Jabbar v. Commonwealth

2009 | Cited 0 times | Supreme Court of Pennsylvania | January 8, 2009

Submitted: October 3, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge, HONORABLE RENÉE COHN JUBELIRER, Judge, HONORABLE JOSEPH F. McCLOSKEY, Senior Judge.

OPINION NOT REPORTED

MEMORANDUM OPINION

The Department of Transportation, Bureau of Motor Vehicles (Bureau) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court) sustaining the appeal of Jailil Jabbar (Jabbar) of the three-month suspension of the registration of Jabbar's 1997 Dodge truck. The Bureau argues that Jabbar failed to adduce any evidence that he did not drive the truck during the lapse in his insurance on the truck, failed to timely obtain new coverage after his insurance lapsed, and that he thereby failed to satisfy the elements of the exception found at Section 1786(d)(2)(i) of the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S. § 1786(d)(2)(i).[1]

The Bureau received notification from Progressive Specialty Company (Progressive) that its insurance on Jabbar's truck had terminated effective June 12, 2007. On July 4, 2007, the Bureau sent Jabbar a letter inquiring as to the financial responsibility coverage on his truck. On July 12, 2007, Jabbar submitted an application for a new insurance policy with American Independent Insurance Company, with coverage effective at 12:01 a.m., on July 13, 2007. On July 24, 2007, the Bureau mailed Jabbar an Official Notice of Suspension, suspending the registration on Jabbar's truck for three months, beginning August 28, 2007. Jabbar appealed to the trial court. The trial court determined that Jabbar had obtained new insurance for the truck "in the final hour of the 30th day" and therefore came within the exception contained in Section 1786(d)(2)(i). (Trial Ct. Op. at 4.) The Bureau now appeals to this Court.[2]

The Bureau argues that Jabbar offered no evidence or testimony that he did not drive the truck during the lapse in his insurance and that he did not, therefore, satisfy the requirements of Section 1786(d)(2)(i). The Bureau also argues that the trial court erred in determining that Jabbar obtained new coverage on the 30th day, rather than the 31st day of his lapse in coverage.[3]

Section 1786(d)(1) directs the Bureau to suspend a vehicle's registration for three months if the vehicle is not properly insured. 75 Pa. C.S. § 1786(d)(1). The Bureau has the initial burden of proving "that (1) the vehicle is registered or of a type required to be registered and (2) that DOT received notice of the cancellation from the insurance company." Choff v. Department of Transportation, Bureau of Motor Vehicles, 861 A.2d 442, 446 (Pa. Cmwlth. 2004). Once the Bureau meets this burden, which it may do by certifying its receipt of electronic transmissions or documents from an insurer that the insurer has terminated the insurance coverage, the presumptions arise: "(1) that the cancellation was effective under 75 Pa. C.S. § 1377(b)(2)[4], and (2) that the vehicle in question lacks the requisite financial responsibility under 75 Pa. C.S. § 1786(d)(3)(ii).[5] " Id. at 446-47. Once the Bureau meets this initial burden, the vehicle owner may avoid the three-month suspension mandated by Section 1786(d)(1) if he "proves to the satisfaction of the department 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).

In this case there is no argument that the Bureau failed to meet its initial burden. Indeed, a review of the record reveals that the Bureau did introduce before the trial court a certified copy of an electronic communication from Progressive stating that Progressive had terminated Jabbar's insurance on his truck. A review of the record also reveals that Jabbar neither testified nor offered any other evidence that he did not drive or permit his truck to be driven while it was uninsured. Therefore, he fails to satisfy the second element of Section 1786(d)(2)(i), and we must reverse the trial court's order.[6]

ORDER

NOW, January 8, 2009, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is hereby REVERSED.

RENÉE COHN JUBELIRER, Judge

1. Section 1786(d) provides, in relevant part: (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 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. (2) Whenever the department revokes or suspends the registration of any vehicle under this chapter, the department shall not restore the registration until the vehicle owner furnishes proof of financial responsibility in a manner determined by the department and submits an application for registration to the department, accompanied by the fee for restoration of registration provided by section 1960. This subsection shall not apply in the following circumstances: (i) The owner or registrant proves to the satisfaction of the department 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. "This Court's review of a trial court order that sustained a statutory appeal from a suspension of registration is limited to determining whether the court committed a reversible error of law, abused its discretion, or made necessary findings of fact that are not supported by substantial evidence." Fell v. Department of Transportation, Bureau of Motor Vehicles, 925 A.2d 232, 236 n.6 (Pa. Cmwlth. 2007).

3. On August 5, 2008, this Court ordered that Jabbar would be precluded from filing a brief if he did not do so within 14 days of the Order. Jabbar did not file a brief and, therefore, this Court issued an Order precluding him from filing a brief on September 24, 2008.

4. Section 1377(b)(2) of the Vehicle Code states: In a proceeding relating to the suspension of the registration of a motor vehicle imposed under section 1786 (relating to required financial responsibility), the department's certification of its receipt of documents or electronic transmission from an insurance company informing the department that the person's coverage has lapsed, been canceled or terminated shall also constitute prima facie proof that the lapse, cancellation or termination of the policy of insurance described in the electronic transmission was effective under the laws of this Commonwealth. 75 Pa. C.S. § 1377(b)(2).

5. Section 1786(d)(3) states that: (3) . . . . The court's scope of review in an appeal from a vehicle registration suspension shall be limited to determining whether: (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 or that the owner, registrant or driver was requested to provide proof of financial responsibility to the department, a police officer or another driver and failed to do so. Notice to the department of the lapse, termination or cancellation or the failure to provide the requested proof of financial responsibility shall create a presumption that the vehicle lacked the requisite financial responsibility. This presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at all relevant times. 75 Pa. C.S. § 1786(d)(3).

6. Moreover, we believe the Bureau is correct that the lapse in Jabbar's insurance for the truck was not "for a period of less than 31 days" and that he, therefore, failed to satisfy Section 1786(d)(2)(i) in that regard as well. 75 Pa. C.S. § 1786(d)(2)(i). Jabbar's insurance lapsed on June 12, 2007. As the Bureau points out in its brief, Section 1908 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1908 states that, "[w]hen any period of time is referred to in any statute, such period in all cases . . . shall be so computed as to exclude the first and include the last day of such period." 1 Pa. C.S. § 1908. Therefore, in calculating the duration of the lapse in Jabbar's financial responsibility, we consider June 13, 2007 to be the first day of that period. The policy Jabbar purchased on July 12, 2007 did not provide coverage until 12:01 a.m. on July 13, 2007, the 31st day of the period during which Jabbar's truck was without coverage. Because the coverage did not begin until 12:01 a.m., the period during which Jabbar's truck was without coverage extended into July 13, 2007. Per Section 1908, July 13, 2007, the last day of the period during which Jabbar's truck was without coverage, must be included when calculating the length of that period. Therefore, Jabbar's truck was without coverage for a period of 31 days. Because the truck was without coverage for a period of 31 days, Jabbar did not prove that "the lapse in financial responsibility coverage was for a period of less than 31 days." 75 Pa. C.S. § 1786(d)(2)(i).