

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tifphane Riley :  
 :  
 v. : No. 999 C.D. 2007  
 : Submitted: March 28, 2008  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, :  
 Bureau of Motor Vehicles, :  
 Appellant :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
 HONORABLE DAN PELLEGRINI, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE PELLEGRINI

FILED: April 15, 2008

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (Bureau) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court) sustaining Tifphane Riley's (Licensee) appeal from its three-month suspension of her vehicle registration because her vehicle was uninsured. It contends that the trial court erred in granting Licensee's *nunc pro tunc* appeal of her suspension and finding that Licensee had established that she maintained financial responsibility on her vehicle during the period in question.

On December 3, 2005, Licensee purchased automobile insurance for her vehicle from Progressive Halcyon Insurance Company (Progressive). It provided her

with insurance identification cards and a declarations page showing that the policy period was from December 3, 2005, to June 3, 2006. On December 20, 2005, Progressive notified Licensee that it was having difficulties billing her for the insurance and that it had canceled the policy as of December 3, 2005. Licensee filed a timely complaint with the Insurance Department regarding the actions taken by Progressive, but she was informed by the Insurance Department that it lacked jurisdiction in the matter.

Progressive reported the policy's cancellation to the Bureau which, in turn, sent Licensee a financial responsibility inquiry letter requesting updated financial responsibility information for her vehicle. Licensee purchased insurance from another carrier on January 12, 2006, but failed to notify the Bureau. Having not received a response to its inquiry letter, by official notice dated and mailed on February 26, 2006,<sup>1</sup> the Bureau suspended her vehicle registration for three months, effective April 2, 2006, pursuant to Section 1786(d) of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. §1786(d).<sup>2</sup> On March 31, 2006, 33 days

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<sup>1</sup> The notice sent by the Bureau clearly bears the mail date as "02/26/06" and provides: "**You have the right to appeal this suspension** to the Court of Common Pleas of the county of your residence **within thirty (30) days of the mail date of this letter.**" (Reproduced Record at 32a.) (Emphasis in original.)

<sup>2</sup> Section 1786(d) of the MVFRL provides, in pertinent part:

(1) The Department of Transportation 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 by this chapter and shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility. The operating privilege

**(Footnote continued on next page...)**

after the mailing date of the notice of suspension, Licensee filed a motion to appeal *nunc pro tunc* from that suspension notice.

Before the trial court on her motion, Licensee testified that she did not receive the notice of suspension from the Bureau until the second week in March 2006 and that “within two weeks [after] I received the letter in the mail that I filed for the appeal. I had actually to go to talk with the Insurance Claims Department, and then that was when I was told to come down to City Hall and ask for the appeal.” (Reproduced Record at 11a.) Licensee did not provide an explanation why she had not received the letter until the second week of March, and when asked by the trial court why she had not filed her appeal between March 15 and March 31 while it would have still been timely, she stated, “I was under the impression I had to file it within thirty days of receiving it in the mail on February 26<sup>th</sup>. I didn’t receive it until the second week of March.” (Reproduced Record at 13a.) Because the trial court determined that Licensee was under the mistaken impression that she could have filed her appeal within 30 days of *receiving* the Bureau’s notice, rather than 30 days from the mail date, it granted her motion to appeal *nunc pro tunc*.

At a subsequent hearing before a different judge to establish a violation of Section 1786(d) of the MVFRL, the Bureau submitted a packet of certified documents including its February 26, 2006 notice of suspension, Licensee’s insurance

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**(continued...)**

shall not be restored until the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operating privilege or vehicle registration) is paid.

policy information electronically received from Progressive, her vehicle registration information, and the financial responsibility inquiry letter sent to Licensee.<sup>3</sup>

To rebut the Bureau's assertion that she lacked financial responsibility on her vehicle as of December 3, 2005, Licensee testified that she believed she was insured on that date because of the insurance cards and declarations pages Progressive had sent her that listed her coverage period from December 3, 2005, to June 3, 2006. She stated that it was not until December 20, 2005, when she became aware that Progressive was no longer insuring her vehicle. With regard to the Progressive policy, Licensee testified that she purchased her insurance from Progressive online, and to make payment she authorized an electronic transfer from her credit union account. However, by letter dated December 20, 2005, Progressive informed her that it was having difficulty billing her for the insurance policy, and the policy would be cancelled. She testified that she then filed a complaint with the

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<sup>3</sup> Once the Bureau establishes its prima facie burden of proof, a vehicle owner must prove that financial responsibility was continuously maintained on the vehicle as required by Section 1786(a) of the MVFRL, 75 Pa. C.S. §1786(a), or that the vehicle owner fits within one of the three statutorily defined defenses outlined in Section 1786(d)(2)(i-iii) of the MVFRL, 75 Pa. C.S. §1786(d)(2)(i-iii), which are: (i) The owner or registrant proves to the satisfaction of the department that the lapse in financial responsibility coverage was for a period of less than 31 days and that the owner or registrant did not operate or permit the operation of the vehicle during the period of lapse in financial responsibility; (ii) The owner or registrant is a member of the armed services of the United States, the owner or registrant has previously had the financial responsibility required by this chapter, financial responsibility had lapsed while the owner or registrant was on temporary, emergency duty and the vehicle was not operated during the period of lapse in financial responsibility. The exemption granted by this paragraph shall continue for 30 days after the owner or registrant returns from duty as long as the vehicle is not operated until the required financial responsibility has been established; (iii) The insurance coverage has terminated or financial responsibility has lapsed simultaneously with or subsequent to expiration of a seasonal registration, as provided in Section 1307(a.1) (relating to period of registration).

