

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR 16 2016

MICHAEL S. RICHIE
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Case No. 114,321

STEVEN WADE JAMESON,)
)
Plaintiff/Appellee,)
)
vs.)
)
STATE OF OKLAHOMA ex rel.,)
DEPARTMENT OF PUBLIC SAFETY,)
)
Defendant/Appellant.)

APPEAL FROM THE DISTRICT COURT OF
PAYNE COUNTY, OKLAHOMA

HONORABLE STEVEN R. KISTLER, TRIAL JUDGE

**AFFIRMED IN PART AND REMANDED IN PART FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS OPINION**

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OPINION BY JERRY L. GOODMAN, CHIEF JUDGE:

State of Oklahoma *ex rel.*, Department of Public Safety (DPS), appeals a September 1, 2015, order vacating DPS's cancelation of Steven Wade Jameson's (Jameson) driver's license. Based on our review of the record and applicable law, we affirm in part and remand in part for further proceedings consistent with this opinion.

BACKGROUND

On August 14, 2009, Jameson was cited for Underage in Possession of Beer in Public in violation of the City of Stillwater City Code § 3-91A. Jameson posted a \$154.00 bond, which was subsequently applied to pay his fine. On October 20, 2009, the Stillwater Municipal Court sent a Notification Form to DPS, recommending the cancelation of Jameson's driver's license for a period of six (6) months. Pursuant to this recommendation, DPS canceled Jameson's license on October 30, 2009. The order canceling Jameson's driver's license was mailed to Jameson at the address shown on the Notification Form and citation Jameson had received.

In December of 2009, Jameson was the driver of a vehicle involved in a fatal collision. He was subsequently charged with three (3) counts of First-Degree Manslaughter on alternative theories of driving under the influence of marijuana and driving under suspension. He ultimately entered into a blind guilty plea,

confessing the driving under suspension predicate and pleading guilty to three (3) counts of manslaughter. Jameson received sixteen (16) years on each of the three (3) counts, with the first eight (8) on each count to be served in custody. The sentences were to run consecutively.

On April 30, 2015, Jameson filed a petition for relief based upon error or hardship pursuant to 47 O.S.2011, § 6-107.2(C), challenging the validity of the cancelation of his driver's license. Jameson named DPS in the petition. A hearing was held on June 18, 2015. After extensive briefing by the parties, the trial court vacated DPS's cancelation of Jameson's driver's license, holding the Stillwater Municipal Court did not have jurisdiction to order the cancelation under 47 O.S.2011, § 6-107.1, that Stillwater City Ordinance § 3-91A did not authorize the cancelation of Jameson's driver's license, and finding Jameson had not been given proper notice of the cancelation as required by 47 O.S.2011, §§ 6-107.1(B) and 2-116. DPS appeals.

ANALYSIS

1. Motion to Dismiss

On October 16, 2015, Jameson filed a motion to dismiss the appeal, asserting DPS had neither standing nor legal authority to appeal the decision.¹ Jameson maintains DPS lacks standing because it is not an aggrieved party in that

¹ The Oklahoma Supreme Court deferred the motion to this Court for consideration.

it has no pecuniary interest in the subject matter of the decision below. Jameson notes DPS was included only as a nominal party, not being a necessary party in the proceeding below. *See* 47 O.S.2011, § 6-107.2(C)(2).² Jameson further asserts DPS's reliance on 47 O.S.2011, § 6-211(M) for authority to appeal is in error because the underlying action was not brought pursuant to § 6-211. Rather, this is an appeal from an order granting Jameson's petition for relief from the cancelation of his driver's license pursuant to § 6-107.2. Thus, Jameson's motion to dismiss should be granted.

DPS disagrees, asserting the Legislature has tasked it with the responsibility of canceling, revoking, suspending, and denying driver's licenses when required by law. Thus, it has standing to challenge district court rulings that vacate or set aside those actions. DPS further asserts it is an aggrieved party, because it is required to follow court orders vacating cancelations and revocations of driver's licenses. Finally, DPS maintains § 6-211 and § 6-107.2 must be read together so that each is given force and effect.

² Section 6-107.2(C)(2) provides, in relevant part:

C. Any person whose driving privileges are canceled or denied pursuant to this section may file a petition for relief based upon error or hardship. ...

2. The district court shall conduct a hearing on the petition and may determine the matter *de novo*, *without notice to the Department*, and if applicable, without notice to the municipal court; provided, the district court shall not consider a collateral attack upon the merits of any conviction or determination which has become final. (Emphasis added).

Standing, as a jurisdictional question, may be correctly raised at any level of the judicial process or by the Court on its own motion. The Oklahoma Supreme Court has consistently held that standing to raise issues in a proceeding must be predicated on interest that is “direct, immediate and substantial.” *Matter of Estate of Doan*, 1986 OK 15, ¶ 7, 727 P.2d 574, 576 (citing *Democratic Party of Oklahoma v. Estep*, 1982 OK 106, ¶ 1, 652 P.2d 271). Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome. *Independent Sch. Dist. No. 5 of Tulsa Cnty. v. Spry*, 2012 OK 98, ¶ 3, 292 P.3d 19, 20; *Matter of Estate of Doan*, 1986 OK 15, 727 P.2d at 576.

Whether DPS has standing to challenge the district court’s decision is a question of law. We independently determine legal issues *de novo* and as an appellate court, claim for ourselves plenary, independent and non-deferential authority to re-examine the trial court’s legal rulings. *Kluver v. Weatherford Hosp. Auth.*, 1993 OK 85, ¶ 14, 859 P.2d 1081, 1084.

We find DPS has a legally-protected interest which has been injured in fact. DPS has the legal responsibility of canceling, revoking, suspending, and denying driver’s licenses. In the present case, DPS was ordered by the district court to vacate its order canceling Jameson’s driver’s license. DPS disputes this action and

believes it was legally erroneous. DPS is the only party capable of redressing the alleged injury by appealing from the district court to a higher court. Accordingly, we find DPS has standing to contest the district court's decision. Jameson's motion to dismiss is therefore denied.

2. *DPS's Appeal*

For its first assertion of error, DPS contends the district court erred in finding the Stillwater Municipal Court did not have jurisdiction to cancel Jameson's driver's license. Questions concerning jurisdiction present a question of law requiring a *de novo* standard of review. *Guffey v. Ostonakulov*, 2014 OK 6, ¶ 10, 321 P.3d 971, 975. In a *de novo* review, this Court has "plenary, independent and non-deferential authority to determine whether the trial court erred in its application of the law." *Justus v. State ex rel. Dep't of Pub. Safety*, 2002 OK 46, ¶ 3, 61 P.3d 888, 889 (citation omitted).

In the present case, the district court held the Stillwater Municipal Court was without jurisdiction to cancel Jameson's driver's license pursuant to § 6-107.1 because Jameson was nineteen (19) years old when he was cited for Underage in Possession of Beer in Public.³ DPS acknowledges § 6-107.1 does not provide for

³ Section 6-107.1 provides, in relevant part:

A. When any district court, municipal court of record ... has determined that a person under the age of eighteen (18) years has committed any offense described in subsection C of this section, or

cancelation if the person is over the age of eighteen (18) for a citation of possession of beer in public. DPS asserts however, that the Stillwater Municipal Court did not cancel Jameson's license pursuant to § 6-107.1. Rather, DPS notes the citation issued to Jameson refers to the Stillwater Code of Ordinances § 3-91, which deals with minors in possession of low-point beer while in public.⁴ Section 3-91 provides its state law reference is 37 O.S.2011, § 246. Section 246(A) provides:

A. No person under twenty-one (21) years of age shall consume or possess with the intent to consume low-point

that a person eighteen (18), nineteen (19), or twenty (20) years of age has committed an offense described in Section 11-906.4 of this title, the court shall notify the Department of Public Safety ...

...

