

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Susan Marie Bon, :
Appellant :
v. :
Commonwealth of Pennsylvania, : No. 1277 C.D. 2008
Department of Transportation : Submitted: December 26, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: January 28, 2009

Susan Marie Bon (Bon) appeals the order of the Court of Common Pleas of Butler County (trial court) that denied her statutory appeal from the Pennsylvania Department of Transportation, Bureau of Motor Vehicles’ (DOT) three month suspension of her operating privilege pursuant to Section 1786(d) of the Vehicle Code (Code), 75 Pa.C.S. §1786(d).¹

¹ Section 1786(d)(1) of the Code provides:

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

By official notice dated February 7, 2008, DOT informed Bon that her operating privilege was to be suspended for three months, effective March 13, 2008, because “you failed to produce proof of financial responsibility on 12/06/07, the date of your traffic offense.” Notice of Suspension, February 7, 2008, at 1; Reproduced Record (R.R.) at 8b. Bon appealed to the trial court.

During the June 20, 2008, *de novo* hearing, DOT introduced into evidence a packet of documents that established Bon’s conviction for violating Section 1786(f) of the Code, 75 Pa.C.S. §1786(f) (relating to operation of a motor vehicle without required financial responsibility) on December 6, 2007, and also established that she was notified of her three month suspension.

Trooper Hillary McCall (Trooper McCall) of the Pennsylvania State Police testified that she was called to a crash on December 6, 2007, and observed a Ford truck operated by Bon “burnt up in the middle of the roadway.” Notes of Testimony, June 20, 2008, (N.T.) at 5; R.R. at 17b. Trooper McCall explained that the incident was considered a crash because the vehicle was on the roadway and caught fire. N.T. at 7; R.R. at 19b. Trooper McCall determined that prior to its catching fire, the vehicle was operated on Moore Road. N.T. at 7; R.R. at 19b. Bon told Trooper McCall that she had left her house and was driving the truck to her husband’s house at his request. Bon also told Trooper McCall that her husband Jeffrey Bon (Mr. Bon) owned the truck. Mr. Bon told Trooper McCall the same thing. N.T. at 8; R.R. at 20b. Trooper McCall’s investigation revealed that Mr. Bon purchased the truck from James Kee. N.T. at 9; R.R. at 21b. Trooper McCall requested that the Bons produce proof of financial responsibility which they failed

to do as the vehicle had an expired registration, expired insurance, and expired inspection. N.T. at 10; R.R. at 22b. Mr. Bon reported that he did not have insurance on the truck. The Bons failed to produce proof of insurance on December 6, 2007. N.T. at 11; R.R. at 23b. On cross-examination, Trooper McCall stated that Mr. Bon resided at 1220 Eau Claire Road, Harrisville, Pennsylvania, while Bon resided at 210 Venango Road, Boyers, Pennsylvania. N.T. at 13; R.R. at 25b.

Bon testified that Mr. Bon purchased the truck earlier in 2007, and had driven it to her residence. Bon first drove the truck on December 6, 2007, when Mr. Bon “asked me to bring his truck over to tow him up the hill because he was bringing wood to my house.” N.T. at 15-16; R.R. at 27b-28b. Bon and Mr. Bon were in the process of getting divorced. N.T. at 16; R.R. at 28b. At the time of the hearing, Bon and Mr. Bon were still married. N.T. at 17; R.R. at 29b. In response to questioning from the trial court, Bon explained that she and Mr. Bon separated in August 2007, and that Mr. Bon purchased the truck “probably like the year before, in October [2006].” N.T. at 20-21; R.R. at 32b-33b. Bon testified that a set of keys was left in the truck and that she did not know the truck was uninsured. N.T. at 21-22; R.R. at 33b-34b.

