

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PRESENTED FOR REVIEW
2010 JUN 16 PM 12:45
PROFROTHY

PEDRO A. CAMARGO,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee

NOVEMBER TERM, 2009

NO. 04763

COMMONWEALTH NO.
572 CD 2010

JUAN W. POSADA,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee

NOVEMBER TERM, 2009 ✓

~~NO. 05044~~

COMMONWEALTH NO.
568 CD 2010

JUAN CARLOS RAMIREZ,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee

NOVEMBER TERM, 2009

NO. 05057

COMMONWEALTH NO.
569 CD 2010

SANDRA L. GONZALEZ,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee

NOVEMBER TERM, 2009

NO. 05066

COMMONWEALTH NO.
570 CD 2010

MARIA P. SERNA-DEANDRADE,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA

NOVEMBER TERM, 2009

NO. 05310

Posada Vs Pa Dot-OPFLD



09110504400012

6

DEPARTMENT OF TRANSPORTATION,
Appellee

: COMMONWEALTH NO.
: 565 CD 2010
:
:
:

JESSE LATORRE,
Appellant
v.

: NOVEMBER TERM, 2009
:
: NO. 05282
:
:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee

: COMMONWEALTH NO.
: 573 CD 2010
:
:

OPINION

Esther R. Sylvester, S.J.

These consolidated appeals involve the cancellation of the Petitioners' drivers' licenses by the Commonwealth of Pennsylvania Department of Transportation ("PennDOT") because the Petitioners' applications did not provide valid social security numbers. PennDOT cancelled Petitioners' drivers' licenses while the licenses were still current. This Court's interpretation of the Pennsylvania Motor Vehicle Code prohibits PennDOT from cancelling these licenses.

I. BACKGROUND

These appeals are the result of the cancellation of Petitioners' drivers' licenses by PennDOT because the Petitioners did not provide social security numbers on their drivers' license applications.

These cases first came before the Honorable Norman Ackerman on January 26, 2010. On that day, PennDOT informed the court that it cancelled Petitioners' drivers' licenses because the

Petitioners did not have proper social security numbers. (N.T. 1.26.10, at 4). PennDOT offered into evidence a packet of certified documents (“PCD”), and then rested. (N.T. 1.26.10, at 5).

Petitioners do not have social security numbers because they are not citizens. Petitioners, in turn, each explained that they had their driver’s licenses for many years and had repeatedly renewed their licenses with their tax identification numbers. (N.T. 1.26.10, at 5, 8, 12, 13, 15). When Petitioners initially went to PennDOT to apply for driver’s licenses, they told PennDOT that they did not have social security numbers. PennDOT advised the Petitioners to write down their tax identification numbers instead of social security numbers. (N.T. 1.26.10, at 18). Thus, Petitioners used a tax identification number to obtain their licenses. (N.T. 1.26.10, at 5, 8, 13, 14, 17). Petitioners never had any problems renewing their licenses with their tax identification numbers.

Petitioners received Official Notices from PennDOT dated May 19, 2009. The Notices stated that PennDOT now required verification of Social Security numbers. Additionally, the Notice ordered Petitioners to bring several documents, including their social security cards, to a Driver License Center. (PCD #3). If they did not, the Notice warned, their licenses would be cancelled within twenty (20) days. (PCD #3). On June 18, 2009, Petitioners received an Additional Notice that the effective date of the cancellation would be postponed indefinitely. (PCD #2). On November 3, 2009, Petitioners received a letter stating their licenses would be cancelled on December 15, 2009. (PCD #1).

II. LEGAL ANALYSIS

The standard of review of a common pleas court decision in a license cancellation case is limited to determining whether necessary findings are supported by competent evidence, whether

errors of law were committed, or whether the trial court abused its discretion. *McKelvy v. Commonwealth of Pennsylvania, Dep't of Transp., Bureau of Driver Licensing*, 814 A.2d 843, 845 n. 1 (Commw. Ct. 2003).

By statute, PennDOT may cancel a driver's license upon determining that the licensee was not entitled to the issuance. 75 Pa.C.S.A. § 1572(1)(i) (2009). PennDOT argues that, in these cases, the Petitioners' drivers' licenses were not properly issued because the Petitioners did not have social security numbers.

Section 1510 of the Motor Vehicle Code states that each applicant for a driver's license must provide his or her social security number, or, in the alternative, obtain a waiver from the federal government permitting him or her not to have a social security number. 75 Pa.C.S.A. § 1510(a), (f). The statute also states that the Department may require other identifiers, including, but not limited to, a taxpayer identification number before issuing the license. 75 Pa.C.S.A. § 1510(f).

