IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David A. Hamilton	:	
	:	
v.	:	No. 1943 C.D. 2007
	:	
Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing,	:	Submitted: January 11, 2008
	:	
Appellant	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: February 26, 2008**

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (Bureau) appeals from the order of the Court of Common Pleas of the 39th Judicial District (Franklin County Branch) (trial court), which sustained the statutory appeal of David A. Hamilton (Licensee) from a one-year suspension of his operating privilege imposed by the Bureau pursuant to Section 1547(b)(1)(i) of the Vehicle Code (Code), 75 Pa. C.S. § 1547(b)(1)(i),[1] as a consequence of Licensee's reported refusal to submit to chemical testing in connection with his arrest for violating Section 3802 of the Code, 75 Pa. C.S. § 3802 (relating to driving under the influence of alcohol or

[1] Section 1547(b)(1)(i) of the Code is commonly referred to as the "Implied Consent Law."

a controlled substance (DUI)). On appeal, the Bureau contends that the trial court erred in sustaining Licensee's appeal because: (1) a common pleas court does not possess King's Bench power; (2) Licensee failed to satisfy his burden for establishing estoppel by laches because the Bureau was not responsible for any delay in imposing his operating privilege suspension; and (3) the trial court was not free to ignore binding precedent in order to rely upon equity to sustain Licensee's statutory appeal.

The relevant facts are not in dispute. On July 6, 2007, the Bureau sent Licensee an Official Notice of the Suspension (Notice) of his driving privilege for a period of one year, effective August 10, 2007, as a consequence of his refusal to submit to a chemical test on October 30, 2005, when Licensee was involved in a car accident and arrested for DUI. (Notice, mail date July 6, 2007; R.R. at 38a.) Licensee filed a timely appeal to the trial court, which held a *de novo* hearing on September 25, 2007. At the hearing, the following witnesses testified: Douglas Strickland, police officer for the Borough of Chambersburg Police Department (Department); Michael McCullough, State Trooper with the Pennsylvania State Police and former police officer with the Department; Janet Danner, employee of the Bureau in the research and support division; and Licensee.

Officer Strickland testified that he responded to the scene of the accident in which Licensee was involved on October 30, 2005. Officer Strickland testified that Trooper McCullough transported Licensee to the hospital while the accident was being investigated. (Trial Ct. Hr'g Tr. at 15.) Additionally, Officer Strickland testified that Trooper McCullough gave him the completed DL-26 form, which indicated that Licensee refused chemical testing. Officer Strickland then gave the

form to the secretary at the Department "within a day or two at the most after it was given to me." (Trial Ct. Hr'g Tr. at 15-16.) Trooper McCullough's testimony was consistent with Officer Strickland in that he testified that Licensee refused chemical testing, that Trooper McCullough completed the DL-26 form, and that he gave it to Officer Strickland "immediately that same day that the arrest was made." (Trial Ct. Hr'g Tr. at 18-19.)

Danner testified that the Bureau received the Department's DL-26 form on June 12, 2007, and that it was later processed by the Bureau on June 29, 2007. (Trial Ct. Hr'g Tr. at 7.) She further testified that nothing contained in the file indicated that the Bureau received notice of Licensee's chemical test refusal any earlier than June of 2007. (Trial Ct. Hr'g Tr. at 10.)

Licensee testified that he was arrested for DUI on October 30, 2005, and that he was accepted into the Accelerated Rehabilitative Disposition (ARD) program for that DUI on April 19, 2006. (Trial Ct. Hr'g Tr. at 20.) He testified that, due to his acceptance into the ARD program, his operating privilege had been suspended for 60 days and that the DUI charge had been dismissed once he completed the ARD program. (Trial Ct. Hr'g Tr. at 21.) Licensee testified that after he received the document dismissing his DUI charge in January 2007, he took a different job in April 2007, which required him to do more traveling. (Trial Ct. Hr'g Tr. at 21-22.) Additionally, Licensee testified that he did not contact the Bureau at any time after the October 30, 2005 arrest. (Trial Ct. Hr'g Tr. at 24.)

At the close of the hearing, the trial judge stated that he was going to dismiss the suspension because of the time delay, which the trial judge attributed to "the secretary" because he found the DL-26 form "obviously . . . got mislaid somewhere along the line and got shortstopped." (Trial Ct. Hr'g Tr. at 24.)

The trial court filed an order on September 28, 2007, finding that the Bureau "did not receive the notice of refusal until June 12, 2007 for a refusal on October 30, 2005 . . . [and] that [the Bureau] processed *in a timely fashion* and on July 8, 2007 a letter dated July 6, 2007 was sent out to [Licensee] in this case." (Order at 1 (emphasis added).) However, the trial court found that from the time Licensee refused chemical testing on October 30, 2005, to the time he received the July 6, 2007 Notice from the Bureau, "using the King's bench power that [the time delay] is totally too long." (Order at 1.) Accordingly, the trial court ordered that the suspension be nullified.

The Bureau filed a timely appeal[2] and also filed, with the trial court, a Concise Statement of Errors Complained of on Appeal. Thereafter, the trial court issued a letter to this Court, in lieu of a Pa. R.A.P. 1925(a) opinion, which states in pertinent part:

> Although it appears from the cases cited in the Commonwealth's Statement of Errors Complained of on Appeal that the King's Bench

[2] In a license suspension case, this Court's scope of review is limited to determining whether the trial court erred as a matter of law, whether the trial court abused its discretion, and whether the trial court's factual findings are supported by substantial and competent evidence. Department of Transportation, Bureau of Driver Licensing v. Gombocz, 589 Pa. 404, 407, 909 A.2d 798, 800-01 (2006).

> power is vested solely in the Supreme Court of Pennsylvania and not in any of the inferior courts within the Unified Judicial System, this Court believes that in equity Appelle [sic] Hamilton's statutory appeal should be sustained. Based on the evidence presented to this Court, the length of time between the chemical testing refusal and notification of the licenses [sic] suspension was too lengthy. The evidence showed that Appellee Hamilton refused chemical testing on October 30, 2005 and received a license suspension notification from the Department of Transportation on June 6, 2007. This Court was presented with evidence that during this 15 month period,[3] Appellee Hamilton relied on the fact that his license was not suspended to change jobs. This Court believes that it was reasonable for Appellee Hamilton to believe that his licenses [sic] was not going to be suspended based on the length of time from the refusal to the notification.

(Trial Ct. Pa. R.A.P. 1925(a) Letter, filed November 14, 2007.)

At the outset, we note that there is no dispute among the parties or the trial court that the trial court erred when it used King's Bench power to nullify the suspension. The law is well-settled that only the Pennsylvania Supreme Court possesses King's Bench powers. See In re Avellino, 547 Pa. 385, 390, 690 A.2d 1138, 1140 (1997); Bell Appeal, 396 Pa. 592, 598, 152 A.2d 731, 734 (1959). Therefore, we will address the remaining two arguments on appeal.

First, the Bureau contends that the trial court erred in sustaining the license suspension appeal because Licensee failed to prove that the Bureau was responsible for the unreasonable delay in notifying Licensee of the suspension. The Bureau contends that, because Licensee failed to show that the unreasonable delay was

[3] The trial court apparently made a typographical error because twenty months is a more accurate description of the time delay.

chargeable to the Bureau, the trial court should not have reached the issue of whether Licensee was prejudiced by the delay.

The law is well-settled that a trial court may reverse a license suspension based on delay only when the licensee shows that: (1) the Bureau created an unreasonable delay which led the licensee to believe that his operating privileges would not be suspended; and (2) the licensee would be prejudiced by having his operating privileges suspended after such a delay. Department of Transportation, Bureau of Driver Licensing v. Gombocz, 589 Pa. 404, 407, 909 A.2d 798, 800-01 (2006) (citing Terraciano v. Department of Transportation, Bureau of Driver Licensing, 562 Pa. 60, 66, 753 A.2d 233, 236 (2000)). In Department of Transportation, Bureau of Traffic Safety v. Maguire, 539 A.2d 484, 485 (Pa. Cmwlth. 1988), this Court held that the Bureau "is not accountable for a local police department's delay in mailing the 'Report of Refusal.'"

