

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2014-000340

Lisa Soto,

Appellant,

v.

South Carolina Department of Motor Vehicles and South Carolina Department of
Public Safety,

Respondents.

REPLY BRIEF OF APPELLANT

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CG Court of Appeals

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ARGUMENT

I. THE ADMINISTRATIVE COURT ERRED IN RULING THAT A CANCELLATION OF INSURANCE DID NOT FALL UNDER THE EXCEPTION TO THE HABITUAL OFFENDER STATUTE SET OUT UNDER S.C. CODE § 56-1-1020(4).

Although a suspension for failure to timely obtain replacement coverage after a policy cancellation may be a valid suspension, driving while under such a suspension is not a violation that the legislature intended to be included in a designation of habitual offender [*hereinafter* “HTO”], pursuant to the specific exception provided in S.C. CODE ANN. § 56-1-1020(a)(4). See S.C. CODE ANN. § 56-1-1020(a)(4) (excepting from HTO status those DUS suspensions for failing to file proof of financial responsibility). A license suspension that results from the failure to file proof of financial responsibility is the same as one for cancellation of insurance. With both, there is a lack of liability coverage certification recorded with the DMV. As such, despite the Respondent’s suggestion, the passive lapse of Appellant’s insurance policy has the same legal effect as failing to have financial responsibility documents filed showing proof of financial responsibility. Further, the Carter decision clearly supports that position, as it explicitly states, that cancellation of insurance leading to a license suspension is considered an exception to the HTO statute. The exception should clearly apply to Appellant’s suspension.

A. A driver’s license suspension for insurance cancellation is indistinguishable from one for not filing proof of financial responsibility

Appellant’s DUS charge, which took place on October 9, 2010, should not be used to justify classifying her as an HTO, as it falls within the exception to S.C. Code Ann. § 56-1-1020(a)(4). The pertinent part of the statute sets out that HTO status is obtained only after three or more convictions of certain offenses. However, when

referring to DUS convictions, the statute specifically excludes convictions for failure to file proof of financial responsibility.” S.C. CODE ANN. § 56-1-1020(a)(4) (2006). Respondent suggests that this exception to the HTO statute does not apply to Appellant because the description of the offense in her DMV record is “cancellation of insurance,” and because Appellant admitted that her insurance coverage lapsed. Respondent’s Initial Brief at 4, No. 20184-000340 [*hereinafter* “RIB”]. Reading the statute as Respondent suggests would require a strict interpretation of a remedial statute, which is improper. See Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 464, 488 (S.C. 2008) (declaring that remedial statutes are to be construed liberally). Respondent further argues that the Appellant was charged pursuant to S.C. Code § 56-10-240. RIB at 4. Respondent offers no evidence to support the assertion that a driving record entry of “cancellation of insurance” refers to said code section; therefore, Respondent cannot use it as dispositive proof that the “cancellation of insurance” does not qualify for the exception to the HTO characterization. See SC DMV v. Carter, No. 06-ALJ-21-0875-AP (S.C. Admin. Ct. Nov. 15, 2007) (noting that there is no proof regarding the statutory sections that correspond to certain DMV driving record codes; therefore, the wording of the suspension in the driving record does not make the exception inapplicable to the suspension in that case). Additionally, in Carter, the court found the Department’s argument that only suspensions under “Code 002 – Failure to Maintain Proof of Financial Responsibility” qualified for the exception unpersuasive. *Id.* (stating that the department provided no authority for treating the exception in such a limited way). In fact, Respondent’s brief refers to Appellant’s suspension as one for “‘cancellation of insurance’ *or* failure to maintain insurance as required by the *Motor Vehicle Financial Responsibility Act.*” *Id.* (emphasis added). In the same breath, Respondent suggests that

Appellant's suspension does not qualify as a failure to file under the Financial Responsibility Act *and* refers to the suspension as a failure to maintain insurance under the Financial Responsibility Act. See RIB at 4 (describing Appellant's suspension as one for failing to maintain insurance under the Financial Responsibility Act as well as claiming that Appellant's suspension for 'cancellation of insurance' did not fall under filing proof of financial responsibility). Such an assertion supports the Appellant's position, that the "cancellation of insurance" is in essence the same as failing to file proof of financial responsibility.

