

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Melanie A. Mathianas | : | |
| | : | |
| v. | : | |
| | : | |
| Commonwealth of Pennsylvania, | : | |
| Department of Transportation, | : | |
| Bureau of Motor Vehicles, | : | No. 1797 C.D. 2009 |
| Appellant | : | Submitted: March 26, 2010 |

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 4, 2010

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (DOT), appeals from the August 20, 2009 order of the Court of Common Pleas of Fayette County (trial court) sustaining the appeal of Melanie A. Mathianas (Mathianas), where she contested the three-month suspension of her vehicle registration pursuant to Section 1786(d) of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S. § 1786(d) (relating to suspension of registration and operating privilege). The sole issue presented here is whether the trial court committed an error of law when it sustained Mathianas' appeal. For the reasons that follow, we reverse the order of the trial court.

Effective January 8, 2009, Encompass Home and Auto Insurance Company (Encompass) terminated the motor vehicle insurance policy on Mathianas' 2002 Chrysler sedan for failure to pay the premium. As required by Section 1786(e)

of the MVFRL, 75 Pa.C.S. § 1786(e) (relating to obligations upon lapse, termination or cancellation of financial responsibility) and 67 Pa. Code § 221.3 (relating to obligations upon termination of insurance), Encompass notified DOT of the termination effective January 8, 2009. In response to the notification, DOT sent Mathianas official notice on March 11, 2009 that her vehicle registration would be suspended effective April 15, 2009. Mathianas filed a timely appeal of the suspension with the trial court.

At the *de novo* hearing before the trial court, Mathianas testified that, in December of 2008, she received notice from Encompass that failure to pay her insurance premium would result in the termination of her policy effective January 8, 2009. She mailed her insurance payment, but it was not received by Encompass until January 9, 2009. Mathianas claimed that it was not until she contacted Encompass on February 6, 2009 to be sure she was still covered, that she was told that her coverage had been terminated. She obtained insurance coverage from Progressive Advanced Insurance Company which became effective February 10, 2009. Mathianas received a statement of transactions from Encompass as of February 12, 2009, which she deemed a written cancellation notice. DOT presented certified documents indicating that Mathianas' vehicle was of the type that should have been registered, and that Encompass notified DOT of the termination. The trial court sustained Mathianas' appeal on the basis that she acted promptly in getting insurance coverage for her vehicle within 30 days of being notified of the termination of her Encompass policy. DOT appealed the trial court's order to this Court.¹

¹ "This Court's scope of review of a vehicle registration suspension is limited to determining whether the trial court committed an error of law, or manifestly abused its discretion in reaching its decision." *Webb v. Dep't of Transp., Bureau of Motor Vehicles*, 870 A.2d 968, 971-72 (Pa. Cmwlth. 2005).

DOT argues that the trial court erred as a matter of law by imposing equitable considerations and sustaining Mathianas' appeal under circumstances in which it was clear and undisputed that Mathianas' vehicle was uninsured for a period of 33 days. We agree.

Section 1786(a) of the MVFRL, 75 Pa.C.S. § 1786(a), requires 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.” Section 1786(d)(1) of the MVFRL, 75 Pa.C.S. § 1786(d)(1), requires DOT to “suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured” In order to sustain a suspension on these grounds, Section 1786(d)(3) of the MVFRL, 75 Pa.C.S. § 1786(d)(3), requires that DOT prove that: “(i) the vehicle is registered or of a type that is required to be registered under this title; and (ii) there has been either notice to the department of a lapse, termination or cancellation in the financial responsibility coverage as required by law for that vehicle” This Court has held that:

DOT may satisfy its burden by certifying that it received documents or electronic transmissions from the insurance company informing DOT that the insurance coverage has been terminated. Once DOT meets that burden, two presumptions arise: (1) that the cancellation was effective under 75 Pa.C.S. § 1377(b)(2)[;] and (2) that the vehicle in question lacks the requisite financial responsibility under 75 Pa.C.S. § 1786(d)(3)(ii).

Choff v. Dep't of Transp., Bureau of Motor Vehicles, 861 A.2d 442, 446-47 (Pa. Cmwlth. 2004) (citations and footnote omitted). The presumptions can be overcome “by . . . clear and convincing evidence that the vehicle was insured at all relevant times,” in accordance with Section 1786(d)(3)(ii) of the MVFRL, 75 Pa.C.S. § 1786(d)(3)(ii), or by fitting into one of the statutory exceptions set forth in Section

1786(d)(2)(i)-(iii) of the MVFRL, 75 Pa.C.S. § 1786(d)(2)(i)-(iii). *See Fell v. Dep't of Transp., Bureau of Motor Vehicles*, 925 A.2d 232 (Pa. Cmwlth. 2007). Section 1786(d)(2)(i) of the MVFRL, 75 Pa.C.S. § 1786(d)(2)(i),² provides that DOT must restore a registration suspended for failure to have insurance if:

The owner or registrant proves to the satisfaction of [DOT] 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.

In this case, it is undisputed that Mathianas' premium payment to Encompass was due January 8, 2009, in order to continue her coverage. Reproduced Record (R.R.) at 23a-24a, 33a. She made a payment, but it was not received by Encompass until January 9, 2009. R.R. at 12a-13a, 24a. Mathianas did not obtain alternate motor vehicle insurance coverage until February 10, 2009. R.R. at 16a, 28a. DOT was notified by Encompass that the insurance for Mathianas' vehicle was terminated. R.R. at 21a-22a, 44a-52a.

By DOT's admission into evidence at the hearing before the trial court of the certified notice from Encompass of the termination of Mathianas' insurance, it met its burden under Section 1786(d)(3) of the MVFRL. This gave rise to the presumption that the cancellation was effective, and that Mathianas lacked the required financial responsibility, at least until she obtained new coverage. It is undisputed that Mathianas' motor vehicle insurance coverage lapsed, and that her vehicle was not insured at all relevant times, so she was unable to overcome that presumption.³

² There are three exceptions set forth in Section 1786(d)(2) of the MVFRL. Subsection (i) is the only exception potentially applicable to the facts of this case.

³ The Court notes, however, that to the extent Mathianas wished to dispute the cancellation of her insurance policy, Section 1786(d)(5) of the MVFRL provides as follows:

Moreover, Mathianas did not meet the conditions necessary to avail herself of the statutory exception set forth in Section 1786(d)(2)(i) of the MVFRL. The parties and the trial court acknowledged that Mathianas' insurance coverage had lapsed between January 8, 2009 and February 10, 2009, which is a period of 33 days. DOT's Br. at 5, 10; Mathianas' Br. at 8; R.R. at 71a-72a. Despite a lapse of more than the 30 days permitted by the first condition of the statutory exception, the trial court's order sustained Mathianas' appeal on the basis that she "acted promptly and exercised due diligence and proper care in having her insurance coverage reinstated" R.R. at 42a, 55a. The trial court's opinion reflects further that it "could not conscientiously ignore the rest of the evidence presented and the circumstances that surround this case," nor despite the case law to the contrary can it "accept the notion that those who crafted the MVFRL intended to place individuals in the situation in which [Mathianas] has found herself." R.R. at 72a. It is on these equitable bases that the trial court interpreted the exception to mean that, since Mathianas "obtained insurance coverage within 30 days of being notified of the cancellation of her insurance policy," she met the requirements of the MVFRL requiring DOT to restore her registration. R.R. 72a-73a.

A strict reading of Section 1786(d)(2)(i) of the MVFRL does not, however, support the trial court's interpretation of the exception. That section states

An alleged lapse, cancellation or termination of a policy of insurance by an insurer may only be challenged by requesting review by the Insurance Commissioner pursuant to Article XX of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921. Proof that a timely request has been made to the Insurance Commissioner for such a review shall act as a supersedeas, staying the suspension of registration or operating privilege under this section pending a determination [or] final order pursuant to ... The Insurance Company Law of 1921.

merely that an insurance coverage lapse must be less than 31 days in order for the first condition of the exception to apply. There is no clear basis for the trial court's interpretation that the 30-day grace period begins to run as of the date a registrant is made aware of a lapse. The trial court cited to nothing more than equitable considerations in support of its interpretation. On the contrary, however, in *Banks v. Department of Transportation, Bureau of Motor Vehicles*, 856 A.2d 294 (Pa. Cmwlth. 2004), this Court stated that trial courts do not have the discretion to consider hardship or other equitable factors when deciding whether a suspension is mandated under Section 1786(d) of the MVFRL.

Further, the plain meaning of the word "lapse" as referenced in Section 1786(d)(2)(i) of the MVFRL is the time during which a registrant's vehicle is without insurance coverage, i.e., from the date of termination until the date coverage is either reinstated or alternate coverage is effective. Since an insurer's coverage termination notice to DOT satisfies DOT's burden under Section 1786(d)(3) of the MVFRL, we hold that the trigger for the grace period in Section 1786(d)(2)(i) of the MVFRL is the termination date set forth in that notice. Here, Encompass' notice to DOT stated that its coverage of Mathianas' vehicle lapsed on January 8, 2009. Alternate coverage was not effective until February 10, 2009. Since the lapse of Mathianas' insurance in this case exceeded 31 days, then the first condition of the exception does not apply.

In order for the exception set forth in Section 1786(d)(2)(i) of the MVFRL to apply, both conditions must be met. Because the first of the two required conditions was not met here, the statutory exception would not be available to

Mathianas.⁴ Under the circumstances, Section 1786(d)(1) of the MVFRL mandates that Mathianas' vehicle registration must be suspended for a period of three months. The trial court erred, therefore, in sustaining Mathianas' appeal.

Based upon the foregoing, the decision of the trial court is reversed.

JOHNNY J. BUTLER, Judge

⁴ Even if this Court were to address the second condition of the exception, it is likely that Mathianas would again fail to meet her burden, since the record reflects that she "may have driven the car" during the time her motor vehicle insurance was lapsed. R.R. at 37a.

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ORDER

AND NOW, this 4th day of May, 2010, the August 20, 2009 order of the Court of Common Pleas of Fayette County is reversed.

JOHNNY J. BUTLER, Judge