

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis Michael Veronick :  
(Title No. 62254388) :  
 :  
v. : No. 633 C.D. 2009  
 : Submitted: December 18, 2009  
Commonwealth of Pennsylvania, :  
Department of Transportation, :  
Bureau of Motor Vehicles, :  
Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge  
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: February 9, 2010

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (DOT), appeals from the March 24, 2009, order of the Court of Common Pleas of Luzerne County (trial court), which sustained the appeal of Dennis Michael Veronick (Veronick) challenging the suspension of his motor vehicle registration pursuant to Section 1786(d) of the Vehicle Code.<sup>1</sup> We reverse.

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<sup>1</sup> 75 Pa. C.S. §1786(d). Section 1786(d)(1) of the Vehicle Code provides that DOT shall suspend a vehicle registration for a period of three months if it determines that the required financial responsibility was not secured and shall suspend the operating privilege of the owner or registrant for a period of three months if it determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility.

By electronic transmission, State Farm Fire and Casualty Company (State Farm) notified DOT that it had cancelled Veronick's motor vehicle insurance policy as of October 18, 2008, for non-payment of premiums. As a result of State Farm's notification, DOT sent a letter, with a mail date of November 4, 2008, to Veronick informing him that it had received such cancellation information and requesting that he provide DOT with verification of his new motor vehicle insurance coverage within three weeks. The letter also indicated that Veronick's failure to respond or provide information regarding new insurance coverage could result in a suspension of his vehicle's registration.

By official notice mailed December 21, 2008, DOT informed Veronick that it had imposed a three-month suspension of his motor vehicle registration, effective January 25, 2009. The official notice indicated that DOT was acting on its receipt of the cancellation information from State Farm and its lack of receipt of any information from Veronick regarding new insurance coverage. Veronick filed a timely appeal with the trial court, and a hearing on the matter was scheduled.

At the *de novo* hearing before the trial court, DOT presented the electronic transmission from State Farm indicating that Veronick's motor vehicle insurance coverage had been cancelled for nonpayment on October 18, 2008. DOT also offered into evidence the following documents: its November 4, 2008, letter requesting new insurance coverage information from Veronick; its December 21, 2008, official notice of suspension; a "vehicle inquiry detail by title" form indicating that Veronick was the owner of the registered motor vehicle; and a certification and

attestation page and statement, signed by DOT's legal custodian of motor vehicle records.

Veronick testified on his own behalf and stated that, during the period when DOT was mailing the notices, he had moved to another location, and his "mail was so screwed up" that he had to pick it up directly from the post office. (R.R. at 14a.) Veronick testified that he only picked up DOT's first letter, informing him that it had received cancellation information from State Farm and requesting new coverage information, on November 26, 2008, and immediately called State Farm and "reinstated the insurance." (R.R. at 14a.) According to Veronick, he then called DOT to verify that he had insurance on the motor vehicle, even though it had been parked in his back yard and had not been operated since his move. Veronick also requested "leniency and mercy from the Court." (R.R. at 14a.)

The trial court sustained Veronick's appeal by order dated March 24, 2009. Although recognizing that Veronick had let his insurance lapse for more than thirty days, the trial court nevertheless concluded that by "[s]trictly adhering to a hard and fast 31 day grace period" the trial court would be stripped of "its role as finder of fact and its discretion in deciding cases based upon all of the evidence . . . ." (R.R. at 45a.). DOT now appeals to this Court.<sup>2</sup>

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<sup>2</sup> Our scope of review is limited to determining whether the trial court committed an error of law or abused its discretion. *Dinsmore v. Department of Transportation, Bureau of Driver Licensing*, 932 A.2d 350 (Pa. Cmwlth. 2007).

DOT argues that, because it met its burden of proof, the trial court exceeded its scope of review and erred as a matter of law in sustaining Veronick's appeal. We agree.

Section 1786(a) of the Vehicle Code, provides that “[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility.” 75 Pa. C.S. §1786(a). In suspension of registration cases arising under this section, DOT has the initial burden of showing that a motor vehicle is registered and that DOT received notice that the registrant's financial responsibility coverage was terminated. *Fagan v. Department of Transportation, Bureau of Motor Vehicles*, 875 A.2d 1195 (Pa. Cmwlth. 2005). DOT may satisfy this burden by certifying its receipt of documents or of an electronic transmission from an insurance company stating that a registrant's financial responsibility coverage has been terminated. *Id.* When submitted, such evidence constitutes *prima facie* proof that the termination of an insurance policy was effective under the laws of the Commonwealth and creates a presumption that the registrant's motor vehicle lacked the required financial responsibility coverage. *Id.* The registrant may then overcome the presumption that the motor vehicle lacked required insurance coverage by presenting clear and convincing evidence that the motor vehicle was insured at all relevant times, *id.*, or that the lapse in coverage was for a period of less than thirty-one days. *Burton v. Department of Transportation, Bureau of Motor Vehicles*, 973 A.2d 473 (Pa. Cmwlth. 2009).

It is undisputed that DOT submitted evidence that Veronick's motor vehicle was of the type required to be registered and that DOT received notification

from State Farm that it had cancelled Veronick's motor vehicle insurance coverage on October 18, 2008. Veronick did not object to or dispute the October 18, 2008, date as the date upon which State Farm cancelled his motor vehicle insurance coverage for nonpayment of premiums. In fact, Veronick acknowledged that he "reinstated" his insurance coverage on November 26, 2008, which is thirty-nine days from the date of cancellation. (R.R. at 14a.) Thus, Veronick failed to establish a lapse in coverage of less than thirty-one days.

This Court has recognized the limitations on the trial court's review of registration suspensions appeals and has stated that such review is limited to examining whether the registrant's motor vehicle is registered or of a type that is required to be registered and whether DOT received notice of the termination of insurance coverage. See Section 1786(d)(3)(i–ii) of the Vehicle Code; *Fagan*. Additionally, in *Jones v. Department of Transportation, Bureau of Motor Vehicles*, 723 A.2d 1090 (Pa. Cmwlth. 1999), we agreed with DOT's argument that the trial court had improperly ignored the fact that Jones' insurance coverage had lapsed for a period of ninety-three days even though he had admitted that his coverage had lapsed for such a time period.

Although the trial court correctly observed that it is the trier of fact and may exercise judicial discretion in deciding cases, it has the responsibility to do so within the confines of the law. Here, the trial court recognized that Veronick failed to rebut DOT's *prima facie* case by proving that the lapse in his motor vehicle insurance coverage was for a period of less than thirty-one days. Thus, the trial court was required to uphold the suspension, and it erred by failing to do so.

Accordingly, we reverse.

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ROCHELLE S. FRIEDMAN, Senior Judge

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

ORDER

AND NOW, this 9th day of February, 2010, the order of the Court of Common Pleas of Luzerne County, dated March 24, 2009, is hereby reversed.

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ROCHELLE S. FRIEDMAN, Senior Judge