

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

AMBER LYNNE SENDEJAZ

Plaintiff

v.

OHIO BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2007-02076-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Amber L. Sendejaz, stated she received a citation for speeding in Norton, Ohio, issued by a local law enforcement officer on November 14, 2006. Plaintiff further stated her driver's license was seized at the time she was issued the speeding citation. Plaintiff did not offer an explanation regarding why her driver's license was subject to seizure. Additionally, plaintiff did not produce a copy of the November 14, 2006, speeding citation. According to plaintiff, she was advised she could pay the fine for the speeding ticket by mail and was not required to appear in court based on the November 14, 2006, speeding citation issued incident to a traffic stop. Plaintiff related she mailed a check for the speeding violation fine along with a copy of her proof of automobile insurance document to the Norton Mayor's Court on November 25, 2006. The check was subsequently negotiated.

{¶2} Plaintiff recorded her car was involved in a motor vehicle accident on January 12, 2007. Plaintiff noted her parked car was damaged when the vehicle was backed into by another motorist. The left front fender and headlight of plaintiff's automobile were damaged in the January 12, 2007 collision. Although plaintiff's car was damaged, the vehicle was operable and plaintiff continued to drive it pending repairs.

{¶3} On January 17, 2007, at approximately 8:00 p.m., plaintiff was driving her automobile when she was stopped by a Brunswick, Ohio police officer, Patrolman S.

Hosta, due to the damaged inoperable headlight on her car. Patrolman Hosta, incident to the traffic stop, ran a computer check of plaintiff's driver's license status. The computer check from defendant, Bureau of Motor Vehicles ("BMV") files, indicated plaintiff's driver's license was suspended for failure to maintain automobile insurance. Plaintiff was issued a citation for driving under a suspended license and also for not having a driver's license. The citation, issued by Patrolman Hosta, noted plaintiff failed to provide proof of automobile insurance at the time she was stopped on January 17, 2007. Furthermore, plaintiff's automobile was impounded because of the driving-under-license suspension charge. Plaintiff asserted she went to a BMV office on January 18, 2007, and received confirmation her driver's license was not suspended. Plaintiff subsequently appeared in the Brunswick Mayor's Court on January 23, 2007, to address the driving under suspension charges. Plaintiff stated the court reviewed all documentation she provided concerning her driver's license status and then dismissed the charges noted in the January 17, 2007 citation issued by Patrolman Hosta.

{¶4} Plaintiff contended she incurred various expenses as a result of defendant's act in erroneously recording her driver's license as suspended. Plaintiff filed this complaint seeking to recover \$394.70 for towing and storage expenses, duplicate driver's license fees, and work loss. Plaintiff paid the \$25.00 filing fee.

{¶5} Defendant denied any liability in this matter asserting BMV records accurately reflected the status of plaintiff's driver's license on January 17, 2007. Defendant acknowledged plaintiff received a uniform traffic ticket for speeding on November 14, 2006 and was convicted of that offense on November 27, 2006 in the Norton Mayor's Court. Defendant submitted a document generated by the Norton Mayor's Court to BMV recording plaintiff failed to show proof of financial responsibility (insurance), "either to the officer at the time of the traffic stop (November 14, 2006) or to the Court at the time of the conviction (November 27, 2006) as required by R.C.

4509.101.”¹ Defendant relied on the report from the Norton Mayor’s Court which found plaintiff failed to produce proof of financial responsibility. Defendant maintained that BMV’s reliance on the report from the Norton Mayor’s Court concerning plaintiff’s supposed failure to provide proof of financial responsibility does not create liability on the part of BMV.

{¶6} On December 13, 2006, defendant, acting on the information supplied by the Norton Mayor’s Court, sent plaintiff a Notice of Suspension letter pursuant to R.C. 4509.101(D)(5).² Defendant mailed the Notice of Suspension letter to plaintiff’s listed

¹ R.C. 4509.101(D)(2)(3)(4)(a) and (b) state:

“(2) A peace officer shall request the owner or operator of a motor vehicle to produce proof of financial responsibility in a manner described in division (G) of this section at the time the peace officer acts to enforce the traffic laws of this state and during motor vehicle inspections conducted pursuant to section 4513.02 of the Revised Code.

“(3) A peace officer shall indicate on every traffic ticket whether the person receiving the traffic ticket produced proof of the maintenance of financial responsibility in response to the officers request under division (D)(2) of this section. The peace officer shall inform every person who receives a traffic ticket and who has failed to produce proof of the maintenance of financial responsibility that the person must submit proof to the traffic violations bureau with any payment of a fine and costs for the ticketed violation or, if the person is to appear in court for the violation, the person must submit proof to the court.

“(4)(a) If a person who has failed to produce proof of the maintenance of financial responsibility appears in court for a ticketed violation, the court may permit the defendant to present evidence of proof of financial responsibility to the court at such time and in such manner as the court determines to be necessary or appropriate. In a manner prescribed by the registrar, the clerk of courts shall provide the registrar with the identity of any person who fails to submit proof of the maintenance of financial responsibility pursuant to division (D)(3) of this section.

“(b) If a person who has failed to produce proof of the maintenance of financial responsibility also fails to submit that proof to the traffic violations bureau with payment of a fine and costs for the ticketed violation, the traffic violations bureau, in a manner prescribed by the registrar, shall notify the registrar of the identity of that person.”

² R.C. 4509.101(D)(5)(a)(b) and (c) states:

“(5)(a) Upon receiving notice from a clerk of courts or traffic violations bureau pursuant to division (D)(4) of this section, the registrar shall order the suspension of the license of the person required under division (A)(2)(a), (b), or (c) of this section and the impoundment of the person’s certificate of registration and license plates required under division (A)(2)(d) of this section, effective thirty days after the date of the mailing of notification. The registrar also shall notify the person that the person must present the registrar with proof of financial responsibility in accordance with this section, surrender to the registrar the person’s certificate of registration, license plates, and license, or submit a statement subject to section 2921.13 of the Revised Code that the person did not operate or permit the operation of the motor vehicle at the time of the offense. Notification shall be in writing and shall be sent to the person at the person’s last known address as shown on the records of the bureau of motor vehicles. The person, within fifteen

address: 2632 W. Comet Rd, Clinton, Ohio 44216. Although plaintiff currently resides at a different address, the Clinton, Ohio address was the last known address of plaintiff at the time defendant sent the notice letter. The Clinton, Ohio address also appears to be the listed address printed on the check plaintiff used to pay the fine for her speeding violation in the Norton Mayor's Court. The notice was not returned to BMV.

{¶17} Defendant submitted a copy of the Notice of Suspension letter sent to plaintiff. The letter provided information regarding the reasons for BMV's actions and advised plaintiff of the measures she needed to take to avoid the suspension from taking effect. The letter provided the following reprinted content.

{¶18} "YOUR DRIVER'S LICENSE IS SUSPENDED starting on the date listed in the 'Important Case Information' box above. If a license plate number is listed, YOUR LICENSE PLATES ARE ALSO SUSPENDED starting on the same date.

days after the date of the mailing of notification, shall present proof of financial responsibility, surrender the certificate of registration, license plates, and license to the registrar in a manner set forth in division (A)(4) of this section, or submit the statement required under this section together with other information the person considers appropriate.

"If the registrar does not receive proof or the person does not surrender the certificate of registration, license plates, and license, in accordance with this division, the registrar shall permit the order for the suspension of the license of the person and the impoundment of the person's certificate of registration and license plates to take effect.

"(b) In the case of a person who presents, within the fifteen-day period, documents to show proof of financial responsibility, the registrar shall terminate the order of suspension and the impoundment of the registration and license plates required under division (A)(2)(d) of this section and shall send written notification to the person, at the person's last known address as shown on the records of the bureau.

"(c) Any person adversely affected by the order of the registrar under division (D)(5)(a) or (b) of this section, within ten days after the issuance of the order, may request an administrative hearing before the registrar, who shall provide the person with an opportunity for a hearing in accordance with this paragraph. A request for a hearing does not operate as a suspension of the order. The scope of the hearing shall be limited to whether, at the time of the hearing, the person presents proof of financial responsibility covering the vehicle and whether the person is eligible for an exemption in accordance with this section or any rule adopted under it. The registrar shall determine the date, time, and place of any hearing; provided, that the hearing shall be held, and an order issued or findings made, within thirty days after the registrar receives a request for a hearing. If requested by the person in writing, the registrar may designate as the place of hearing the county seat of the county in which the person resides or a place within fifty miles of the person's residence. Such person shall pay the cost of the hearing before the registrar, if the registrar's order of suspension or impoundment under division (D)(5)(a) or (b) of this section is upheld."

