

Pennsylvania Legal Update

Winter 2011/2012

Driver's License Suspension in Pennsylvania

A Pennsylvania man unexpectedly lost his driver's license when he failed to respond promptly to a traffic ticket. The man's problems started when he was cited for speeding and driving an unregistered car. The man was not arrested, but the police department mailed him a citation after the incident.

Drivers who simply assume that they can drive legally at the end of their suspension period are mistaken.

When he failed to respond to the citation, the Pennsylvania Department of Transportation (PennDOT) sent the man a letter advising him that he would lose his driver's license in 20 days if he did not respond to the citation immediately. The man did not respond to the citation within the 20 days; instead, two months after having received the notice about losing his license, he pleaded guilty to the citation and paid the fine.

PennDOT then suspended his license for an additional 15 days

because he had been convicted of a moving violation while his license was under suspension. The moving violation was the original speeding-and-driving-an-unregistered vehicle citation. His guilty plea had amounted to a conviction.

The man appealed the additional 15-day suspension of his license, claiming that by pleading guilty to the citation for speeding and driving an unregistered vehicle, he had been

effectively responding to the citation and that his doing so should have ended the first suspension. He argued that PennDOT should not be permitted to treat his "conviction" as having occurred during a period of license suspension.

The man lost his appeal. License suspensions do not end in automatic restoration of drivers'

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Drug Treatment for Teens

Parents of drug-dependent teens can have their children involuntarily committed to residential drug- and alcohol-treatment facilities. A little-known and rarely used section of Pennsylvania's Drug & Alcohol Abuse Control Act permits parents and legal guardians to petition the county court to determine whether a minor is in need of court-ordered drug or alcohol treatment, either outpatient or inpatient. A minor is a person under 18 years of age.

If the parent or guardian's petition identifies facts that show "good reason" for treatment, the court has

the authority to take the minor into custody and to require an assessment by a psychiatrist, psychologist, or certified addiction counselor. The minor is entitled to a lawyer but is not entitled to have the lawyer present at the assessment.

After the assessment, the minor is entitled to a hearing before a judge. If the judge finds "clear and convincing" evidence at the hearing that the minor is drug- or alcohol-dependent and in need of treatment, the judge can commit the

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Termination of Parental Rights

Pennsylvania trial judges have the authority to terminate parents' rights. Judicial termination of parental rights is rare and requires convincing evidence or the consent of the parent whose rights are in question. A parent whose rights to his or her child have been terminated is left with absolutely no parental rights; the termination effectively extinguishes the parent-child relationship.

In a recent case, the Pennsylvania Supreme Court reversed the termination decision of a trial judge and an intermediate appellate court, finding that the mother's rights to her child should not have been terminated.

The history of the case was brief but bitter. After several years of intense custody litigation, the mother abruptly dropped her four-year-old daughter off at the father's home and moved to Tennessee. The mother later claimed that the father and his new wife had been so hostile to her that she thought it best for everyone that she move away.

She tried to stay involved in the daughter's life through mail and phone calls. Initially she maintained a schedule of weekend visits, but the father and stepmother frequently interfered in the mother's weekend custody. The mother sent gifts and tried to maintain contact with the daughter through her own extended family members.

The rights of a parent in regard to a child may be terminated if the parent "by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing pa-

rental claim to a child or has refused or failed to perform parental duties." Parents may also lose their rights if there has been serious abuse, abandonment, or conviction of serious crimes, or if their children are in protracted foster care.

In the case of the mother who moved to Tennessee, the Pennsylvania Supreme Court found numerous errors in the termination procedures at the trial level. The

court noted that the trial judge had not placed sufficient importance on the long-term level of hostility directed at the mother from the father and stepmother. The mother's continued efforts to maintain a relationship with the daughter had been seriously impaired by steady interference from the father and stepmother. More importantly, near the

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You Bet Poker Is Gambling

A Pennsylvania couple arrested and convicted of illegal gambling for operating a Texas Hold 'Em poker business in their garage appealed their case, claiming that poker is not gambling, even when betting is involved. The couple claimed that poker is a game of skill, not of chance.

Pennsylvania law defines "gambling" as an enterprise based on payment, chance, and reward. All three elements must exist to make a game or event gambling. Gambling is illegal in Pennsylvania except where specifically permitted by law. Pennsylvania law limits legal gambling to licensed casinos and racetracks and to licensed charitable small games of chance. The Pennsylvania state lotteries and regional powerball lotteries are also legal.

The Pennsylvania appellate court rejected the couple's appeal, finding that while poker involves some skill, "the element of chance predominates." Noting that throwing dice is purely a game of chance, while playing chess is purely a game of skill, the court observed that poker falls somewhere in between dice throwing and chess.

But the court concluded that players' use of skill in poker does not change the fact that it is largely a game of chance. "No amount of skill can change a deuce into an ace," the court stated. The court found that a skilled player can win more often but "is always subject to defeat at the turn of a card, an instrumentality beyond his control."

With the growth of licensed casinos in Pennsylvania and the expansion of legal casino gambling to include table games and poker, Pennsylvania residents and visitors can bet on poker games legally, but only in casinos.

Sleeping on the Job

An employee fired for sleeping on the job won her unemployment claim recently after convincing the court that she was not at fault for having fallen asleep at work.

The employee was a “money room technician,” whose duties involved counting money at a city parking garage. Working a shift that began in the late afternoon and ended at midnight, the employee spent a lot of time alone in a “counting room,” doing nothing. She requested additional work so that she could avoid becoming drowsy and falling asleep, but her supervisors did not give her tasks to fill her time.

The employee suffered from diabetes and sleep apnea; she claimed that she had advised her supervisors that her sleep apnea sometimes caused her to fall asleep without her realizing it. After hearing complaints from other employees that the employee was sleeping on the job, a supervisor found the employee asleep in the counting room and fired her.

In the unemployment compensation hearings, the supervisors denied that the employee had ever complained about medical conditions that could cause her to fall asleep. The hearing officer found that the employee was more credible. The employee testified that she had repeatedly asked for more work so that she would not “konk out,” sitting alone in the counting room for lengthy periods. She also claimed that when asking for more

work, she was specific about her problems with sleep apnea.

The appellate court agreed with the hearing officer and found that the employee was not guilty of willful misconduct that could justify a denial of unemployment compensation. The court found that an employer seeking to avoid paying unemployment compensation must prove that the employee had been aware of a work rule and violated it intentionally and deliberately. In the case of the sleeping employee, the court ruled that the

city parking garage did not prove that the employee’s conduct was willful. In addition, the court found that “physical illness can constitute good cause” for an employee’s failure to follow a workplace rule.

Employees with health problems cannot systematically violate workplace rules and collect unemployment. But where an employee shows legitimate reasons that add up to “good cause,” the employee may be entitled to unemployment compensation after being fired for breaking workplace rules.

Parental Rights

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end of the termination hearings and proceedings, the mother discovered that the father and the stepmother had separated and intended to divorce.

An enduring principle in the law of termination of parental rights is that a parent’s rights are terminated only when an adoptive parent is ready, willing, and able to promptly adopt the child. The only exception to the requirement of an available adoptive parent is when a child protection agency that has custody of children in foster-care placement seeks to terminate parents’ rights.

The supreme court found that because the father had petitioned

for termination and no agency was involved, the separation and divorce of the father and stepmother should have been a major factor in the trial judge’s decision making. The daughter’s adoption by the stepmother was essential to the termination decision.

The supreme court observed that an order of termination “is not to punish an ineffective or negligent parent, or to provide a means for changing the surname of the child.” Instead, the court said, “the purpose of involuntary termination of parental rights is to dispense with the need for parental consent to an adoption when, by choice or neglect, a parent has failed to meet the continuing needs of the child.”

Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Child Support Update

Pennsylvania's support guidelines establish the amount of child support owed by one parent to the other. A parent is entitled to receive child support if he or she has physical custody of the child for more overnights than the other parent does. Where parents share physical custody equally, the parent who earns more money owes the other parent child support.

The amount of child support is calculated from the parties' combined total net income. The Pennsylvania support guidelines include a specific dollar amount, called the "basic support obligation," for each child of the family, based exclusively on the parents' combined total net income. The separate responsibility of each parent to pay a share of the support guidelines amount is then calculated proportionately, based on the percentage of the total combined income that each parent earns.

If a mother who owes a father child support earns 74% of the parents' total combined income, she is ordered to pay 74% of the support guideline figure. When parents share custody equally, the higher earner pays support to the other parent, but with a discount of up to 20% to compensate for the expenses of shared custody.

Recently, a Pennsylvania father who thought he was entitled to a reduction in his support payment moved for modification of his support order and was frustrated when the support hearing officer instead increased the support payment amount. The mother had not requested any changes prior to the hearing, and the father's request was specifically for a decrease in his obligation.

On appeal, the Pennsylvania appellate court affirmed the hearing officer's decision. The court held that it was not necessary for the mother to have requested an increase or to have taken any position prior to the hearing. Instead, the court found that support hearing officers have the obligation and authority to determine the parties' current incomes and to set an appropriate order based on those calculations. Hearing officers may

also "attribute" income to parents who are found to be earning less than their actual income-earning capacity.

When parents' incomes go up or down, their child support orders can be modified if either parent files a petition with the court requesting modification. Before filing a request for a change in your child support, it is wise to check with a lawyer to review the possible results.

License Suspension

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privileges. When Pennsylvania drivers lose their driving privileges due to traffic tickets, DUI charges, failure to pay past fines, or for any other reason, they must complete a "restoration" process before their privileges are restored. Drivers who simply assume that they can drive legally at the end of their suspension period are mistaken.

To start the restoration process, a driver can request a free restoration letter from PennDOT by calling (800) 932-4600 or by visiting PennDOT online at www.dot.state.pa.us and following the menu on the first page, headed "Driver and Vehicle Services." A restoration letter advises the suspended driver of everything he or she must do to become a legal driver again. Those conditions may include resolving previous open citations, paying fines, and going through driver education and testing again.

Drug Treatment

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minor to treatment for up to 45 days. At subsequent review hearings, the judge can continue to commit the minor to treatment for any number of successive periods of up to 45 days each. At least every 45 days, the minor is entitled to a review hearing before the judge.

Minors who are court-ordered into inpatient rehabilitation are unlikely to stay in care unless they actually benefit from the treatment by actively engaging in the recovery program, because most inpatient rehabilitation facilities discharge patients who refuse to cooperate with treatment. But skilled facilities are often able to help drug- and alcohol-dependent teens transform their behavior and commit to treatment.

Parents and legal guardians sometimes can succeed in saving a young person's life by seeking the court's help in getting a minor into drug and alcohol treatment.