

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Tara V. Patrick	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	:
Bureau of Motor Vehicles,	: No. 696 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 Tara V. Patrick (Patrick),<sup>1</sup> where she contested the three-month suspension of her vehicle registration pursuant to Section 1786(d) of the Vehicle Code, 75 Pa.C.S. §1786(d) (relating to suspension of registration and operating privilege).

On July 2, 2007, Illinois National Insurance Co. (insurance company) cancelled Patrick's insurance policy for failure to pay the premium. As required

---

<sup>1</sup> DOT suspended the vehicle registrations of both Tara V. Patrick and her husband, Paul R. 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. Paul R. Patrick's case is under docket number 582 C.D. 2008.

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 her 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 testified that she did not receive the cancellation notification until mid-August 2007 because she and her husband had moved and her mail was forwarded several times in order to reach her current residence. Patrick also testified that her insurance premiums were normally paid automatically on her American Express credit card, but because of a mistake by American Express, the premium in question was never paid. Patrick renewed her insurance effective August 10, 2007 after she had learned of the cancellation.

The trial court determined DOT did not have the authority to suspend Patrick's registration because the cancellation of Patrick's insurance was ineffective since she did not receive the cancellation notice in a timely manner and she rectified the situation as soon as she learned of the error. DOT appealed the trial court's order to this Court.<sup>2</sup>

---

<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).

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 her 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 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 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 her 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: “[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, Patrick did not provide proof related to the address to which the insurance company sent the cancellation notice; she merely produced verification that she was currently insured. (Notes of Testimony, February 14, 2008 (N.T.) at 4-6). Concerning the reason for not receiving notice, Patrick testified as follows.

Ms. Patrick: I had insurance. What happened was at that time we just moved to Allentown because we had to leave because we sold our home. As of then, we were there temporarily until our home was finished in Easton, then we moved to Easton and our mail was routed three different places.

We never lapsed on our insurance. Our American Express directly debits our insurance company’s payments ...

....

Ms. Patrick: Because our American Express went into review that month and we found out after we got the mail which was later, and then we rectified it right away as soon as we found out.

(N.T. at 3). Patrick did not indicate in the testimony that the insurance company had sent the cancellation notice to an address not on the policy or that Patrick had notified the insurance company of her change in address.

The trial court concluded the following:

[T]he appellant offered sufficient evidence to overcome the presumption that the cancellation was effective because she did not receive notification concerning the cancellation of [her] policy. The appellant presented credible testimony that her insurance premiums were set up to be paid automatically by her American Express card. The appellant stated that her American Express account was in review and, thus, the insurance premiums were unpaid and the insurance was cancelled. At the time that the error occurred with the American Express account, the appellant and her husband had moved to Allentown as a temporary residence while their home was finished in Easton. They did not receive the notice regarding the nonpayment until later, and they rectified the situation as soon as they found out about the error. The appellant reinstated her insurance coverage in August.

We respectfully submit that, based on the foregoing, the cancellation of the appellee's insurance coverage was ineffective, and the Department did not have the authority to impose a suspension in this case.

(Trial Court Opinion at 4-5).

As previously stated, the Insurance Company Law considers a cancellation ineffective unless the insurer mails the notice to the address on the policy. Since 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.

---

JOHNNY J. BUTLER, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Tara V. Patrick	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	:
Bureau of Motor Vehicles,	: No. 696 C.D. 2008
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.

---

JOHNNY J. BUTLER, Judge