

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Paul R. Patrick	:
	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	: No. 582 C.D. 2008
Appellant	: Submitted: September 5, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY  
JUDGE BUTLER**

**FILED: October 30, 2008**

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (DOT) appeals from an order of the Court of Common Pleas of Northampton County (trial court) sustaining the pro se statutory appeal of Paul R. Patrick (Patrick),<sup>1</sup> where he contested the three-month suspension of his vehicle registration pursuant to Section 1786(d) of the Vehicle Code, 75 Pa.C.S. §1786(d).

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<sup>1</sup> DOT suspended the vehicle registrations of both Paul R. Patrick and his wife, Tara V. Patrick. Since the statutory appeals for each vehicle were heard by different trial court judges, this Court denied DOT's petition for consolidation of the cases on June 13, 2008. Tara V. Patrick's case is under docket number 696 C.D. 2008.

On July 2, 2007, Illinois National Insurance Co. (insurance company) cancelled Patrick's insurance policy for failure to pay the premium. As required by Section 1786(e) of the Vehicle Code, 75 Pa.C.S. §1786(e) (relating to obligations upon lapse, termination or cancellation of financial responsibility) and 67 Pa. Code §221.3 (relating to obligations upon termination of insurance), the insurance company notified DOT of the cancellation. In response to the notification, DOT sent Patrick official notice on September 16, 2007 that his vehicle registration would be suspended effective October 21, 2007. Patrick filed a timely appeal of the suspension in the trial court.

At trial, DOT presented certified documents indicating that the vehicle should have been registered and that the insurance company had notified DOT of the cancellation. Patrick had his wife testify as a witness because she handled the couple's financial matters. Mrs. Patrick testified that she did not receive the cancellation notification until mid-August 2007 because she and her husband had moved and the mail was forwarded several times in order to reach their current residence. Mrs. Patrick also testified that their insurance premiums were normally paid automatically on an American Express credit card, but because of a mistake by American Express, the premium in question was never paid. Mrs. Patrick renewed the couple's insurance effective August 10, 2007 after she had learned of the cancellation. Upon questioning by the DOT attorney, Mrs. Patrick admitted that the DOT notices and insurance cancellation notice were sent to their Allentown address, but that they had moved into their new home in Easton by the time the documents were sent.

The trial court determined DOT did not have the authority to suspend Patrick's registration because the cancellation of his insurance was ineffective, the

cancellation of the insurance policy was due to a mistake by American Express, and the situation was rectified as soon as Mrs. Patrick learned of the error. DOT appealed the trial court's order to this Court.<sup>2</sup>

DOT argues that it met its burden of proof under Section 1786 of the Vehicle Code, 75 Pa.C.S. §1786 and that Patrick did not dispute that the insurance coverage had lapsed between July 2, 2007 and August 10, 2007. It further argues that the trial court's finding that the insurance company did not mail the notice of cancellation to the address on Patrick's policy is not supported by any evidence of record. DOT asks that this Court vacate the trial court's order and remand the matter to the trial court to either 1) allow Patrick to provide proof that the cancellation was not mailed to the address on the insurance policy, or 2) continue the matter while Patrick pursues an appeal of the cancellation to the Insurance Commissioner.

Under Section 1786(d)(1) of the Vehicle Code, 75 Pa.C.S. §1786(d)(1), DOT "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...." The owner of the vehicle whose registration has been suspended may appeal the suspension. In such an appeal, the trial court's scope of review is limited to determining whether:

- (i) the vehicle is registered or of a type that is required to be registered under this title; and
- (ii) there has been either notice to the department of a lapse, termination or cancellation in the financial

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<sup>2</sup> "This Court's scope of review of a vehicle registration suspension is limited to determining whether the trial court committed an error of law, or manifestly abused its discretion in reaching its decision." *Webb v. Dep't of Transp., Bureau of Motor Vehicles*, 870 A.2d 968, 971-972 (Pa. Cmwlth. 2005) (citation omitted).

responsibility coverage as required by law for that vehicle.... Notice to the department of the lapse, termination or cancellation ... shall create a presumption that the vehicle lacked the requisite financial responsibility. This presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at all relevant times.

Section 1786(d)(3) of the Vehicle Code, 75 Pa.C.S. §1786(d)(3). There is no dispute in this case that DOT met its burden of proof by showing that the vehicle was registered and that DOT received notice of the cancellation from the insurance company. The burden then shifted to Patrick to prove that his vehicle was insured at all relevant times. Under Section 2006 of The Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, *as amended*, added by the Act of June 17, 1998, P.L. 464, 40 P.S. §991.2006 (Insurance Company Law) (relating to proper notification of intention to cancel), “[a] cancellation or refusal to renew by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew.” In *Eckenrode v. Dep’t of Transp., Bureau of Driver Licensing*, 853 A.2d 1141, 1145 n.11 (Pa. Cmwlth. 2004), this Court noted that “[t]he licensee need not actually receive the notice to be effective; instead, the insurance company must mail the notice to the address on the policy as it would in the regular course of business.”

In the present case, Mrs. Patrick testified that the DOT suspension notices and the insurance company cancellation notices went to 1942 Chew Street in Allentown which was the couple’s temporary residence during their move from New York to Easton. (Notes of Testimony, February 21, 2008 (N.T.), at 8). She further testified as follows.

A. When we had our -- when we first got our insurance, we were in Allentown. We switched it from New York to Allentown. Now we are in Easton.

Q. But at the time in question, the notices that were going out were mailed to Allentown? That was your address?

A. That was our address, but roundabout July when those notices came from PennDOT, we were in Easton. We closed on our house at the end of May.

....

Q. Now the insurance company, they must have given you also a notice of cancellation, correct?

A. Yes, which went to Allentown.

(N.T. at 8-9).

The trial court concluded, “we found that the petitioner’s insurance company did not send notice of cancellation to the address on the policy, that the cancellation of the petitioner’s insurance coverage was ineffective, and that the Department did not therefore have the authority to impose a suspension in this case.” (Trial Court Opinion at 3). As previously stated, the Insurance Company Law considers a cancellation ineffective unless the insurer mails the notice to the address on the policy. Although the insurance policy itself was not produced as evidence to show the address to which the insurance company sent the cancellation notice, Mrs. Patrick testified that the cancellation notice was sent to the Allentown address where the couple had first obtained their insurance. (N.T. at 8). Since proof of the address on the policy was not made available to the trial court, the effectiveness of the cancellation cannot be determined based on the evidence of record. In addition, the record is unclear as to whether the insurance company

intended to reinstate Patrick's policy retroactively or to issue a new policy altogether. It appears that this issue was not actually litigated by the parties.

For the reasons stated, the trial court's order is vacated and the matter remanded to determine whether the insurance company reinstates Patrick's policy retroactively, and if not, whether the insurance company mailed its cancellation notice to the appropriate address.

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JOHNNY J. BUTLER, Judge

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Appellant	:	

**ORDER**

AND NOW, this 30th day of October, 2008, the order of the Court of Common Pleas of Northampton County is vacated and the matter is remanded for further proceedings consistent with this opinion.

Jurisdiction relinquished.

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JOHNNY J. BUTLER, Judge