SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0597-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STEVEN STRAUSS,

Defendant-Appellant.

Argued October 4, 2023 – Decided October 27, 2023

Before Judges Firko and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Municipal Appeal No. M-6273.

Steven Strauss, appellant pro se.

Michele C. Buckley, Assistant Prosecutor, argued the cause for respondent (William A. Daniel, Union County Prosecutor, attorney; Milton S. Leibowitz, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Stephen F. Strauss appeals from his traffic offense conviction for making an unsafe lane change. While entering a multi-lane roadway from the right side, defendant proceeded to move directly toward the far-left lane, crossing the right and middle lanes without travelling any substantial distance. Following a trial in the municipal court, Law Division Judge Stacey K. Boretz conducted a de novo trial based on the municipal court record and found defendant guilty of violating N.J.S.A. 39:4-88(b). Defendant contends that offense does not apply to vehicles entering a roadway. He also contends the municipal court and Law Division judges erred in finding he changed lanes without first ascertaining it was safe to do so. After carefully reviewing the record in light of the governing legal principles and arguments of the parties, we affirm.

The essential facts are not disputed. Officer Samantha Bierilo observed defendant driving in a "perpendicular" fashion across Route 22 East into the far-left lane before exiting the roadway and pulling into a gas station. At trial, the State presented dash-cam video of the maneuver. Both judges found defendant's conduct constituted a violation of N.J.S.A. 39:4-88(b).

Defendant raises the following contentions for our consideration:

> THE COURT IMPROPERLY FOUND THE DEFENDANT GUILTY OF UNSAFE LANE

> CHANGE [UNDER] N.J.S.A. 39:4-88(B) BECAUSE THE STATUTE DOESN'T APPLY TO HIS ACTIONS.
>
> EVEN IF N.J.S.A. 39:4-88(B) WAS FOUND TO APPLY IN THIS INSTANCE, THE DEFENDANT BELIEVES THAT [THE] COURT ERRED WHEN IT CONCLUDED THE DEFENDANT'S ACTIONS WERE DONE IN AN UNSAFE MANNER.

When a defendant appeals a municipal court conviction, a Law Division judge conducts a de novo trial on the municipal court record. R. 3:23-8(a)(2). The Law Division judge must make independent findings of fact and conclusions of law but defers to the municipal court's credibility findings. State v. Robertson, 228 N.J. 138, 147 (2017); State v. Locurto, 157 N.J. 463, 474 (1999); see also State v. Kuropchak, 221 N.J. 368, 382 (2015).

"[T]he rule of deference is more compelling where . . . two lower courts have entered concurrent judgments on purely factual issues." Locurto, 157 N.J. at 474; accord State v. Stas, 212 N.J. 37, 49 n.2 (2012). "Under the two-court rule, appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Locurto, 157 N.J. at 474 (citing Midler v. Heinowitz, 10 N.J. 123, 129 (1952)).

Furthermore, in an appeal from a de novo hearing on the record, we do not independently assess the evidence. Id. at 471. Our review of a Law Division judge's decision is limited to determining whether the findings made by the judge "could reasonably have been reached on sufficient credible evidence present in the record." Id. at 472 (quoting State v. Barone, 147 N.J. 599, 615 (1997)).

However, we owe no such deference to the Law Division judge or the municipal court with respect to legal determinations. See State v. Handy, 206 N.J. 39, 45 (2011) ("[A]ppellate review of legal determinations is plenary.") (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Accordingly, our review of the Law Division judge's construction of the statute is subject to plenary review, and we are not required to defer to her legal conclusions. See Maeker v. Ross, 219 N.J. 565, 574 (2014) (citing Aronberg v. Tolbert, 207 N.J. 587, 597 (2011)); State v. Gandhi, 201 N.J. 161, 176 (2010); N.J. Div. of Child Prot. & Perm. v. Y.N., 220 N.J. 165, 177 (2014).

N.J.S.A. 39:4-88(b) provides in pertinent part:

> When a roadway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following regulations:
>
> [. . .]

> b. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.

In State v. Regis, 208 N.J. 439, 452 (2011), our Supreme Court held the statute consists of two separate, independent clauses, each of which addresses a distinct offense. The Court explained,

> [t]he statute's two clauses address different circumstances. The first clause imposes a continuous requirement upon the driver: to maintain his or her vehicle in a single lane, by avoiding drifting or swerving into an adjoining lane or the shoulder, unless it is not feasible to do so. See Black's Law Dictionary 1290 (9th ed. 2009) (defining 'practicable' as 'reasonably capable of being accomplished; feasible'). Unlike the second clause of N.J.S.A. 39:4-88(b), the first clause is not limited to the setting of a highway or road with two or more lanes of traffic proceeding in the same direction, in which a driver could safely change lanes. For example, the first clause of N.J.S.A. 39:4-88(b) would apply to a road with one lane of traffic in each direction, and thus addresses a broader range of circumstances than does the statute's second clause.
>
> Moreover, the first clause of N.J.S.A. 39:4-88(b) is not limited to circumstances in which the deviation from the lane is demonstrated to be a danger to other drivers.
>
> [Id. at 448.]