C. In addition to the administrative revocation of driving privileges pursuant to Section 754 of this title, and the mandatory revocation of driving privileges pursuant to Section 6-205.1 of this title, this section applies to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, or consumption of beer, alcohol, or any beverage containing alcohol and to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, trafficking, cultivation, consumption, ingestion, inhalation, injection, or absorption of any controlled dangerous substance as defined by paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes or any substance which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor functions.

⁴ Section 3-91(A) provides: "No person under 21 years of age shall consume, or possess with the intent to consume any low-point beer, as defined in section 3-1. Any person violating the provisions of this section shall be guilty of a Class A offense. ..."

beer, as defined in Section 163.2 of this title. ... Any person violating any of the provisions of this subsection shall be guilty, upon conviction, of a misdemeanor... . In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. ...

Therefore, DPS maintains the Stillwater Municipal Court canceled Jameson's driver's license pursuant to § 246(A).

Jameson disagrees, noting the 2009 Order of Cancellation does not cite or reference § 246. Rather, it cites § 6-107.2.⁵ In addition, Jameson notes his September 2, 2010, driving index indicates the reason for cancellation was possession of alcohol or drugs by a person eighteen (18) years of age or younger.⁶ Finally, Jameson contends § 246 does not apply to municipal court convictions, asserting municipal courts enforce municipal ordinances, not state statutes.

⁵ Section 6-107.2 provides, in relevant part:

A. The Department of Public Safety shall prepare and distribute a Notification form to be used by the courts, as provided in Section 6-107.1 of this title. In addition to any other authority to cancel or deny driving privileges, the Department of Public Safety shall, upon receipt of such completed Notification form from a court, cancel or deny all driving privileges of the person named in the Notification form without hearing, for a period of time recommended by the court.

⁶ At the hearing on Jameson's petition for review, a second index, dated June 17, 2015, was also introduced. This index provided the reason for cancellation was possession of alcohol or drugs by a person twenty (20) years of age or younger. Jameson questions the purported altered driving index.

Reviewing the record in this case, it is clear the Municipal Court canceled Jameson's driver's license pursuant to § 6-107.1. The 2009 Order of Cancellation cites § 6-107.2, which references § 6-107.1, as authority for the cancellation of Jameson's license. There is absolutely no indication the Municipal Court acted pursuant to a state statute, § 246, rather than its own ordinances. Since DPS has acknowledged that Jameson's driver's license could not be canceled under § 6-107.1 because he was nineteen (19) at the time he received his citation, the trial court correctly determined the Stillwater Municipal Court was without jurisdiction to order his driver's license cancellation. This assertion of error by DPS is therefore denied.

For its next assertion of error, DPS contends the district court erred in failing to find Jameson's petition for relief was a collateral attack on a conviction or final determination in violation of § 6-107.2(C)(2).

Jameson filed his petition for relief pursuant to § 6-107.2(C). Section 6-107.2(C) provides, in relevant part:

C. Any person whose driving privileges are canceled or denied pursuant to this section may file a petition for relief based upon error or hardship.

However, subsection 2 provides:

2. ... provided, the district court shall not consider a collateral attack upon the merits of any conviction or determination which has become final.

DPS asserts Jameson is collaterally attacking the authority of the Stillwater Municipal Court through the DPS statute, noting he has questioned the municipal court's authority to cause the cancelation of his driver's license.

Jameson disagrees, asserting he has not presented a collateral attack on the merits of the municipal court's determination that he violated the municipal code. Rather, he contends his petition for relief was based on the erroneous issuance of the Notification Form to DPS, causing the cancelation of his driver's license.

"A collateral attack is an attempt to avoid, defeat, evade, or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial." *Charter Oak Prod. Co. v. Morgan*, 2011 OK CIV APP 104, ¶ 7, 263 P.3d 325, 327 (citing *Nilsen v. Ports of Call Oil Co.*, 1985 OK 104, ¶ 11 fn. 5, 711 P.2d 98, 101 fn. 5).

