

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tedi J. Perez	:	
	:	
v.	:	No. 774 C.D. 2014
	:	Submitted: September 22, 2014
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: October 30, 2014

The Pennsylvania Department of Transportation, Bureau of Motor Vehicles (PennDOT) appeals from an order of the Court of Common Pleas of Allegheny County (trial court) that sustained the appeal of Tedi J. Perez (Perez) from the three-month suspension imposed on her registration pursuant to Section 1786(d) of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. §1786(d). PennDOT argues the trial court erred in rescinding the suspension because Perez failed to maintain financial responsibility on her vehicle for a nine-day period, and thus violated the statute. PennDOT asserts it met its *prima facie* burden of proof, and that the trial court erred in finding that Perez did not operate the vehicle during the lapse. Upon review, we vacate and remand to the trial court for a continued hearing.

I. Background

The financial responsibility on Perez's 2011 Toyota sedan (Vehicle) lapsed for nonpayment. Perez's financial responsibility carrier, GEICO Casualty Company (GEICO), terminated the insurance on the Vehicle effective October 30, 2013. After receiving notice of the termination, PennDOT mailed notice dated December 26, 2013, to Perez suspending her registration for three months pursuant to Section 1786(d) of the MVFRL. Reproduced Record (R.R.) at 15a-16a. However, GEICO notified PennDOT by letter dated December 23, 2013, that coverage was in effect as of November 9, 2013 through June 10, 2014. R.R. at 20a. Perez appealed the notice of suspension to the trial court.

The trial court held a de novo hearing where Perez, unrepresented by counsel, responded to the trial court's inquiries. The Honorable Lester G. Nauhaus conducted the hearing. PennDOT submitted Perez's certified registration record as evidence, indicating the termination of coverage on October 30, 2013. Although the Vehicle was insured within 10 days of the lapse in coverage, PennDOT argued Perez operated the Vehicle during that lapse.

The trial court sustained the appeal at the close of the hearing. The trial court subsequently directed PennDOT to file a concise statement of the errors complained of on appeal, which it did. See Pa. R.A.P. 1925(b). In its 1925(b) Statement, PennDOT asserted the trial court erred in not finding that PennDOT met its *prima facie* burden. It also argued that the trial court erred in finding that Perez met her burden of providing clear and convincing evidence that the Vehicle was not operated during the lapse in coverage. To the contrary, PennDOT

contended that, at the hearing, Perez twice admitted that she operated the Vehicle during the nine-day lapse.

The Honorable Robert C. Gallo, Senior Judge,¹ issued an opinion for the trial court, supporting its order in Perez’s favor. The trial court credited Perez’s testimony that she did not operate the Vehicle during the lapse.

PennDOT then filed a notice of appeal to this Court.²

II. Discussion

PennDOT argues it met its burden to prove a *prima facie* case of a statutory violation. It also contends substantial evidence shows Perez operated her Vehicle during the lapse in coverage.

Under the MVFRL, every motor vehicle that is operated, or currently registered, is required to be covered by insurance. 75 Pa. C.S. §1786(a). Section 1786(d)(1) of the MVFRL provides in pertinent part: “[PennDOT] 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” 75 Pa. C.S. §1786(d)(1).

¹ Senior Judge Gallo did not preside over the hearing or hear Perez’s testimony first-hand.

² Our review of a trial court order sustaining a statutory appeal from a suspension of registration is limited to determining whether the necessary findings of fact were supported by substantial evidence and whether the court committed a reversible error of law or abused its discretion. Greenfield v. Dep’t of Transp., Bureau of Motor Vehicles, 67 A.3d 198 (Pa. Cmwlth. 2013).

PennDOT has the initial burden of showing that a registrant's vehicle is registered or is a type of vehicle that must be registered, and that it received notice that the registrant's financial responsibility coverage was terminated. 75 Pa. C.S. §1786(d)(3). PennDOT may satisfy this burden by certifying its receipt of documents or of an electronic transmission from an insurance company stating that a registrant's financial responsibility coverage was terminated. Section 1377(b)(2) of the Vehicle Code, 75 Pa. C.S. §1377(b)(2).

When submitted, as in this case, the foregoing evidence (1) constitutes *prima facie* proof that the termination of an insurance policy was effective under the laws of the Commonwealth, and (2) creates a presumption that the licensee's vehicle lacked the required financial responsibility coverage. 75 Pa. C.S. §1786(d)(3)(ii). The MVFRL expressly limits the trial court's discretion to examining these two factors. Fagan v. Dep't of Transp., Bureau of Motor Vehicles, 875 A.2d 1195 (Pa. Cmwlth. 2005).

It is undisputed³ that PennDOT submitted sufficient evidence to make its *prima facie* case that termination of Perez's coverage was effective and created a presumption that the Vehicle lacked coverage. Thus, the burden shifted to Perez.

The presumption that a vehicle lacked required insurance coverage may be overcome by presenting "clear and convincing evidence that the vehicle was insured at all relevant times." 75 Pa. C.S. §1786(d)(3)(ii). Clear and convincing evidence is defined as "testimony that is so clear, direct, weighty, and

³ Perez was precluded from filing a brief by this Court's order dated September 8, 2014.

convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” Fagan, 875 A.2d at 1199.

To successfully defend an appeal of a vehicle registration suspension, 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 one of the three statutorily defined defenses outlined in Section 1786(d)(2). Fell v. Dep’t of Transp., Bureau of Motor Vehicles, 925 A.2d 232 (Pa. Cmwlth. 2007) (en banc). Section 1786(d)(2)(i) provides a valid defense when “the owner or registrant proves to the satisfaction of [PennDOT] 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 ... the vehicle during the period of lapse.” 75 Pa. C.S. §1786(d)(2)(i) (emphasis added).