The Court added,

> The statute's second clause addresses a related, but discrete, mandate of the Code. It requires a driver to

> ascertain the safety of switching lanes before conducting a lane change. N.J.S.A. 39:4-88(b). Unlike the violation described in the first clause of N.J.S.A. 39:4-88(b), the violation described in the second clause is avoided if a driver, in a roadway with multiple lanes traveling in the same direction, first determines that departure from a lane may be conducted safely.
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> [Id. at 449.]

We first address defendant's argument the statute applies only to motorists who have been travelling along a roadway and exempts motorists who have just entered the roadway. Familiar principles of statutory construction guide our analysis.

The Legislature directs that the words and phrases of its statutes "shall be read and construed in their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language." N.J.S.A. 1:1-1. Our objective is to determine the meaning of the statute to the extent possible by looking to the Legislature's plain language. Gandhi, 201 N.J. at 176-77; State v. Smith, 197 N.J. 325, 332-33 (2009); DiProspero v. Penn, 183 N.J. 477, 492 (2005). If a statute's language is unambiguous, then the "interpretive process is over." Gandhi, 201 N.J. at 177 (quotation omitted); DiProspero, 183 N.J. at 492-93. It is only when a statute's

language is ambiguous that we should resort to extrinsic aids, such as "legislative history, committee reports, and contemporaneous construction." Ibid. (quotation omitted).

Nothing in the plain language of the statute expressly exempts vehicles that have just entered a roadway. Nor does the statute prescribe a fixed distance of travel in a lane before the duties established in N.J.S.A. 39:4-88(b) arise. We decline to read into the statute the limitation defendant suggests.

Defendant relies on State v. Woodruff, 403 N.J. Super. 620 (Law Div. 2008), to support his argument that N.J.S.A. 39:4-88(b) does not apply to vehicles that have just entered a roadway. In Woodruff, the trial judge offered examples of conduct that would violate the first clause of N.J.S.A. 39:4-88(b), noting the statute,

> covers situations where the driver has no intention to change lanes, or where the driver does not or cannot change lanes. For example, a driver can violate the first clause when deviating from the lane of a single-lane, one-way road, or on a single-lane ramp to or from a highway, or when driving in a three-lane highway, in which two lanes are traveling against the driver. In those cases, no lane-change is possible, but the driver's failure to maintain a lane is proscribed.
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> [Id. at 625.]

Defendant argues "[t]his Woodruff decision is entirely about maintaining and changing lanes while driving down a roadway. None of the examples in this decision even slightly resemble the actions of the defendant, whereby he entered Route 22 and crossed traffic lanes, just prior to him being stopped and ticketed."

It is true the facts presented in Woodruff involved a motorist who had been travelling on a roadway.[1] We view the list of examples as illustrations of conduct proscribed by the statute, not a comprehensive much less exhaustive list of situations covered under the plain text. The judge in Woodruff had no occasion to address the circumstance where a motorist enters a highway and almost immediately proceeds to cross multiple lanes. Nothing in Woodruff—or Regis—suggests, much less expressly holds, there is a limitation on the scope of N.J.S.A. 39:4-88(b) as defendant contends.

Even accepting N.J.S.A. 39:4-88(b) applies only to vehicles that are on the roadway, defendant's argument still fails because he was on the roadway, albeit only briefly, when he crossed from the far-right lane, through the middle lane, and into the far-left lane. The Court in Regis explained the first clause of

[1] Woodruff was driving his pickup truck south on Route 130. Woodruff, 403 N.J. Super. at 623. He was travelling in the right-hand lane and twice veered out of the lane, crossing over the fog line that separates the right lane's edge and the shoulder. Ibid.

the statute requires drivers to maintain their vehicle in a single lane "by avoiding drifting or swerving into an adjoining lane or the shoulder, unless it is not feasible to do so." 208 N.J. at 448. But that is what defendant did for all practical purposes; he darted abruptly across adjoining lanes on his way to the far-left lane from which he exited the roadway. We are satisfied defendant's multiple-lane-crossing maneuver posed dangers at least as immediate and significant as a single-lane swerving violation committed by a motorist who has been driving on the roadway for a sustained period.

That leads us to address defendant's contention the municipal court and Law Division judges both erred in finding his maneuver posed a safety risk. We review that finding applying the deference accorded under the "two-court rule." See Locurto, 157 N.J. at 474. Officer Bierello testified the traffic was moderate. The dashcam video shows numerous cars on the roadway, changing lanes, entering the roadway, and exiting it. Thus, the trial evidence amply supports the finding that by crossing multiple lanes in one uninterrupted motion, defendant failed to ascertain whether crossing into each succeeding lane could be done safely.

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION