

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kenneth M. Rowan, :
Petitioner :
 :
v. : No. 865 C.D. 2008
 : Submitted: September 19, 2008
Department of Transportation, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY FILED: November 25, 2008

Kenneth M. Rowan (Rowan) petitions for review from an order of the Secretary (Secretary) of the Department of Transportation (Department) which denied the exceptions filed by Rowan to the proposed report of the hearing officer and made final the hearing officer's proposed report which denied Rowan's request for issuance of an occupational limited license (license). We affirm.

On April 10, 2007, Rowan filed a petition for a license with the Department. In a letter dated May 4, 2007, the Department denied his petition pursuant to Section 1553(d) of the Vehicle Code, 75 Pa. C.S. § 1553(d) because of unsatisfied judgments against him. Rowan appealed the denial of the license and an administrative hearing was thereafter conducted.

Before the hearing examiner, the Department introduced exhibit D-2, showing that there are currently four open judgments on Rowan's driving record. Specifically, the Department provided copies of: (1) Form DL-201 which is a

certification of motor vehicle judgment from the Court of Common Pleas of Chester County, showing that Rowan has an unsatisfied judgment of \$3,387.54, entered on February 1, 1995; (2) Form DL-201 from the Court of Common Pleas of Chester County, showing that Rowan has an unsatisfied judgment in the amount of \$4,784.83 entered on September 19, 1995; (3) Form TS-201, certification of motor vehicle judgment from the Court of Common Pleas of Chester County showing that Rowan has an unsatisfied judgment in the amount of \$971.50 entered on August 9, 1995; and (4) Form DL-201 from the Court of Common Pleas of Chester County showing that Rowan has an unsatisfied judgment in the amount of \$19,000.00, entered June 4, 1997.

Rowan did not contest that the judgments had been entered against him. Nor did Rowan make any payments towards any of the judgments against him. Additionally, the Department did not receive any documentation releasing any of the judgments on Rowan's driving record. Further, Rowan did not contact any of the parties on the judgments to have them invalidate the judgments against him. Rowan also failed to provide proof of financial responsibility.

Based on the above, the hearing examiner determined that Rowan is disqualified from receiving a license because he currently has unsatisfied money judgments levied against him as defined by Sections 1772-1774 of the Vehicle Code, 75 Pa. C.S. §§ 1772-1774. Further, 75 Pa. C.S. § 1553(d) prohibits the issuance of a license to an individual with an indefinite suspension, such as an unsatisfied money judgment.

Rowan then filed exceptions to the hearing examiner's proposed report with the Secretary. The Secretary entered an order denying the exceptions

and adopted and made final the hearing officer's proposed report. This appeal followed.¹

Initially, we address Rowan's argument with respect to the admissibility of the Department's exhibit D-2. At the hearing, the hearing officer raised the issue that there was no raised seal on the documents and Rowan subsequently voiced an objection to its admission. (Record at p. 8, 9.) The following exchange then occurred:

HEARING OFFICER:

We can cure this easy. We can go get them, get the sealed version.

MR. ROWAN:

I don't think that's going to be necessary, Your Honor. I think. . .

HEARING OFFICER;

Okay.

MR. ROWAN:

...my defense will...

HEARING OFFICER:

All right. So you're going to withdraw your objection if ...

MR. ROWAN:

I will withdraw my objection.

HEARING OFFICER:

...he moves it to admission? Okay.

MR. ROWAN:

Sure.

¹ This court's review is limited to determining whether an error of law was committed, findings of fact are supported by substantial evidence or whether constitutional rights were violated. Ray v. Department of Transportation, 821 A.2d 1275 (Pa. Cmwlth. 2003).

(Record at p. 10.)

Exhibit D-2 was then admitted and the substitution with the appropriate seal was supplied to the docket clerk for insertion into the transcript. (Record at 9-11, Exhibit D-2.) Later in the proceedings, however, Rowan renewed his objection to the Department's exhibit, now arguing that exhibit D-2 did not contain the actual certified copies of the court records, but a copy of the microfilmed original.

Vita Yough (Ms. Yough) testified on behalf of the Department that the contents of exhibit D-2 were copies of microfilm made of the original certified court records and that the certification and seal are checked by the Department when they are submitted, and such would not have been honored if the seals were not present. (Record at 7-8, 32.) Further, the Department's practice with old records is that they are placed on microfilm, and the originals are then destroyed, with the microfilm becoming the official copy of the business record. Such was certified and authenticated in accordance with Section 6103 of the Judicial Code, 42 Pa. C.S. § 6103.² Official records kept by an agency of the state, which are attested to and certified by an officer having legal custody of the documents are

² With respect to official records, 42 Pa. C.S. § 6103 provides in pertinent part:

(a) General rule.- An official record kept within this Commonwealth by any court, district justice or other government unit, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by that officer's deputy, and accompanied by a certificate that the officer has the custody. The certificate may be made by any public officer having a seal of office and having official duties with respect to the government unit in which the record is kept, authenticated by the seal of that office

admissible as evidence of facts stated therein. Thorne v. Department of Transportation, Bureau of Driver Licensing, 727 A.2d 1205 (Pa. Cmwlth. 1999).

Moreover, we also observe that Rowan did not raise the issue of the admissibility of exhibit D-2 in his exceptions filed with the Secretary. Issues not raised in exceptions filed with the Secretary are waived. Niles v. Department of Transportation, 674 A.2d 739, 742 (Pa. Cmwlth. 1995).

Next, Rowan claims that because over ten years has passed since the entry of the four judgments against him the judgments, in effect, have been stayed. Specifically, Rowan relies on Section 5526 of the Judicial Code, 42 Pa. C.S. § 5526, which provides in pertinent part:

The following actions and proceedings must be commenced within five years:

(1) An action for revival of a judgment lien on real property.

Because the judgments in this case are over ten years old, Rowan argues that he is not barred from receiving a license.

Initially, we observe that because of his non-payment of the judgments, Rowan's operating privileges were suspended. Specifically, Section 1771(a) of the Vehicle Code, 75 Pa. C.S. § 1771(a), provides that when the Department is notified that a judgment against an individual remains unsatisfied, the Department shall suspend the operating privileges of that person. Such suspension, in accordance with Section 1773 of the Vehicle Code, 75 Pa. C.S. § 1773, shall remain in effect until every judgment is stayed, satisfied in full, or as provided in Subchapter G, and until the person provides proof of financial

responsibility.³ Pleiss v. Department of Transportation, 782 A.2d 64, 65 n.2 (Pa. Cmwlth. 2001).

Rowan's current application for a license was denied by the Department in accordance with 75 Pa. C.S. §1553(d) because of his unsatisfied judgments. The pertinent provisions of 75 Pa. C.S. §1553(d) provide:

§ 1553. Occupational limited license

(d) Unauthorized issuance.- The department shall prohibit issuance of an occupational limited license to:

(3) Any person who has an unsatisfied judgment against him as the result of a motor vehicle operation, until such judgment has been satisfied under the provision of section 1774 (relating to payments sufficient to satisfy judgments) or an installment agreement has been entered into to satisfy the judgment as permitted under section 1772(b) (relating to suspension for nonpayment of judgments) and the financial responsibility of such person has been established.

Here, there is no dispute that Rowan has not satisfied the judgments against him nor has Rowan entered into an installment agreement to satisfy the judgments. As such, the Department is not authorized to issue him a license.

³ For instance, in accordance with Subchapter G, 75 Pa. C.S. §1774(a)(3), judgments shall be deemed satisfied when \$5,000.00 has been credited upon any judgments in excess of that amount resulting from any one accident.

Moreover, just because a judgment has not been revived within ten years does not mean that it is incapable of being revived. “[A] judgment continues as a lien against real property for five years and then expires unless revived. ... Although a judgment may be revived after the five year period, its priority against intervening liens is lost.” Mid-State Bank and Trust Company v. Globalnet International, Inc., 710 A.2d 1187, 1190 (Pa. Super. 1998), aff’d, 557 Pa. 555, 735 A.2d 79 (1999).

In accordance with the above, the decision of the Secretary is affirmed.

JIM FLAHERTY, Senior Judge

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Department of Transportation,	:	
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ORDER

Now, November 25, 2008, the Order of the Department of Transportation, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge