

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
September 11, 2012

v

ALLINGHAM CORPORATION,  
  
Defendant-Appellant.

No. 306120  
Saginaw Circuit Court  
LC No. 10-010619-AR

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Before: SERVITTO, P.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Allingham Corporation (“Allingham”) appeals by leave granted the circuit court’s order affirming the district court’s imposition of a \$14,600 fine.<sup>1</sup> We affirm.

Allingham is an operator of commercial truck cranes, and operates a Grove 5240 Truck Crane, which exceeds the normal road weight restrictions placed on commercial vehicles.<sup>2</sup> Such vehicles may only be operated on public highways with a special permit issued by the Michigan Department of Transportation (“MDOT”).<sup>3</sup> Allingham routinely applies for and receives such permits. Allingham was in possession of such a permit when its vehicle was stopped by the Traffic Safety Division on June 4, 2010. An error by Allingham when it prepared the permit application led to the issuance of a special permit that included incorrect weight numbers for the vehicle, resulting in a violation of the permit. Because the weight violation caused the special permit to be automatically revoked, Allingham was charged with a violation of the general weight requirements,<sup>4</sup> resulting in an assessed fine of \$14,600.

A civil infraction proceeding was initiated in district court, where Allingham moved to dismiss the citation. Allingham argued that the special permit was improperly voided, and that the proper fine should have been for a special permit violation, rather than a general overweight

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<sup>1</sup> MCL 257.724(3).

<sup>2</sup> MCL 257.722.

<sup>3</sup> MCL 257.725.

<sup>4</sup> MCL 257.722; MCL 257.724.

violation, with a resulting fine of \$250.<sup>5</sup> After hearing arguments, the district court denied the motion, finding that the special permit was automatically voided by the weight violation, and Allingham was properly fined under the graduated weight provision.<sup>6</sup>

Allingham appealed to Saginaw Circuit Court, arguing that the special permit could not be voided without an administrative hearing, the proper fine for a special permit violation was \$250, and a fine of \$14,600 is unconstitutionally excessive. In an opinion and order issued August 22, 2011, the circuit court found that MDOT issued Allingham a special permit with certain conditions and restrictions permitted under the relevant statute.<sup>7</sup> One of the conditions of the special permit was that any operation on state truckline highways beyond the size and weight limitations of the permit voided the permit. Where it was undisputed that when Allingham's truck was stopped by the motor carrier officer, the actual weight of its axles exceeded the weight limitations of the permit, Allingham's actions, not those of the MDOT, voided the permit. Thus, the court concluded that no administrative hearing was required.

Having determined that the permit was properly voided, the circuit court found that Allingham was correctly fined under the graduated schedule.<sup>8</sup> Had Allingham violated one of the provisions that did not result in the automatic voiding of the special permit, it would have been subject to a \$250 fine.<sup>9</sup> Where the special permit was violated, Allingham was no longer operating under section 725, and the graduated schedule was properly applied.

The circuit court concluded that the \$14,600 fine did not violate the constitutional prohibition against excessive fines.<sup>10</sup> Following *People v Wolfe*, the circuit court found that the graduated schedule of section 724 was adopted by the Legislature to provide penalties that would deter operators of commercial vehicles from using the highways of the state in a destructive manner to the danger and detriment of the public.<sup>11</sup> In view of the seriousness of the problem, the fines were not excessive, particularly where the owner or operator of such equipment may avoid any violation by the exercise of proper care. The circuit court denied Allingham's appeal, and remanded the matter to district court for further proceedings.

Allingham argues that the circuit court erred when it upheld the imposition of the \$14,600 fine.<sup>12</sup> We disagree. This Court reviews questions of statutory construction de novo.<sup>13</sup>

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<sup>5</sup> MCL 257.907(3).

<sup>6</sup> MCL 257.724.

<sup>7</sup> MCL 257.725.

<sup>8</sup> MCL 257.724.

<sup>9</sup> MCL 257.907(3).

<sup>10</sup> U.S. Const, Am VIII; Const 1963, art 1, § 16.

<sup>11</sup> *People v Wolfe*, 338 Mich 525; 61 NW2d 767 (1953).

<sup>12</sup> MCL 257.724.

MCL 257.725 provides in part:

(1) Upon receipt of a written application and good cause being shown, a jurisdictional authority may issue a written special permit authorizing an applicant to operate upon or remove from a highway maintained by that jurisdictional authority a vehicle or combination of vehicles that are any of the following:

(a) Of a size, weight, or load exceeding the maximum specified in this chapter.

(b) Otherwise not in conformity with this chapter.

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(7) A special permit issued under this section shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by a police officer or authorized agent of a jurisdictional authority granting the special permit. A person shall not violate any of the terms or conditions of the special permit.

(8) A person who violates this section is responsible for a civil infraction.

The weight limits for wheel and axle loads provide for a maximum axle load of 18,000 pounds, with lesser limits depending on the spacing and number of axles.<sup>14</sup> Violations of section 722 are civil infractions, and there is a graduated system of penalties in which the amount of the penalty for each excess pound increases with the amount of excess weight.<sup>15</sup>

The permit issued to Allingham contains the following term:

G. Any of the following actions shall immediately void the permit and subject the applicant to appropriate legal action: (a) Misrepresentation of information set forth in an application for permit. (b) Any operation on state truckline highways beyond the size or weight limitations shown on the permit. (c) A change or erasure on a permit.

Allingham does not challenge that the weight of its truck crane exceeded the weight set forth on the special permit. Rather, it asserts that the trial court should have found that it was in violation of section 725, and subject to a civil infraction citation with a fine of \$250.<sup>16</sup> While Allingham argues that the permit could not automatically be voided upon a weight violation, a

<sup>13</sup> *People v Campbell*, 289 Mich App 533, 535; 798 NW2d 514 (2010).

<sup>14</sup> MCL 257.722.

<sup>15</sup> MCL 257.724.

<sup>16</sup> MCL 257.907(3).

special permit may restrict and prescribe the conditions of use.<sup>17</sup> The special permit issued to Allingham clearly indicates that Allingham's act of violating the weight provisions of the special permit immediately voids the special permit and subjects Allingham to legal action.

Although Allingham argues that the special permit could not be voided without administrative procedures, the terms of the permit clearly state that the permit is immediately voided by certain actions. Thus, Allingham was given notice that operation in excess of the weight limits would void the permit. While Allingham argues that this violates due process of law, it should be noted that Allingham is able to challenge the basis for the revocation, before it is required to pay the civil citation. Therefore, Allingham will receive due process of law before it will suffer the consequences of the voided permit.<sup>18</sup>

Moreover, there is no showing that the fine is excessive. In addressing the graduated system of fines,<sup>19</sup> the Supreme Court noted that heavily loaded trucks cause serious damage to public highways, and it could be assumed that the Legislature had in mind the practical necessity of imposing penalties that would be large enough to deter owners of trucks from transporting destructive weights on such highways.<sup>20</sup> Where the amount of the fine was tailored to deterrence of a known harm, there is no showing that the fine is excessive.<sup>21</sup>

Affirmed.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot

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<sup>17</sup> MCL 257.725(4).

<sup>18</sup> U.S. Const, Ams V and XIV; Const 1963, art 1, § 17.

<sup>19</sup> MCL 257.724.

<sup>20</sup> *Wolfe*, 338 Mich at 540-541.

<sup>21</sup> U.S. Const, Am VIII; Const 1963, art 1, § 16.