

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Antonio L. Horne, Sr., :
 :
 : No. 2054 C.D. 2013
 Appellant : Submitted: August 22, 2014
 :
 v. :
 :
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: September 26, 2014

Antonio L. Horne, Sr., appeals from the November 4, 2013, order of the Court of Common Pleas of Dauphin County (trial court) that quashed his statutory appeal from a disqualification of his commercial driving license (CDL) imposed by the Department of Transportation, Bureau of Driver Licensing (DOT). We affirm.

In a letter dated May 31, 2013, DOT notified Horne that pursuant to section 1611(c) of the Vehicle Code, 75 Pa. C.S. §1611(c), his CDL was being disqualified for life due to his refusal to submit to chemical testing on May 22, 2013.¹ (Trial Ct. Op., 1/6/14, at 2.)

¹ Although not part of the record before us, DOT states that on June 5, 2013, it mailed Horne a notice changing the lifetime CDL disqualification to a one-year CDL disqualification. (DOT's Br. **(Footnote continued on next page...)**)

In a separate letter, also dated May 31, 2013, DOT further notified Horne that his driving privilege was being suspended for 18 months in accordance with section 1547(b)(1)(ii) of the Vehicle Code, 75 Pa. C.S. §1547(b)(1)(ii), due to his refusal to submit to chemical testing on May 22, 2013. (Trial Ct. Op., 1/6/14, at 2.)

On June 28, 2013, Horne appealed the 18-month driving privilege suspension. On August 12, 2013, Horne filed an “Amendment to Appeal Filed,” in which Horne attempted to amend his appeal of the 18-month driving privilege suspension to include an appeal of his CDL disqualification. On October 11, 2013, DOT filed a motion to quash Horne’s appeal of the CDL disqualification because it was untimely filed. (*Id.*)

By order dated November 4, 2013, the trial court granted DOT’s motion to quash.² The trial court determined that Horne had 30 days to appeal DOT’s May 31, 2013, notice of CDL disqualification. Because Horne did not attempt to appeal the CDL disqualification until August 12, 2013, well past the 30-day appeal period, the trial court concluded that it did not have subject matter jurisdiction. (*Id.* at 2-3.)

(continued...)

at 4, 5 n.4.) Horne did not appeal either the May 31, 2013, or June 5, 2013, notice of CDL disqualification within 30 days.

² By order dated November 6, 2013, the trial court dismissed Horne’s appeal of his 18-month driving privilege suspension. Although Horne’s notice of appeal identifies the November 6, 2013, order, it is the trial court’s November 4, 2013, order that quashed Horne’s statutory appeal from the disqualification of his commercial driving license.

The trial court also determined that Horne's *pro se* status did not excuse the late appeal. Moreover, the trial court found that Horne did not allege that fraud or a breakdown in the administrative or judicial process caused the delay in filing the appeal. (*Id.* at 4.) This appeal followed.³

Horne argues that the timely appeal of his driving privilege suspension carried with it the timely appeal of his CDL disqualification because DOT's notices made little distinction between the two. We disagree.

In accordance with section 1550 of the Vehicle Code, 75 Pa. C.S. §1550, a person whose CDL has been disqualified by DOT has the right to appeal the disqualification. Pursuant to sections 5571(b) and 5572 of the Judicial Code, 42 Pa. C.S. §§5571(b) and 5572, a licensee has 30 days from the mailing date of DOT's disqualification notice to file an appeal with the trial court. "Appeals filed beyond the 30-day appeal period are untimely and deprive the common pleas court of subject matter jurisdiction over such appeals." *Department of Transportation, Bureau of Driver Licensing v. Maddesi*, 588 A.2d 580, 582 (Pa. Cmwlth. 1991).

Although Horne timely appealed his driving privilege suspension, he did not timely appeal his CDL disqualification. As such, the trial court concluded that it lacked subject matter jurisdiction over the CDL disqualification appeal and properly granted DOT's motion to quash.

³ This court's review is limited to determining whether the necessary findings of fact are supported by competent evidence of record and whether the trial court abused its discretion or committed an error of law. *Hudson v. Department of Transportation, Bureau of Driver Licensing*, 830 A.2d 594, 597 n.5 (Pa. Cmwlth. 2003).

A court may permit a licensee to appeal *nunc pro tunc* only where the licensee's failure to file a timely appeal resulted from extraordinary circumstances involving fraud or a breakdown in the administrative or judicial process. *Department of Transportation, Bureau of Driver Licensing v. Grasse*, 606 A.2d 544, 546 (Pa. Cmwlth. 1991). Horne does not complain of a breakdown in the administrative or judicial process. Rather, Horne claims that at the time he received the suspension notices, he was not represented by counsel and did not know that he needed to file an appeal as to each notice.

This court understands the difficulties a *pro se* litigant endures. However, Horne “must understand that [he] assumed the risk that [his] lack of legal knowledge might prove to be [his] undoing.” *Hinds v. Department of Transportation, Bureau of Motor Vehicles*, 740 A.2d 1217, 1219 (Pa. Cmwlth. 1999). Horne's unfamiliarity with appellate procedure is insufficient to warrant an appeal *nunc pro tunc*. *Id.*

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 26th day of September, 2014, we hereby affirm the November 4, 2013, order of the Court of Common Pleas of Dauphin County.

ROCHELLE S. FRIEDMAN, Senior Judge