

The Office of Constable (of Tobyhanna Township) Roger C. Metzgar

v.

**Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Motor Vehicles, Appellant**

The Office of Constable (of Tobyhanna Township) Roger C. Metzgar, Appellants

v.

**Commonwealth of Pennsylvania,
Department of Transportation, Bureau of
Motor Vehicles**

No. 294 C.D. 2012

No. 395 C.D. 2012

**COMMONWEALTH COURT OF
PENNSYLVANIA**

Submitted: February 15, 2013

April 4, 2013

BEFORE: HONORABLE RENÉE COHN
JUBELIRER, Judge HONORABLE ROBERT
SIMPSON, Judge HONORABLE ROCHELLE S.
FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE
FRIEDMAN

Roger C. Metzgar and the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (DOT), cross-appeal from the February 2, 2012, order of the Court of Common Pleas of Monroe County (trial court), which:

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(1) quashed Metzgar's appeal from the suspension of his vehicle registration for a 1997 Chevrolet station wagon (Chevrolet Appeal); (2) sustained Metzgar's appeal from the suspension of his vehicle registration for a 2001 Ford sedan (Ford Appeal); and (3) ordered DOT to reinstate Metzgar's vehicle registration for the 2001 Ford

sedan. We affirm in part, vacate in part, and remand for further proceedings.

Metzgar purchased a 1997 Chevrolet station wagon and a 2001 Ford sedan to use for his work as the Constable of Tobyhanna Township. Metzgar originally placed the vehicles' titles in his own name, but he later sought to transfer both titles to the fictitious name of "Office of Constable of Tobyhanna Township." Metzgar went to a DOT-authorized auto-tag company to transfer the titles. An employee of the auto-tag company helped Metzgar complete the registration forms for municipal government (MG) vehicles. The employee never asked Metzgar to pay registration fees. After Metzgar completed the applications, the employee gave Metzgar two MG license plates.

Thereafter, DOT mailed Metzgar registration cards for the two vehicles, each bearing the name of "Office of Constable of Tobyhanna Township." DOT never notified Metzgar that registration fees were required or mailed Metzgar a bill for the registration fees.

On September 13, 2011, DOT mailed Metzgar two letters informing him that his MG registrations were being suspended indefinitely for non-payment of the required fees pursuant to section 1373(b)(2) of the Vehicle Code, 75 Pa. C.S.

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§1373(b)(2).¹ The letters also stated that DOT had issued the MG registrations in error and that Metzgar must return the MG license plates to DOT.

Metzgar filed a statutory appeal from the suspension notices. After a *de novo* hearing, the trial court determined that Metzgar had improperly filed a single appeal from multiple suspension notices in violation of the common law rule that a party must file a separate appeal from each suspension notice. Thus, the trial court quashed the Chevrolet Appeal.

With regard to the Ford Appeal, the trial court found that DOT failed to prove that a

registration fee was due or that DOT ever requested a fee from Metzgar. The trial court explained:

Absent proof [that] a fee is actually due for registration of "MG" plates, the Court is constrained to sustain Petitioner's appeal. *This Court takes no position on whether or not the plate and registration were issued in error*, either because a fee was not paid, or as Petitioner argued, because PennDOT no longer wishes to issue "MG" registration[s] and plates to constables.

(Trial Ct. Op. at 6 (emphasis added).) Therefore, the trial court sustained the Ford Appeal and ordered DOT to reinstate Metzgar's MG registration for the 2001 Ford sedan. Both Metzgar and DOT timely appealed to this court.²

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Metzgar's Appeal

Metzgar asserts that the trial court erred in quashing the Chevrolet Appeal. Metzgar claims that the cases on which the trial court relied are distinguishable or, in the alternative, should be overruled.

We conclude that the trial court properly quashed Metzgar's Chevrolet Appeal. The law is clear that "a party may not file a single statutory appeal from multiple suspension notices relating to separate vehicle registrations." *Brogan v. Department of Transportation, Bureau of Driver Licensing*, 643 A.2d 1126, 1128 (Pa. Cmwlth. 1994) (*en banc*); accord *Hapchuk v. Department of Transportation, Bureau of Motor Vehicles*, 929 A.2d 656, 659 (Pa. Cmwlth. 2007); *O'Hara v. Department of Transportation, Bureau of Motor Vehicles*, 691 A.2d 1001, 1004 (Pa. Cmwlth. 1997) (*en banc*), *aff'd*, 551 Pa. 669, 713 A.2d 60 (1998). The *Brogan* court reasoned that "each notice of suspension issued by DOT constitutes a final order of a governmental agency . . ." 643 A.2d at

1127. Contrary to Metzgar's assertions, we are bound by these cases and cannot overrule them.

Accordingly, we affirm the portion of the trial court's order quashing Metzgar's Chevrolet Appeal.

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DOT's Appeal

DOT asserts that the trial court erred in sustaining Metzgar's Ford Appeal. At the hearing, DOT argued that the MG registration for Metzgar's 2001 Ford sedan was issued in error. According to DOT, constables are not eligible for the MG registration fee exemption because they are not political subdivisions of the Commonwealth of Pennsylvania or employees of a state or local authority.³ Rather, DOT contends that Metzgar is an independent contractor and his vehicle is privately owned. The trial court, however, refused to consider this issue. In sustaining Metzgar's appeal, the trial court reasoned that because DOT never asked Metzgar to pay a fee, DOT improperly suspended his registration. The trial court found that the issue of whether DOT issued the MG registration in error "was not before the Court." (Trial Ct. Op. at 5.) We disagree.

The notice from which Metzgar appealed expressly stated that the MG registration was "issued in error" because it "was issued . . . without payment of the required fees." (N.T., 1/25/12, Ex. 2; R.R. at 118b.) Thus, the question of whether DOT erroneously issued the MG registration for Metzgar's vehicle was squarely before the trial court. The trial court limited its analysis to whether DOT ever asked Metzgar to pay a registration fee; however, that should not have been the end of its inquiry. DOT maintains that it initially exempted Metzgar from paying a fee because he represented that he works for an eligible governmental entity when, in reality, he does not. Therefore, we conclude that the trial court erred in failing to consider

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whether Metzgar was eligible for an MG license plate and registration fee exemption under the facts of this case.

Accordingly, we vacate the portion of the trial court's order sustaining Metzgar's Ford Appeal and remand this matter to the trial court for findings of fact and conclusions of law on the issue of whether DOT issued the MG registration for Metzgar's 2001 Ford sedan in error.

/s/ _____
ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 4th day of April, 2013, with respect to the February 2, 2012, order of the Court of Common Pleas of Monroe County (trial court), we hereby: (1) affirm the portion of the order quashing Roger C. Metzgar's appeal from the suspension of his vehicle registration for the 1997 Chevrolet station wagon; (2) vacate the remainder of the order; and (3) remand the matter to the trial court for further proceedings consistent with this opinion.

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Jurisdiction relinquished.

/s/ _____
ROCHELLE S. FRIEDMAN, Senior Judge

Footnotes:

¹ Section 1373(b)(2) of the Vehicle Code provides that DOT "may suspend a registration without providing an opportunity for a hearing" if "[t]he required fees have not been paid." 75 Pa. C.S. §1373(b)(2).

² Our scope of review is limited to determining whether the trial court's factual findings are supported by competent evidence or whether the trial court committed an error of law

or abused its discretion. *O'Hara v. Department of Transportation, Bureau of Motor Vehicles*, 691 A.2d 1001, 1003 n.2 (Pa. Cmwlth. 1997) (*en banc*), *aff'd*, 551 Pa. 669, 713 A.2d 60 (1998).

³ Section 1901(a) of the Vehicle Code exempts the following entities from registration fees: (1) the Commonwealth of Pennsylvania; (2) political subdivisions of the Commonwealth; (3) state and local authorities; (4) state institutions of higher learning; (5) the federal government; and (6) other states. 75 Pa. C.S. §1901(a).
