

8/28/07 and electronic transmission from Progressive certifying the termination of insurance on 6/12/07. (DOT Exhibit, C-1).

Jabbar entered into evidence a copy of his insurance card, insurance declaration page and application form from American Independent Insurance Company, which shows an application date of July 12, 2007 and coverage beginning on July 13, 2007 at 12:01 a.m.. (Jabbar Exhibit, D-1). This Court, in sustaining the appeal and rescinding the registration of Jabbar found that he had provided clear and convincing evidence that he obtained coverage of the Dodge vehicle in less than 31 days from lapse. (See Order dated 12/7/07). DOT appealed this Court's ruling to the Commonwealth on January 4, 2008 and issued its Statement of Matters requesting that this Court address the aforementioned issue, as well as other miscellaneous hearsay issues. *infra*.

The "Commonwealth Court's review of a trial court order sustaining a statutory appeal from a suspension of registration is limited to determining whether the necessary findings of fact are supported by substantial evidence and whether the court committed a reversible error of law or abused its discretion." *Fagan v. Commonwealth, Dept. of Trans.*, 875 A.2d 1195, 1197 (Pa. Commw. Ct. 2005). The authority for addressing statutory appeals involving motor vehicle insurance is derived from Pennsylvania Motor Vehicle Financial Responsibility Law, (MVFRL), 75 Pa.C.S.A. 1701 et seq.

The MVFRL 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." 75 Pa. C.S. § 1786(a). The MVFRL requires DOT:

...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....

75 Pa.C.S.A. § 1786(d)(1). Whenever the DOT revokes or suspends the registration of any vehicle under this chapter, the department shall not restore the registration unless:

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.A. §1786(d)(2)(i).

75 Pa.C.S.A. § 1786(d)(3), provides that an insured/vehicle owner, whose vehicle registration has been suspended because DOT has determined that the required financial responsibility has not been secured, has the right to appeal that suspension under Section 1377 of the Vehicle Code, 75 Pa. C.S. § 1377, to the applicable Court of Common Pleas.

In such an appeal, DOT bears the initial burden of showing that a lapse in the required financial responsibility has occurred. *The Pennsylvania Department of Transportation, Bureau of Driver Licensing v. Porter*, 157 Pa. Commw. 645, 630 A.2d 945, 946-47 (1993). To do this, DOT must establish: "(1) that the vehicle in question is of a type required to be registered in the Commonwealth; and (2) that the required automobile liability insurance has been cancelled or otherwise terminated. *Id.* at 947; 75 Pa. C.S.A. § 1786(d)(3). Once DOT establishes its prima facie burden of proof, a vehicle owner must prove that financial responsibility was continuously maintained on the vehicle as required by §1786(a) of the MVFRL, 75 Pa. C.S.A. § 1786(a), or that the vehicle owner fits within one of the three statutorily defined defenses outlined in Section

1786(d)(2)(i-iii) of the MVFRL, 75 Pa. C.S.A. §1786(d)(2)(i-iii). DOT does not contest that Jabbar did not operate the motor vehicle during the period of lapse in insurance, rather it argues that Jabbar did not obtain coverage for his vehicle within 30 days as is required under §1786(d)(2)(i). (N.T. dated 12/7/07, pgs. 14-15). This argument requires the Court to examine the language of §1786(d)(2)(i) to determine this statutory interpretation.

When interpreting a statute, the court must begin with the plain meaning of the language used in the statute. *Ludmer v. Nernberg*, 699 A.2d 764, 765 (Pa.Super. 1997). The canons of statutory interpretation instruct that the plain words of a statute cannot be disregarded where the language is free and clear from ambiguity. *Price v. Pennsylvania Property and Casualty Ins. Guar. Ass'n*, 795 A.2d 407, 412 (Pa.Super. 2002), 1 Pa.C.S.A. § 1921(b). When a statute's meaning is plain, there is no occasion to further resort to rules of statutory interpretation when doing so would alter the plain meaning of the statute. *Price*, 795 A.2d at 412. Thus, the plain language of a statute is the best indication of legislative intent. *Com. v. Gilmour Mfg. Co.*, 573 Pa. 143; 822 A.2d 676 (2003).

The language in the statute is clear that §1786(d)(2)(i) allows for a grace period that is in excess of 30 days, but “less than 31 days.” Jabbar’s documentation submitted to the Court demonstrated clear and convincing evidence of insurance coverage on his vehicle in the final hour of the 30th day. Counsel for DOT recognizes the difference had the legislature used a 30 day grace period instead of using “less than 31 days,” “[w]hat the legislature could have said was: One may not [operate a motor vehicle] without insurance for more than 30 days.” This phrase pinpoints the intention of the legislature was to allow for a time period beyond 30 days, but less than 31 days.

Jabbar submitted sufficient evidence of his compliance under §1786(d)(2)(i) that he obtained insurance coverage in “*less than 31 days.*” (emphasis added). According to the plain meaning of the statute and the phrase “less than 31 days,” this Court believes by submitting documentation showing insurance coverage on the final hour of the 30th day, Jabbar established by clear and convincing evidence that lapse in insurance was within the 31 day time period of §1786(d)(2)(i). He therefore is exempt from any suspension of his registration on this vehicle under §1786(a).

In addition to its argument that Jabbar did not provide sufficient proof of insurance within the statutory time period, DOT alleges additional errors committed by this Court in considering hearsay statements and documents of Jabbar during the hearing.

Although DOT does not specify what statements constituted objectionable hearsay, this Court did not consider any testimony from Jabbar in rendering its decision other than his statement that “[o]n July 12th I went into a company and started application [sic] for insurance. And they gave [me] this policy...” Such a statement is not hearsay and therefore is not subject to preclusion from consideration.

DOT argues that the documentation submitted by Jabbar is also hearsay and was not admissible. In support of his argument, he cites the case of *Fell v. Department of Transportation, Bureau of Motor Vehicles*, 925 A.2d 232 (Pa. Commw. 2007) to support this theory. However, the Commonwealth Court in *Fell* did not preclude documentation evidence based on hearsay. *Id.* (emphasis added). Rather, *Fell* stands for the principle that an insurance card and cancelled check payable to the insurance company, alone, are insufficient for proving that a person had *continuously maintained a relationship* with his insurance company according to §1786(a). *Id.* at 237-239. (emphasis added). The *Fell*

case is also not applicable to the case *sub judicie* based on sufficiency of evidence because Jabbar's contention is that a lapse had occurred and that he has obtained insurance coverage on the vehicle in less than 31 days. Jabbar's case does not require this Court to examine documentation to support a theory of a continuous relationship with his insurance company, rather it requires evidence that insurance was obtained on the Dodge in less than 31 days. In support of this argument Jabbar submits his insurance card, insurance declaration page and application that were filed with the insurance company. Therefore, the documentation submitted by Jabbar is not hearsay subject to preclusion at trial.

Based on the aforementioned analysis this Court believes that the Order of this Court dated December 7, 2007 sustaining Jabbar's appeal of registration suspension should be affirmed.

BY THE COURT:

5-15-2008

Date

ALLAN L. TERESHKO, J.

cc: Marc Werlinsky counsel for Appellant
Jailil Jabbar pro se Appellee