We agree with Jameson that he has not challenged the validity of the underlying municipal citation or merits of his municipal conviction. Rather, he filed his petition for relief pursuant to § 6-107.2(C), seeking relief from the cancelation of his driver's license, citing error. We find no impermissible collateral attack on the merits of a judgment or final determination. Accordingly, we deny this assertion of error.

DPS next asserts the district court erred in finding Jameson was not given notice as required by §§ 6-107.1 and 2-116.⁷ DPS acknowledges it did not send the Order of Cancellation to Jameson's mailing address as maintained in DPS's records, as required by § 2-116. DPS maintains, however, that Jameson received sufficient notice because it mailed the Order of Cancellation to an address Jameson had listed on the citation, his current college address. Although DPS acknowledges this was not the address listed on Jameson's driver's license or in DPS's records, it maintains it was the most recent address provided to DPS. Thus, notice was sufficient under the statute and met constitutional standards.

This issue involves statutory interpretation. It is, therefore, a question of law, governed by a *de novo* standard of appellate review. *In re Detachment of Mun. Territory from City of Ada, Oklahoma*, 2015 OK 18, ¶ 4, 352 P.3d 1196, 1198, as corrected (Apr. 20, 2015), reh'g denied (June 29, 2015) (citing *State ex rel. W.A. "Drew" Edmondson v. Native Wholesale Supply*, 2010 OK 58, 237 P.3d

⁷ Section 6-107.1(B) provides, in relevant part: "The court shall send a copy of the notice to the person first class, postage prepaid."

Section 2-116 provides, in relevant part:

Whenever the Department of Public Safety is authorized or required to give any notice under this act or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. ...

199). In a *de novo* review, this Court has “plenary, independent and non-deferential authority to determine whether the trial court erred in its application of the law.” *Justus*, 2002 OK 46, at ¶ 3, 61 P.3d at 889 (citation omitted).

Section 2-116 provides DPS “shall” give notice under the act to “such person at the address as shown by the records of the Department.” Generally, when the Legislature uses the term “shall,” it signifies a mandatory directive or command. *Tulsa Cty. Budget Bd. v. Tulsa Cty. Excise Bd.*, 2003 OK 103, ¶ 13 fn. 25, 81 P.3d 662, 676 fn. 25.

The record provides DPS did not send notice to Jameson at the address as shown by DPS’s records. DPS acknowledges it did not comply with § 2-116’s requirements. Accordingly, the trial court correctly determined Jameson was not given proper notice. This assertion of error is therefore rejected.

For its next assertion of error, DPS contends the district court erred in failing to find Jameson’s petition for relief under § 6-107.2 was time-barred pursuant to § 6-211.

Statutory construction presents a question of law, which is reviewed by a *de novo* standard. *Fanning v. Brown*, 2004 OK 7, ¶ 8, 85 P.3d 841, 845 (citing *Arrow Tool & Gauge v. Mead*, 2000 OK 86, ¶ 20, 16 P.3d 1120, 1122–23). In a *de novo* review, this Court has “plenary, independent and non-deferential authority to

determine whether the trial court erred in its application of the law.” *Justus*, 2002 OK 46, at ¶ 3, 61 P.3d at 889 (citation omitted).

Section 6-211 grants a general right of appeal to district court to a person whose driving privilege has been canceled, revoked, denied, or suspended. The appeal must be filed within thirty (30) days after the order is served. *See* § 6-211(E). Conversely, § 6-107.2(C) provides “[a]ny person whose driving privileges are canceled or denied pursuant to this section may file a petition for relief based upon error or hardship.” There is no time limitation for filing the petition for relief identified in § 6-107.2. As a result, DPS contends § 6-211 must be read in conjunction with § 6-107.2, noting all relevant statutes should be considered together to give force and effect to each.

