

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur & Candice Brinson	:	
	:	
	:	
v.	:	No. 845 C.D. 2013
	:	Submitted: November 1, 2013
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
	:	
Appellant	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: December 12, 2013

This matter is an appeal by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (the Department) from an order of the Court of Common Pleas of Lancaster County (trial court) sustaining the appeal of Arthur and Candice Brinson (the Brinsons) from a three-month suspension of the registration of their 1999 Infinity station wagon (the Vehicle) that had been imposed by the Department under Section 1786(d) of the Vehicle Code, 75 Pa. C.S. § 1786(d). Because the trial court exceeded its authority under Section 1786(d) of the Vehicle Code and acted in contravention of this Court’s well-established precedents, we reverse.

On November 9, 2012, Agency Insurance Company of Maryland canceled the liability insurance policy that covered the Vehicle. (Trial Court Op. at 1; Hearing Transcript (H.T.) at 2-5, Reproduced Record (R.R.) at 20a-23a; Commonwealth Ex. 1, R.R. at 31a.) The insurance was canceled for non-payment of premium. (Trial Court Op. at 1; H.T. at 3, 5, R.R. at 21a, 23a; Commonwealth Ex. 1, R.R. at 31a.) The Department, by letter dated November 21, 2012, advised the Brinsons that it had been notified of this cancellation and requested proof of insurance. (Trial Court Op. at 1; Commonwealth Ex. 1, R.R. at 33a-34a.) The Brinsons did not submit any proof of insurance in response to this request. (Trial Court Op. at 1; H.T. at 4-6, R.R. at 22a-24a.) As a result, the Department, on January 8, 2013, mailed an official notice to the Brinsons that the registration of the Vehicle was being suspended for a period of three months, effective February 12, 2013, pursuant to Section 1786(d) of the Vehicle Code. (Trial Court Op. at 1-2; Commonwealth Ex. 1, R.R. at 29a-30a.)

The Brinsons timely filed a statutory appeal with the trial court, which held a *de novo* hearing on April 23, 2013. At the hearing, the Department presented certified documents showing that the insurance on the Vehicle had been canceled on November 9, 2012. The Brinsons admitted that the insurance had been terminated on November 9, 2012 for failure to pay the premium and that the Vehicle was uninsured for 36 days until they obtained new insurance on December 15, 2012. (H.T. at 5-6, R.R. at 23a-24a.) The Brinsons did not dispute that they knew of the cancellation and that the Vehicle was uninsured, but contended that they had been unable to pay the premium and afford replacement insurance because of a delay in receiving unemployment compensation benefits. (*Id.* at 5, R.R. at 23a.) The Brinsons also argued that they need the Vehicle to take their

daughter to school and for transportation to medical appointments. (*Id.* at 5-6, R.R. at 23a-24a.)

Despite finding that the Vehicle had been uninsured for 36 days and that the Brinsons did not establish any defense to suspension permitted by the Vehicle Code (Trial Court Op. at 2-3), the trial court reversed the registration suspension. The trial court in its opinion recognized that it “did not have the equitable authority to sustain the Brinsons’ appeal,” but it nonetheless did so because it viewed the Brinsons as only “6 days late in reinstating their insurance,” and because it found that their lapse in insurance was due to financial difficulties and that inability to use the Vehicle for three months would cause them hardship. (*Id.* at 3-4) (emphasis omitted). The Department’s timely appeal to this Court followed.¹

Section 1786(a) of the Vehicle Code provides that “[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility.” 75 Pa. C.S. § 1786(a). Section 1786(d) of the Vehicle Code further provides:

(d) Suspension of registration and operating privilege.--

(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

¹ This Court’s review of a trial court order sustaining an appeal from the suspension of vehicle registration for failure to insure is limited to determining whether the trial court’s findings are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. *Banks v. Department of Transportation, Bureau of Motor Vehicles*, 856 A.2d 294, 295 (Pa. Cmwlth. 2004).

registrant has operated or permitted the operation of the vehicle without the required financial responsibility. The operating privilege 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.

75 Pa. C.S. § 1786(d)(1) (emphasis added). Section 1786(d) expressly addresses the issue of brief lapses in insurance coverage and provides that this three-month suspension of registration does not apply if “[t]he owner or registrant proves ... 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.” 75 Pa. C.S. § 1786(d)(2)(i) (emphasis added). If the lapse in insurance coverage exceeds 30 days, however, the three-month suspension of registration is mandatory.² *Greenfield v. Department of Transportation, Bureau of Motor Vehicles*, 67 A.3d 198, 201 (Pa. Cmwlth. 2013); *Banks v. Department of Transportation, Bureau of Motor Vehicles*, 856 A.2d 294, 296 (Pa. Cmwlth. 2004).

It was undisputed that the Brinsons allowed their insurance to lapse and that they left the Vehicle without the required financial responsibility coverage from November 9, 2012 to December 15, 2012, a period of 36 days. Given these facts, the trial court had no authority to reverse the Department’s three-month suspension of the Vehicle’s registration. *Greenfield*, 67 A.3d at 201-02; *Banks*,

² Section 1786(d) provides two other exemptions from the mandatory three-month suspension of registration, for members of the armed services on temporary, emergency duty and for seasonal registrations that are not in effect during the lapse. 75 Pa. C.S. § 1786(d)(ii), (iii). Neither of these exemptions applies here.

856 A.2d at 296-97; *Pray v. Department of Transportation, Bureau of Motor Vehicles*, 708 A.2d 1315, 1317 (Pa. Cmwlth. 1998).

Neither of the trial court's justifications for its decision has merit.³ Contrary to the trial court's assertion, the Brinsons were not a mere six days late in obtaining new insurance for the Vehicle after their coverage had been canceled; they were 36 days late. Had the Brinsons been only six days late, they would have had a defense to the suspension under Section 1786(d)(2)(i), provided that they refrained from driving the Vehicle while it was uninsured. The legislature has made the judgment in Section 1786(d) of the Vehicle Code that the exemption for brief lapses in insurance coverage should be limited to lapses of 30 days or less. The trial court cannot ignore the statute and create a longer grace period.

Nor do the equitable factors found by the trial court permit it to set aside the suspension of registration. Although we are sympathetic to the Brinsons' financial difficulties and the burden that the statutorily mandated three-month loss of use of the Vehicle may cause them, it is well established that the courts have no discretion to consider such factors in an appeal from a suspension of registration under Section 1786(d) of the Vehicle Code. *Greenfield*, 67 A.3d at 202; *Banks*, 856 A.2d at 297. "This is not a case where the trial court has discretion to consider the hardship and other equitable factors involved. A three-month suspension is mandatory." *Banks*, 856 A.2d at 297. As this Court has recently reaffirmed,

[w]hile we acknowledge that strict application of the mandatory registration suspension provisions of section 1786 will inevitably create hardship, it is now well-settled that

³ The Brinsons did not file a brief in this matter and were precluded from filing a brief after failing to comply with this Court's order of September 23, 2013 directing them to file a brief within 14 days.

courts have no discretion to decide such matters based on equitable considerations.

Greenfield, 67 A.3d at 202.

Accordingly, we reverse and reinstate the three-month suspension of the registration of the Brinsons' 1999 Infinity station wagon.

JAMES GARDNER COLINS, Senior Judge

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	:	
Appellant	:	

ORDER

AND NOW, this 12th day of December, 2013, the order of April 23, 2013 of the Lancaster County Court of Common Pleas in the above-captioned case is REVERSED. The suspension of registration imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles is hereby reinstated.

JAMES GARDNER COLINS, Senior Judge