

NEW JERSEY DIVISION OF MOTOR VEHICLES,
Petitioner,
v.
JOHN S. MONDELLI,
Respondent.

Initial Decision: September 28, 1988

Final Agency Decision: November 14, 1988

Approved for Publication: July 24, 1989

SYNOPSIS

The Division of Motor Vehicles proposed suspending respondent's driver's license for 49 months because of his involvement in an accident resulting in the death of another driver. The matter was transmitted to the Office of Administrative Law for a hearing.

The administrative law judge assigned to the case found that respondent, who had been a licensed driver for a year and a half, was responsible for the fatality because he swerved his car toward another car, causing the other driver to lose control and crash into a tree. Respondent's actions violated *N.J.S.A.* 39:4-97 and 39:4-129. Therefore, there were reasonable grounds to suspend his license pursuant to *N.J.S.A.* 39:5-30. The judge recommended a suspension of two years, reasoning that respondent did not intend to cause the accident and that his youth and lack of driving experience contributed to his unsafe driving. A two-year period of suspension would give respondent time to mature.

Upon review, this initial decision was affirmed by the Director of Motor Vehicles. The Director noted that license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the roads, and agreed that respondent failed to appreciate the risks of his behavior primarily because of his youth and lack of driving experience. The Director concluded that a two-year suspension would be appropriate.

Rena Rothfeld, Esq., for petitioner
Juan J. Ryan, Esq., for respondent

TASSINI, ALJ:

STATEMENT OF THE CASE

The New Jersey Division of Motor Vehicles ("Division") proposes suspension of John S. Mondelli's ("respondent") driver's license for a period of 49 months, because respondent committed certain motor vehicle law violations and was involved in an accident resulting in the death of another driver. *See, N.J.S.A. 39:4-87, N.J.S.A. 39:4-97, N.J.S.A. 39:4-129 and N.J.S.A. 39:5-30.*

The respondent denies that he was involved in the accident and submits that his driver's license should not be suspended.

PROCEDURAL HISTORY

By its notice dated May 26, 1988, the Division proposed respondent's suspension for a period of 49 months to begin on June 5, 1988. *N.J.S.A. 39:5-30.*

On May 31, 1988, respondent appealed for a hearing and the matter was transmitted to the Office of Administrative Law ("OAL") where it was filed as a contested case on June 6, 1988. *N.J.S.A. 52:14F-1 et seq.*

On June 16, 1988, Administrative Law Judge ("ALJ") Thomas Clancy held a preliminary hearing and concluded that it would be in the best interest of public safety to suspend the respondent's driving privileges pending the Division's final decision and an order was entered accordingly. The respondent complied with that order and surrendered his driver's license on that day.

On July 29, 1988, ALJ Clancy entered an interlocutory order restoring (respondent's) driving privileges, pursuant to *N.J.S.A. 39:5-30b*; however, the Director of the Division stayed the restoration.

On August 15, 1988, the matter was heard and the parties requested an opportunity to submit briefs. These were submitted on August 29, 1988, and the record was closed on that date.

FACTUAL DISCUSSION

I. The following **FACTS** are not disputed:

During the evening of March 25, 1988, a group of young men met in a commercial parking lot in the Township of Berkeley Heights, Union County. The group included: the respondent, Mark Stallone, Kyle Mele, Dominick Mazza, Thomas Taylor, Darrell Leger, Lawrence Eckenrode, Jr., August Santore, Joseph Williams and Lance Ruban.

While in the parking lot, the group talked and some drank beer. At about 10:40 P.M., the group decided to leave and drive to another parking lot.

Mr. Mondelli was first to drive from the lot and his passengers included Mark Stallone and Kyle Mele.

Mr. Mazza was second to drive from the lot and his passengers included Thomas Taylor and Darrell Leger.

Mr. Eckenrode was third to drive from the lot and his passengers included Mr. Santore, Mr. Williams and Mr. Ruban.

Mr. Mazza passed the respondent, so that the order of the cars became: Mr. Mazza first, the respondent second and Mr. Eckenrode third as they drove south on Plainfield Avenue between Bolton Avenue and Roosevelt Avenue.

In that area, Plainfield Avenue is a straight and level two-lane roadway. Passing is permitted and the speed limit is 35 miles per hour.

On the west side of Plainfield Avenue is a library and a church. In the area of the library and the exit from the church, Mr. Eckenrode entered the left lane and began to pull alongside the respondent who was driving 30 to 40 miles per hour. The respondent suddenly swerved towards Mr. Eckenrode who was driving 50 to 60 miles per hour.

After respondent swerved towards him, Mr. Eckenrode passed the respondent; re-entered the right lane momentarily; and then re-entered the left lane. On the yellow line dividing the two lanes, Mr. Eckenrode's car left a "scuff mark," showing that the car was sliding clockwise sideways across the left lane.

The scuff mark on the yellow line showed that Mr. Eckenrode's car continued to slide out-of-control sideways 104 feet and 9 inches, until striking a tree on the front drivers' side, killing Mr. Eckenrode.

The respondent left the scene and did not return.

II. The following is a summary of testimony related to disputed facts:

A. Mark Stallone was a credible witness and I **FIND** the following **FACTS** based upon his testimony:

Mr. Stallone has known the respondent since grade school.

At the time of this accident, the respondent had been driving about a year and a half.

In 1986, Mr. Stallone observed the respondent swerve in the roadway to prevent another car from passing him (*see, Evid. R. 55*).

Because of his prior observations of the respondent's swerving,

when the respondent swerved in this accident, Mr. Stallone yelled at the respondent, "What are you doing? We can't fool around like that." The respondent did not deny that he was "fooling around."

At the time of this accident, the respondent swerved to less than three feet from Mr. Eckenrode's car. Mr. Eckenrode's car then "fish-tailed," "snapped" out-of-control and hit the tree.

B. August Santore was a credible witness and I **FIND** the following **FACTS** based upon his testimony:

Mr. Santore is respondent's cousin.

Earlier in 1988, Mr. Santore observed the respondent move suddenly to the left and right in the roadway to prevent another car from passing him. *See, Evid. R. 55.*

In this accident, Mr. Eckenrode began to pass on Plainfield Avenue, between the beginning of the library property and the exit of the Little Flower Church. In that area, during Mr. Eckenrode's pass, respondent's car "veered" towards Mr. Eckenrode's car and Mr. Eckenrode lost control. Mr. Eckenrode's car then "quickly" went one way (back into the right lane) then another (across the left lane) and then hit the tree.

C. Daniel Mondelli testified as follows:

Mr. Mondelli is respondent's father.

Mr. Mondelli drew a diagram based upon measurements he took along Plainfield Avenue.

III. Specific FINDINGS OF FACT:

I **FIND** that the respondent unjustifiably swerved to the left towards Mr. Eckenrode's car, intending to interfere with or prevent the pass.

I **FIND** that immediately upon the respondent's swerving towards him, Mr. Eckenrode lost control of his automobile.

I **FIND** that Mr. Eckenrode never recovered control of his automobile and the chain of events begun by the respondent's swerve culminated in Mr. Eckenrode's collision and death.

LEGAL DISCUSSION AND CONCLUSIONS

The Motor Vehicle and Traffic Laws provide:

Every registration certificate and *every license certificate to drive motor vehicles may be suspended or revoked*, and any person may be prohibited from obtaining a driver's license or a registration

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certificate, and the reciprocity privilege of any nonresident may be suspended or revoked by the director *for a violation of any of the provisions of this Title or on any other reasonable grounds*, after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof. [Emphasis added] *N.J.S.A.* 39:5-30

In this matter, the Division must show by a preponderance of the credible evidence that the respondent violated a provision of Title 39 or that other reasonable grounds exist for the suspension or revocation of his license. *N.J.A.C.* 1:1-2.1. "Preponderance" means the "greater weight of evidence or evidence which is more credible and convincing . . ." *Black's Law Dictionary*, Rev'd 4th Ed. (1968), at 1344. *Atkinson v. Parsekian*, 37 *N.J.* 143, 149 (1962).

Violation of (1) *N.J.S.A.* 39:4-98 by more than 20 miles per hour; (2) *N.J.S.A.* 39:4-50; (3) *N.J.S.A.* 39:4-96 or *N.J.S.A.* 39:4-97; or (4) *N.J.S.A.* 39:4-129, where death or serious bodily injury has occurred, are examples of reasonable grounds for suspension of a driver's license.

It is not disputed that the respondent suddenly swerved his car to the left towards Mr. Eckenrode, who was passing on that side. It is also not disputed that Mr. Eckenrode's death resulted from the subject accident. The question is whether the respondent's driving proximately caused or substantially contributed to the accident and death or whether the respondent left the scene after being involved in the accident.

In tort law, a person is generally held answerable for injuries which result in the ordinary course of events from his negligence and it is generally sufficient if his negligent *conduct was a substantial factor in bringing about the injuries*. Further, the fact that there were also intervening causes which were foreseeable or were normal incidents of the risk created would not relieve the tort-feasor of liability. *See, Rappaport v. Nichols*, 31 *N.J.* 188, 203 (1959). The tort concept is useful here.

I CONCLUDE that the respondent's unjustified, sudden and unexpected veering towards the passing car, even without physical contact, would put any reasonable person in that car in fear of immediate personal injury. *See, Falzone v. Busch*, 45 *N.J.* 559, 569 (1965).

I CONCLUDE that the respondent's unjustified, sudden and unexpected veering towards the passing car would cause any reasonable driver to take immediate evasive action to avoid a collision. *See, Gerber v. Allstate Insurance Co.*, 161 *N.J. Super.* 543, 550 (Law Div.

1978). Sudden speeding up to get away from the respondent is one such expectable action.

I **CONCLUDE** that the respondent's unjustified, sudden and unexpected veering towards Mr. Eckenrode's car was the first and at least a substantial cause of Mr. Eckenrode's loss of control, accident and death.

I also **CONCLUDE** that the respondent's veering towards Mr. Eckenrode was wrongfully intended to interfere with or prevent Mr. Eckenrode's pass. This is evidenced by respondent's earlier driving incidents, *Evid. R. 55*; by his failure to deny that he was "fooling around," *Greenberg v. Stanley*, 30 *N.J.* 485, 497-499 (1959); and by his flight from the scene. *Cf.*, *State v. Andrial*, 203 *N.J. Super.* 1, 6 (App. Div. 1985).

Imposition of a final suspension pursuant to *N.J.S.A.* 39:5-30 must be ordered when the highway would be a safer place for the public if respondent is removed as a driver for some time. *Atkinson v. Parsekian*, 37 *N.J.* 143, 155 (1955).

Given the above, I **CONCLUDE** that the Division has met its burden of proof that the respondent committed violations of *N.J.S.A.* 39:4-97 and *N.J.S.A.* 39:4-129, resulting in the death of Mr. Eckenrode and I **CONCLUDE** that there is reasonable ground to suspend the respondent's driver's license, *N.J.S.A.* 39:5-30.

In deciding upon the suspension's length of time, aggravating and mitigating factors must be balanced.

Although the respondent intended to veer at the passing car and although such conduct foreseeably could result in serious personal injury or death, the respondent certainly did not want that result. The respondent's youth and lack of driving experience probably contributed to his unsafe driving and his lack of appreciation of its possible consequences.

A substantial period of suspension is necessary so that the respondent can have time to mature. Yet the respondent should have an incentive for returning to the highways as a safe driver. I **CONCLUDE** that a suspension of two years will serve that purpose.

ORDER

I modify the Division's scheduled suspension of the respondent's driver's license and I **ORDER** that the respondent's driver's license be suspended for a period of two years beginning on the day respon-

dent's license was delivered to the Division pursuant to ALJ Clancy's preliminary order of suspension.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, GLENN R. PAULSEN**, who by law is empowered to make a final decision in this matter.

**FINAL DECISION BY THE DIRECTOR OF
MOTOR VEHICLES, GLENN R. PAULSEN:**

The Division of Motor Vehicles (Division) hereby determines the matter concerning the proposed suspension of the New Jersey driving privilege of John S. Mondelli, respondent, because he was involved in an accident which resulted in the death of Lawrence H. Eckenrode, Jr., (decedent). Pursuant to *N.J.S.A.* 39:5-30, the Division proposed a suspension of respondent's New Jersey driving privilege for a period of forty-nine (49) months. Prior to this final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ), the exceptions to the Initial Decision filed by counsel for respondent and the certification filed by respondent's father. Based upon the record presented, I shall affirm the recommendation of the ALJ. The ALJ's findings of fact and conclusions of law are incorporated into this decision as if the same were set forth herein fully and at length.

The ALJ, in his Initial Decision, reduced the length of the suspension to which respondent is subject from a period of forty-nine (49) months to a period of two (2) years. The ALJ concluded that respondent intended to drive and maneuver his vehicle the way he actually drove and maneuvered it. He did not, however, intend to kill or seriously injure the decedent. Respondent did not appreciate the risks which his behavior created due, in part, to his youth and lack of driving experience.

In his letter of exceptions, counsel for respondent states that respondent understands that the ALJ may have properly reached his decision but counsel states that respondent disagrees with the ALJ's conclusion.

Counsel also asks the Division to consider the certification filed by respondent's father. Respondent's father filed a certification detailing his illness, stating that his son, respondent, lives with him and

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contributes to the support of the family. Because respondent needed to drive a truck to perform the duties of his job, he has been unable to work since his driving privilege suspension went into effect.

I must inform respondent that I am not bound by the ALJ's Initial Decision. The ALJ's Initial Decision is actually a recommendation. I can reduce the suspension period recommended or I can increase it. However, in this particular matter, I agree with the ALJ that a two (2) year suspension of respondent's New Jersey driving privilege is warranted. In the Initial Decision, the ALJ states that respondent needs time to mature. I agree.

Driving is an adult activity with adult responsibilities; it requires an adult attitude. A driver license is a license to drive responsibly, it is not a license to play games on the road.

The Division has the responsibility of promoting safety on the roads and preventing mishaps caused by drivers. A fatality is the most tragic result of carelessness on the road. The Division must take swift action to remove drivers whose behavior on the roadway has been determined to have caused a fatality.

While I am sympathetic regarding which inconveniences respondent and his family will suffer as a result of his driving privileges being suspended, respondent, however, must understand and appreciate the responsibility that he owes to the travelling public when he operates a motor vehicle on the highways of the State of New Jersey. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. *David v. Strelecki*, 51 N.J. at 566 (1968); *Cresse v. Parsekian*, 43 N.J. at 328-29; *Atkinson v. Parsekian*, 37 N.J. at 155.

It is therefore, on this 14th day of November, 1988, ORDERED that the New Jersey driving privileges of John S. Mondelli be suspended for a period of two (2) years beginning on the day respondent surrendered his license to the Division in accordance with Administrative Law Judge Clancy's preliminary order of suspension.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.