Insurance Department regarding Progressive's cancellation, but it declined to consider the complaint because the matter was outside of its jurisdiction. Licensee also testified that she had not operated her vehicle from December 20, 2005, to January 13, 2006, when she obtained insurance through a different carrier.

The trial court sustained Licensee's appeal because she had established that she had timely secured insurance for her vehicle after Progressive notified her that her policy was being cancelled, thus complying with Section 1786(d) of the MVFRL. Moreover, relying on *Fell v. Department of Transportation, Bureau of Motor Vehicles*, 925 A.2d 232 (Pa. Cmwlth. 2007), the trial court held that the cancellation had not become effective because Licensee filed a complaint with the Insurance Department, which stayed the cancellation. The Bureau then filed this appeal.<sup>4</sup>

The Bureau advances two arguments on appeal. It first contends that the trial court erred in granting Licensee's *nunc pro tunc* appeal because her stated reason for not filing within the 30-day appeal period, namely, that she believed that she had 30 days from when she received the Bureau's suspension notice, does not constitute fraud, a breakdown in the administrative or judicial process, or non-negligent circumstances, and it is not a basis for granting *nun pro tunc* relief. The Bureau also contends that the trial court erred in determining that there was substantial evidence

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<sup>4</sup> Our scope of review of a trial court's order sustaining a statutory appeal is limited to determining whether the trial court's findings of fact are supported by substantial evidence, and whether the trial court made an error of law or committed an abuse of discretion in coming to a decision. *Richards v. Department of Transportation, Bureau of Driver Licensing*, 767 A.2d 1133 (Pa. Cmwlth. 2001).

offered by Licensee to rebut the presumption of a lack of financial responsibility in violation of Section 1786(d). If we decide that Licensee was erroneously granted a *nunc pro tunc* appeal, we need not decide the merits of the Bureau's other contention; therefore, we will address that matter first.

A licensee must file her appeal within 30 days of the date on which the Bureau mails the notice of the suspension. *Schofield v. Department of Transportation, Bureau of Driver Licensing*, 828 A.2d 510 (Pa. Cmwlth. 2003). When a licensee fails to file an appeal within 30 days, the only remedy available to challenge the suspension is by seeking *nunc pro tunc* relief. However, a court may only permit a licensee to appeal *nunc pro tunc* where the licensee's failure to file a timely appeal resulted from extraordinary circumstances involving fraud, a breakdown in the administrative or judicial process, or because of non-negligent circumstances, either as they relate to the licensee or to her counsel, and the licensee files shortly after expiration of the appeal period. *Ercolani v. Department of Transportation, Bureau of Driver Licensing*, 922 A.2d 1034 (Pa. Cmwlth. 2007); *Balfour Beatty Construction, Inc. v. Department of Transportation*, 783 A.2d 901 (Pa. Cmwlth. 2001).

Here, Licensee filed an appeal on March 31, 2006, beyond the 30-day appeal period from when the Bureau's notice of suspension was dated and mailed – February 26, 2006. She testified that she did not receive the notice until the second week of March, but giving Licensee the benefit of the doubt, she still would have had approximately two weeks to file a timely appeal. While Licensee testified that she believed that the 30-day appeal period began to run when she received the Bureau's

notice, that notice unequivocally states that she had the right to appeal the suspension “within thirty (30) days of the mail date of this letter,” and her misunderstanding of when the appeal period commenced is not a basis for *nunc pro tunc* relief. See *Kovalesky v. Department of Transportation, Bureau of Driver Licensing*, 850 A.2d 26 (Pa. Cmwlth. 2005) (licensee’s misunderstanding of the mechanisms of the reciprocity provisions of the Driver’s License Compact was not a basis to trigger *nunc pro tunc* relief). Because she failed to establish sufficient excuse for filing her appeal untimely, the trial court erred in granting Licensee’s motion for an appeal *nunc pro tunc*.

Accordingly, the order of the trial court is reversed and remanded with directions to quash Licensee’s statutory appeal as untimely, and the three-month suspension of her registration is reinstated.

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DAN PELLEGRINI, JUDGE

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**ORDER**

AND NOW, this 15<sup>th</sup> day of April, 2008, the order of the Court of Common Pleas of Philadelphia County, dated April 27, 2006, is reversed and remanded with the directions to quash the statutory appeal filed by Tifphane Riley as untimely and reinstate the three-month suspension of her registration.

Jurisdiction relinquished.

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DAN PELLEGRINI, JUDGE