



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 15, 2019

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Niesha S. Barnett
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Re: *Commonwealth of Virginia v. Niesha S. Barnett*
(aka: *495 Express Lanes v. Niesha S. Barnett*)
(aka: *Transurban (USA) Operations Inc. v. Niesha S. Barnett*)
Criminal Case Nos. MI-2019-1017, -1018, -1019, -1020, -1021

Dear Counsel and Ms. Barnett:

The issue before the Court is whether the Commonwealth (aka: “495 Express Lanes” and hereinafter “Transurban”) proved its case against Niesha S. Barnett (“Barnett”) for using toll lanes without paying the fare. In making that determination, the Court took under advisement whether Virginia residency is a condition precedent to registering a personal vehicle with the Virginia Department of Motor Vehicles (“DMV”). This Court holds that Virginia law permits a nonresident to register her vehicle in Virginia. Therefore, Transurban has proven its case beyond a reasonable doubt, and the Court awards judgment in its favor.

The Virginia Code does not explicitly state in a statute that residency is or is not required. This Opinion Letter clarifies that Virginia residency is not required in order to register a vehicle in Virginia.

OPINION LETTER

I. FACTS

On May 18 and 29, 2018, and June 20, 27, and 29, 2018, Transurban photographed a white Mercedes Benz vehicle with Virginia tags UXU-5622 passing an electronic toll.¹ (Pl. Ex. 1.) In each of the five cases, Transurban claims it could not collect payment for the toll via an E-ZPass, which, when used and funded, can electronically provide payment. It is undisputed that on each of the five days, the electronic toll readers were functioning properly. (Pl. Ex. 2.) Occasionally a motorist has an E-ZPass that cannot be properly read or it is malfunctioning. When this happens, and if the toll reader captures the motorist's license plate, it can transmit the information to the company operating E-ZPass for payment. If an E-ZPass account is linked to that license plate number, and if the account is funded, E-ZPass will pay the toll and further collection action stops. (Test. of Sarah Skillman.)

However, the vehicle in the present case either lacked an E-ZPass account or the E-ZPass was not funded. Transurban was not given payment for the tolls. (Test. of Sarah Skillman.) So, Transurban obtained the name and address of the registered owner of the vehicle from the Virginia DMV. Barnett was the owner, with a registered address of 2244 Alice Ave., Apt. 104, Oxon Hill, MD 20745-6564, as of May 18, 2018. (Pl. Ex. 3.) Transurban mailed invoices to Barnett at the Maryland address on May 31, 2018; June 7 and 28, 2018; and July 5, 13, and 20, 2018.² None were returned undeliverable. (Pl. Ex. 4 and Test. of Sarah Skillman.) Unable to get paid, Transurban issued Summonses in each of the five cases.

Barnett testified that she moved from Maryland to Woodbridge, Virginia, in 2018, and she produced a lease with a start date of March 1, 2018. (Def. Ex. 1.) She produced an account history from E-ZPass for a white Mercedes Benz with an activity date of June 14, 2019. The history neither lists her name nor the vehicle's license plate number. (Def. Ex. 2.) Barnett provided an E-ZPass Customer Account Report, referencing her name and Virginia address, for a white Mercedes Benz. This Report shows the account opened May 3, 2018, had its last activity on July 22, 2019, and had a negative balance. (Def. Ex. 3.)

¹ The tolls are entirely electronic. There is no way for toll road users to pay manually at a toll booth. (Test. of Sarah Skillman.)

² Six invoices were sent for the five cases. Two invoices were sent for the May 29, 2019, case: one original invoice and another after the first accrued additional late fees.

II. ANALYSIS

Transurban argues it photographed a white Mercedes Benz with the license plate number UXU-5622 on multiple days using the toll road without paying. The E-ZPass did not register payments as the vehicle passed tolls. Transurban sought payment by contacting the E-ZPass provider hoping the license was linked to a funded E-ZPass account, but this did not work either. In a third attempt to get paid it sent invoices to the vehicle owner's DMV registered address. This, too, did not work.

Barnett argues she had an account with E-ZPass that should have auto-paid her tolls. She further argues that she lived in Virginia as of March 1, 2018, and not in Maryland, where Transurban sent her the invoices. Inferentially, she argues that her Virginia license plates prove the DMV registered her move from Maryland to Virginia—otherwise, she would have had Maryland license plates.

As to Barnett's first point, her own documentary evidence shows that her E-ZPass account was unfunded. Her own testimonial evidence did not contradict this point. She testified at the trial in her defense, and at no point did she testify that her account was funded on the days Transurban reported the violations.

As to her second point, Barnett offered no proof that she ever registered her vehicle to her Virginia address upon moving from Maryland. Again, she testified in her defense at trial; at no point did she testify that she ever changed the address. Her point is that she could have only obtained Virginia license plates if she lived in Virginia.

The parties offered the Court no authority, and the Court has found none, that requires a person to reside in Virginia in order to register a vehicle with the Virginia DMV. The Virginia Code does not explicitly say, "Virginia residency is required to register a personal vehicle." But taking the Code as a whole and taking inferential steps make it clear that residency is not required.

Title 46.2 of the Virginia Code deals with Motor Vehicles. Subtitle II involves Titling, Registration, and Licensure. Chapter 6 addresses Titling and Registration of Motor Vehicles. Specifically, Virginia Code § 46.2-600 requires "every person who owns a motor vehicle . . . before it is operated on any highway in the Commonwealth, [to] register with the [DMV] . . ." VA. CODE ANN. § 46.2-600. The Code further provides that "[i]ndividuals applying for registration shall provide the [DMV] with the residence address of the owner of the vehicle being registered." *Id.* It does not affirmatively state that the address be in Virginia. Consistently, Virginia Code § 46.2-601 provides a procedure for service of process on a nonresident owner of a motor vehicle registered in Virginia. VA. CODE ANN. § 46.2-601. Of course, this statute would be unnecessary if one had to be a resident to register a vehicle in Virginia. "[E]very part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary." *Hubbard v. Henrico Ltd. P'ship*, 255 Va. 335, 340 (1998). "Closely related statutes must be read as being consistent with one another." *Meierotto v. Commonwealth*,

50 Va. App. 1, 4 (2007) (internal citations omitted). “Statutes should be construed, if possible, so as to harmonize, and force and effect should be given the provisions of each.” *Id.* This is in stark contrast to the requirements for obtaining a driver’s license (addressed in Chapter 3 “Licensure of Drivers” of Title 46.2). Virginia Code § 46.2-323.1 explicitly states, “No driver’s license . . . shall be issued to any person who is not a Virginia resident.” VA. CODE ANN. § 46.2-323.1.

Moreover, although the Virginia Code does not explicitly state residency is or is not required, the DMV and its forms do. The Virginia Administrative Code does not specifically address registration requirements but gives the authority to promulgate such regulations to the DMV. *See* 24 VA. ADMIN. CODE § 20 *Agency Summary* (2019). On its website,³ the DMV states, “You are not required to be a Virginia resident to title a vehicle in Virginia; however, you must show proof of your residential address.” *See also* DMV 177 (11/09/2018). The DMV’s title and registration forms provide further support that Virginia residency is not required. *See* VSA 14 (07/01/2019) *Vehicle Registration Application* and VSA 17A (07/01/2019) *Certificate of Title and Registration*. Neither form has a field labeled “Virginia Address”; indeed, the Owner’s Residence field includes a State subfield. By negative implication, if Virginia residency is required, then the State field would need not be an option; it would be filled in “VA.”

With these principles in mind, the Court finds that certain nonresidents may register a vehicle in Virginia. Thus, in the present case, Barnett could have had her vehicle registered in Virginia while her mailing address was in Maryland—exactly as the DMV reported to Transurban. (*See* Pl. Ex. 3.) Accordingly, the fact that the photographs of her vehicle in Pl. Ex. 1 reflect a Virginia license plate does nothing to prove Barnett’s DMV registered address.

Transurban proved Barnett’s vehicle drove on the 495 Express Lanes. Transurban proved Barnett’s vehicle did so without paying through an E-ZPass. Transurban further proved Barnett did not pay the invoices sent to her DMV registered address. Therefore, Transurban proved its prima facie case. Barnett’s reply that she had a funded E-ZPass account is contradicted by her own evidence that showed a negative balance. Her pointing to having Virginia plates as proof that she changed her DMV registered address actually proves nothing, since a Virginia address is not required to register a vehicle in Virginia. The DMV certificate of her registered address in Pl. Ex. 3 states her actual registered address as of May 18, 2018, the date of the first violation, was Maryland. Barnett is unable to challenge its veracity and, pointedly, did not do so when testifying. Consequently, Transurban proved the violations.

³ DMV, *Acceptable Documents for an Individual Titling a Vehicle in Virginia*, <https://www.dmv.virginia.gov/webdoc/pdf/dmv177.pdf> (last visited Nov. 14, 2019). Titling is a prerequisite to registering. *See* DMV, *Vehicle Registration Information*, <https://www.dmv.virginia.gov/vehicles/#vehiclereg.asp> (last visited Nov. 14, 2019).

II. CONCLUSION

For the reasons stated herein, the Court holds that Virginia allows nonresidents to register their vehicles with the DMV. Therefore, the Court holds Barnett in violation of all five Summonses, as charged.

Transurban shall prepare proposed sketch orders consistent with— and citing— this opinion, endorse them, and circulate them to Barnett to endorse with any objections. Transurban shall submit the fully endorsed orders to Chambers, care of Law Clerk # 7, for entry. This matter will be placed on the Court's docket for Friday, November 22, 2019, at 9:00 a.m. for entry of the Orders in the event such fully endorsed orders are not submitted prior.

Kind regards,



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia