SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2757-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALBERT J. FIELDS, JR.,

Defendant-Appellant.

Submitted October 17, 2017 – Decided November 2, 2017

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Salem County, Municipal Appeal No. 09-15.

Albert J. Fields, Jr., appellant pro se.

John T. Lenahan, Salem County Prosecutor, attorney for respondent (Derrick Diaz, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Albert J. Fields, Jr. appeals from an order entered by the Law Division on February 29, 2016, which found him guilty

of crossing no-passing lanes, in violation of N.J.S.A. 39:4-86. We affirm.

The following facts are taken from the record. On July 10, 2015, defendant was traveling southbound on Broadway in Pennsville. Two cars in front of him was an automobile traveling slower than the speed limit. Defendant crossed the double yellow lines on the roadway, entering the northbound lane, passed the two automobiles in front of him, and returned to the southbound lane. Patrolman James Endres of the Pennsville Police Department was two vehicles behind defendant's vehicle. He observed defendant execute the maneuver, stopped defendant, and issued him a summons for violation of N.J.S.A. 39:4-86.

A trial ensued in the municipal court. Patrolman Endres testified for the State, recounting the details of defendant's infraction and the motor vehicle stop. Defendant also testified and did not dispute the essential facts. He conceded he crossed the double yellow lines because the vehicle in front of him was traveling slowly. The municipal court considered the testimony and also reviewed the State's dashboard camera evidence of the incident. Defendant was adjudicated guilty of violating N.J.S.A. 39:4-86 and required to pay a fine of $60 and $33 court costs.

Defendant appealed from the municipal court judgment. He argued that because the vehicle in front of him had decreased its

speed so dramatically, was approaching the passing zone, and the roadway was clear, he had license to pass. Specifically, defendant argued the slow pace of the vehicle constituted an obstruction. Therefore, he could not be found guilty of N.J.S.A. 39:4-86.

After a de novo review of the record, the Law Division judge found defendant guilty. The judge noted N.J.S.A. 39:4-86 requires the road must be both obstructed and impassable. The judge held impassable meant "[i]mpossible to travel over or across." The judge concluded, though "[a] vehicle moving slower than the speed limit may disturb or even obstruct the flow of traffic, it does not render the roadway impossible to travel across."

Defendant now appeals the Law Division adjudication. He asserts the following arguments.

> I. THE COURT'S DECISION CONSTITUTED A CLEAR ABUSE OF DISCRETION WHERE THE COURT ACTED UNDER A MISCONCEPTION OF THE APPLICABLE LAW.
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> a. The Court's Definition Of Obstruct And Impassible As Applied In This Action Was Error Because The Court Required The Road To Be Both Obstructed And Impassable, In Essence Adding Language That The Legislature Omitted. DiProspero v. Penn, 183 N.J. 477, 492 (2005).
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> b. When The Court's Concept Of Slow Drivers Is A Stated Policy, As Is The Case Here, Then The Statute's Goal Cannot Be Achieved Because The Decision Has Been Made Before

Consideration Of The Defendant's Right To Qualify For The Exception Identified Within The Statute, Additionally, A Per Se Rule On Slow Drivers Precluded The Court From Considering Relevant Factors Outside The Policy.

c. The Trial De Novo Court Evaluation Of Obstruct And Impassable Conflict[s] With The Holding Of The Appellate Court In Cruz v. Trotta, 363 N.J. Super. 353, 359 (App. Div. 2003).

II. THE STATE PRESENTED NO EVIDENCE IN ITS CASE ON THE MERITS. THE STATE HAD THE BURDEN OF PROOF. DEFENDANT WAS NOT OBLIGED TO PUT ON A DEFENSE. THUS, THE RECORD EVIDENCE WAS INSUFFICIENT TO SUPPORT THE FINDING OF GUILT.

We begin by reciting our scope of review. In reviewing a trial court's decision on municipal appeal, we determine whether sufficient credible evidence in the record supports the Law Division's decision. State v. Johnson, 42 N.J. 146, 162 (1964). Unlike the Law Division, which conducts a trial de novo on the record pursuant to Rule 3:23-8(a)(2), we do not independently assess the evidence. State v. Locurto, 157 N.J. 463, 471 (1999). In addition, under the two-court rule, only "a very obvious and exceptional showing of error[]" will support setting aside the Law Division and municipal court's "concurrent findings of facts[.]" Id. at 474. However, when issues on appeal turn on purely legal determinations, our review is plenary. State v. Adubato, 420 N.J.

Super. 167, 176 (App. Div. 2011), certif. denied, 209 N.J. 430 (2012). "We do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." State v. Barone, 147 N.J. 599, 615 (1997). We defer to the trial court's credibility findings. State v. Cerefice, 335 N.J. Super. 374, 383 (App. Div. 2000).

I.

Defendant argues the trial court abused its discretion because it misconstrued N.J.S.A. 39:4-86. He asserts the statute does not require the road to be both obstructed and impassable, and that the trial court's interpretation of the statute added language the Legislature did not intend. Defendant's argument has no merit.

The primary goal of statutory interpretation is to interpret a statute in accordance with the Legislature's intent, and "the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Fruqis v. Braciqliano, 177 N.J. 250, 280 (2003)). The court must interpret the words in the enactment in accordance with "their ordinary meaning and significance." Ibid. (citing Lane v. Holderman, 23 N.J. 304, 313 (1957)).

If the statute is clear and unambiguous, the court's role "is to construe and apply the statute as enacted." Ibid. (quoting In

re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980)). However, if there is any ambiguity in the statutory language that leads to more than one plausible interpretation, the court may consider extrinsic evidence, including the legislative history. Id. at 492–93 (citing Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

N.J.S.A. 39:4-86, in pertinent part, states:

> Except when otherwise directed by a duly constituted traffic or police officer or when the lane in which he is operating is obstructed and impassable, the driver of a vehicle shall not cross an appropriately marked "No Passing" line in a "No Passing" zone duly established pursuant to a duly promulgated regulation of the State Highway Commissioner or an ordinance or resolution duly adopted by a municipal governing body or a board of chosen freeholders, whichever has jurisdiction over the highway.

Thus, the plain language of the statute permits passing in a no passing zone only where the road is both obstructed and impassable. The legislative intent is clear from the statute and the trial judge did not add language to it, as defendant claims.

II.

Defendant next argues the trial court misinterpreted the word "obstructed" in N.J.S.A. 39:4-86 to exclude slow vehicles. He asserts the trial court ignored our holding in Cruz v. Trotta, 363 N.J. Super. 353, 360-61 (App. Div. 2003), a personal injury matter

where we held a slow moving vehicle may constitute an obstruction in violation of N.J.S.A. 39:4-86. However, defendant misconstrues the holding in Cruz. There, the plaintiff who had been a passenger on a slow moving scooter, which collided with a truck causing plaintiff substantial injuries, appealed from jury verdict in favor of the defendant. Plaintiff argued the trial court erred by submitting the question of whether a slow moving vehicle constitutes an obstruction to the jury. We stated that "[s]ince there are virtually endless possible variations that might or might not constitute obstructions," the trial court was correct to submit the question to the jury as trier of fact. Id. at 361.

Relying on Cruz, the trial judge here stated:

> In the instant case, this Court is the finder of fact. At trial, the Defendant testified only that the vehicle, "started to slow down," and that the vehicle's speed was inconsistent with, in his opinion, the flow of traffic. A vehicle moving slowly does not render the roadway impassable. While a vehicle moving slower than the speed limit may disturb or even obstruct the flow of traffic, it does not render the roadway impossible to travel across. Therefore, this Court finds that the Defendant was not allowed to legally pass the vehicle in front of him in the no passing zone. His actions were in violation of N.J.S.A. 39:4-86, and this Court finds him guilty.

The trial judge's findings are support by sufficient and credible evidence in the record.

III.

Finally, defendant argues there was "insufficient evidence in the record to find [him] guilty of the violation beyond a reasonable doubt." Specifically, defendant asserts the municipal court did not find his testimony incredible or his arguments unpersuasive. Thus, he claims the Law Division was not bound by the municipal court's findings, nor are we.

As we noted above, the Law Division's review is de novo. The suggestion that the trial judge did not undertake an independent review and make independent findings is unsupported by the law or the record. Contrary to defendant's claims, the trial judge independently addressed his testimony, which the judge relied upon in part to adjudicate him in violation of the statute. The judge did not need to find defendant's testimony incredible when the testimony he provided on both direct and cross-examination supported a finding of guilt. Defendant's guilt was proved beyond a reasonable doubt, and we are satisfied the adequate, substantial, and credible evidence in the record supports the trial judge's conclusion defendant was guilty of violating N.J.S.A. 39:4-86.

Affirmed.