[J-32-2010] [MO: Orie Melvin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MAHER S. AHMED MOHAMED,	:	No. 86 MAP 2009
	:	
Appellant	:	Appeal from the Order and Opinion of the
	:	Commonwealth Court at No. 56 CD 2008,
	:	dated May 4, 2009, transferring to the
v.	:	Dauphin County Court of Common Pleas
	:	the appeal from the decision of the
	:	Department of Transportation at No. Oper.
COMMONWEALTH OF PENNSYLVANIA,	:	# 24376, dated December 11, 2007
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF MOTOR VEHICLES,	:	973 A.2d 453 (Pa. Cmwlth. 2009)
	:	
Appellees	:	ARGUED: May 11, 2010

DISSENTING OPINION

MR. CHIEF JUSTICE CASTILLE **DECIDED: March 26, 2012**

I respectfully dissent. I would affirm the decision of the Commonwealth Court to transfer this appeal of a routine administrative license suspension to the Dauphin County Court of Common Pleas. I am persuaded that the Commonwealth Court correctly assessed the intent of the General Assembly to provide a mechanic whose inspections certificate is suspended by the Department of Transportation ("Department"), see 75 Pa.C.S. § 4726, with an appeal and *de novo* evidentiary hearing in the court of common pleas. The Majority's reading of the statutory language, although certainly reasonable when viewed in isolation, directs a result whose practical consequences are unreasonable and absurd, a result which I believe the General Assembly could not have intended.

Section 4726 provides that "[a]ny mechanic whose certificate has been . . . suspended under this chapter shall have the right to appeal to the court vested with jurisdiction of such appeals by [the Judicial Code]." 75 Pa.C.S. § 4726(c). The court vested with jurisdiction "shall set the matter for hearing . . . and take testimony and examine into the facts of the case" to determine whether the mechanic's suspension should be upheld. Id. The Majority holds that, according to the plain language of Sections 763 and 933 of the Judicial Code, "the court vested with jurisdiction" over Section 4726 appeals is the Commonwealth Court. See 42 Pa.C.S. §§ 763(a), (c), 933(a). The Majority explains that the general rule governing appeals from Commonwealth agencies, like the Department, are within the jurisdiction of the Commonwealth Court. 42 Pa.C.S. § 763. As exceptions to the general rule, Section 933 of the Judicial Code lists several types of Department adjudications appealable to the court of common pleas. Because Section 4726 appeals are not listed in Section 933, the Majority concludes, they are to be decided by the Commonwealth Court.

It is well established that the object of statutory construction is to ascertain and effectuate legislative intent, and that the plain language of the statute is, as a general rule, the best indicator of legislative intent. Commonwealth v. Zortman, 23 A.3d 519, 525 (Pa. 2011) (citing 1 Pa.C.S. § 1921(a)). But, the general rule is subject to several important qualifying precepts, including that the General Assembly "does not intend a result that is absurd, impossible of execution, or unreasonable." Commonwealth v. Shiffler, 879 A.2d 185, 189-90 (Pa. 2005) (alternative construction of seemingly clear mandatory sentencing provision is warranted to avoid absurd incongruity with graduated sentencing scheme) (citing 1 Pa.C.S. § 1922(1), (2)); accord Alekseev v. City Council, 8 A.3d 311, 315-18 (Pa. 2010) (Castille, C.J., dissenting) (alternative construction of public comment provision is warranted to avoid unreasonable practical ramifications of

stricter reading). "Most importantly, the General Assembly has made clear that the rules of construction are not to be applied where they would result in a construction inconsistent with the manifest intent of the General Assembly." Shiffler, 879 A.2d at 190 (citing 1 Pa.C.S. § 1901).

In my respectful view, this matter presents an instance in which an alternate interpretation of seemingly clear statutory language is warranted in order to effectuate the General Assembly's intent. My primary concern is that the process for judicial review of a mechanic's suspension sanctioned by the Majority fails to offer either the mechanic or the Department the opportunity to pursue a traditional appeal of right, *i.e.*, to obtain review of the findings of fact and conclusions of law on the existing record. The Majority approves a statutory scheme, which provides for: an evidentiary hearing before a Department examiner, 67 Pa. Code § 177.651; a *de novo* evidentiary hearing -- in the guise of an "appeal" -- in the Commonwealth Court, see 75 Pa.C.S. § 4726(c), 42 Pa.C.S. §§ 763(a), (c), 933(a); and a right for either party to request leave to appeal the Commonwealth Court's decision to this Court, see 42 Pa.C.S. §§ 724(a), 723, Pa.R.A.P. 1112 (petition for allowance of appeal). According to the parties, the hearing before the Department's examiner is informal and off the record, and no transcript is generated or available for a court's review. Section 4726 then provides the suspended mechanic with the right to **a second** full evidentiary hearing before a court of record. But, after that second "trial" (masquerading as an "appeal"), the mechanic has no opportunity to file a traditional "appeal" of right following either decision; additionally, the Department is provided no opportunity to seek appellate-style review as of right at either

stage of the proceedings. Only review by permission in this Court, following the second, *de novo*, evidentiary hearing is available to the parties.[1]

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[1] The Majority misconstrues my position and responds that appellant is entitled to an administrative process and an appeal of right to the Commonwealth Court, which it says comports with Administrative Agency Law procedures. Majority Slip Op., at 15 n.20, 18 (citing 2 Pa.C.S. §§ 504, 702). According to the Majority, this process should be sufficient to allay my supposed "primary complaint" and to vindicate appellant's principal complaint. While the Majority may be correct that its construction affords this particular appellant the relief he seeks, it is not substantively responsive to my central position concerning the review paradigm, and ultimately raises more questions than it answers.

Under the plain language of Section 4726(c) (judicial review), the appellant is entitled to two trial-like proceedings and no **traditional** type of appeal by right; meanwhile, the Department is deprived of any form of appeal by right. The Majority seemingly believes that application of Administrative Agency Law Section 702 to mechanic's license suspension matters provides for an appeal of right for all parties. I respectfully disagree. Section 702 provides that "[a]ny person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure)." 2 Pa.C.S. § 702. While Section 702 designates in which court the appeal is appropriate and seemingly affords the Department a right of appeal, judicial review of a suspension would nonetheless proceed under the specific provision applicable, Section 4726(c), and the terms I explain above. Section 702 does not change the atypical nature of a mechanic's appeal, and introduces the further complication of affording the Department and mechanics differing processes for appeal of the same adjudication. In my view, the General Assembly could not have intended such a tortured interpretation of the relevant provisions. The Majority does not explain adequately or reconcile its broad pronouncements regarding the Administrative Agency Law with the plain language of Section 4726(c).

I also note that, unlike the informal process currently employed by the Department, the Administrative Agency Law, 2 Pa.C.S. §§ 502-508 (Practice and Procedure of Commonwealth Agencies), requires all testimony to be stenographically recorded and a full and complete record to be kept of the proceedings; requires notice to the Department's representative in the Department of Justice of the Department's proposed action or defense; permits legal representation, examination and cross-examination of witnesses, briefing, and oral argument before the Department's examiner; and mandates that the Department issue adjudications in writing, to contain (continued…)

Neither party focuses on this particular effect of the Majority's "plain language" construction, but it seems apparent that this unusual two-trial "appeal" paradigm is at least problematic, if not flatly inconsistent with Article V, Section 9 of the Pennsylvania Constitution. Section 9 states in relevant part: "[t]here shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court. . . ." PA. CONST. Art. V, § 9. This statutory scheme, according to the plausible plain language interpretation of the Majority, denies both the Department and the mechanic the right to have an appellate tribunal review legal issues. In my view, this result suggests a latent absurdity in the plain language.[2]

Notably, the procedure that would result from rote enforcement of the plain language of Section 4726 would make it a curious anomaly among other judicial review processes for related Vehicle Code adjudications. As the Department explains, the suspensions of the certificates of a mechanic and of the inspection station employing the mechanic are related because the same acts of the mechanic are, in many instances, the factual basis for imposing the suspensions. See Department's Brief at 9; accord 67 Pa. Code §§ 177.602(a)-(b), 177.603. But, unlike a suspended mechanic, the owner of an inspection station with a suspended certificate of appointment may

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findings and the reasons for any adjudication. By its approach and holding here, the Majority establishes a major shift in practice which is incongruent with the relatively minor nature of these cases.

[2] My conclusion regarding the "latent absurdity" in Section 4726(c) is distinct from the Commonwealth Court's finding of a "latent ambiguity" in the same provision. Indeed, I agree with the Majority's criticism of the Commonwealth Court's finding, see Majority Slip Op. at 13, although I also note that the lower court's decision was in large part driven by the parties' theories of the case and briefing.