The trial court denied Bon’s appeal. The trial court determined:

Based upon the facts presented at the hearing on June 20, 2008, the Appellant [Bon] was an owner of the uninsured truck, not based upon being a record owner nor upon the Divorce Code, but upon other indicia of ownership. The first indicium of ownership was that the truck was located at the marital residence which was then possessed by the Appellant [Bon]. Secondly, although the

Appellant [Bon] did not drive the truck before the date she was cited, she could have easily done so because the keys were located inside of the vehicle. It must also be pointed out that the Appellant [Bon] did not need to have her own set of keys in order to be an owner of this vehicle because the keys were inside of the truck. The Court's decision did not focus upon how or when the truck was purchased, but rather upon whether the facts illustrated that the Appellant [Bon] was an owner of the truck.

Trial Court Opinion, July 23, 2008, at 4-5.

Bon contends that the trial court erred when it suspended her operating privileges for three months for violation of Section 1786(d) of the Code, 75 Pa.C.S. §1786(d).²

In order to sustain a suspension of a licensee's operating privilege pursuant to Section 1786(d) of the Code, 75 Pa.C.S. §1786(d), DOT must establish the following: 1) the vehicle was required to be registered in the Commonwealth; 2) financial responsibility was not maintained on the vehicle; and 3) the licensee operated the vehicle while it was not covered by financial responsibility. Richards v. Department of Transportation, Bureau of Driver Licensing, 767 A.2d 1133 (Pa. Cmwlth. 2001). An important part of DOT's burden is producing an official record of the conviction to support the suspension. The introduction of the certified record of the conviction into evidence creates a rebuttable presumption that the licensee was convicted of the offense. The burden then shifts to the

² This Court's review is limited to a determination whether necessary findings of fact are supported by substantial evidence of record, whether the trial court committed an error of law, and whether the trial court abused its discretion. Todd v. Department of Transportation, Bureau of Driver Licensing, 555 Pa. 193, 723 A.2d 655 (1999).

licensee to establish by clear and convincing evidence the presumption of correctness raised by DOT's records. If the licensee fails to do so, then the presumption becomes conclusive. Richards.

Here, DOT introduced a packet of documents which indicated that Bon was convicted for violating Section 1786(f) for operating a vehicle without required financial responsibility. Through the introduction of these documents, DOT established the rebuttable presumption that 1) the vehicle was required to be registered in the Commonwealth, 2) financial responsibility was not maintained on the vehicle, and 3) the licensee operated the vehicle while it was not covered by insurance.

The burden then shifted to Bon to rebut the presumption by clear and convincing evidence. Bon did not attempt to refute the convictions. Bon admitted that she drove the vehicle and did not dispute that there was no insurance on the vehicle. However, Bon asserted that she was not the owner of the vehicle and that the owner of the vehicle was her estranged husband. The trial court did not accept this argument.

Before this Court, Bon asserts that while the vehicle was purchased during the marriage, it was purchased by her husband with his money. Her husband parked the vehicle at her residence with the keys inside. Bon was estranged from her husband at the time of the violation. Until the date of the violation, Bon never drove the uninsured vehicle and did not know it was

uninsured. Further, on the date of the violation, Bon only drove the vehicle as a favor to her husband.

In Habbyshaw v. Department of Transportation, Bureau of Driver Licensing, 683 A.2d 1281 (Pa. Cmwlth. 1996), this Court addressed a situation similar to the one presented to the Court here. Ronald Habbyshaw (Habbyshaw) was stopped by a Meadville City police officer on March 12, 1995, while driving a car registered in his wife's name. The car was not insured. Habbyshaw was cited for violating Section 1786(f) of the Code. Habbyshaw pled guilty to the summary offense of operating a motor vehicle without proof of financial responsibility and paid a fine and costs. DOT suspended Habbyshaw's operating privilege for three months. Habbyshaw appealed the suspension to the Court of Common Pleas of Crawford County on the basis that he was neither the owner nor the registrant of the vehicle in which he was stopped. The Court of Common Pleas of Crawford County sustained the appeal because it determined that he was not an "owner of the vehicle so he could not be subjected to a suspension for a violation of Section 1786(f) of the Code." Habbystraw, 683 A.2d at 1281-1282.

DOT appealed to this Court and contended that the Court of Common Pleas of Crawford County erred when it determined that Habbystraw was not the owner because he pled guilty to the violation of 1786(f) and should be estopped from claiming that he was not the owner and that based upon the facts of the case Habbystraw was an owner because it was purchased by his wife during their marriage and he had free access to it. Habbystraw, 683 A.2d at 1282.

This Court reviewed the applicable case law, agreed with DOT, and reversed:

We have previously recognized that under this definition there may be both a legal and an equitable owner of a motor vehicle. . . .

The trial court in the case at bar looked beyond title ownership to consider whether Appellee [Habbystraw] had a property interest in his wife's car. In concluding that he did not, the court applied and distinguished a line of Superior Court decisions interpreting the Vehicle Code definition of owner.

. . . .
We now apply the Superior Court's reasoning in *Allen* [v. Merriweather, 605 A.2d 424 (Pa. Super. 1992), *petition for allowance of appeal denied*, 533 Pa. 622, 620 A.2d 489 (1993)]³ and *Bethea* [v. Pennsylvania Financial Responsibility Assigned Claims Plan, 595 A.2d 192 (Pa. Super. 1991)] to evaluate the ownership of a motor vehicle for purposes of Section 1786 of the MVFRL [Code]. In this regard, we must determine whether Appellee [Habbystraw] had a property right to his wife's car and demonstrated sufficient 'indicia of ownership' so as to be subject to the penalties of the MVFRL [Code].

. . . . We agree with DOT, however, that the facts presented demonstrate sufficient indicia of ownership to establish, as a matter of law, that both Appellee [Habbystraw] and his wife were 'owners' of the car in question.

³ In *Allen v. Merriweather*, 605 A.2d 424 (Pa. Super. 1992), our Pennsylvania Superior Court determined whether a husband is entitled to receive first party benefits when he suffers injuries in a motor vehicle accident while operating an uninsured vehicle titled only in his wife's name. Our Superior Court determined that because the husband, Bryant Allen, had a property interest in the vehicle under marital property law and because there were the following indicia of ownership: Bryant Allen resided with his wife on the date of the accident, his wife allowed him to drive the vehicle which he knew was uninsured, and he was coming back from a personal errand when the accident occurred, he was an owner for purposes of the Code. *Allen*, 605 A.2d at 426-427.

First of all, as found by the trial court, the car was acquired by Appellee's [Habbystraw] wife during the marriage with Appellee [Habbystraw]. . . . Accordingly, under Allen and Bethea, the car is marital property, and Appellee [Habbystraw] has a property right to it. In addition, the record clearly demonstrates de facto indicia of ownership with regard to Appellee [Habbystraw]. At the time of his traffic stop, he and his wife were married and living together. The car Appellee [Habbystraw] was driving was the only vehicle in the household, and he was the only licensed driver. Appellee [Habbystraw] was on a personal errand at the time, a job interview, and he had not asked his wife's permission to use the car for that errand. He had access to the car and drove it knowing it was uninsured.

These facts are sufficient under the Superior Court's reasoning in Allen, to establish indicia of ownership necessary to satisfy the test for determining whether an operator is also an 'owner' within Section 102 of the MVFRL [Code].

Habbystraw, 683 A.2d at 1282-1284.

Here, the trial court determined that Bon was an owner of the vehicle because of the indicia of ownership that the vehicle was parked at her residence and that even though she had not driven it before the date of her violation she had the ability to do so because the keys were kept in the vehicle. Further, although the trial court did not emphasize it, Bon testified that her husband purchased the vehicle while they were still residing together and still married. Although this case is not precisely on all fours with Habbystraw in that Bon and her husband were not living together at the time of the violation and Bon did not know that the vehicle was uninsured, the present matter is similar to Habbystraw in that the vehicle was marital property and there were specific indicia of ownership to lead the trial court

to conclude that Bon was an owner of the vehicle for purposes of the Code. This Court must conclude the trial court did not err.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 28th day of January, 2009, the order of the Court of Common Pleas of Butler County in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge