

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Howard W. Hampton, Jr., :
Appellant :
v. : No. 697 C.D. 2008
Commonwealth of Pennsylvania : Submitted: October 17, 2008
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER¹

FILED: December 22, 2008

Howard W. Hampton, Jr. (Licensee) appeals from an order of the Court of Common Pleas of Delaware County (trial court) that denied Licensee's appeal from a recall of his driving privileges based on medical issues, pursuant to Section 1519(c) of the Vehicle Code (Code), 75 Pa. C.S. § 1519(c).²

¹ This case was reassigned to the authoring judge on November 14, 2008.

² This section provides that:

(c) **Recall or suspension of operating privilege.**-- The department shall recall the operating privilege of any person whose incompetency has been established under
(Footnote continued on next page...)

Following an examination of Licensee on September 14, 2007, Domenic Oteri, M.D., partially completed and submitted an Initial Reporting Form (IRF) to the Pennsylvania Department of Transportation (PennDOT). The IRF indicated that Licensee's date of birth was January 12, 1915, and that Dr. Oteri had diagnosed Licensee with cardiovascular disease and dementia.³ The form included a box marked "yes" and a box marked "no" for the doctor to place a checkmark indicating whether or not the condition(s) affected Licensee's ability to safely operate a motor vehicle. However, Dr. Oteri did not check either box.

On October 30, 2007, PennDOT sent a letter to Licensee informing him that PennDOT had received information indicating that he had a cardiovascular disorder and cognitive impairment condition that could affect or limit his ability to drive.

(continued...)

the provisions of this chapter. The recall shall be for an indefinite period until satisfactory evidence is presented to the department in accordance with regulations to establish that such person is competent to drive a motor vehicle. The department shall suspend the operating privilege of any person who refuses or fails to comply with the requirements of this section until that person does comply and that person's competency to drive is established. . . . The judicial review shall be limited to whether the person is competent to drive in accordance with the provisions of the regulations promulgated under [75 Pa.C.S. § 1517] (relating to Medical Advisory Board).

75 Pa.C.S. § 1519(c).

³ While the reasons underlying submission of this report are not evident in the record, we note that Section 1518 of the Code requires all physicians to "report to the department, in writing, the full name, date of birth and address of every person over 15 years of age diagnosed as having any specified disorder or disability" which may affect "the ability of a person to drive safely." 75 Pa. C.S. § 1518(a)-(b).

Pursuant to Section 1519(a) of the Code,⁴ PennDOT requested that Licensee undergo a physical examination in order to determine if he met the medical standards for driving. PennDOT provided Licensee with two forms for his medical provider to complete: a Cardiovascular Form (CVF) and a Cognitive Impairment Form (CIF). The forms contained nearly identical questions (Competency Question) and asked the medical provider, “[f]rom a medical standpoint only, do you consider this person physically and/or mentally competent to operate a motor vehicle?”⁵ (CVF.) The Competency Question was followed by two boxes, one marked “yes” and one marked “no.”

Francis E. Capista, M.D., Licensee’s primary care physician, examined Licensee and completed both the CVF and CIF on November 12, 2007. In response to the Competency Question, Dr. Capista checked the “yes” box on both forms. On the CVF, Dr. Capista commented that Licensee was safe to drive “as he does limited, local, daytime driving only.” (Capista CVF) (November 12, 2007).) On the CIF, Dr.

⁴ Section 1519(a) relates to the recall or suspension of motor vehicle operating privileges and provides as follows:

(a) General rule.-- The department, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, may require the applicant or driver to undergo one or more of the examinations authorized under this subchapter in order to determine the competency of the person to drive.

75 Pa. C.S. § 1519(a).

⁵ The CIF included additional language in its Competency Question, asking “[f]rom a medical standpoint only, do you consider this person physically and/or mentally competent to operate a motor vehicle *under the stresses and challenges associated with driving?*” (CIF (emphasis added).)

Capista commented that “[p]atient does only very limited, local, daytime driving, no night driving.” (Capista CIF (November 12, 2007).) Dr. Capista also indicated that Licensee did not have any significant impairment in the areas of attention, judgment, planning, impulsivity or visual/spatial perception. With regard to Licensee’s reaction time, Dr. Capista reported that “[a]t age 92 I imagine some delay, but patient has been a good, safe driver.” (Capista CIF (November 12, 2007).) Dr. Capista submitted both forms to PennDOT.

On November 24, 2007, PennDOT sent Licensee a letter stating that it was recalling his driver’s license because PennDOT had received medical information indicating that Licensee had a cardiovascular disorder and cognitive impairment condition that prevented him from safely operating a motor vehicle. In the letter, PennDOT informed Licensee that the recall would remain in effect until PennDOT received medical information establishing that Licensee’s conditions had improved and that he could safely operate a motor vehicle.

Licensee appealed PennDOT’s determination to the trial court, which held a hearing on the matter. At the hearing, PennDOT presented a packet of certified documents that were admitted into evidence. The documents included the forms that PennDOT had received from Drs. Oteri and Capista, as well as additional medical information that Licensee had submitted to PennDOT, which included: a letter from Howard Caplan, M.D., dated December 22, 2007, a CVF completed by Licensee’s cardiologist, Robert M. Marvin, M.D., on January 9, 2008; and a second CIF that Dr. Capista completed on January 10, 2008.

Dr. Caplan's letter indicated that he examined Licensee based on a referral from Dr. Capista. Dr. Caplan did not opine whether or not Licensee was able to operate a motor vehicle but, instead, suggested that Licensee have an evaluation at a driver training center in order to determine whether or not he was capable of safe driving. The letter from Dr. Caplan to Dr. Capista stated that Licensee had a history of diabetes, hypertension, coronary artery disease, congestive heart failure, colon cancer, and degenerative arthritis. He "suspected" that Licensee has "mild Primary Degenerative Central Nervous System Disturbance (Alzheimer type)." (Letter from Caplan to Capista, (December 22, 2007).) However, he opined that taking away Licensee's car might be detrimental to his health. Dr. Caplan noted that, without a car, Licensee would be isolated in his home.

In the CVF that Dr. Marvin completed, he questioned, but did not definitively opine, whether Licensee was capable of safely operating a motor vehicle. Dr. Marvin did not check either of the boxes following the Competency Question but, instead, placed a question mark next to the boxes and commented that Licensee "would benefit from evaluation at a driving training program." (Marvin CVF.)

On the second CIF that Dr. Capista completed, he drew a line through both of the boxes following the Competency Question and commented "indefinite, test pending." (Capista CIF (January 10, 2008).) Dr. Capista also noted that Licensee's judgment and problem solving were "naturally slowing, due to advanced age" and that he had some impairment in his short-term memory and in his planning and sequence skills. (Capista CIF (January 10, 2008)). The CIF also had a note from Dr.

Capista that Licensee had “no gross deficiency with respect to normal daily function.” (Capista CIF (January 10, 2008).)

After PennDOT presented the medical documentation, the trial court found that PennDOT had met its initial burden of proof and that the burden shifted to Licensee to establish competency. Before the trial court, counsel for Licensee indicated that Licensee had undergone a driver training evaluation. While counsel acknowledged that the evaluation “wasn’t really good” and that Licensee “had a few problems,” counsel explained that Licensee was uncomfortable because he was not permitted to use his own vehicle for the evaluation. (Trial Ct. Hr’g Tr. at 14.) As such, counsel declined to offer the evaluation into evidence. Licensee, thereafter, testified on his own behalf. He stated that he had never received a citation, did not have many driving problems, and did not drive at night due to the new automobile headlights. Additionally, a letter that Licensee submitted to PennDOT was also admitted into evidence. In the letter, Licensee asked PennDOT to “overcome the restrictions on daylight driving only” because he eats out everyday and engages in various community organization activities that take place at night. (Letter from Licensee to PennDOT (February 7, 2007) at 1.) Licensee also indicated in the letter that he does not drive at night any more than he has to. In his testimony before the Court, Licensee acknowledged that he has “driving problems,” although there “are not many” and that he “do[es] the best [he] can for [his] age.” (Trial Ct. Hr’g Tr. at 17, March 11, 2008.)

Following the hearing, the trial court concluded that the medical reports established that Licensee was incompetent to drive as of the date of the recall notice.

As Licensee failed to present evidence to rebut PennDOT's *prima facie* case, the trial court determined that Licensee was incompetent to drive and denied his appeal.

Licensee now appeals to this Court.⁶ Licensee argues that the trial court abused its discretion in denying his appeal from the recall of his driver's license. Licensee argues that PennDOT presented insufficient evidence that he was incompetent to drive. Licensee notes that none of the medical reports indicated that he was incompetent to drive and that these reports, at most, suggest only that Licensee be limited to driving during daylight hours.⁷

In a license recall case, PennDOT has the burden of proving, by a preponderance of the evidence, that a licensee "suffered from a medical condition on the date of the recall that rendered him incompetent to drive." McKelvy v. Department of Transportation, Bureau of Driver Licensing, 814 A.2d 843, 845-46 (Pa. Cmwlth. 2003). In meeting its burden, PennDOT can establish a *prima facie*

⁶ Our scope of review in a proceeding recalling driving privileges "is limited to determining whether necessary findings are supported by competent evidence, errors of law were committed or whether the trial court abused its discretion." McKelvy v. Department of Transportation, Bureau of Driver Licensing, 814 A.2d 843, 845 n.1 (Pa. Cmwlth. 2003).

⁷ At the hearing before the trial court, counsel for PennDOT conceded that Licensee could have been issued a daytime-driving-only license. Counsel stated, "that's an honor thing. Once – once an individual has a license, how do you stop them from driving? You have to trust that they'll comply with the terms." (Trial Ct. Hr'g Tr. at 11.) Interestingly, PennDOT submitted a letter, dated October 24, 2006, in which it informed Licensee that it added a "Daylight Driving Only" restriction to his driver's license. (Letter from Janet L. Dolan, Director of the Bureau of Driver Licensing to Licensee (October 24, 2006).) PennDOT further included a letter from Licensee, dated February 7, 2007, attempting to have the restriction removed. However, as no further evidence was presented, it is unclear whether or not Licensee's license currently contains this restriction.

case through the introduction of the medical documentation it relied upon in recalling driving privileges. Reynolds v. Department of Transportation, Bureau of Driver Licensing, 694 A.2d 361, 364 (Pa. Cmwlth. 1997). Once PennDOT establishes a *prima facie* case, the burden then shifts to the licensee to establish that he was competent to drive on the date of the recall. Proof of competency by Licensee then shifts the burden back onto PennDOT to prove incompetency. McKelvy, 814 A.2d at 846.

In this case, we conclude that the trial court did not err in finding that PennDOT presented sufficient evidence to conclude that Licensee was no longer able to safely drive his vehicle. PennDOT provided evidence that the then 92-year-old Licensee had cardiovascular disease, mental deficiency and dementia; the license recall process was started by Dr. Oteri submitting to PennDOT a form indicating that Licensee suffered from “Cardiovascular Disease” and “Mental Deficiency (DEMENTIA).” (IRF.) As noted earlier, this form seems to have been submitted by Dr. Oteri in conformance with his responsibility, under Section 1518 of the Code, 75 Pa. C.S. § 1518, to report to PennDOT when a person has a “disorder or disability” that affects “the ability of a person to drive safely.” While Dr. Oteri did not check either “yes” or “no” as to whether this condition prevents Licensee from being able to drive, that Dr. Oteri submitted this form on his own, in light of his obligation under Section 1518, establishes an inference that Dr. Oteri believed that Licensee was unable to safely operate motor vehicles.

As correctly noted by the trial court, the subsequent medical reports “fail[ed] to show a single doctor that stated [Licensee] is competent to drive.” (Trial Ct. Op. at

10.) In fact, review of the documents shows clear limitations in Licensee’s abilities, above and beyond being able to drive just during the day. For instance, Dr. Capista, Licensee's family physician, opined in the CIF completed on November 12, 2007, that Licensee could engage in “*very limited, local*, daytime driving,” and he refers to “some delay” in Licensee’s reaction times. (Capista CIF (November 12, 2007) (emphasis added).) However, this same doctor, who evaluated Licensee after the license recall, noted in his second CIF some additional cognitive deficiencies in Licensee, including: (1) slowed judgment and problem solving skills; (2) slowed reaction times; (3) impaired planning and sequencing skills; and (4) short-term memory impairment. These deficiencies fall within the criteria that PennDOT’s regulations, at 67 Pa. Code § 83.5(b), authorize as bases for disqualifying a licensee from operating a motor vehicle.⁸ Coupled with this expansion of the list of

⁸ The regulation provides as follows:

(b) *Disqualification on provider's recommendation.* A person who has any of the following conditions will not be qualified to drive if, in the opinion of the provider, the condition is likely to impair the ability to control and safely operate a motor vehicle:

....

(4) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in lack of coordination, confusion, loss of awareness, dyspnea upon mild exertion or any other sign or symptom which impairs the ability to control and safely perform motor functions necessary to operate a motor vehicle.

(5) Mental disorder, whether organic or without known organic cause, . . . especially as manifested by the symptoms set forth in (i) -- (iii). While signs or symptoms of mental disorder may not appear during examination by the provider, evidence may be derived from the person's history as provided by self or others familiar with the person's behavior.

(Footnote continued on next page...)

deficiencies was a change in Dr. Capista's response as to the Competency Question. In the first CIF completed on November 12, 2007, Dr. Capista checked the "yes" box to this question. In the CIF completed on January 10, 2008, Dr. Capista placed a single line through both the "yes" and "no" boxes, and handwrote the phrase "indefinite, test pending." The two CIFs, when read together, convey a clear concern on Dr. Capista's part as to Licensee's ability to safely operate a motor vehicle. Likewise, Dr. Marvin's evaluation specifically questioned whether Licensee was competent to drive, and Dr. Hampton's silence on the matter, in the context of a lengthy discussion as to Licensee's conditions, is also indicative of concern. Read in their entirety, this evidence sufficiently meets PennDOT's burden of proving that Licensee suffers from a medical condition that renders him incompetent to drive.

Accordingly, the burden then shifted to Licensee to establish that he was competent to drive as of the recall date. He did not meet this burden and offered

(continued...)

(i) Inattentiveness to the task of driving because of, for example, preoccupation, hallucination or delusion.

....

(6) Periodic episodes of loss of attention or awareness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding, as reported by a licensed physician.

....

(8) Other conditions which, in the opinion of a provider, is [sic] likely to impair the ability to control and safely operate a motor vehicle.

67 Pa. Code § 83.5.

nothing other than his own testimony, in which he personally acknowledged a number of difficulties he had with driving. Additionally, Licensee's counsel acknowledged that Licensee had undergone the additional evaluation by the Bryn Mawr Rehab Center that some of the doctors had recommended for him, but conceded that the results from the evaluation as to his ability to drive, "w[eren't] really good. It was not -- it wasn't the best..." (Trial Ct. Hr'g Tr. at 14.) The trial court, as the fact finder, was free to weigh the evidence presented and find the testimony of Licensee more persuasive and credible than the evidence offered by PennDOT. See Byler v. Department of Transportation, Bureau of Driver Licensing, 883 A.2d 724, 729 (Pa. Cmwlth. 2005). "We must view the evidence in a light most favorable to the party that prevailed before the trial court." Reinhart v. Department of Transportation, Bureau of Driver Licensing, 954 A.2d 761, 765 (Pa. Cmwlth. 2008). The trial court clearly found PennDOT's evidence more credible, and we find no error in that determination.

For these reasons, we find that the trial court neither abused its discretion nor committed an error of law. Accordingly, the order of the trial court is affirmed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Howard W. Hampton, Jr.,	:
Appellant	:
	:
v.	: No. 697 C.D. 2008
	:
Commonwealth of Pennsylvania	:
Department of Transportation,	:
Bureau of Driver Licensing	:

ORDER

NOW, December 22, 2008, the order of the Court of Common Pleas of Delaware County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge

At the hearing, PennDOT had the burden of proving that Licensee “suffered from a medical condition on the date of the recall that rendered him incompetent to drive....” See McKelvy v. Department of Transportation, Bureau of Driver Licensing, 814 A.2d 843, 846 (Pa. Cmwlth. 2003). Only after PennDOT has established a *prima facie* case would the burden shift to Licensee to establish that he was competent to drive on the date of the recall.

In the present case, PennDOT could not establish that it relied on any medical documentation in recalling Licensee’s driving privilege, as none of the provided medical documentation opined that Licensee was unable to safely operate a vehicle. Dr. Domenic Oteri, who first submitted information to PennDOT, failed to indicate whether or not Licensee was competent to drive. Dr. Francis Capista then submitted two forms to PennDOT. On both forms, Dr. Capista indicated that Licensee was competent to drive, noting that Licensee limited himself to local, daytime driving. Inexplicably, after receiving the forms, PennDOT recalled Licensee’s driving privilege.

PennDOT introduced additional evidence at the hearing in an attempt to establish that Licensee was incompetent to drive at the time of recall. This evidence included a letter from Dr. Howard Caplan that made no determination as to whether or not Licensee was competent to drive and suggested that Licensee undergo a driver evaluation in order to make such a determination. This letter does not provide PennDOT with evidence that Licensee was incompetent to drive at the time of recall.

PennDOT also presented evidence from Dr. Robert Marvin. Dr. Marvin placed a question mark next to the “no” box regarding whether or not Licensee was competent to drive. He further suggested that Licensee undergo a

driver evaluation. The evidence provided by Dr. Marvin likewise fails to establish that Licensee was incompetent to drive at the time of recall.

Finally, PennDOT presented a second cognitive impairment form signed by Dr. Capista. On this form, Dr. Capista did not answer the question regarding Licensee's ability to drive and commented that it was indefinite and a test was pending. This form also fails to provide PennDOT with evidence that Licensee was incompetent to drive at the time of recall. It merely establishes that Dr. Capista was unsure of Licensee's ability to drive at that time.

As PennDOT failed to present any evidence suggesting that Licensee was incompetent to drive, it failed to present a *prime facie* case. Thus, contrary to the majority opinion, the burden never shifted to Licensee to establish his competency.

We recognize that PennDOT has a responsibility to recall the driving privileges of unsafe drivers and that we all face a grave danger from operators whose declining skills render them unsafe to operate a motor vehicle on our highways. However, the recall of a driving privilege can also present a great detriment to the quality of life of senior citizens living in the rural areas of Pennsylvania. While the age of a driver can raise a concern, age alone cannot establish incompetency. As such, it is imperative that PennDOT not exceed its statutory authority and only recall the driving privilege of a person "whose incompetency has been established." 75 Pa. C.S. § 1519(c).

Furthermore, in the present case, when PennDOT received inconclusive evidence from Licensee's doctors regarding Licensee's competency to drive, it was not without recourse. PennDOT had the statutory authority to

require Licensee to undergo an additional examination by a doctor of its choosing.
See 75 Pa. C.S. § 1519(a).

Accordingly, I would reverse the order of the Court of Common Pleas
of Delaware County.

JOSEPH F. McCLOSKEY, Senior Judge