

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IDA CARN,	:
Appellee/Plaintiff	: NO. 10-00,214
	:
vs.	:
	: CIVIL ACTION –
COMMONWELATH OF	: LICENSE SUSPENSION
PENNSYLVANIA, DEPARTMENT OF	:
TRANSPORTATION, BUREAU OF	:
DRIVER LICENSING,	: RULE 1925(a) OPINION
Appellant/Defendant	:

**OPINION IN SUPPORT OF THE ORDER OF May 25, 2010 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

The Department of Transportation, Bureau of Driver Licensing (hereinafter “Department”) has appealed this Court’s May 25, 2010 Opinion and Order sustaining Ida Carn’s (hereinafter “Ms. Carn”) appeal of her license suspension.

The Department’s appeal should be denied and the Order of May 25, 2010 affirmed. The Court relies on its reasoning as explained by the Opinion and Order of May 25, 2010 in support thereof but will additionally address its reasoning in the foregoing opinion.

Facts & Procedural History

On December 9, 2009, Dr. Militza Ausmanas filed an Initial Reporting Form with the Department. Def.’s Ex. 6A. The Form stated Ms. Carn had been “treated by our office since 2000.” Id. Dr. Ausmanas diagnosed Ms. Carn with a vision deficiency attributed to double vision and also stated that Carn had “double vision while driving, recent falls, mental status changes, [and] recent hallucinations.” Id. The Form recommended that the Ms. Carn lose her driving privilege immediately. Id.

The Department then contacted Ms. Carn via a letter mailed January 2, 2010. Def.'s Ex. 5A. The letter stated that the Department was acting upon receipt of the Initial Reporting Form and recalling Ms. Carn's driving privilege pursuant to Section 1519(c) of the Vehicle Code. Id. The letter further advised that the recall would remain in effect until, "we [the Department] receive medical information that your condition has improved and you are able to safely operate a motor vehicle." Id. Enclosed with the letter were a General Psychiatric Form (DL-104) and Report of Eye Examination Form (DL-102). Id.

After receiving the Department's letter, Ms. Carn underwent an eye examination with a licensed optometrist, Joel Getty. Def.'s Ex. 4A. Getty completed the Report of Eye Examination (DL-102) on January 13, 2010 and observed Ms. Carn's vision to be better than 20/40 with correction. Id. The Report also identified, by checking of the boxes, that Ms. Carn's condition did not warrant monitoring by the Department nor were there any conditions that made her an unsafe driver. Id.

On January 18, 2010, Ms. Carn's physician, Dr. Kimberly Jones, completed the General Psychiatric Form (DL-104). Def.'s Ex. 3A. The Form indicated that Ms. Carn suffered from some disorders including hypertension, but ultimately determined that, from a medical standpoint, Ms. Carn was "physically and/or mentally competent to operate a motor vehicle under the stresses and challenges associated with driving." Id.

Having received the medical forms submitted by Ms. Carn, the Department mailed another letter to her on January 27, 2010. Def.'s Ex. 2A. The letter stated that the Department added a corrective lenses restriction to Ms. Carn's driver's license, and Ms. Carn would be receiving an endorsement card containing the restriction to carry with her license. Id.

Also on January 27, 2010, the Department mailed Ms. Carn a separate letter which advised her that a successful driving examination must be completed in order for the Department to determine if she met the “medical and physical standards for driving.” Def.’s Ex. 1A. The letter provided the logistical information for scheduling an examination. Id.

On February 1, 2010, Ms. Carn, through her attorney, filed an Appeal From License Suspension with this Court. An argument on Ms. Carn’s appeal was heard on May 14, 2010, and the Court entered an order on May 25, 2010.

On June 14, 2010, Notice of Appeal to the Commonwealth Court of Pennsylvania was filed. That same day this Court issued an order in compliance with Pennsylvania Rule of Appellate Procedure 1925(b) directing the Department to file a Concise Statement of Errors Complained of on Appeal within twenty-one (21) days of the order. On June 18, 2010, the Department filed a Concise Statement of Errors Complained of on Appeal.

Discussion

Upon review of the Concise Statement of Errors Complained of on Appeal, the Court agrees that the Department may require a licensee to take an examination. However, the Court believes that the Department’s ability to require a driver’s examination is relinquished once a driver’s competency – which prompted the recall – is no longer in question. This statutory check on the Department’s examination authority is made clear from reading the controlling provision of law:

§ 1519. Determination of incompetency
(a) GENERAL RULE.-- The department, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, may require the applicant or driver to undergo one or more of the examinations authorized under this subchapter *in order to determine the competency of the*

person to drive.

75 Pa.C.S. § 1519(a)(emphasis added).

Pursuant to Section 1519, the Department is able to administer any tests put forward in Sections 1508 – examination of applicant for driver's license – and 1514(b) – expiration and renewal of drivers' licenses – as well as requiring a licensee to receive a medical examination. Montchal v. Commonwealth of Pennsylvania, Dep't of Transp., Bureau of Driver Licensing, 794 A.2d 973, 976 (Pa. Commw. Ct. 2002). The driver's license may remain suspended indefinitely until the licensee complies with the Department's request and competency is established. 75 Pa.C.S. § 1519(c). However, the licensee may appeal the Department's decision to a court with appropriate jurisdiction for review. Id. Judicial review is limited to a determination of the individual's competency to drive in accordance with the regulations under section 75 Pa.C.S. § 1517. Id.

Ms. Carn exercised her right to judicial review under Section 1519(c). As such, the Court had proper jurisdiction and was to determine whether Ms. Carn was competent to operate a vehicle.

In order to sustain the recall of Ms. Carn's license, the Department was required to “prove by a preponderance of the evidence that the licensee was incompetent to drive as of the date of the recall.” Byler v. Commonwealth of Pennsylvania, Dep't of Transp., Bureau of Driver Licensing, 883 A.2d 724, 728 (Pa. Commw. Ct. 2005). As understood by this Court, the evidentiary process for such a determination has been clearly established:

“...we construe *Section 1519(c)* of the Code, *75 Pa.C.S. § 1519(c)*, as providing that DOT's burden at a *de novo* hearing, to prove that the driver suffered from a medical condition on the date of recall that rendered him incompetent to drive...This would establish DOT's *prima facie* case and would shift the burden

of going forward with the evidence to the licensee. If the licensee presents evidence at the hearing that he was, in fact, competent to drive on the date of the recall, or that he has become competent to drive since the time that his license was recalled and the date of the hearing, then, naturally, DOT would most likely need to present testimonial evidence in order to prove incompetency. The burden of persuasion never leaves DOT, but the medical report itself is sufficient to meet and overcome DOT's initial burden to establish a *prima facie* case."

Reynolds v. Commonwealth of Pennsylvania, Dep't of Transp., Bureau of Driver Licensing, 694 A.2d 361, 364 (Pa. Commw. Ct. 1997).

During argument, both the Department and Ms. Carn agreed that the question before the Court regarded the burden of proof for sustaining a departmental recall. See Transcript of Proceedings, pg. 25-26. Specifically, the question presented to the Court was whether the Department must produce additional evidence in order to require Ms. Carn to successfully complete a driving examination to restore her driver's license once medical competency is no longer disputed by either party.

The Court recognized that the Department established its *prima facie* case of incompetency by introducing the letter from Dr. Ausmanas. The letter states, from a medical standpoint, that Ms. Carn lose her driving privileges due to "double vision while driving, recent falls, mental status changes, [and] recent hallucinations." Def.'s Ex. 6A. The Initial Reporting Form offered the Department sufficient cause to act and recall Ms. Carn's license. Hence at the time of the recall, the Department established that Ms. Carn was incompetent to drive and satisfied its initial evidentiary burden.

Ms. Carn responded to this presumption by offering two forms completed by medical professionals which were submitted directly to the Department. Def.'s Ex. 4A and Def.'s Ex. 3A. Both forms indicted that Ms. Carn was able to safely drive a vehicle and did not warrant continued monitoring from the Department. Id. As such, the Court found that Ms. Carn

successfully presented evidence tending to prove that she was in fact competent to drive on the date her license was recalled. Under the Reynolds analysis, the burden returns to the Department. Reynolds, 694 A.2d at 364. The Department is responsible for submitting additional testimonial evidence in order to prove Ms. Carn's incompetency. Id.

The Department contended that the conflicting medical reports offered the requisite authority for Ms. Carn to complete a driving examination.

MS. POINTS (counsel for the Department): We then received other information, which we have accepted from another physician, and so we have said, okay, she is medically able to operate a motor vehicle, however this is not clear enough. There is some question because at least one doctor has a concern, and so we are going to require her to go out and complete a driving test.

Transcript of Proceedings, pg. 19.

However, the reporting form which initiated the Department's involvement and generated concern regarding Ms. Carn's competency cannot provide the sole evidentiary support for the Department's proposition. While such a report is sufficient to meet the Department's initial burden, Ms. Carn has since responded to that burden by providing evidence of her own. The Department is not entitled to use the existence of conflicting reports to overcome its subsequent evidentiary obligation because the burden never leaves the Department. Reynolds, 694 A.2d at 364. Therefore, the Department was required to introduce additional evidence which would allow a fact finder to conclude Ms. Carn was incompetent. Id. Instead of attempting to discharge its burden, however, the Department stated it would "not produce any additional evidence." Transcript of Proceedings, pg. 5.

Furthermore, the Department acknowledged it no longer viewed Ms. Carn as a medically incompetent:

MR. HILLMAN (counsel for Ms. Carns): ...The form indicates that my client is competent to safely operate a motor vehicle.

MS. POINTS (counsel for the Department): And we have accepted that and agreed that for medical purposes she is competent.

Id. at 4.

Medical competency concerns – related to “a Psychiatric and Vision Deficiency condition” – produced the recall of Ms. Carn’s license. Def.’s Ex. 5A. In fact, the Department stated in a letter to Ms. Carn that her license recall would remain in effect until the Department received “medical information that your [Ms. Carn’s] condition has improved and you are able to safely operate a motor vehicle.” Id. Ms. Carn did just that by providing evidence that allayed concerns regarding her mental and visual condition and declared that she could safely operate a motor vehicle. Def.’s Ex. 3A (form question 9) and Def.’s Ex. 4A (form questions 6 and 7).

The trial court is entitled to make credibility and persuasiveness determinations in deciding whether to sustain a license suspension at the *de novo* hearing. Byler, 883 A.2d at 729 (holding that it was within the trial court’s discretion to make such assessments regarding presented evidence). Additionally, a trial court may consider “the timing and issuance of multiple forms, the conflicting statements contained on the forms and the lack of clarity regarding the extent to which Physician’s opinions were based on current examination ... in determining whether Licensee carried her burden to prove competency to drive.” Turk v. Commonwealth of Pennsylvania, Dep’t of Transp., Bureau of Driver Licensing, 983 A.2d 805, 815 (Pa. Commw. Ct. 2009).

In looking at the evidence before it, this Court determined that Ms. Carn presented more persuasive and credible evidence. The Initial Reporting Form relied upon by the Department

sufficiently states the medical deficiencies with Ms. Carn's vision. Def.'s Ex. 6A. However, the forms submitted by Ms. Carn – by their very nature – describe with greater particularity her physical condition and allow a fact finder to make a more informed decision regarding competency.

The Report of Eye Examination detailed Ms. Carn's performance after an examination of her visual capacities. Def.'s Ex. 4A. The form states that Ms. Carn's combined vision is 20/40 or better with correction. Id. The Department of Transportation Vehicle Code provides that a person "shall wear lenses correcting combined vision to 20/40 or better while driving." 67 Pa. Code § 83.3(b). The Report also answers in the affirmative that Ms. Carn's vision was at least 120° in the horizontal median [67 Pa. Code § 83.3(e)], that Ms. Carn had better than 20/100 vision in each eye with correction [67 Pa. Code § 83.3(d)], and that Ms. Carn's vision correction was not through the use of telescopic lenses [67 Pa. Code § 83.3(g)]. While acknowledging Ms. Carn required corrective lenses to drive, the form identified that there were no conditions rendering her an unsafe driver. Def.'s Ex. 4A.

The Court found the vision analysis contained in the Report of Eye Examination to be adequate in addressing all the corresponding vision standards provided under the Vehicle Code. It appeared clear to the Court that the results were based upon a current examination with Ms. Carn. Furthermore, there were no conflicting statements which rendered the optometrist's ultimate conclusion regarding Ms. Carn's competency to operate a vehicle improper. In contrast, the Initial Reporting Form only states that Ms. Carn suffers from double vision while driving. Def.'s Ex. 6A. It remains unclear whether Ms. Carn presented this self-evaluation to the physician or the physician diagnosed Ms. Carn with symptoms associated with double vision.

Regarding Ms. Carn's proposed visual deficiency, the Report of Eye Examination performed by a licensed optometrist offered a more credible and persuasive assessment.

The Court also determined that the General Psychiatric Form completed on Ms. Carn's behalf supported that she was competent to drive. While the form did not provide results from a mental evaluation, the form was completed by Ms. Carn's treating physician of seven months. The form only recognized Ms. Carn as being diagnosed with conditions such as hypertension and osteoporosis – largely unrelated to her mental health. Def.'s Ex. 3A. In response to the question regarding impairment from hallucinations, the form indentified no significant impairment. Id. Responses on the rest of the form also indicated no concerns with Ms. Carn's mental capacities which would affect her competency to drive a vehicle. Id.

The Initial Reporting Form and General Psychiatric Form provide conflicting determinations as to whether Ms. Carn suffered from hallucinations and mental changes which would impair her driving abilities. However, the General Psychiatric Form appears to be more credible primarily because it was completed by Ms. Carn's treating physician who presumably has more familiarity with her medical history. The Initial Reporting Form was completed by someone in the treating physician's office, but not the treating physician.

The factual evidence presented for the Court's consideration of Ms. Carn's competency primarily consisted of the three medical forms received by the Department, the three letters mailed to Ms. Carn from the Department, and Ms. Carn's driving record. Def.'s Ex. A. During argument, the Department believed that additional facts and testimony were immaterial.

THE COURT: Are you okay with those facts so far, Ms. Points?

MS. POINTS (counsel for the Department): I'll accept Mr. Hillman's representation. I think it's irrelevant because the forms speaks for themselves,

clearly by the providers.

Transcript of Proceedings, pg. 9. Therefore, the proceedings before the Court consisted of argument in lieu of an evidentiary hearing.

Upon consideration of all the evidence in totality, the Court found the Report of Eye Examination and General Psychiatric Form to not only meet Ms. Carn's burden but to be more persuasive and credible. From an evidentiary standpoint, the forms satisfied Ms. Carn's burden in responding to the Department's *prima facie* case. However, the forms go beyond that and actually foreclose on the possibility that Ms. Carn suffered from a vision or mental condition which rendered her incompetent to drive when her license was initially recalled by the Department.

While the Department cites Turk in support of its ability to require Ms. Carn to take a driver's examination, the Court believes the reliance on Turk is misplaced given the current facts. Turk, 983 A.2d 805. As outlined in this Court's Order from May 25, 2010, Turk is factually distinguishable. In Turk, there were multiple forms submitted by physicians which produced confusion as to the licensee's competency. Id. After receiving a letter from the licensee's family member regarding vision problems, the Department mailed the licensee a recall notice and enclosed a general medical form to be completed. Id. Four general medical forms pertaining to the licensee were eventually completed and returned to the Department which presented differing assessments of the licensee's competency to drive. Id. As the Turk court held, the timing and issuance of multiple forms with conflicting statements are factors to be considered by a trial court. Id. at 815. As it relates to Ms. Carn, there were no conflicting statements contained in the responsive forms. The two enclosures with Ms. Carn's recall notice

were appropriately completed and returned to the Department. Both forms indicated a uniform determination that Ms. Carn had no conditions which rendered her unsafe to operate a vehicle. Def.’s Ex. 3A (form question 9) and Def.’s Ex. 4A (form questions 6 and 7).

Additionally, in Turk, the first correspondence that the licensee received from the Department stated that:

“In order to determine if you meet [DOT’s] medical standards for driving, it is necessary that you undergo a physical examination. Based on the results from this examination, you [licensee] may be required to have an additional medical evaluation and/or take a driver’s test.”

Id. at 808. The letter that Ms. Carn received is strikingly different in its advisement of the process for restoration of driving privileges. While noting the recall will remain in effect indefinitely, the Department’s letter to Ms. Carn stated: “This action will remain in effect until we receive medical information that your condition has improved and you are able to safely operate a motor vehicle.” Def.’s Ex. 5A. The Department’s letter to Ms. Carn identified the evidence it required from Ms. Carn in order to render a further determination on her competency – medical information. Absent from the Department’s letter to Ms. Carn, in contrast with the letter received by the licensee in Turk, was any indication that the licensee may be required to complete a driver’s examination. Certainly, the omission is not dispositive for the current matter, but it is strong indicia that adjudication of Ms. Carn’s competency at the time of the recall was not contingent upon completion of a driver’s examination.

Finally, the holding in Turk demonstrates that the trial court retains unspecified options when reviewing determinations of incompetency. Turk, 983 A.2d 805. While addressing the trial court’s authority to request reexamination, the court acknowledged that:

...This statutory provision [75 Pa.C.S. § 1550(c)] does not specify the options available to the trial court during its *de novo* review.

It would be unreasonable, however, to conclude there is a silent limitation of a trial court's authority to assess competency by requiring retesting, despite repeated pleas by a physician for retesting.

Id. at 816. Regarding Ms. Carn's determination of incompetency, there were pleas from medical professions in the opposite direction: that Ms. Carn was in fact a safe driver and didn't require additional monitoring from the Department. Def.'s Ex. 3A (form question 9) and Def.'s Ex. 4A (form questions 6 and 7). Therefore, based the holding in Turk, the statutory provisions do not offer a silent limitation on the trial courts sovereignty in determining competency. This Court found the evidence to persuasively demonstrate that Ms. Carn was competent to drive at the time of her license recall. As such, the Court retained the authority to much a competency determination under Section § 1519(c) which ultimately restored Ms. Carn's driving privileges.

This Court believed the Department was not entitled to use multiple examinations as procedural hurdles for Ms. Carn and could not require her to complete any further examinations once it recognized that Ms. Carn was medical competent to drive insofar as it related to the psychiatric and visual conditions which prompted departmental involvement. The Department acknowledged that Ms. Carn had in fact demonstrated her competency through completion of the additional medical forms provided by the Department. Given that Ms. Carn successfully rebutted the Department's *prima facie* case and provided more credible evidence that she was competent to drive, the Court sustained Ms. Carn's statutory appeal of her license suspension.

Therefore, the Court requests that the Order from May 25, 2010 sustaining Ms. Carn's license suspension appeal be affirmed.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Terrance M. Edwards, Esquire
Pennsylvania Department of Transportation, Office of Chief Counsel,
1101 South Front Street, 3rd Floor, Harrisburg, PA 17104-2516
Bradley S. Hillman, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Jonathan DeWald, Judge McCoy's Law Clerk
Jerri Rook, Executive Secretary to Judge McCoy