

# 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

STEVE BARRETO

Plaintiff

v.

BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2007-05831-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶ 1} Plaintiff, Steve Barreto, filed this complaint alleging his driver's license was erroneously recorded as suspended by defendant, Bureau of Motor Vehicles ("BMV"), and consequently, his car was impounded on April 12, 2007 by local law enforcement. Plaintiff seeks monetary recovery in the amount of \$116.00, which represents claims for towing expenses and filing fee costs. The \$25.00 filing fee was paid.

{¶ 2} On August 30, 2006, plaintiff received a speeding ticket from an officer of the City of Euclid Police Department. On September 18, 2006, plaintiff entered a guilty plea on the speeding citation and was convicted in the Euclid Municipal Court. Subsequently, the Euclid Municipal Court reported to BMV that plaintiff failed to show proof of financial responsibility (car insurance) to either the local law enforcement officer who issued him the speeding citation or the court pursuant to the statutory requirement of R.C. 4509.101.<sup>1</sup>

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<sup>1</sup> 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 officer's 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.

|                        |       |                     |
|------------------------|-------|---------------------|
| Case No. 2006-03532-AD | - 2 - | MEMORANDUM DECISION |
|------------------------|-------|---------------------|

{¶ 3} On December 27, 2006, defendant, acting on information supplied by the Euclid Municipal Court sent plaintiff a Notice of Suspension letter (copy submitted) pursuant to R.C. 4509.101(D)(5).<sup>2</sup> The letter provided information regarding the

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“(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.”

<sup>2</sup> R.C. 4509.101(D)(5)(a)(b) and (c) state:

“(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 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

|                        |       |                     |
|------------------------|-------|---------------------|
| Case No. 2006-03532-AD | - 3 - | MEMORANDUM DECISION |
|------------------------|-------|---------------------|

reasons for BMV's actions and advised plaintiff of the measures he needed to take to avoid the suspension from becoming operative. The September 27, 2006 mailed Notice of Suspension letter was not returned to BMV. The letter provided the following content:

{¶ 4} "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.

{¶ 5} "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)

{¶ 6} "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:

{¶ 7} "A copy of your automobile insurance identification (ID) card,

{¶ 8} "Or a copy of the declarations page of your policy,

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

{¶ 10} "Name of insurance company

{¶ 11} "Name and address of local agent

{¶ 12} "Name in which policy was issued

{¶ 13} "Policy number

{¶ 14} "Effective dates of policy (must include date of traffic offense)

{¶ 15} "Phone number of local agent (REQUIRED for verification)"

{¶ 16} Defendant's records show a response to the Notice of Suspension letter was not received until April 7, 2007 when a fax from Esurance (copy submitted) was sent to BMV verifying plaintiff had been insured at the time he was cited for speeding on

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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."

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|------------------------|-------|---------------------|
| Case No. 2006-03532-AD | - 4 - | MEMORANDUM DECISION |
|------------------------|-------|---------------------|

August 30, 2006. When defendant received this information, plaintiff's suspension status was cleared. Defendant submitted a copy of BMV records showing plaintiff's driver's license suspension was cleared on April 7, 2007.

{¶ 17} In his complaint plaintiff stated he was stopped by a Lindale Police officer at approximately 7:00 p.m. on April 12, 2007 and informed by the officer that he "had been driving under suspension." Plaintiff claimed his car was impounded and towed on April 12, 2007. Plaintiff did not submit a copy of the towing bill or a copy of any citation he may have received on April 12, 2007.

{¶ 18} BMV records clearly show plaintiff's suspension status was deleted on April 7, 2007. Any information received by local law enforcement from BMV on April 12, 2007 would have shown plaintiff's driver's license was valid and not suspending at that time. Based on the evidence available, the court finds defendant acted properly in suspending plaintiff's license. Additionally, the court finds defendant acted promptly in deleting plaintiff's suspension when proof of insurance was received.

{¶ 19} Resulting monetary damages are recoverable when plaintiff prove, 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. In the instant action, plaintiff has failed to prove that defendant erroneously recorded his 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* (2001), 2001-02104-AD, jud.

{¶ 20} Plaintiff is barred from recovery in situations where BMV performs statutory duties acting in reliance upon records supplied by a court. *Raheem v. Ohio*

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|------------------------|-------|---------------------|
| Case No. 2006-03532-AD | - 5 - | MEMORANDUM DECISION |
|------------------------|-------|---------------------|

*Bur. of Motor Vehicles*, Ct. of Cl. No. 2006-06043-AD, jud, 2007-Ohio-1987. Plaintiff, in the instant claim, has failed to establish defendant at any time erroneously recorded his driver's license status. Therefore, this claim is denied.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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