

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

FEB 6 2007

MICHAEL S. RICHIE
CLERK

MARK MacFARLANE,)

Plaintiff/Appellant,)

vs.)

Case No. 103,752

STATE OF OKLAHOMA, *ex rel.*)

DEPARTMENT OF PUBLIC)

SAFETY,)

Defendant/Appellee.)

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DAVID C. YOULL, TRIAL JUDGE

AFFIRMED

Bruce Edge
EDGE LAW FIRM
Tulsa, Oklahoma

For Appellant

Margaret C. Farish
DEPARTMENT OF PUBLIC SAFETY
Oklahoma City, Oklahoma

For Appellee

OPINION BY JOHN F. REIF, JUDGE

Mark MacFarlane, an Iowa licensee, appeals the district court order that upheld the administrative revocation of his “driver’s license” for refusing a blood alcohol test. Mr. MacFarland has stipulated he refused a test when arrested March 21, 2006, for being in actual physical control of a motor vehicle. He has also acknowledged that 47 O.S.2001 § 753 requires the Commissioner of Public Safety to revoke an arrestee’s “license to drive and any nonresident operating privilege” for refusing a test. His complaint is that he was not advised that his non-resident driving privilege would be revoked, but instead was informed “your driver’s license will be revoked.” He maintains that telling a non-resident that their “driver’s license” will be revoked for refusing a test misinforms the licensee about the effect of their refusal. He asserts that this erroneous and misleading information deprives the licensee of the opportunity to make an informed choice, and is so unfair as to constitute a denial of due process.

In response, the Oklahoma Department of Public Safety has noted that the statutory definition of “driver’s license,” 47 O.S.2001 § 1-128(B), expressly includes “[a]ny non-resident’s operating privilege [based on] lawful possession of a valid driver license . . . issued under the laws of another state.” The Department of Public Safety points out that the Oklahoma Supreme Court has held that the

statutory definition is “very broad” and encompasses any privilege to drive. The Department of Public Safety basically contends that the warning, “your driver’s license will be revoked,” correctly states Oklahoma law and thus satisfies due process.

In resolving this controversy, we begin by noting Mr. MacFarland’s “driver’s license” was initially revoked based on an “Officer’s Affidavit and Notice of Revocation/Disqualification” that reports Mr. MacFarland refused a request for a test. The parties agree that the arresting officer informed Mr. MacFarland “your driver’s license will be revoked” for refusal of a test by reading this statement from the Officer’s Affidavit and Notice.

The legislature has provided for administrative and judicial review of revocations based upon a test refusal as reflected in such a sworn report by a law enforcement officer. 47 O.S. 2005 Rev. Supp. §§ 754(D), (F), and 755. The scope of the hearing in such cases shall include inquiry “whether . . . the person was informed that driving privileges would be revoked or denied if the person refused to submit to the test.” 47 O.S. 2005 Rev. Supp. § 754(F)(2)(b).

The dispositive issue in this case is whether the statement, “your driver’s license will be revoked,” contained in the Officer’s Affidavit and Notice, adequately informs a non-resident licensee that “driving privileges would be

revoked . . . if [they] refused to submit to the test or tests.” In arguing it does not, Mr. MacFarland stresses that § 753 draws a distinction between “license to drive” and “non-resident driving privilege.” He also maintains the average person would understand the statement “your driver’s license will be revoked” to refer to the driver’s license issued by a governmental entity. The chief problem with Mr. MacFarland’s reasoning is that a non-resident operates a motor vehicle in Oklahoma subject to the laws of the State of Oklahoma, and not subject to common understanding of the effect of those laws.

The Officer’s Affidavit and Notice is an official record of action taken by Oklahoma law enforcement officers in the enforcement of Oklahoma’s Implied Consent Law. The language used in the Affidavit and Notice must be read and understood by reference to Oklahoma law. In the same way that Oklahoma law defines the conditions that make both resident and non-resident subject to the Implied Consent Law (i.e., “operates a motor vehicle,” “actual physical control of a motor vehicle” and “under the influence”), Oklahoma law likewise defines “driver’s license” and “revocation.” The statement in the Affidavit and Notice that “your driver’s license will be revoked” means your driver’s license as defined by Oklahoma law will be revoked as provided by Oklahoma law.

We must conclude that the statement in the Affidavit and Notice that “your driver’s license will be revoked” adequately conveys the consequence of loss of “driving privileges” for refusal to take a test. A non-resident licensee who refuses a test would understand that they could no longer drive on Oklahoma roads by virtue of the license issued in their home state, even without understanding (or even needing to know) what effect the Oklahoma “revocation” of their “driver’s license” would have on the status of the license in their home state. So long as the licensee is correctly informed of the consequences that follow in Oklahoma under Oklahoma law for refusing a test, due process is satisfied.

Finding no error as alleged by Mr. MacFarland, the district court order upholding the administrative revocation of Mr. MacFarland’s driver’s license as defined by Oklahoma law is AFFIRMED.

GABBARD, P.J., and GOODMAN, J., concur

February 6, 2007