{¶9} “This suspension is because you did not prove insurance to a police officer or to the court after you received a traffic ticket. (R.C. 4509.101)

{¶10} “YOU CAN AVOID THIS SUSPENSION if you can prove to us that you did have insurance or other financial responsibility coverage (FR coverage) PRIOR to the time of your traffic offense and IN EFFECT FOR THE ABOVE VIOLATION DATE. To prove insurance or other FR coverage, return this notice along with ONE of the following WITHIN FIFTEEN (15) DAYS:

{¶11} “A copy of your automobile insurance identification (ID) card,

{¶12} “Or a copy of the declarations page of your policy,

{¶13} “Or a letter on insurance company letterhead signed by your insurance agent. This letter must include the following information:

{¶14} “Name of insurance company

{¶15} “Name and address of local agent

{¶16} “Name in which policy was issued

{¶17} “Policy number

{¶18} “Effective dates of policy (must include date of traffic offense)

{¶19} “Phone number of local agent (REQUIRED for verification)”

{¶20} Defendant’s records show plaintiff never responded to the Notice of Suspension letter. Therefore, BMV pursuant to the statutory authority suspended plaintiff’s license effective January 12, 2007. Defendant removed the suspension when plaintiff appeared at a BMV Reinstatement Office on January 18, 2007 and submitted proof of financial responsibility. Plaintiff’s license was reinstated along with the suspension being cleared. Defendant contended BMV acted properly in suspending plaintiff’s license based on information received from the Norton Mayor’s Court and plaintiff’s failure to timely respond to the Notice of Suspension.

{¶21} Plaintiff filed a response explaining when she was stopped for a speeding ticket on November 14, 2006, the police officer issuing the speeding citation advised her to “send in proof of my insurance with the payment for my ticket.” Plaintiff related she

submitted proof of financial responsibility with a check to pay the speeding ticket fine and therefore assumed she had complied with the law. Plaintiff denied receiving the Notice of Suspension mailed from defendant to her listed Clinton, Ohio address. Plaintiff asserted she remained unaware of defendant's actions until she was cited on January 17, 2007.

{¶22} Defendant is required to give written notice of driver's license suspensions by regular mail sent to the last known address of the person whose license is suspended. *State v. May* (July 19, 1995), Ross App. 94CA2075. In the instant claim, evidence has shown BMV complied with the requisite notice provisions in mailing the December 13, 2006 Notice of Suspension letter to plaintiff's listed address in Clinton, Ohio. The letter was mailed and not returned to BMV. Delivery can be presumed. Additionally, evidence has shown plaintiff paid her speeding ticket fine by check on November 25, 2006, and the check appears to bear the Clinton, Ohio address. No evidence has been presented to establish BMV failed to comply with requirements for sending notice. See *Raheem v. Bureau of Motor Vehicles*, Ct. of Cl. No. 2006-06043-AD, jud, 2007-Ohio-1987.

{¶23} Furthermore, plaintiff was charged with a statutory duty to notify BMV of any address change, within ten days after moving. There is no evidence plaintiff filed a change of address form. It has been previously held that a plaintiff who fails to notify BMV of a full address change as required by statute (see 4507.09(C))³ is the sole proximate cause of any failure of service and loss resulting from this real or perceived failure. See *Spinner v. Bureau of Motor Vehicles*, Ct. of Cl. No. 2004-09401-AD, 2005-Ohio-2487; also *Fredrickson v. Ohio State Hwy. Patrol, et al.*, Ct. of Cl. NO. 2005-

³ R.C. 4507.09(C) states:

"(C) Each person licensed as a driver under this chapter shall notify the registrar of any change in the person's address within ten days following that change. The notification shall be in writing on a form provided by the registrar and shall include the full name, date of birth, license number, county of residence, social security number, and new address of the person."

04466-AD, 2006-Ohio-7305.

{¶24} Considering the information available to defendant, insufficient evidence has been offered to show that BMV acted improperly in listing plaintiff's license as suspended. 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 her driver's license status. In situations based on financial responsibility noncompliance, BMV may not bear liability for damages proximately caused from suspending a driver's license in reliance upon erroneous information supplied by a municipal court. *Sullivan v. Bureau of Motor Vehicles*, Ct. of Cl. No. 2006-04393-AD, 2007-Ohio-1267. Defendant's records were accurate under the circumstances when plaintiff's cause of action accrued. *Elliott v. Bureau of Motor Vehicles* (2002), 2001-02104-AD, jud. Plaintiff is barred from recovery in situations where BMV performs statutory duties acting in reliance upon records supplied by a court. *Raheem*, Ct. of Cl. No. 2006-06043-AD, jud, 2007-Ohio-1987.

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

AMBER LYNNE SENDEJAZ

Plaintiff

v.

OHIO BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2007-02076-AD

Deputy Clerk Daniel R. Borchert

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Amber Lynne Sendejaz
720 Maplewood Avenue
Brunswick, Ohio 44212

John R. Guldin
Associate Legal Counsel
Ohio Department of Public Safety
Legal Services
1970 West Broad Street

P.O. Box 182081
Columbus, Ohio 43218-2081

RDK/laa
11/15
Filed 12/6/07
Sent to S.C. reporter 1/30/08