Additionally, Respondent asserts that other code sections in South Carolina requiring proof of financial responsibility provide for their own suspensions and that Appellant's suspension is separate and distinct from said suspensions. RIB at 5. However, pursuant to S.C. Code Ann. § 56-10-540, when proof with the DMV of financial responsibility "filed by any person as required by [the Act] no longer fulfills the purpose for which required," the director must require other proof of financial responsibility. S.C. CODE ANN. § 56-10-540 (2006). The suspension by Appellant might have been characterized as a cancellation of insurance, but in effect, it is one for failure to file proof of financial responsibility. Further, Appellant's prior proof of financial responsibility, her insurance coverage, after its expiration, no longer fulfilled the purpose of providing financial responsibility; therefore, her insurance policy expiration was in effect the failure to file proof of financial responsibility with the state. See Travelscape, LLC v. SC DOR, 391 S.C. 89, 100, 705 S.E.2d 28, 34 (S.C. 2011) (ruling that identical phrases and words within the same statute should be given the same general meaning); Eagle Container Co. v. Cnty. of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (S.C. 2008) (holding that a statute's words must be construed within their context).

Additionally, the Court has held that when interpreting statutes, it will not always be using the literal meaning of the statute; instead, it will rely on the purpose and intent of lawmakers, the “spirit of the enactment.” See Caughman v. Columbia YMCA, 212 S.C. 337, 341, 47 S.E.2d 788, 789 (S.C. 1948) (determining that statutory interpretation relies on the whole scheme and scope of a statute, not its technical definitions and literally constructed phrases); Soil Remediation Co. v. Nu-way Env'tl., Inc., 317 S.C. 274, 276, 453 S.E.2d 253, 254 (S.C. Ct. App. 1995) (allowing the court to use the spirit of an enactment instead of the strict and literal meaning of a statute). In evaluating the spirit of the enactment of the exception in the HTO statute, it is important to consider State v. Goff, and its affect on the statute. State v. Goff, 290 S.E.2d 238 (S.C. 1982). In Goff, the court determined that Goff was an HTO, even though one of his DUS charges was based on a violation of the Financial Responsibility Act. Id. Following the decision of the case, in 1984, via Bill 2590, the legislature responded by adding the “except” clause that still remains as a part of the HTO statute. H.R. 2590, 105th Leg. (S.C. 1984). In changing the language, the legislature indicated that suspensions that were a technical result of either failing to file something with the state, or letting such a filing lapse, were not to be included in tabulating convictions in order to treat someone as an HTO. In the case at bar, even Respondent has described the cancellation of Appellant’s insurance as a failure to adhere to the Financial Responsibility Act. As such, in keeping with the “spirit of the enactment,” as shown with the change made after Goff, a violation of the Financial Responsibility Act, such as letting your insurance coverage lapse, which is what occurred here, should qualify under the exception in S.C. Code Ann. § 56-1-1020(a)(4).

Moreover, the cancellation of Appellant’s insurance was a passive expiration of coverage, not an affirmative cancellation. There was no act done by the Appellant to

cancel her insurance. Instead, her mistake was passively allowing that policy to expire. Respondent suggests that the characterization of Appellant's suspension would have been worded differently in the record if it were in fact for failure to file proof of financial responsibility, but offers no proof from DMV handbooks or codebooks certifying that. However, in failing to file the proper documentation of financial responsibility, the same passive action leads to a violation, not an intentional act of cancellation. Courts have construed this exception in the statute as not to applying to affirmative actions taken by individuals resulting in suspensions, and have even defined the exception as applying to the requirement that that a person file a certificate of insurance or bond with the DMV. See SC DMV v. Gibbs, No. 2011-UP-107 (S.C. Ct. App. 2011) (unpublished) (noting that the HTO statute exception refers to "sections of the Motor Vehicle Financial Responsibility Act requiring a person to file a certificate of insurance or bond with the DMV," but not to failure to show proof of insurance to an officer).

Furthermore, unlike Respondent's assertion suggests, the expiration of Appellant's insurance was in essence a suspension for failure to file proof of financial responsibility. The requirements to verify proof of financial responsibility can be satisfied by obtaining replacement insurance coverage, as the purchase of that insurance causes the insurance company to incur the responsibility to file a certificate with the state. See S.C. CODE ANN. § 56-9-550 (2006) (providing that proof of financial responsibility can be completed by a filing from an insurance company indicating that the driver has a motor vehicle liability policy). As such, the only way to cure Appellant's mistake is to file proof of financial responsibility; therefore, Appellant's expiration of insurance coverage leading to a DUS charge does qualify as failing to file proof of financial responsibility. See S.C. CODE ANN. § 56-9-540 (2006) (providing that proof of financial

responsibility can be achieved by filing a certificate of insurance, a bond, or a certificate of deposit of money or securities).

B. Carter does apply to the case at bar as it equates not paying an insurance premium to failing to file financial responsibility and respondent, who chose not to respond as part of that case, cannot now decide that it shouldn't establish precedent.

