

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

WILLIAM PATRICK GREENE,

Appellant,

Appeal Case No.
UCN No.

CRC 08-00025-APANO
52007CT138330XXXXX

vs.

STATE OF FLORIDA.

Appellee.
_____ /

2009 MAY 20 PM 4:44
CLERK OF COURT

ORDER AND OPINION

THIS MATTER is before the Court on Appellant's, William Patrick Greene, appeal seeking review of the trial court's denial of his motion to dismiss pursuant to rule 3.190(c)(4) where it found that the exclusion in Fla. Stat. §322.53(2)(e)(2008) does not apply to Appellant. This Court has reviewed the single brief filed by Appellant as well as the record in the above styled cause and finds that the exclusion set forth in Fla. Stat. §322.53(2)(e)(2008) does apply to Appellant and therefore reverses the judgment of the trial court and remands this cause back to the trial court for proceedings consistent with this opinion.

Factual and Procedural History

Appellant received a citation for operating a motor vehicle whose GVWR [gross vehicle weight rating] was 30,000 lbs. without a Class B license, in violation of Fla. Stat. §322.54(2)(D)92008) which states:

(2) The department shall issue, pursuant to the requirements of this chapter, drivers' licenses in accordance with the following classifications:

(d) Any person, except a person who possesses a valid Class A, valid Class B, or valid Class C driver's license, who drives a motor vehicle must possess a valid Class E driver's license. Any person who possesses a valid Class E driver's license may, subject to the appropriate restrictions and endorsements, drive any type of motor vehicle, other than the type of motor vehicle for which a Class A, Class B, or Class C driver's license is required, within this state.

Appellee failed to file a traverse or demur denying the factual matters asserted by Appellant, therefore all facts presented by Appellant in its motion to dismiss are considered to be admitted. Strikertaylor v. State, 997-So. 2d 488, 488 (Fla. 2d 2008); Fla. R. Crim. P. 3.190(d). Appellant asserted in its motion to dismiss that the truck in question was a "straight truck" as defined by Fla. Stat. 316.003(70) and was used solely to transport the Appellant's own personal property, which was not for sale. Accordingly, Appellant states that he is exempted from the "commercial driver's license" requirement based on the exception set forth in Fla. Stat. §322.53(2)(e)(2008):

(2) The following persons are exempt from the requirement to obtain a commercial driver's license:

(e) Drivers who operate straight trucks, as defined in s. 316.003, that are exclusively transporting their own tangible personal property which is not for sale.

Analysis and Conclusion

The interpretation of a statute or ordinance is purely a legal matter and is subject to *de novo* review. State v. Hannah, 901 So. 2d 201, 204 (Fla. 5th DCA 2005). A statute's "plain and ordinary meaning must control, unless this leads to an unreasonable result or a result or a result clearly contrary to legislative intent." State v. Burris, 875 So.2d 408, 410 (Fla. 2004). Here we find that the "plain and ordinary meaning" of Fla. Stat.

§322.53(2)(e)(2008) and §322.54(2)(d)(2008), when read together, is that every person who drives a commercial motor vehicle in Florida is required to possess a valid commercial driver's license, except as otherwise expressly exempted. Here, Appellant presented evidence that he fits within an exempted class as he drove a straight truck, as defined by Fla. Stat. 316.003(70), which was used solely to transport the Appellant's own personal property which was not for sale. Accordingly, we reverse the judgment of the trial court and remand this cause back to the trial court for proceedings consistent with this opinion.

DONE AND ORDERED this 19 day of May, 2009 at Pinellas County, Florida.

Original order entered on May 19, 2009 by Circuit Judges David A. Demers, Joseph A. Bulone, and Chris Helinger.

Copies to: Honorable John Carassas

Bernie McCabe, State Attorney
Sixth Judicial Circuit of Florida
Counsel for Appellee

Gregory L. Olney, II, Esquire
Counsel for Appellant