

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Amanda Provinzano :  
 :  
 v. : No. 2651 C.D. 2010  
 : Submitted: June 17, 2011  
 Commonwealth of Pennsylvania :  
 Department of Transportation :  
 Bureau of Motor Vehicles, :  
 Appellant :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION  
BY JUDGE BROBSON**

**FILED:** August 25, 2011

Appellant Department of Transportation, Bureau of Motor Vehicles (DOT), appeals from an order of the Court of Common Pleas of Lackawanna County (trial court), which sustained the statutory appeal of Amanda Provinzano (Provinzano). Provinzano challenged DOT's three-month suspension of her vehicle registration based upon her failure to maintain automobile insurance. We reverse.

Provinzano's initial insurance company, Peerless Indemnity Insurance Company (Peerless), terminated Provinzano's insurance policy for nonpayment on August 7, 2010, and notified DOT of the termination in accordance with Section 1786(e) of the Motor Vehicle Code (Code), 75 Pa. C.S. § 1786(e). Based upon that termination of insurance, on September 20, 2010, DOT mailed a notice of a three-month registration suspension for Provinzano's vehicle effective October 25,

2010, pursuant to Section 1786(d) of the Code, 75 Pa. C.S. § 1786(d). Provinzano filed a statutory appeal of the suspension notice with the trial court. On November 17, 2010, the trial court conducted a *de novo* hearing. During the hearing, DOT submitted to the trial court a packet of certified documents, reflecting Peerless's notification to DOT of its termination of Provinzano's insurance and DOT's suspension notice to Provinzano. Provinzano provided DOT's counsel with a Financial Responsibility Identification Card, indicating that she had obtained a new insurance policy for her vehicle from Safe Auto Insurance Company with an apparent effective date of September 10, 2010. Thus, the presumptive period during which Provinzano failed to maintain insurance for her vehicle exceeded thirty days (August 7, 2010 through September 9, 2010 equals approximately thirty-four days).<sup>1</sup> The trial court asked Provinzano whether she had driven her vehicle during the period when her vehicle was not covered by insurance, and Provinzano stated that she had used her mother's vehicle. The trial court issued an order sustaining Provinzano's appeal.

DOT filed an appeal from that order, but the trial court never issued an opinion in support of its order.<sup>2</sup> In this appeal, DOT raises the question of whether the trial court erred in sustaining Provinzano's appeal based upon Provinzano's testimony that she did not drive the vehicle, when DOT submitted

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<sup>1</sup> Under Section 1786(d)(2)(i) of the Code, DOT "lacks statutory authority to suspend a vehicle registration . . . where the owner proves to the satisfaction of DOT that the lapse in coverage 'was for a period of less than 31 days and that the owner or registrant did not operate or permit the operation of the vehicle during the period of lapse.'" *Burton v. Dep't of Transp., Bureau of Driver Licensing*, 973 A.2d 473, 474 (Pa. Cmwlth. 2009).

<sup>2</sup> The trial court's order expressed its rationale, which as indicated above, rested on Provinzano's testimony, which the trial court accepted to mean that Provinzano did not drive her own vehicle and that she acquired new insurance effective September 10, 2010.

evidence demonstrating that Provinzano failed to maintain insurance on her vehicle.<sup>3</sup>

Section 1786(d) of the Code provides that DOT “shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured.”<sup>4</sup> In order to establish a prima facie case in a vehicle registration suspension matter, DOT must show that (1) the vehicle is of the type that is required to be registered, and (2) the owner did not obtain or failed to maintain financial responsibility coverage for the vehicle. *Deklinski v. Dep’t of Transp., Bureau of Motor Vehicles*, 938 A.2d 1191, 1194 (Pa. Cmwlth. 2007), *appeal denied*, 598 Pa. 783, 959 A.2d 321 (2008). Further, DOT may satisfy its burden through the introduction into the trial court’s record of certified documents consisting of electronic transmissions to DOT from a motor vehicle owner’s insurance company indicating the owner’s insurance has lapsed. Section 1377(b)(2) of the Code, 75 Pa. C.S. § 1377(b); *Deklinski*, 938 A.2d at 1194. In this case, DOT introduced such documentary evidence into the record, and Provinzano did not seek to exclude or challenge that evidence in the hearing before the trial court. Therefore, we conclude that DOT satisfied its initial burden.

Once DOT established its prima facie case, the burden shifted to Provinzano, who could have sought to avoid the suspension of her vehicle’s registration by establishing either that (1) she did in fact maintain continuous insurance coverage on the vehicle, or (2) the lapse of insurance falls within one of

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<sup>3</sup> By order dated May 12, 2011, this Court precluded Provinzano from filing a brief.

<sup>4</sup> This provision also directs DOT to suspend the operating privileges of the owner of such a vehicle for the same time period if DOT determines that the owner or registrant of the vehicle has operated or permitted the operation of the vehicle.

the three exceptions identified in Section 1786(d)(2) of the Motor Vehicle Code.<sup>5</sup> *Fell v. Dep't of Transp., Bureau of Motor Vehicles*, 925 A.2d 232 (Pa. Cmwlth. 2007).

In this case, Provinzano offered no excuse or explanation for her failure to maintain insurance, and the sole apparent reason for the trial court's order sustaining Provinzano's appeal was that Provinzano's statement that she drove her mother's vehicle suggested to the trial court that she did not drive her own vehicle during the period she lacked insurance on her vehicle. Although Provinzano may have testified credibly that she did not operate her vehicle during the period she failed to maintain insurance, that period exceeded thirty-one days. DOT's duty to suspend a registration in such circumstances is mandatory under Section 1786(d) of the Code. The trial court, therefore, erred in sustaining Provinzano's appeal based upon her testimony suggesting that she did not operate her own motor vehicle during the period for which she failed to maintain financial responsibility for her own vehicle. *Burton*, 973 A.2d at 474.

Accordingly, because the trial court erred as a matter of law in sustaining Provinzano's statutory appeal from DOT's order suspending Provinzano's registration for a three-month period, we reverse the trial court's order.

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P. KEVIN BROBSON, Judge

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<sup>5</sup> Briefly stated, an exception may apply if the lapse of insurance is less than thirty-one (31) days, the owner or registrant is a member of the armed services (and certain conditions are present), or a seasonal registration is involved.

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Commonwealth of Pennsylvania	:	
Department of Transportation	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

***ORDER***

AND NOW, this 25th day of August, 2011, the order of the Court of Common Pleas of Lackawanna County is REVERSED.

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P. KEVIN BROBSON, Judge