

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

AKIL CHANEY

Plaintiff

v.

BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2006-07066-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On February 22, 2006, plaintiff, Akil Chaney, was cited for driving under a financial responsibility law suspension (no insurance coverage) and speeding. Consequently, his vehicle was impounded. On March 3, 2006, plaintiff entered a plea of no contest to the charges and subsequently was found guilty by the Ashland Municipal Court. Plaintiff relates he later discovered he did have car insurance at the time of the traffic stop and subsequently filed a motion to vacate his convictions with the court. On May 9, 2006, the Ashland Municipal Court issued a Judgment Order vacating those convictions. Plaintiff asserts the initial charge of driving without insurance coverage was the result of erroneous information contained in defendant's, Bureau of Motor Vehicles ("BMV"), data base. Accordingly, plaintiff asserts his vehicle would not have been impounded had the information been accurate.

{¶2} Therefore, plaintiff filed this complaint seeking to recover \$265.00, for impound and towing fees and \$300.00 for attorney fees necessary for his representation in the Ashland Municipal Court. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant contended BMV records were accurate when plaintiff was cited. Defendant's investigation reveals that on March 19, 2004, plaintiff received a traffic citation for operating a vehicle without a valid driver's license. Subsequently, on March 30, 2004, he was convicted of this offense by the Rocky River Municipal Court. Consequently, he was required to maintain high risk insurance or post a bond with defendant for the period

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from May 28, 2004, until May 28, 2007. On July 5, 2005, plaintiff's insurance was cancelled. Plaintiff did not renew his insurance coverage until February 22, 2006. On February 21, 2006, plaintiff received a citation for driving without a valid driver's license. On May 9, 2006, plaintiff entered a guilty plea to his charge and was convicted by the Mansfield Municipal Court. On February 22, 2006, plaintiff was again stopped and cited for driving under a financial responsibility law suspension and speeding. On February 23, 2006, the day after plaintiff was stopped due to driving under a financial responsibility law suspension, plaintiff's insurer filed information with defendant that he had renewed his insurance coverage on February 22, 2006. On March 3, 2007, plaintiff plead no contest to the charges of driving under a financial responsibility suspension and speeding.

{¶4} Defendant also asserts plaintiff does not have a valid Ohio driver's license. Defendant contends plaintiff held an Ohio identification (ID) card issued on March 17, 2005, and expiring on January 30, 2009, at the time of the incident. In order to hold an ID an individual must not hold a driver's license from this state or any other licensing jurisdiction. Therefore, defendant contends plaintiff did not hold a valid operator's license at the time he was stopped nor did defendant receive notice that plaintiff complied with the financial responsibility law until the day after he was stopped. Accordingly, defendant asserts it was not negligent and plaintiff's case should be dismissed for failure to state a claim upon which relief can be granted.

{¶5} On February 23, 2007, plaintiff filed a motion to amend his complaint. Plaintiff seeks to amend the prayer amount of the complaint to \$2,500.00 to reflect lost income he suffered as a result of his vehicle being impounded.

{¶6} On March 15, 2007, plaintiff filed a response to defendant's investigation report. Plaintiff asserts that at the time he was stopped on February 22, 2006, he was holding a valid Pennsylvania ID and no longer was holding an Ohio ID card. He claims on February 21, 2006, he realized he had lost his Pennsylvania driver's license and ordered a new one, which was issued on April 8, 2006. Plaintiff also asserts he had insurance at the

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time he was stopped. Plaintiff provides a copy of the traffic ticket he received on February 22, 2006. The ticket indicated the box yes was checked for the question Financial Responsibility proof shown. However, the ticket indicated he was cited for a suspended driver's license pursuant to R.C. 4510.16. It is noted a Pennsylvania identification card is not a driver's license. Plaintiff contends defendant was negligent in reporting that his license was under suspension.

{¶7} On March 15, 2007, plaintiff filed a motion to exclude the investigation report because it was not timely filed pursuant to R.C. 2743.10(B).

{¶8} On November 6, 2006, plaintiff filed his complaint. On February 9, 2007, this court issued an entry requiring defendant to file an investigation report within 14 days. On February 20, 2007, defendant filed the investigation report. Accordingly, defendant's investigation report was timely filed pursuant to the entry issued by this court. Plaintiff's motion to exclude the investigation report is denied and will not be further addressed.

{¶9} Civil Rule 15(A) in pertinent part states:

{¶10} "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . otherwise a party may amend his pleading only by leave of court or with written consent of the adverse party."

{¶11} Plaintiff filed his motion to amend after the investigation report had been filed. He did not get the written consent of defendant to amend his pleading. Accordingly, plaintiff's motion to amend is denied and this matter will not be further addressed.

{¶12} Resulting monetary damages are recoverable when plaintiff proves, by a preponderance of the evidence, defendant erroneously records driver's license information. *Ankney v. Bureau of Motor Vehicles* (1998), 97-11045-AD; *Serbanescu v. Bureau of Motor Vehicles* (1994), 93-15038-AD; *Black v. Bureau of Motor Vehicles* (1996), 95-01441-AD. In the instant action, plaintiff has failed to prove that defendant erroneously recorded his driver's license status. Plaintiff failed to notify defendant that he obtained insurance coverage after the policy was cancelled on July 5, 2005, until his insurance carrier notified

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defendant on February 23, 2005, the day after the citation was issued. Furthermore, a Pennsylvania identification card does not provide the plaintiff with any driving privileges. Plaintiff did not produce a valid Pennsylvania driver's license on either February 21, or 22, 2006. Defendant correctly listed plaintiff's Ohio driver's license as suspended on these dates. Plaintiff could have remedied the situation at the Ashland Municipal Court on March 3, 2006, by presenting information concerning his insurance coverage and his valid driver's license. However, plaintiff chose to plead no contest and was subsequently convicted. Evidence indicates defendant's records were accurate under the circumstances when plaintiff's cause of action accrued. *Elliott v. Bureau of Motor Vehicles* (2001), 2001-02104-AD, jud. Any damages sustained by plaintiff are attributable to his own negligence.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
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