Jameson disagrees, asserting initially that the Order of Cancellation was never served on him as required. Thus, the thirty (30) day time period never commenced. Jameson further asserts § 6-211 is inapplicable because he filed a petition for relief pursuant to § 6-107.2(C), not a right of appeal granted by § 6-211. Jameson contends the Legislature intended a distinct review process for licenses canceled under § 6-107.2, noting several differences between the statutes,

including the absence of a time limitation and the lack of notice requirement to DPS in § 6-107.2.⁸

Where two (2) statutes conflict, one (1) specific and one (1) general, the statute enacted for the purpose of dealing with the subject matter controls over the general statute. See *King v. King*, 2005 OK 4, ¶ 22, 107 P.3d 570, 579; *Phillips v. Hedges*, 2005 OK 77, ¶ 12, 124 P.3d 227, 231. Pursuant to this maxim of statutory construction, § 6-211 applies to all *appeals* regarding license cancelations and revocations while § 6-107.2 is the specific statute which provides the method in which to file a petition for relief from a cancelation or revocation based on § 6-107.1.

In the present case, it is undisputed Jameson filed a petition for relief based on error or hardship pursuant to § 6-107.1(C), seeking review of the cancelation of his driver's license under § 6-107.1. Accordingly, we agree with Jameson that the specific statute, § 6-107.2, trumps the general appeal provision of § 6-211. This assertion of error is therefore denied.

⁸ Section 6-107.2(C)(2) provides in relevant part:

2. The district court shall conduct a hearing on the petition and may determine the matter de novo, without notice to the Department, and if applicable, without notice to the municipal court; ...

For its final assertion of error, DPS contends the district court erred in failing to find Jameson's petition for review was barred by the statute of limitations contained in 12 O.S.2011, § 95(A)(12).⁹ DPS asserts that because there is no time limitation contained in § 6-107.2 in which to seek review, the general statute of limitations applies. Jameson disagrees, asserting the petition for relief authorized by § 6-107.2 is not a civil action. Thus, § 95 does not apply.

We find the general five (5) year statute of limitation contained in § 95(A)(12) is applicable to Jameson's action because § 6-107.2 does not contain a time limitation of its own. When Jameson's cause of action accrued however, is a separate issue. "The discovery rule is an equitable principle which shields a plaintiff from the accrual of a cause of action until he discovers, or by the exercise of reasonable diligence should have discovered, that he may have an actionable claim." *Lancaster v. Hale*, 2007 OK CIV APP 9, ¶ 7, 152 P.3d 890, 892 (citing *Samuel Roberts Noble Found. v. Vick*, 1992 OK 140, ¶ 22, 840 P.2d 619, 624). Generally, "the question of when [a plaintiff] possessed sufficient information to trigger the running of the statute of limitations is one of fact." *Gallagher v. Enid Reg'l Hosp.*, 1995 OK 137, ¶ 11, 910 P.2d 984, 986.

⁹ Section 95(A)(12) provides: "An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued."

In the present case, it is undisputed DPS did not send Jameson notice of the cancellation of his driver's license as required by law. DPS contends, however, that Jameson's counsel admitted at the June 18, 2015, hearing that Jameson learned his license was canceled on December 24, 2009. Thus, his action was barred by the statute of limitations as of December 23, 2014. Jameson disagrees, asserting his cause of action did not accrue until the date of his conviction, July 29, 2011. Thus, his April 30, 2015, petition for relief was timely.

When Jameson's cause of action accrued is a question of fact the trial court did not address. *Gallagher*, 1995 OK 137, at ¶ 11, 910 P.2d at 986. Appellate courts do not make first-instance determinations of issues of fact which were not assessed below. *Mahmoodjanloo v. Mahmoodjanloo*, 2007 OK 32, ¶ 12, 160 P.3d 951, 955 (citing *State of Oklahoma v. Torres*, 2004 OK 12, ¶ 8, 87 P.3d 572, 578, fn. 15; *Evers v. FSF Overlake Associates*, 2003 OK 53, ¶ 18, 77 P.3d 581, 587). Accordingly, the matter is remanded to the trial court for a determination of when Jameson "discover[ed], or by the exercise of reasonable diligence should have discovered, that he may have an actionable claim," *i.e.*, that his driver's license had been canceled.

**AFFIRMED IN PART AND REMANDED IN PART FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS OPINION.**

WISEMAN, P.J., and FISCHER, J., concur.

March 16, 2016