In 2005, Congress enacted the REAL ID Act. This Act requires a state to adopt "the following practices in **the issuance of drivers' licenses** and identification cards: . . . (5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number." *Id.* The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 314 (emphasis added). These procedures were set in place to ensure that no social security number was being used by more than one person. *See id.* This statute, however, applies only to drivers' licenses that are issued going forward, not those already in use. "[W]here a statute is unambiguous, the judiciary may not ignore the plain language 'under the pretext of pursuing its spirit,' for the language of a statute is the best indication of legislative intent. *Colville v. Allegheny C'ty Ret. Bd.*, 926 A.2d 424, 431 (Pa. 2007). There is no indication in the

REAL ID Act that it should be applied retroactively. In the cases *sub judice*, Petitioners' licenses were issued at least nine years ago or more. Thus, the REAL ID Act should not apply.

Prior to the REAL ID Act, PennDOT allowed individuals to use only their tax identification numbers if they did not have social security numbers. In *Kocher v. Bickley*, 722 A.2d 756 (Cmwlth. Ct. 1999), applicants for learner's permits filed a petition for review in the nature of a mandamus with the Commonwealth Court to compel PennDOT to issue them permits. *Kocher v. Bickley*, 722 A.2d 756, 757 (Commw. Ct. 1999). Applicants had religious objections to the social security system and claimed requiring them to obtain social security numbers violated the free exercise clause of the Constitution.¹ *Id.* at 758. In turn, PennDOT argued that, instead of a social security number, applicants could have provided, among other things, a tax identification number. *Id.* at 757.

In support of its preliminary objections, PennDOT argued that the action should be dismissed because "the Vehicle Code allows the Applicants to provide **federal taxpayer identification numbers as an alternative to providing a social security number.**" *Id.* at 758. PennDOT argued that because the Applicants failed to provide social security numbers, waivers, **or tax identification numbers** as required under section 1510 of the Motor Vehicle Code, and PennDOT properly denied their applications.² Irrespective of the holding of *Kocher, supra*, it is

¹ Applicants conscientiously objected because social security violated "a biblical principal that parents of the family were to provide for the children, not the children for the parents." *Kocher*, 722 A.2d at 758-59. The specific passage is found in 2 Corinthians 12:14 (KJV), "the apostle Paul writes, 'for the children ought not lay up for the parents, but the parents for the children.'" *Id.* at 758 n. 5. According to Applicants, social security is a direct violation of that principle. *Id.*

² The Court, however, found that PennDOT's argument on that point had no merit because Applicants could not obtain tax identification numbers because they are only issued to non-resident aliens. *Id.* at 758. Ultimately, however, the court granted PennDOT's objections based on Applicant's lack of a clear legal right to relief and no corresponding duty on the Department. *Id.* at 762. The *Kocher* case is being cited to show PennDOT's prior inconsistent arguments and its clear course of conduct in accepting tax payer identification numbers, not for its holding.

clear that PennDOT did allow tax identification numbers to be used in lieu of social security numbers.

Petitioners in the cases *sub judice* were told they could do just that by PennDOT. (N.T. 1.26.10, at 20). No evidence presented by PennDOT contradicted Petitioner's representations. Because the Petitioners are non-citizens, they could not obtain social security numbers and offered their tax identification numbers. This was approved by PennDOT's authorized agents. Indeed, not only did PennDOT allow them to obtain driver's licenses, they continued to allow them to renew those licenses using their tax identification numbers for many years.

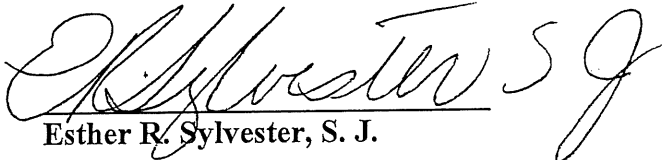
As a separate matter, in the Notices of Cancellation sent to Petitioners, PennDOT never once mentioned that Petitioners could obtain a waiver of the social security requirement. At a minimum, justice would require that PennDOT inform Petitioners of all the steps they could take to maintain their licenses. The first time any of the Petitioners were told they could obtain a waiver was in court on January 29, 2010. (N.T. at 18). This option was never mentioned to any of the Petitioners when they applied for their driver's license over a decade ago. Instead, it allowed Petitioners to use their tax identification numbers. Therefore, in the interests of justice and fairness, Petitioners drivers' licenses should never have been cancelled.

III. CONCLUSION

Based on the foregoing, this Court respectfully requests that the Orders sustaining Petitioners' appeals be affirmed.

BY THE COURT:

6/16/2010
Date


Esther R. Sylvester, S. J.