counsel described as follows:

> THE COURT: … [N]ow we can deal with the next issue and the next motion which is to quash based on the fact that the appeal was not filed timely.

[5] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law, or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

> [Garwood's Counsel] Not an appeal.
>
> THE COURT: Okay.
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> [Garwood's Counsel] It's an original petition---although not titled as such--- in the nature of mandamus, your Honor….

(R.R. at 37a.) Furthermore, in the Petition's prayer for relief, Garwood asks the trial court to "declare" that she may remove the interlock system from her vehicle and maintain her Pennsylvania driver's license. (R.R. at 5a.)

Because Garwood was seeking mandamus and/or declaratory relief against DOT, which is an agency of the Commonwealth, Garwood was required to file a petition for review in the original jurisdiction of the Commonwealth Court, and not in common pleas court. Section 761 of the Judicial Code, 42 Pa. C.S. §761. The trial court lacked subject matter jurisdiction over the Petition. Barr v. Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, 803 A.2d 243 (Pa. Cmwlth. 2002) (holding that Commonwealth Court had exclusive jurisdiction in an action to compel the Department of State to reissue a real estate license); Saunders v. Department of Corrections, 749 A.2d 553 (Pa. Cmwlth. 2000) (stating that only the Commonwealth Court has authority to issue writs of mandamus or prohibition to other government units apart from courts, including administrative agencies). Therefore, we conclude that the trial court erred by reaching the merits of the Petition.[6]

[6] Garwood never appealed from DOT's July 4, 2008, order suspending her driver's license and requiring her to install an ignition interlock device on her vehicle. Instead, based on her conclusion that Whalen changed the law in her favor, Garwood filed a pleading, naming DOT as the respondent, in which she asked the trial court to declare that she was free to remove the ignition
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Because Garwood's Petition is a matter within our exclusive jurisdiction, we conclude the trial court should have transferred the Petition to this Court's original jurisdiction. Accordingly, the trial court's order is vacated, and the trial court is directed to transfer this matter to this Court's original jurisdiction.[7] Chruby v. Department of Corrections, 4 A.3d 764 (Pa. Cmwlth. 2010) (where an injunction action against the Department of Corrections was improperly filed in common pleas court, the remedy was to vacate the common pleas court's order with direction to transfer the case to our original jurisdiction).

PATRICIA A. McCULLOUGH, Judge

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interlock system from her vehicle. It is clear from the Petition and the representations of Garwood's counsel that she was seeking declaratory relief and/or a writ of mandamus against DOT. Because Garwood did not file an untimely appeal, this case cannot be quashed.

[7] In light of our disposition of this matter, we do not address the merits of the Whalen issue.

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ORDER

AND NOW, this 16th day of August, 2011, the July 28, 2010, order of the Court of Common Pleas of Berks County is VACATED. The Court of Common Pleas of Berks County is directed to transfer this matter to this Court's original jurisdiction. The Department of Transportation is directed to file responsive pleadings within 30 days of notice of the receipt by the Chief Clerk of this Court of the transferred file.

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PATRICIA A. McCULLOUGH, Judge