Here, Perez submitted a letter from GEICO showing the effective date of insurance began within 10 days of the termination of financial responsibility. Accordingly, the evidence established the lapse in coverage was less than 31 days. However, in addition to obtaining coverage within the 31-day grace period, Perez must establish that she did not operate the Vehicle during the lapse by clear and convincing evidence. Fagan.

The trial court concluded Perez produced clear and convincing evidence as was required to overcome the statutory presumption. Specifically, the trial court credited Perez’s testimony in response to inquiries that she did not operate the Vehicle during the lapse, which is a valid defense. See 75 Pa. C.S.

§1786(d)(2)(i). The trial court stated: “[Perez] testified that she did not drive the [V]ehicle during that time period.” Tr. Ct., Slip Op., 6/10/14, at 2. However, our review of the transcript reveals that Perez attempted to provide a full explanation earlier in her testimony, and she was not able to do so. The following is an excerpt from the trial transcript:

[PennDOT’s counsel]: I would like to ask her a couple questions about whether she drove the vehicle.

[Trial Court]: She didn’t drive the vehicle, did you?

[PennDOT’s counsel]: Did you drive your vehicle?

[Trial Court]: No, you didn’t drive your vehicle, did you? I’m talking to you. Answer my question. You didn’t drive your vehicle during that period of time [the lapse], did you?

[Perez]: Actually, I did.

[Trial Court]: Oh, God.

[Perez]: I’m not going to say no because what happened was --

[Trial Court]: I’m going to ask you one more time: Did you drive your vehicle during that period of time?

[Perez]: He said that I didn’t [gesturing to husband].

[Trial Court]: She wants – this guy back here sitting there, he wants to talk to you. Go see him and talk to him. Did you drive your car during that period of time.

[Perez]: No.

[Trial Court]: Thank you.

[PennDOT’s counsel]: How did you get around?

[Trial Court]: She probably got around with the bus didn’t you?

[Perez]: Yes.

[Trial Court]: Thank you.

R.R. at 9a-10a (emphasis added).

There is some ambiguity in the testimony regarding whether Perez operated the Vehicle during the lapse so as to warrant registration suspension here. Further, it appears that Perez was unable to complete her testimony. It is possible that Perez could have provided testimony that she did not operate the vehicle other than to move it in a driveway, or out of a garage, or a number of scenarios that would not have involved operation of the Vehicle on the roadways of the Commonwealth.⁴ See 75 Pa. C.S. §1786(f) (within the same subsection of the MVFRL; stating, “Any owner of a motor vehicle for which the existence of financial responsibility is a requirement for its legal operation shall not operate the motor vehicle or permit it to be operated upon a highway of this Commonwealth without the financial responsibility required by this chapter.”) (emphasis added).

⁴ A violation of Section 1786(d)(1) of the MVFRL occurs by authorizing operation of an uninsured vehicle on the Commonwealth’s highways. Cangemi v. Dep’t of Transp., Bureau of Driver Licensing, 8 A.3d 393, 399 (Pa. Cmwlth. 2010) (*en banc*). It is the operation of a vehicle on the highway that triggers the financial responsibility requirement. Dep’t of Transp., Bureau of Driver Licensing v. Lear 616 A.2d 185 (Pa. Cmwlth. 1992) (construing Section 1301 of the Vehicle Code, 75 Pa. C.S. §1301, and Section 1786 of the MVFRL, 75 Pa. C.S. §1786, to require registration and insurance on a dirt bike). Interpreting the defense to coverage to require operation on a highway is consistent with the statutory purpose. Cangemi, 8 A.3d at 400 (“[i]n enacting the MVFRL, the Legislature intended to provide a minimal level of compensation for victims of motor vehicle accidents.”); see also Pa. Nat’l Mut. Cas. Co. v. Black, 916 A.2d 569, 580 (Pa. 2007) (“the enactment of the MVFRL reflected a legislative concern for the spiraling consumer cost of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways.”); Burdick v. Erie Ins. Grp., 946 A.2d 1106, 1111 (Pa. Super. 2008) (quoting Black).

Given the incomplete testimony, it is not possible for this Court to conduct effective appellate review. See, e.g., Carter v. Dep't of Transp., Bureau of Motor Vehicles (Pa. Cmwlth., No. 2080 C.D. 2012, filed June 24, 2013) (remand is appropriate to permit unrepresented registrant to complete testimony and provide evidence supporting a defense to the registration requirements). In addition, the matter was reassigned to another trial judge to issue the opinion. Accordingly, it is unclear whether Senior Judge Gallo was present to observe Perez and discern whether she had an opportunity to present her defense. He may have been relying on only the incomplete transcript that is before this Court. These circumstances, in combination, impede appellate review.

III. Conclusion

In accordance with the foregoing opinion, we vacate the trial court's order and remand to the trial court to conduct a continued hearing in which Perez is provided a full and fair opportunity to complete her testimony regarding her alleged operation of the Vehicle during the lapse.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 30th day of October, 2014, the Order of the Court of Common Pleas of Allegheny County is hereby **VACATED** and the matter is **REMANDED** to the trial court to continue the hearing in accordance with this opinion. The Court of Common Pleas shall use its best efforts to schedule the continued hearing within ninety (90) days to allow Tedi J. Perez to complete her testimony.

Jurisdiction relinquished.

ROBERT SIMPSON, Judge