Licensee argues that the Bureau is chargeable with the unreasonable delay because it received timely notice of Licensee's refusal to submit to chemical testing in two other forms. First, Licensee contends that the Bureau received form DL-21A showing that Licensee's driving privileges were suspended for entry into the ARD program on a Tier III DUI. However, the testimony presented, which is the only evidence of record regarding this form, shows that Danner agreed that the "form may or may not have shown that there was a refusal . . . ." (Trial Ct. Hr'g Tr. at 12.) Therefore, the evidence with regard to form DL-21A does not establish that the Bureau was timely notified of the refusal. The second method by which Licensee argues that the Bureau was timely notified of his refusal came in the form of his

certified driving history, which was submitted into evidence as Exhibit No. 3. Exhibit No. 3 describes Licensee's violation on October 30, 2005, as "ARD-DUI GEN IMPAIRMENT" with a suspension of 60 days effective April 19, 2006. (Certified Driving History, July 27, 2007, at 2, Ex. 3; R.R. at 42-45.) Licensee argues that the Bureau was on notice of his refusal to submit to chemical testing because the Code, in particular, 75 Pa. C.S. §§ 3802, 3804 and 3807, provides that for an ARD-General Impairment, "there is no license suspension, in the absence of a refusal, an accident involving injury or damage or controlled substances." (Licensee Br. at 5.) However, this argument fails because a licensee's license could be suspended for sixty days if any one of those conditions were present, and not necessarily the condition that the licensee refused chemical testing.[4]

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[4] Section 3807(d) of the Code, 75 Pa. C.S. § 3807(d), provides:

> **(d) Mandatory suspension of operating privileges.--**As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant's license suspended as follows:
>
> (1) There shall be no license suspension if the defendant's blood alcohol concentration at the time of testing was less than 0.10%.
>
> (2) For 30 days if the defendant's blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%.
>
> (3) For 60 days if:
>
> (i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;
>
> (ii) the defendant's blood alcohol concentration is not known;
>
> (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or
>
> (iv) the defendant was charged pursuant to section 3802(d)
>
> (4) For 90 days if the defendant was a minor at the time of the offense.

The trial court specifically found that the Bureau was not at fault for the twenty-month delay of issuing the Notice to Licensee. The trial court found that the Bureau did not receive the DL-26 form until June 12, 2007, and that it processed this information in a "timely fashion" because it sent the Notice to Licensee on July 6, 2007, which Licensee received on July 8, 2007. (Order at 1.) Because this finding is supported by the evidence of record, we conclude that Licensee failed to sustain his initial burden of showing fault on the part of the Bureau for the unreasonable delay. Thus, under Gombocz and Terraciano, the analysis should have ended there, and the trial court should not have reached the issue of prejudice. See Maguire (reversing the trial court's decision, which reversed the suspension because of prejudice to the licensee, and concluding that the trial court erred because the delay was not attributable to the Bureau's actions).

Finally, the Bureau contends that the trial court erred in sustaining the statutory appeal based upon equity.[5] The Bureau argues that the trial court is not free to "forgive" Licensee by relying on equity because it is inconsistent with binding precedent of the Supreme Court in Gombocz and Terraciano, and this Court in Maguire. (Bureau's Br. at 29-32.) In opposition, Licensee argues that "[f]undamental fairness dictates that there must be some limitation on the time period within which the Bureau can impose sanctions. [Licensee] clearly showed that he

[5] In the Pa. R.A.P. 1925(a) letter opinion, the trial court acknowledged that it could not use King's Bench power to sustain Licensee's appeal. Nevertheless, the trial court sustained the statutory appeal because of the delay in issuing the Notice to Licensee based on the principles of equity.

was prejudiced by the delay." (Licensee's Br. at 5-6.) We agree with the Bureau and in the absence of a specific equitable doctrine applicable to the facts of this case, such as equitable estoppel, equity follows the law.

In Commonwealth of Pennsylvania v. 6969 Forest Avenue, 713 A.2d 701 (Pa. Cmwlth. 1998), this Court vacated an order of a trial court finding it did not have equitable power to stay a sale of property under Sections 6801 and 6802 of the Judicial Code, 42 Pa. C.S. §§ 6801, 6802, commonly known as the Controlled Substances Forfeiture Act. This Court explained that:

> Where, as here, the parties' rights are regulated and fixed by a comprehensive statutory scheme, the maxim, "equity follows the law," is applicable. *First Federal Savings & Loan Ass'n v. Swift*, 457 Pa. 206, 321 A.2d 895 (1974). Consequently, the court does not have authority to grant equitable relief to the party who has failed to pursue a mandatory and exclusive statutory remedy provided by the legislature. A court simply "cannot devise a remedy which is inconsistent with existing legislation." *Armstrong School District v. Armstrong Education Ass'n*, 5 Pa.Cmwlth. 387, 291 A.2d 125, 128 (1972).
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> . . . .
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> Further, it is well settled that in Pennsylvania, the legislature has not conferred upon the courts a universal, or even a general, equity jurisdiction. "There is no common law equity jurisdiction in Pennsylvania; a court may exercise only those equitable powers which have been specifically conferred by the legislature." *Armstrong School District*.

6969 Forest Avenue, 713 A.2d at 705 (citation omitted); see also Department of Transportation, Bureau of Traffic Safety v. Cormas, 377 A.2d 1048, 1050 (Pa. Cmwlth. 1977) (holding that the trial court may not modify the penalty imposed by

DOT once the trial court determines, *de novo*, that the violation actually occurred for which the licensee's operating privilege was suspended.)

In the case at bar, the Code specifically states that refusal to submit to chemical testing will result in a suspension of one's driving privileges for twelve months. 75 Pa. C.S. § 1547(b)(1)(i). As in 6969 Forest Avenue, the statutory scheme does not grant authority to a trial court to impose equitable relief when a licensee fails to comply with the Code. If this Court upholds the trial court's actions in this case, we would essentially be "devis[ing] a remedy which is inconsistent with existing legislation," which we are not permitted to do. 6969 Forest Avenue, 713 A.2d at 705 (quoting Armstrong School District v. Armstrong Education Ass'n, 291 A.2d 125, 128 (Pa. Cmwlth. 1972)). Moreover, finding in favor of Licensee would be in direct conflict with binding precedent in Gombocz, Terraciano, and Maguire.[6]

[6] Licensee cites the Supreme Court's decision in Commonwealth v. Kratsas, 564 Pa. 36, 764 A.2d 20 (2001), for the proposition that fundamental fairness necessitates affirming the trial court. However, Kratsas involved a *criminal* prosecution for distributing gambling devices under the gambling law, not a *civil* sanction. Furthermore, although the Supreme Court recognized that the state and federal constitutional due process clauses, "in a narrow set of unique and compelling circumstances," can prevent a prosecution where the defendant relied upon an affirmative misrepresentation by a government official, the Supreme Court reversed the Superior Court's order

(Continued…)

Accordingly, we reverse the order of the trial court and reinstate the license suspension.

RENÉE COHN JUBELIRER, Judge

finding that fundamental fairness barred prosecution in that case. Id. at 56, 69, 764 A.2d at 31, 38-39.

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Department of Transportation,	:	
Bureau of Driver Licensing,	:	
	:	
Appellant	:	

O R D E R

NOW, February 26, 2008, the order of the Court of Common Pleas of the 39th Judicial District (Franklin County Branch) in the above-captioned matter is hereby **reversed**.

RENÉE COHN JUBELIRER, Judge

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BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

CONCURRING OPINION
BY SENIOR JUDGE KELLEY FILED: February 26, 2008

I respectfully concur in the result only. I recognize that the trial court's order in this matter must be reversed based on the current state of the law. However, I believe that the law should be changed.

It is patently unfair and prejudicial to the citizenry of this Commonwealth to permit the negligent conduct by local police departments, which results in an unreasonable delay in notification to a licensee of a suspension of his or her operating privilege based on a refusal to submit to chemical testing, to go unchecked. While I agree that the Bureau of Driver Licensing should not be held accountable for a local police department's delay in mailing the report of refusal, I

believe that if the licensee is able to show that the delay is due to the actions of the local police department and that he or she was prejudiced by said delay, the trial court may reverse a license suspension on that basis. As case after case that comes before this Court has shown, in these instances where the delay is not attributable to the Bureau but to the local police department, the licensee is almost always prejudiced in some manner.

The Commonwealth cannot expect each and every licensee to be responsible for ensuring that a local police department complies in a timely manner with what is expected under the law. Accordingly, I would call upon the General Assembly to amend Section 1547 of the Vehicle Code, 75 Pa.C.S. §1547, to provide a provision wherein a licensee's operating privilege could not be suspended unless the report of refusal is received by the Bureau in a timely manner or within a set number of days.

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JAMES R. KELLEY, Senior Judge