appeal the Department's adjudication to the court of common pleas of the county where the inspection station is located, see 75 Pa.C.S. § 4724(b), 42 Pa.C.S. § 933(a). After a *de novo* evidentiary hearing in the court of common pleas, the decision is appealable of right to the Commonwealth Court, by either party. 42 Pa.C.S. § 762(a)(3). Finally, either party may request leave to appeal the Commonwealth Court's decision to this Court, as a discretionary matter. 42 Pa.C.S. § 724(a). The process is similar for adjudicating criminal charges against a mechanic arising from the same acts as his suspension. After adjudication in traffic court -- a court not of record -- a mechanic may pursue, as of right, an appeal requiring a *de novo* hearing in the court of common pleas. Pa.R.Crim.P. 460; see, e.g., Commonwealth v. Grey, 445 A.2d 112 (Pa. Super. 1982). Either party then has a right to appeal the common pleas decision to the Superior Court, and may request further leave to appeal the Superior Court decision to this Court. See Grey; 42 Pa.C.S. § 724(a). These processes encompass the conventional approach to judicial review and utilize our courts in their traditional roles: the courts of common pleas as courts of first instance, and the Commonwealth Court as an appellate court conducting error review on the existing record.[3] In my respectful view, I believe it unlikely that the General Assembly intended to single out cases involving mechanics challenging suspensions as instances where appeals of right should not be permitted, despite the constitutional right of appeal.[4]

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[3] There are instances where the Commonwealth Court acts, in effect, as a trial court, and direct appeals lie with this Court; and there are cases where direct appeals from trial courts proceed to this Court (such as capital matters). But, in both of those scenarios, a traditional appeal as of right is preserved. The scheme here provides no traditional manner of appeal, a lacunae which calls for an examination beyond the plain language.

[4] Appellant's principal theory of the case is that his suspension is void *ab initio* because the Department issued its adjudication in his absence and in violation of his (continued…)

Finally, I am further persuaded that the Majority's interpretation is contrary to the General Assembly's intent because of the administrative inefficiencies that the plain language interpretation of the relevant provisions creates. The General Assembly is certainly familiar with the classes of matters on which the Commonwealth Court holds evidentiary hearings, and routine administrative suspensions, equivalent to summary criminal offenses, are generally not among them. See generally 42 Pa.C.S. § 761. Nonetheless, the procedure prescribed by the Majority requires the Commonwealth Court to step out of its traditional role and be tasked to hold evidentiary hearings in these fact-bound, routine matters involving minor offenses. It is unlikely in the extreme that the General Assembly consciously intended to so burden the Commonwealth Court. The General Assembly also is not likely to have intended the dissipation of judicial resources necessitated by the use of dissimilar and parallel judicial processes in related cases which the parties could choose to consolidate for the purposes of evidentiary hearings, if such hearings were in the same forum. The availability of

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due process rights. According to appellant, the Department should have conducted an on the record agency hearing appealable to the Commonwealth Court, in accord with the Commonwealth agency procedures of the Administrative Agency Law. See 2 Pa.C.S. §§ 504, 702. In the context of this claim, appellant also argues that "the alleged 'oversight' was the inclusion of [S]ection 4724(b) of the Vehicle Code within the provisions of Section 933 of the Judicial Code rather than the exclusion of Section 4726(c)." Appellant's Brief at 28 (emphasis omitted). Appellant seems to suggest that the Administrative Agency Law offers the appropriate adjudication and review procedure for Motor Vehicle Code suspensions. In my view, the Commonwealth Court properly rejected appellant's argument in light of Section 4726(c), which includes a specific review procedure, i.e., a *de novo* hearing in a court of record. Moreover, appellant's suggestion that the legislative oversight was to list Section 4724(b) among Section 933 adjudications appealable to the court of common pleas is unavailing in light of the infirmities, described supra, from which the Section 4726(c) procedure suffers.

consolidation would also release litigants and witnesses from the burdens of appearing multiple times, and in different tribunals, and from the risk of inconsistent adjudications.

But, the Majority rejects any requirement of symmetry between the judicial process afforded mechanics facing suspension and the process provided inspection station owners following suspension of their certificate of appointment, according great deference to the plain language of Section 933, no matter how absurd or unreasonable. See Majority Slip Op. at 13-14. In my respectful view, a proper decision here requires a broader perspective and, for the reasons I have explained, the general rule that the plain language of the statute is the best indicator of legislative intent fails us here. In this instance, the effect on the parties' right of appeal, against the background of the full legislative scheme, persuades me that the omission of Section 4726(c) from the list of appeals over which the court of common pleas has jurisdiction was not simply an inconsistency supported by unclear legislative policy or even benign inadvertence, but is demonstrably contrary to the General Assembly's intent in devising the statutory scheme governing the suspension of a mechanic's inspection certificate by the Department.[5]

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[5] I am aware of the Judicial Code provision which states that this Court may reassign classes of matters among the several courts of this Commonwealth "by general rule," subject to the approval or disapproval of the General Assembly. See 42 Pa.C.S. § 503. Thus, after concluding that the intent of the General Assembly was to provide *de novo* hearings in Section 4726(c) appeals in the Commonwealth Court, this Court could act to reassign these appeals to the court of common pleas. But, unless the burden on the Commonwealth Court becomes onerous to an extreme, the justification to undertake this process will be absent, in light of the Majority's conclusion that the intent of the General Assembly was clearly to the contrary.