Erb v. Department of Highway Safety & Motor Vehicles (Fla. 4th Cir. Ct. 2007)

Reported at 15 Fla. L. Weekly Supp. 202a. Duval County appellate division.

ARTHUR ERB, Petitioner, vs. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 4th Judicial Circuit (Appellate) in and for Duval County. Case No. 162007-CA-2961, Division CV-A. December 21, 2007. Petition for Writ of Certiorari arising from Order of License Revocation, Suspension, or Cancellation. Counsel: Rhonda F. Goodman, Rhonda F. Goodman, P.A., Miami, for Petitioner. Mark J. Hiers, Assistant General Counsel, Department of Highway Safety & Motor Vehicles, Tallahassee, for Respondent.

OPINION

(PETER J. FRYEFIELD, J.) This cause is before the Court upon the Petition for Writ of Certiorari filed by the Petitioner on April 6, 2007. Petitioner seeks review of the Order of License Revocation, Suspension, or Cancellation entered by the Department of Highway Safety and Motor Vehicles on March 9, 2007, in response to information supplied to it by a participating program in Duval County's Special Supervision Services DUI program. Jurisdiction is proper with this Court pursuant to Florida Rule of Appellate Procedure 9.030(c)(3), and section 322.31, Florida Statutes (2007).

I. Factual Background and Procedural History From review of the briefs submitted by the parties as well as the record before the Court, the Court has gleaned the following facts.

As a result of multiple convictions for driving under the influence (DUI), Petitioner's driver's license was revoked on October 16, 2000 for a period of ten (10) years. On December 5, 2002, a hearing officer with the Department found that Petitioner could apply for the Special Supervision Services program pursuant to section 322.271 of the Florida Statutes. On January 24, 2003, the Metro Traffic School DUI Program ("Metro") recommended Petitioner for Special Supervision Services. Petitioner signed a Statement of Abstinence prior to entry into the program in which he acknowledged that any substance abuse on his part would result in his termination from the Special Supervision Services as well as the cancellation of his restricted driver's license. On February 6, 2003, Petitioner's driving privilege was reinstated on a restricted basis, for "business purposes only". On March 1, 2007, Metro sent a letter to Respondent in which it reported Petitioner's noncompliance with the regulations of the Special Supervision Services program, and requesting cancellation of Petitioner's hardship driver's license. As grounds for such, Metro reported that Petitioner tested positive for marijuana on a sample collected on February 23, 2007. Petitioner was advised of this information in a letter to him on the same date, and was informed that he had the right to appeal the decision and had ten (10) business days following receipt of the letter in which to appeal. On March 9, 2007, Respondent informed Petitioner that it had received information from the DUI Special Supervision Services that he was no longer in compliance with program requirements, and in light of such his restricted driver's license was being cancelled and the revocation period was being reimposed. On March 9, 2007, Petitioner completed a Request to Release or Obtain Information, in which he exercised his right to appeal Metro's decision to another Special Supervision Services DUI program. In this document, Petitioner indicated that he

wished for all paperwork pertaining to his appeal to be submitted to a program known as “Pride” for the purposes of an appeal decision. The case file contains a U.S. Postal Service Certified Mail Receipt dated March 21, 2007 for items sent to Pride at an address in West Palm Beach, Florida. On April 6, 2007, Petitioner filed the instant Petition for Writ of Certiorari based upon Respondent's failure to wait until the appeal process was complete to cancel his restricted driver's license, and based upon alleged improprieties in the handling of his appeal.

II. Standard of Review The scope of this Court's review of Respondent's Order of License Revocation, Suspension, or Cancellation is extremely limited. In reviewing an administrative order by certiorari, the circuit court must determine (1) whether procedural due process is accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. Dep't of Highway Safety & Motor Vehicles v. Favino, 667 So. 2d 305, 308 (Fla. 1st DCA 1995). The Court is not permitted to re-weigh the evidence or to substitute its judgment for the findings of the Respondent's hearing officer. See Education Dev. Ctr., Inc. v. West Palm Beach Zoning Bd. of Appeals, 541 So. 2d 106, 108 (Fla. 1989); Dep't of Highway Safety & Motor Vehicles v. Smith, 687 So. 2d 30, 32 (Fla. 1st DCA 1997). III. Application of Standard of Review In his Petition for Writ of Certiorari, Petitioner asserts that Respondent violated his right to due process by cancelling his restricted driver's license without holding a hearing and/or waiting for the appeal process to be completed prior to taking such action. Petitioner further asserts that Respondent's Order is not supported by competent substantial evidence, and alleges improprieties in the handling of his appeal.

With regard to Petitioner's appeal, the Court notes that a proper appeal of Metro's decision was not taken. Rule 15A-10.031(2) of the Florida Administrative Code, which governs the appeal process for DUI programs, provides that a client in the DUI program who wishes to contest an unfavorable recommendation of termination by a DUI program shall be allowed to appeal the recommendation to any DUI program licensed by the Department “in that circuit or any adjacent circuit”, excluding its own program. Such requirement limits Petitioner's appeal to another DUI program in the Fourth Judicial Circuit or a DUI program in a circuit adjacent to the Fourth Judicial Circuit. Here, the appeal was taken to a DUI program in West Palm Beach, Florida, which is neither in the Fourth Judicial Circuit or in a circuit adjacent to the Fourth Judicial Circuit. In light of such, the Court cannot consider Petitioner's claims with respect to the handling of his appeal, as a proper appeal was not taken in this case.

With regard to Petitioner's claims that he was denied due process and that Respondent's Order is not supported by competent substantial evidence, the Court finds no merit to these arguments. Petitioner asserts that Respondent erred in cancelling his restricted driver's license without first providing him with a hearing and/or allowing his appeal process to be completed. However, Florida law contains no such requirement. Rule 15A10.031(2) of the Florida Administrative Code states that “the DUI program shall not delay notification to the Department of its termination recommendation pending such appeal”. The Florida Statutes require that if an individual fails to comply with the required supervision, “the program shall report the failure to the department, and the department shall cancel such person's driving privilege”. § 322.271(2)(b), Fla. Stat. (2007) (emphasis added). Such language mandates that when an individual is a participant in a DUI

program and the program recommends his or her termination, this shall be immediately communicated to the Department and the Department shall cancel the individual's driving privilege, with no indication being made that the Department shall wait until any appeal that is taken is resolved before the license is cancelled. As this is what Respondent did here, the Court is unable to find that Petitioner was denied due process or that Respondent's Order is not supported by competent substantial evidence.

Thus, it is ORDERED AND ADJUDGED that Petitioner's Petition for Writ of Certiorari is hereby DENIED.

Text of the court's opinion, reproduced for reference. Headnotes and publisher material omitted. Posted by The Brancato Law Firm, P.A., Tampa. Not legal advice.