STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED
1999 DEC 29 A 9:28
SUPERIOR COURT

Scott M. Berube)
)
v.)
)
State of Vermont, Agency of Transportation)

Washington Superior Court
Docket No. 416-7-99 Wncv

MEMORANDUM OF DECISION

This matter is before the court on the plaintiff's appeal of a decision by the hearing examiner for the Agency of Transportation. The Defendant is represented by Thomas A. McCormick, Assistant Attorney General, and the plaintiff is pro se.

Background

On January 30, 1999 plaintiff was involved in an automobile accident. Plaintiff was driving a 1993 Volkswagen Fox owned by Haley Batchelder, his friend. The vehicle sustained $3,000 worth of damage, and a police report was filed. Plaintiff was not at fault in the accident. Another driver's vehicle hit him as he was driving Ms. Batchelder's car through an intersection in a lawful manner under the direction of a traffic control officer.

Plaintiff was asked to provide proof of insurance. The information that was provided indicated an insurance policy with Colonial Insurance Company under Ms. Batchelder's name. According to the insurance company, this policy was not in effect as of the date of the accident. As a result, plaintiff's driver's license was suspended "for not having the required liability insurance coverage in effect at [the] time of [the] accident." (See Hearing Examiner's Decision at 1.)

Plaintiff requested an administrative hearing. The hearing examiner decided against plaintiff and ordered that his license be suspended. Plaintiff now appeals the hearing examiner's decision to this court. A hearing was held in this court on November 1, 1999.

Discussion

Appeals of decisions of administrative agencies are subject to review on the record. See V.R.C.P. 74(d); see also State of Vermont Dep't of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 294-95 (1980). The standard of review on appeal affords deference to the hearing officer's decision. "Where the findings of an

administrative agency 'fairly and reasonably' support the agency's conclusions of law" the court must uphold the agency's decision. In re New England Tel. and Tel. Co., 159 Vt. 459, 461-62 (1993) (quoting Caledonian Record Publ'g Co. v. Department of Employment & Training, 151 Vt. 256, 260 (1989)). It is presumed "that decisions made within an administrative agency's area of expertise are correct, valid, and reasonable, absent a clear showing to the contrary." Close v. Superior Excavating Co., 166 Vt. 318, 321 (1997).

The statute that is at issue in this case states that:

> The commissioner shall require proof of financial responsibility to satisfy any claim for damages . . . . to property in any one accident, as follows: From the operator of a motor vehicle involved in an accident . . . . whereby the motor vehicle then under his or her control or any other property is damaged in an aggregate amount to the extent of $1,000.00 or more excepting, however, an operator furnishing the commissioner with satisfactory proof that a standard provisions automobile liability insurance policy, issued by an insurance company authorized to transact business in this state insuring the person against public liability and property damage, in the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident . . . .

23 V.S.A. § 801(a)(3). If no proof of insurance is provided "the commissioner shall suspend the license of an operator . . . to operate any motor vehicle in this state." 23 V.S.A. § 802(a).

Plaintiff's argument is that he was unaware that the owner of the vehicle lacked automobile insurance for the vehicle. As evidence plaintiff provided the hearing commissioner with evidence of an insurance card that he found in the glove compartment at the time of the accident which seemed to indicate that the car was insured (the insurance card was issued at the time of the insurance renewal bill which was never paid). (See Ex. A2.) Plaintiff has also argued to the court that he was not found to be at fault in the accident that occurred, and thus this case is not about any financial liability on his part but is rather an exercise in strict enforcement of a statute.

The State contends that these statutes are plainly written and allow for no exception. The State has provided the court with the former version of the statute at issue in this case. Previously 23 V.S.A. § 801(a)(3) stated that proof of insurance would be required "[f]rom the operator of a motor vehicle involved in an accident for which he was wholly or partially at fault as determined by the commissioner." As noted above, however, the "fault" language has been eliminated from the statute by the legislature. The statutory provisions regarding a hearing, 23 V.S.A. § 802(I), were also amended by the legislature to remove language stating that the hearing officer was to determine "whether the operator was, in any degree, at fault for the accident." The current version of the statute

regarding hearings states that the hearing is merely "to determine whether the operator was at the time of the accident . . . insured against public liability and property damage." 23 V.S.A. 802(I).

Plaintiff has made clear his argument that he was without fault in the automobile accident that occurred, and has alleged that he was unaware that the friend's vehicle he was driving lacked insurance coverage. The court was sufficiently persuaded by these arguments to seek some proof from the State as to whether this court could consider the plaintiff's fault in making a decision regarding this appeal. The State has come forward and shown that the statutes at issue have been amended by the legislature specifically to remove any language involving fault or the determination of fault in an accident.

When faced with such clear-cut and straightforward language in a statute, the Vermont Supreme Court has said that the courts must "apply the plain meaning of a statute where the language is clear and unambiguous," and that the "paramount goal in statutory construction is to give effect to the Legislature's intent." Shea v. Metcalf, 167 Vt. 494, 498 (1998) (citing Conn v. Middlebury Union High Sch. Dist. # 3, 162 Vt. 498, 501 (1994) and Burlington Elec. Dep't v. Vermont. Dep't of Taxes, 154 Vt. 332, 335 (1990)). In this case the legislature has chosen to allow no room for the court to consider the issues raised by plaintiff, and thus the decision of the hearing examiner must be upheld.

ORDER

Based on the foregoing reasons, the decision of the hearing examiner is AFFIRMED.

Dated at Montpelier, Vermont this 28th day of December 1999.

Mary Miles Teachout

Hon. Mary Miles Teachout
Superior Judge, presiding