IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

JOCELYN D HARGRAVE SITTA BOMBERI,

Plaintiff(s),

-vs-

OHIO BUREAU OF MOTOR VEHICLES,

Defendant(s).

CASE NO.: 2016 CV 06072

JUDGE TIMOTHY N. O'CONNELL

DECISION, ORDER AND ENTRY AFFIRMING THE REGISTRAR'S AMENDED FINAL ADJUDICATION ORDER

This matter is before the Court on Jocelyn D. Hargrave Sitta-Bomberi's ("Appellant") administrative appeal of the Ohio Bureau of Motor Vehicles *Amended Final Adjudication Order* (the "order") dated November 16, 2016. The order imposed noncompliance and security suspensions against Appellant's driver's license. Appellant filed a *Notice of Appeal* on November 30, 2016. Appellant filed a *Brief in Support of Administrative Appeal* on February 10, 2016. The record of the Administrative hearing was filed on December 29, 2016. The Ohio Department of Public Safety, Bureau of Motor Vehicles ("Appellee") filed a *Brief* on March 9, 2017. Appellant filed a *Reply* on March 27, 2017.

I. STATEMENT OF THE CASE

On March 20, 2016 Appellant's vehicle, a Dodge Durango (the "vehicle"), was involved in a hit-and-run accident.[1] Nicole Kelly was driving a Chevrolet Malibu which was hit by the vehicle and she was injured as a result of the accident.[2] She also had a passenger in the car, Nicholas Brown.[3] The Malibu was damaged in the amount of $11,603.29.[4] Appellant did not have insurance covering the vehicle at the time of the accident.[5] Appellant's insurance was cancelled as of February 19, 2016.[6]

The BMV issued a Notice of Suspension (the "notice") to Appellant, informing her that she would be subject to a noncompliance suspension of her driver's license if she failed to show proof of insurance on the vehicle.[7] The notice also informed Appellant that she was required to submit a security deposit in the amount of $11,603.29.[8] Failure to pay this deposit would subject Appellant's license to a security suspension. Appellant failed to pay the deposit.[9] Appellant then appealed both suspensions.

On December 14, 2016 an administrative hearing was held before a hearing officer. Appellant was represented by counsel at the full hearing. Ms. Kelly and Mr. Brown testified on behalf of the BMV. Appellant also testified at the hearing. Appellant claimed that an acquaintance, Tonya Pope, took her vehicle without permission while Appellant was sleeping.[10] Appellant claimed she tried to report the vehicle as stolen on the morning of March 20th.[11] After the full hearing, the hearing officer issued a report upholding both the noncompliance and the security suspensions. The Registrar of the BMV adopted the report and issued a Final Adjudication Order

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1 Transcript of hearing pg. 30.
2 Transcript of hearing pg. 12.
3 Transcript of hearing pg. 16.
4 Transcript of haring pg. 24.
5 Transcript of hearing pgs. 25, 33.
6 Transcript of hearing pg. 34, 37.
7 Transcript of hearing pg. 21.
8 Transcript of hearing pg. 22.
9 Transcript of hearing pg. 25.
10 Transcript of hearing pg. 30.

imposing noncompliance and security suspensions against Appellant's license. After objections were filed by Appellant, the Registrar of the BMV issued an Amended Final Adjudication Order on November 16, 2016 imposing noncompliance and security suspensions against Appellant's license.

On November 30, 2016, Appellant filed a *Notice of Administrative Appeal.*

II. STANDARD OF REVIEW

The standard of review in this case is governed by R.C. §119.12. §119.12 states, "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication *** revoking or suspending a license*** may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident***."[12] "Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law."[13] "Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency."[14] "The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record***, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law."[15] "In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law."[16]

"The evidence required by RC § 119.12 can be defined as follows: (1) 'reliable' evidence is dependable, that is, it can be confidently trusted, and there must be a reasonable probability that the evidence is true; (2) 'probative' evidence is evidence that tends to prove the issue in question, it

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[11] Transcript of hearing pgs. 30, 31, 33, 47, 48.
[12] R.C. §119.12.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

must be relevant in determining the issue; (3) 'substantial' evidence is evidence with some weight, it must have importance and value."[17]

III. LAW AND ANALYSIS

Appellant argues that the order of November 16, 2016 was not supported by reliable, probative and substantial evidence and it was not in accordance with law. Appellant asserts that she attempted to secure a separate insurance policy for her vehicle and was in the process of obtaining a divorce during that time. Her husband was required to sign the insurance paperwork and he refused. The insurance policy was cancelled because of this. Appellant asserts that she did not drive the vehicle while it was uninsured. Appellant had been helping an individual named TOnya Pope, who sometimes stayed with Appellant. Appellant contends she never gave Ms. Pope permission to drive her vehicle. On the night of March 19, 2016 Appellant awoke during the night and found that her keys were missing and so was the vehicle. On the 20th Appellant asserts she reported the vehicle stolen and provided the police with Ms. Pope's information as the person involved in the accident. Appellant argues that the police refused to make a formal report.

Appellee argues that Appellant offered no evidence aside from her own uncorroborated, self-serving testimony to demonstrate that she qualified for an exception to any of the suspensions. The hearing officer did not find Appellant's testimony credible. Further, Appellant failed to show that she maintained proof of financial responsibility for the vehicle prior to the accident. Appellee asserts that the hearing officer's decision was supported by reliable, probative and substantial evidence and it was in accordance with law.

A. 4509.19(A)(3)

Appellant argues that the exception to the security suspension listed in 4509.19(A)(3) applies. She argues that the persons involved in the accident could not identify the driver of the

[17] *Our Place, Inc. v. Ohio Liquor Control Com.*, 63 Ohio St.3d 570 (1992).

vehicle. Tonya Pope was driving Appellant's vehicle without permission and Appellant argues the evidence shows that she reported it stolen.

Appellee argues that Appellant offered no evidence aside from her uncorroborated, self-serving testimony to demonstrate that she qualified for an exception. Appellant failed to offer a police report that her vehicle was stolen. The hearing officer determined the testimony offered by Appellant was insufficient to prove her claims. The police report listing Appellant's vehicle as the at-fault vehicle for the accident established a reasonable probability of judgment for damages against Appellant. Appellant did not refute that her vehicle was uninsured at the time of the accident. Appellant also did not refute that her vehicle was the one involved in the accident. Appellee argues that the hearing officer made a factual determination based on a collection of reliable, probative and substantial evidence presented at the hearing and the BMV's final adjudication should be upheld.

R.C. 4509.17 states:

> "Except as provided in sections 4509.01 to 4509.78 of the Revised Code, upon failure of any person to request a hearing as provided for in section 4509.13 of the Revised Code or to deposit the security required under section 4509.12 of the Revised Code within thirty days after the registrar of motor vehicles has sent the notice provided for in section 4509.13 of the Revised Code, the registrar shall impose a class F suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of time specified in division (B)(6) of section 4510.02 of the Revised Code on the person and the registrations of all motor vehicles owned by the person. If the person is a nonresident, the suspension shall include the privilege of operating any motor vehicle within this state or permitting the operation within this state of any motor vehicle owned by the nonresident."

R.C. §4509.19(A)(3) states:

"The requirements as to security and suspension in sections 4509.12 and 4509.17 of the Revised Code do not apply: *** (3) To the owner of a motor vehicle if at the time of the accident the motor vehicle was operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission ***."

"Under Ohio Rev. Code Ann. § 4509.12, the Registrar of Motor Vehicles is not authorized to make a judicial determination of negligence or agency. To substantiate his request for a security deposit from a non-driving owner who is not otherwise specifically excepted from such requirement, he is only to determine whether there may be a reasonable possibility of a judgment for damages against that owner under some legal theory of liability either under the doctrine of respondeat superior or the doctrine of negligent entrustment or by reason of a defective condition of the vehicle for which he was responsible."[18]

The Court finds Appellee's argument well-taken. The Court holds that the evidence supporting the hearing officer's determination was reliable and probative. The Court holds that the evidence was also substantial. The evidence shows that Appellant did not have financial responsibility insurance for the vehicle at the time of the accident. The hearing officer did not find Appellant's testimony credible that she gave the police the name and information regarding the person who allegedly stole her vehicle and that the police failed or refused to give her any documentation. Appellant may have testified that Ms. Pope did not have permission to drive her vehicle, but there was no other testimony to corroborate her statements and the hearing officer determined that Appellant's self-serving testimony was not credible.

The hearing officer had to make a decision based on the testimony before her. In reaching her decision she had to weigh the credibility of that evidence based on the first-hand questioning of the witnesses. This Court, removed as it is from such first-hand questioning of the witnesses, cannot now second-guess the hearing officer's judgment that Appellant's narrative was not credible. The Court finds that there was reliable, probative and substantial evidence in the testimonial record to support the hearing officer's findings. Accordingly, Appellant's assignments of error are OVERRULED.

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[18] *Toledo v. Bernoir*, 18 Ohio St. 2d 94, 96 (1969).

B. 4509.101

Appellant argues that the exception listed in R.C. 4509.101(L) applies and that the suspension should be lifted. Appellant asserts that she had insurance at the time of the hearing. Appellant also asserts that her insurance expired through no fault of her own, that her husband refused to sign the required paperwork and this caused the lapse. Further, she stopped driving the vehicle once the insurance was terminated. These factors are highly unlikely to occur again and there is no indication that the insurance lapse occurred because of a desire to evade the requirements of the law.

Appellee argues that the hearing officer's decision to uphold the non-compliance suspension for failure to maintain financial responsibility on the vehicle was correct. Appellant, to qualify for exceptions to a non-compliance suspension, must show that she customarily maintained proof of financial responsibility prior to the accident. Appellant only provided self-serving testimony, she did not provide any evidence that she consistently maintained financial responsibility for the vehicle prior to the policy cancellation. The policy Appellant presented that was cancelled for the missing signature was only in effect for less than 90 days before it was cancelled.

R.C. 4509.101(A)(1) states:

> "No person shall operate, or permit the operation of, a motor vehicle in this state, unless proof of financial responsibility is maintained continuously throughout the registration period with respect to that vehicle, or, in the case of a driver who is not the owner, with respect to that driver's operation of that vehicle."

R.C. 4509.101(L)(1) states:

> "The registrar may terminate any suspension imposed under this section and not require the owner to comply with divisions (A)(5)(a), (b), and (c) of this section if the registrar with or without a hearing determines that the owner of the vehicle has established by clear and convincing evidence that **all** of the following apply:
> (a) **The owner customarily maintains proof of financial responsibility.**
> (b) Proof of financial responsibility was not in effect for the vehicle on the date in question for one of the following reasons:
> (i) The vehicle was inoperable.

(ii) The vehicle is operated only seasonally, and the date in question was outside the season of operation.
(iii) A person other than the vehicle owner or driver was at fault for the lapse of proof of financial responsibility through no fault of the owner or driver.
(iv) The lapse of proof of financial responsibility was caused by excusable neglect under circumstances that are not likely to recur and do not suggest a purpose to evade the requirements of this chapter." (emphasis added).

The hearing officer found that Appellant failed to show that she customarily maintains proof of financial responsibility for the vehicle in question.[19] Based on this, R.C. 4509.101(L) does not provide Appellant any relief from the suspension. The Court finds that there was reliable, probative and substantial evidence in the testimonial record to support the hearing officer's findings. Accordingly, Appellant's assignments of error are OVERRULED.

IV. CONCLUSION

After duly considering the matter, the *Amended Final Order* is hereby AFFIRMED.

This is a final appealable order, and there is not just cause for delay for the purposes of Civ. R. 54. Pursuant to App. R. 4, the parties shall file a Notice of Appeal within thirty (30) days.

SO ORDERED:

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TIMOTHY N. O'CONNELL, JUDGE

To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

SO ORDERED:

_____
JUDGE TIMOTHY N. O'CONNELL

[19] Report and Recommendation October 28, 2016.

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So Ordered

Timothy N. O'Connell