Carter clearly supports the finding that a cancellation of insurance does qualify under the exception to the HTO statute. Carter is persuasive authority to this court, but its applicability to the facts in question remains unaffected by the Respondent's assertion that the DMV's failure to defend their charge under Carter makes it inapplicable as authority before this court. To distinguish Carter as inapplicable merely because the DMV chose not to defend would be to undermine the entire judicial doctrine and idea behind *stare decisis*. The holding in Carter does not become inapplicable to Appellant's situation merely because a party (DMV) did not defend the charges involved therein. Furthermore, Carter refers to assertions made by the "department," meaning that at some point the DMV did defend its suspension, making the Respondent's argument carry even less weight. See Carter (referring to the department and the department's brief). Therefore, the Respondent's assertions concerning the distinguishability of Carter based on their failure to defend is without merit and does not change the applicability of the case.

Further, when considering the facts provided in Carter, Respondent's other assertions regarding its distinction from Appellant's situation are equally unpersuasive. Respondent suggests that the decision in Carter relied on the fact that the defendant in question did have coverage at the time of the suspension, but the required paperwork had not been filed. In the case at bar, there is no evidence concerning the Appellant's actual insurance coverage at the time of her suspension; however, the inability to enter proof of

its existence does not make Carter inapplicable.¹ In Carter, the Judge notes that the actual insurance coverage was an added bonus; *not* a requirement. See Carter (noting that the cancellation in question was one solely “because her insurance company cancelled her insurance” and that her testimony regarding her insurance coverage supported that position, but did not define that position taken by the judge). In fact, the Judge in Carter very clearly sets out that the HTO statute has few exceptions, and notes, “it does not appear, that Section 56-9-500 is inapplicable to suspensions that are implemented as a result of an insurance cancellation.” Id. Therefore, Carter applies to the Appellant’s case, and provides that Appellant’s insurance cancellation suspension was the same as that for the failure to file proof of financial responsibility. As such, the exception in S.C. Ann. § 56-1-1020(a)(4) applies to Appellant’s suspension to be excepted from determining HTO status under the HTO statute.

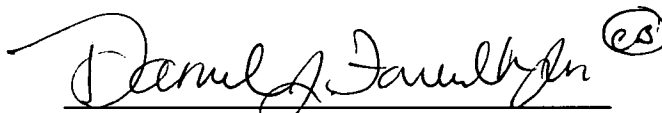
CONCLUSION

Appellant’s declaration and accompanying suspension as a Habitual Offender should be rescinded. Appellant’s suspension for her insurance being cancelled is equivalent, per Carter, to failing to maintain proof of financial responsibility. The Department of Motor Vehicle’s treatment of these two circumstances as mutually exclusive is neither supported nor suggested under the laws of South Carolina. Appellant’s DUS violation on October 9, 2010, was due to her driving a motor vehicle after failing to provide proof of financial responsibility. Operating a vehicle after insurance coverage lapses and failing to provide proof of financial responsibility are one in the same. The decision of the ALC may be reversed or modified when a party has

¹ A letter certifying that Appellant was in fact covered by insurance at the time of her offense was presented with the Appellant’s Initial Brief. The introduction of said evidence was objected to by the Respondent, but proves that Carter is even more on point with the case at hand.

been prejudiced by the ALC's decision, or said decision is "clearly erroneous in light of the reliable and substantial evidence on the whole record . . . or otherwise characterized by an abuse of discretion, or affected by other error of law." SC DMV v. Holtzclaw, 382 S.C. 344, 347, 675 S.E.2d 756, 758 (S.C. Ct. App. 2009). In the case at bar, Appellant has shown substantial evidence to confirm that the legislature intended suspensions, including ones such as Appellant's for insurance cancellation, be excepted from the HTO statute, not just those specifically quoted as "failure to file proof of financial responsibility."

Therefore, Appellant respectfully requests that her declaration as a Habitual Offender and subsequent suspension be rescinded, as her conviction for Driving Under Suspension on October 9, 2010, (Ticket #76868FK) for her failure to prove proof of financial responsibility after her cancellation of insurance falls within the exception listed in S.C. CODE ANN. § 56-1-1020(a)(4).



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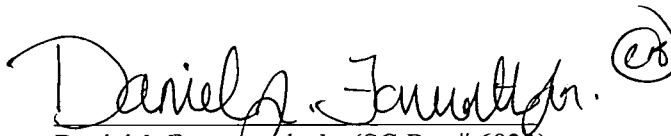
I certify that I served the Reply Brief of Appellant on the South Carolina Administrative Law Court, the Office of Motor Vehicle Hearings, and the South Carolina Department of Public Safety General Counsel by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2014, addressed to:

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