

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Z. Warren, :
Appellant :
v. :
Commonwealth of Pennsylvania, :
Department of Transportation, : No. 212 C.D. 2007
Bureau of Motor Vehicles : Submitted: December 14, 2007

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: January 16, 2008

William Z. Warren (Warren) appeals the order of the Court of Common Pleas of Berks County (trial court) that denied his statutory appeal from the Pennsylvania Department of Transportation, Bureau of Motor Vehicles’ (DOT) three month suspension of the registration of five vehicles owned by Warren pursuant to Section 1786(d) of the Vehicle Code (Code), 75 Pa.C.S. §1786(d).¹

¹ Section 1786(d)(1) of the Code provides:

(1) The Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter and shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility. The operating privilege shall not be restored until the restoration fee for operating privilege provide by section 1960 (relating to reinstatement of operation privilege or vehicle registration) is paid.

By official notices dated May 15, 2006, DOT informed Warren that the registration for a 1948 Willys car, a 1961 Willys truck, and a 1978 Lincoln were suspended for three months effective June 19, 2006, because the insurance contracts on the vehicles were terminated on March 15, 2006. By official notices dated May 25, 2006, DOT informed Warren that the registrations for a 1993 Dodge station wagon and a 1991 Dodge station wagon were suspended for three months effective June 29, 2006, because the insurance contracts on the vehicles were terminated on February 21, 2006. Warren appealed to the trial court.

The trial court originally scheduled a hearing for August 3, 2006. On August 2, 2006, Warren moved for a continuance and alleged that he had a health problem which required hospitalization and that DOT did not oppose the motion and believed that the matter could be settled without a hearing. On August 2, 2006, the trial court granted the motion for continuance and continued the hearing until September 7, 2006. On September 7, 2006, the trial court granted a second continuance until October 5, 2006, because Warren asserted “Insurance documents to be provided.” Continuance Order, September 7, 2006, at 1; Supplemental Reproduced Record (S.R.R.) at 65b. On October 5, 2006, the trial court granted a third continuance because Warren was “waiting for insurance information.” Continuance Order, October 5, 2006, at 1; S.R.R. at 66b.

On December 28, 2006, Warren filed a motion for continuance or motion that the orders of suspension/orders of denial be set aside. Warren alleged:

2. WHEREAS, Appellant [Warren] has mailed copies of the attached letters to:

(a) Foremost Insurance Company, 5600 beechtree [sic] Lane, Caledonia, Michigan 49316 Tel.: 1-800-527-3905 or 1-800-237-2060.

(b) Erie Insurance Company, 100 Erie Insurance Place, Erie, Pennsylvania 16530-1104 Tel.: 1-800-458-0811 X3000

3. WHEREAS, after many attempts to determine why there has been no response to Appellant's [Warren] letters, Appellant [Warren] has been informed by employees of these said Insurance Companies that the requested statements cannot be issued, without a reason being given by the Pennsylvania Bureau of Motor Vehicles as to why said statements are needed.

4. WHEREAS, Appellant is stuck in the middle of this bureaucratic nightmare, and WHEREAS, the orders of registration suspension, issued by the Pennsylvania Department of Transportation, constitute much ado about nothing and have no merit, as explained in Appellant's [Warren] petition.

Motion for Continuance or Motion that the Orders of Suspension/Orders of Denial be Set Aside, December 28, 2006, at 1; Reproduced Record at 19.

At the *de novo* hearing on December 28, 2006, before the trial court, Warren failed to appear. DOT's counsel opposed the motion for continuance. The trial court denied the motion. DOT introduced a packet of documents that established Warren's violation of Section 1786(d) of the Code, 75 Pa.C.S. §1786(d), for the five vehicles.

The trial court denied Warren's appeal:

At the hearing on December 28, 2006, DOT entered into evidence certified information that it had received notice of the insurance lapse on each of Appellant's [Warren]

five vehicles. . . . It also submitted the registration record/certification statement for each vehicle's title. . . .

Appellant [Warren] failed to appear at the hearing and therefore did not present any clear and convincing evidence that the vehicles at issue were insured at all relevant times. . . . He filed a motion for continuance of the hearing at the last minute, time stamped December 28, 2006, but did not appear for court to argue that he was entitled to yet another continuance to get his proof together. . . . We gave him continuances from August 3, 2006 until the hearing on December 28, 2006. We gave him ample time to get his documentation together to present at his appeal hearing. Even if he had argued his motion for a continuance, we would not have granted yet another one. Appellant [Warren] had five months of extra time. Not only did he not present such evidence, he failed to appear for his hearing.

. . . DOT's evidence constituted *prima facie* proof that termination of Appellant's [Warren] coverage was effective and that created a presumption that Appellant's [Warren] vehicles lacked the required coverage. Appellant [Warren] failed to rebut that presumption. (Citations omitted).

Trial Court Opinion, May 2, 2007, at 3-4.

Warren contends that the dilatory and vexatious actions of DOT's counsel entitle him to a jury trial before a fair minded judge sitting in both law and equity to grant relief of fraud, misrepresentation, and overreaching. Warren also contends that DOT's counsel acted willfully, deliberately, maliciously and with reckless disregard or deliberate indifference to his constitutional and statutory rights. Warren further contends that DOT's counsel acted to deprive him of his constitutional and statutory rights of due process and equal protection, rights granted under the privileges and immunities clause of the United States and

Pennsylvania Constitutions and under 42 U.S.C. §1983, and his property rights by acting to needlessly increase the costs of litigation, and by requiring Warren to rent or purchase a vehicle for ninety days. Finally, Warren contends that Section 1786(d) of the Code and related sections violate the United States and Pennsylvania Constitutions.²

Initially, Warren contends that the dilatory and vexatious actions on the part of DOT counsel entitle him to a jury trial for relief of fraud, misrepresentation, and overreaching. Warren asserts that DOT's counsel sent him on a "wild goose chase" to obtain information from his insurance company and never presented him with a proposed settlement agreement. Warren also asserts that he filed his last motion for continuance because he wasted a great deal of time sitting in a courtroom where no judge appeared. Because the trial court did not grant the continuance, Warren asserts that DOT employed "tortious tactics" to obtain "an undue and unconscientious advantage" over him. Warren's Brief at 4.

First, Warren had the opportunity to raise any concerns over the conduct of DOT's counsel at the December 28, 2006, hearing. His failure to appear and raise the issue means it was waived. Pa.R.A.P. 302 states that "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal."

² This Court's review is limited to a determination whether necessary findings of fact are supported by substantial evidence of record, whether the trial court committed an error of law, and whether the trial court abused its discretion. Todd v. Department of Transportation, Bureau of Driver Licensing, 555 Pa. 193, 723 A.2d 655 (1999).

Second, this Court finds no error in the denial of the continuance. “The decision to grant or deny a continuance is exclusively within the discretion of the trial court, and this Court will not disturb the trial court’s determination in the absence of an apparent abuse of discretion.” Gillespie v. Department of Transportation, Bureau of Driver Licensing, 886 A.2d 317, 319 (Pa. Cmwlth. 2005). Here, Warren does not allege any abuse of discretion by the trial court. Further, the only action DOT took with respect to the motion was to oppose it.

Third, as part of this issue, Warren asserts that DOT did not meet its burden of proof. In a registration suspension case, DOT’s initial burden is to show that the vehicle in question is of the type required to be registered and that DOT received notice that the registrant’s automobile insurance policy had been terminated. 75 Pa.C.S. §1786(d)(3). DOT may satisfy this burden by the certified receipt of an electronic transmission from an insurance company stating that a policy has been terminated. 75 Pa.C.S. §1377(b). This evidence constitutes prima facie proof that the termination was legally effective and that the registrant’s vehicle lacked the required coverage. It is then up to the registrant to rebut the presumption. Dinsmore v. Department of Transportation, Bureau of Driver Licensing, 932 A.2d 350 (Pa. Cmwlth. 2007).

Here, DOT submitted these electronic transmissions from Warren’s insurance companies. The trial court determined that DOT satisfied its burden of proof. This Court agrees. Warren failed to challenge DOT’s proof because he did not appear.

Warren next contends that DOT's counsel acted willfully, deliberately, maliciously, with reckless disregard or deliberate indifference to Warren's constitutional and statutory rights because of counsel's dilatory and vexatious actions and by filing an action in which DOT did not meet its burden of proof. Because this Court has determined that Warren waived any issue with respect to DOT's conduct and because this Court agreed with the trial court that DOT met its burden of proof, this issue has no merit.

Warren next contends that DOT's counsel acted to deprive him of assorted statutory, constitutional and property rights, needlessly increased the cost of litigation, and forced him to rent or purchase a vehicle to replace those idled for ninety days. Warren refers back to the first two issues for support for this argument. Because this Court has already disposed of these issues, i.e., whether DOT's conduct was dilatory and vexatious and whether it met its burden of proof, this Court need not revisit these issues.

Finally, Warren contends that Section 1786(d) of the Code, 75 Pa.C.S. §1786(d), violates the United States and Pennsylvania Constitutions. Warren failed to raise this issue before the trial court. Therefore, it was waived. See Roselle v. Department of Transportation, Bureau of Driver Licensing, 865 A.2d 308 (Pa. Cmwlth. 2005).

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

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ORDER

AND NOW, this 16th day of January, 2008, the order of the Court of Common Pleas of Berks County in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge