

CASE NO. A09-835

State of Minnesota
In Court of Appeals

3

CHRIS JOHN PALLAS,

Appellant,

vs.

COMMISSIONER OF PUBLIC SAFETY,

Respondent

APPELLANT'S BRIEF AND APPENDIX

MESHBESHER & ASSOCIATES,
P.A.
Steven J. Meshbesh
Attorney Reg. No. 127413
Kevin M. Gregorius
Attorney Reg. No. 328315
225 Lumber Exchange Building
10 South Fifth Street
Minneapolis, Minnesota 55402
Telephone: (612) 332-2000

Attorneys for Appellant

JOEL WATNE
Asst. Attorney General
1800 Bremer Tower
445 Minnesota Street
St. Paul, Minnesota 55101
Telephone: (651) 297-5909

MICHAEL CAMPION
Commissioner of Public Safety
Bremer Tower, Suite 1000
445 Minnesota Street
St. Paul, Minnesota 55101
Telephone: (651) 201-7000

Attorneys for Respondent

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

- I. Did the District Court err in denying Petitioner Pallas' Petition for Reinstatement, and/or did the Commissioner of Public Safety abuse his discretion in denying Petitioner a Minnesota driver's license?

The District Court held in the negative.

Most apposite authority: Madison v. Comm'r of Pub. Safety, 585 N.W.2d 77
(Minn.App.1998)
Thorson v. Comm'r of Pub. Safety, 519 N.W.2d 490
(Minn App.1994)

BRIEF STATEMENT OF THE CASE

This matter was adjudicated in the First Judicial District, Carver County District Court. The Honorable Richard C. Perkins presided over the proceedings.

Between the years of 1979 and 1994, Petitioner Pallas was residing in the State of Illinois and, during that time, was arrested, charged, and/or convicted on multiple occasions for driving under the influence. Though Petitioner's driving privileges in Illinois were reinstated in 1994, a subsequent alcohol-related driving offense in the State of Wisconsin in 1999 led the State of Illinois to impose a lifetime driving revocation on Petitioner – which lifetime revocation cannot be lifted.

In September of 2000, Petitioner's Minnesota driving privileges were revoked for a refusal to submit to chemical testing following an arrest for suspected drunk driving. Petitioner's privileges were revoked again (resulting in an additional year of revocation time) in February of 2001 for refusing to submit to chemical testing. In February 2002, the Commissioner of Public Safety became aware that Petitioner's driving privileges in Illinois had been revoked for his lifetime due to the multiple alcohol-related driving offenses, and informed Petitioner that his Minnesota driving privileges could not be reinstated until he received a "clearance letter" from the State of Illinois. Petitioner's Minnesota driving privileges were cancelled in April of 2002 as Petitioner was unable to obtain a clearance letter.

In October of 2002, the Commissioner of Public Safety agreed to waive the clearance letter requirement upon demonstrated rehabilitation. Petitioner demonstrated rehabilitation in May of 2008. However, the Commissioner denied Petitioner a Minnesota

driver's license having received evidence that Petitioner had consumed alcohol in August of 2003 and that he was arrested for an alcohol-related driving offense in May of 2004. Although no evidence suggests Petitioner has consumed alcohol or been involved in any alcohol-related driving offense since May of 2004, the Commissioner nonetheless has refused to grant Petitioner the privilege or license to drive in the State of Minnesota until he has obtained "clearance" from the State of Illinois.

On June 18, 2008, Petitioner filed a Petition for Reinstatement. The matter was considered at a hearing on January 30, 2009 before the Hon. Richard C. Perkins. No testimony was taken, and the court considered the matter on argumentation and materials provided by counsel. By an Order dated March 2, 2009, filed March 12, 2009, the court denied Petitioner's Petition for Reinstatement. This appeal follows.

STATEMENT OF FACTS

There is no dispute regarding the essential facts of this case. Petitioner Pallas, who previously lived in the state of Illinois, was arrested, charged and/or convicted of three separate alcohol-related driving offenses in that state – which offenses occurred on 6/28/1979, 6/29/1986, and 8/25/1986. Petitioner's Illinois privileges were revoked after each offense, and his privileges were ultimately reinstated in 1994.¹ On November 30, 1999, Petitioner was arrested again for an alcohol-related driving offense in the state of Wisconsin. Upon receipt of that information, the state of Illinois again revoked Petitioner's driving privileges and, by a law that took effect January 1, 1999, imposed a lifetime driving restriction upon Petitioner Pallas due to his having four alcohol-related driving incidents on his record.²

On September 4, 2000, in the state of Minnesota, Petitioner Pallas was arrested on suspicion of drunk driving at which time he refused to submit to chemical testing. Petitioner Pallas' Minnesota privileges were revoked one week later, for a period of one year, on September 11, 2000 as a result.³ On February 16, 2000, Petitioner Pallas was arrested again on suspicion of drunk driving and again he refused to submit to chemical testing. As a result, Petitioner's privileges were revoked for an additional year with an effective revocation date of February 22, 2002.⁴ At some point in February of 2002, the

¹ See Abstract of Chris Pallas Illinois Driver's Record (Illinois Driver's Record), Appendix pages 1-4.

² Id.; Also see Reply to Petition For Reinstatement, pages 6, 8-9.

³ See Minnesota Driver's Record for Chris Pallas (Minnesota Driver's Record), Appendix page 5-9.

⁴ Id.; Appendix page 7.

Commissioner of Public Safety became aware of Petitioner Pallas' Illinois record and his lifetime restriction in that state. Accordingly, Petitioner's license was cancelled by the Commissioner on April 2, 2002 due to Petitioner's failure to obtain clearance or reinstatement from Illinois.⁵

Petitioner Pallas filed a Petitioner for Reinstatement in October, 2002. In response, the Commissioner (through the Attorney General's Office) agreed that it would be "impossible ... to get a clearance letter from Illinois" given the lifetime restriction imposed upon Petitioner by that State. The Commissioner then informed Petitioner Pallas that the state of Minnesota would "be prepared to issue a license despite the lack of a clearance letter" upon successful completion of the remaining Minnesota rehabilitation requirements.⁶ On December 30, 2002, Petitioner Pallas met with a driver evaluator (as part of the rehabilitation requirements), and was allegedly informed or advised that "any alcohol/drug violations or use of alcohol/drugs" would negate Minnesota's waiver of requiring a clearance letter from Illinois.⁷ It is noteworthy that this particular information was not formally introduced to the trial court as evidence or supported by any testimony.

On August 17, 2003, Petitioner Pallas was arrested on suspicion of 5th Degree Domestic Assault, Criminal Damage to Property, and Obstructing Legal Process. In the course of that arrest, an investigating officer claimed he observed a "strong odor of alcohol" emanating from Petitioner Pallas. Petitioner Pallas refused to submit to a Preliminary Breath Test (PBT), and, after he was booked at the Scott County Jail, was

⁵ See Notice of Withdrawal dated 4/2/02, Appendix page 10.

⁶ See Letter dated October 8, 2002, Appendix page 13.

⁷ See Record of Hearing dated 12/30/2002, Appendix page 15.

taken to detox.⁸ Upon receiving information regarding this incident, the Commissioner again cancelled Petitioner Pallas' driving privileges as Inimical to Public Safety for "violation of [the] total abstinence restriction", which cancellation took effect on September 2, 2003.⁹

Finally, On January 9, 2004, Petitioner Pallas was arrested on suspicion of drunk driving, fleeing a peace officer in a motor vehicle, and obstructing legal process. The investigating officer reported observing a "strong odor of alcoholic beverage" coming from Petitioner Pallas, though no PBT was administered. Petitioner Pallas ultimately refused to submit to chemical testing.¹⁰ As a result, the Commissioner issued a new Notice of Cancellation as inimical to public safety on January 20, 2004.¹¹

Petitioner Pallas once again sought reinstatement of his driving privileges in May of 2008. On May 19, 2008, Petitioner Pallas met with a DVS interviewer who "accepted all documents" for rehabilitation at that time. The interviewer informed Petitioner Pallas that his Illinois (lifetime) revocation must be "cleare[ed]" before reinstatement could be granted, though the final decision was left to "DVS managers" as to whether reinstatement would be granted.¹² On May 27, 2008, an internal record from the DVS shows acting supervisor "Frank Z" indicated that "NO FURTHER OVERRIDE OF ILLINOIS PDPS/WITHDRAWALS" would be made and that, until Petitioner Pallas' privileges were

⁸ See Law Enforcement Case Report and Supplemental Report dated 8/17/2003, Appendix pages 16-18.

⁹ See Cancellation Notice dated 8/27/2003, Appendix page 19-20; Minnesota Driver's Record, Appendix page 8.

¹⁰ See Shakopee Police Department Report, Appendix pages 21-22.

¹¹ See Notice of Cancellation dated 1/20/2004, Appendix pages 23-24.

¹² See Records of Hearing dated 5/19/2008, Appendix pages 25-26.

reinstated in Illinois, he would not be granted Minnesota driving privileges.¹³

On June 20, 2008, Petitioner Pallas filed a Petition for Judicial Review of his cancelled/withdrawn driving privileges. A Motion Hearing was held January 30, 2009. On March 2, 2009, the Carver County District Court issued an Order denying the petition. In its Memorandum, citing the interstate Driver's License Compact as codified by Minn. Stat. § 171.50, the court found that the Commissioner "may refuse to issue a license if .. [it] determines that it will not be safe to grant such person the privilege of driving a motor vehicle on the public highways."¹⁴ The court agreed that the Commissioner has "the discretion of determining whether to grant or deny" driving privileges, and that Petitioner Pallas produced "no evidence ... that the Commissioner abused its discretion, or acted fraudulently, arbitrarily, or unreasonably" in denying Petitioner Pallas a license.¹⁵ This Appeal follows.

¹³ See DVS Internal Record dated 5/27/2008, Appendix page 27.

¹⁴ See Order and Memorandum dated 3/02/2009, pages 2-3, Appendix pages 29-30.

¹⁵ Id. at page 3, Appendix page 30.

ARGUMENT

I. The District Court erred in denying Petitioner's Petition for Reinstatement without a full hearing, and the Commissioner's decision to deny or refuse Petitioner a driver's license was arbitrary and capricious.

A. Standard of Review

Ultimately, the decision of whether to suspend, revoke, cancel or refuse a driver's license rests with the Commissioner of Public Safety, which decision is afforded a presumption of regularity and correctness.¹⁶ The appellate courts will generally not reverse a license determination unless the decision was either unsupported by substantial evidence or was arbitrary and capricious¹⁷

B. The District Court's denied Petitioner Pallas due process in denying the Petitioner for Reinstatement without a full hearing.

According to Minn. Stat. § 171.19, a person whose driver's license has been revoked, suspended, canceled or refused by the Commissioner of Public Safety may file a petition for a hearing in the district court. During that hearing, the court is directed "to **take testimony and examine into the facts**¹⁸ of the case to determine whether the petitioner is entitled to a license or is subject to revocation, suspension, cancellation or refusal" of their driving privileges.¹⁹ Following a series of decisions creating confusion over the role of the district court in proceedings initiated in accordance with Minn. Stat. § 171.19, this Court, in the case of Madison v. Commissioner of Public Safety, clarified the issue simply as a matter of statutory construction, holding that the district courts act as

¹⁶ See, e.g., Askildon v. Comm'r of Pub. Safety, 403 N.W.2d 674, 676 (Minn.1987).

¹⁷ Thorson v. Comm'r of Pub. Safety, 519 N.W.2d 490, 493 (Minn.App.1994).

¹⁸ Minn. Stat. § 171.19

¹⁹ Id., emphasis added.

courts of first impression (resulting in de novo review of the Commissioner's decision by the district court).²⁰ More importantly, however, this Court provided clarification with regard to the manner of evidence that ought to be presented at a hearing, as well as the degree to which any evidence would be sufficient to support the Commissioner's decision:

Because section 171.19 directs that the district court may take new evidence, the duty of the district court **cannot be to simply review the commissioner's determination based on the partial, even skimpy, evidence considered by the commissioner.** ...

This case today is representative of the amount of new evidence a driver can bring forth at the hearing, compared to the limited evidence upon which the commissioner's office acts. Here, the commissioner's office was limited to a letter from Sergeant Weinzetl.²¹ The letter was **not given under oath**, and the contents of the letter were **not subject to cross examination**. In fact, the contents of the letter were not even subject to friendly direct or redirect examination by a prosecutor to bring forth the full import of that evidence. On the other hand, at the district court hearing mandated by the statute, the district court had the limited evidence the commissioner had, *plus* the testimony under oath of persons on the scene, including Madison, Weinzetl, Nord, Gauthier, and the testimony of Madison's physician Dr. Cathey and Madison's nephew. ..

Here, the district court's decision was based solely on a belief that since Weinzetl's letter gave the commissioner "sufficient cause, Madison's cancellation can be upheld on that basis. ...

It is not enough for the district court to conclude that the Commissioner of Public Safety had "sufficient cause." [B]y properly challenging the cancellation ... Madison availed himself of the right given to him by statute, meaning, a whole new hearing in the district court in front of a judge where new evidence would be

²⁰ Madison v. Comm'r of Pub. Safety, 585 N.W.2d 77, 80-81 (Minn.App 1998).

²¹ The letter in question contained Sgt. Weinzetl's observations that Madison, whose license was subject to a total abstinence restriction, appeared to have an odor of alcohol about him and admitted consuming alcohol.

submitted, and cross examination would be available to both sides.²²

In the instant case, the record before the Commissioner was, concededly, more expansive than the record before the Commission in Madison – consisting of numerous documents and records from the state of Illinois, the Commissioner’s own records regarding Petitioner Pallas, and several records or documents regarding Petitioner Pallas’ varying arrests or encounters with law enforcement in this state. However, none of this “evidence” was formally presented to the district court, none of the “evidence” was subject to cross-examination (as no witnesses were called in support or rebuttal of the evidence), and the district court did not even determine whether the information it reviewed was “sufficient”.

Rather, upon reviewing the documents submitted as exhibits prior to the hearing (the majority of which were made by the Commissioner), the district court merely found that the Commissioner’s decision was “reasonable” and that there was no evidence to indicate the Commissioner acted fraudulently, arbitrarily or unreasonably.²³ In particular, the district court relied and gave credence to documents regarding two incidents in particular: 1) That Petitioner “was advised that *any alcohol or drug use would negate the waiver of the clearance letter*” on December 30, 2002 ; and 2) That, on August 17, 2003, evidence suggests that

²² Madison, 585 N.W.2d 77 at 81-83.

²³ See Order and Memorandum dated 3/02/2009, pages 2-3, Appendix pages 29-30.

“Petitioner had consumed alcohol.”²⁴ The district court’s findings are not only insufficient, but were made following a denial of Petitioner’s rights to due process, a full hearing, and confrontation/cross-examination of witnesses.

C. The Commissioner’s decision to require a “clearance letter” from the state of Illinois, effectively denying Petitioner a driver’s license for life, was arbitrary and capricious.

Even if the district court **had** followed established, required procedures, the Commissioner’s decision to require a “clearance letter” (or any other license rehabilitation) from the state of Illinois – effectively denying or refusing a license to Petitioner Pallas for the duration of his lifetime – was either arbitrary or capricious.

Here, the Commissioner and Attorney General’s Office have conceded that it will be “impossible” for Petitioner Pallas to obtain a “clearance letter” or otherwise rehabilitate his driving privileges in the state of Illinois.²⁵ As of this date, Petitioner Pallas has been arrested, charged, and/or convicted of alcohol-related driving offenses seven times in 25 years (from June 28, 1979 through January 4, 2004). If all the offenses/incidents had occurred within the state of Minnesota, at **best** Petitioner Pallas would be subject to cancellation and denial with reinstatement of driving privileges only after completion of all rehabilitation requirements including the demonstration of six years’ sobriety.²⁶ The

²⁴ See Record of Hearing dated 12/30/2002, Appendix page 15; Law Enforcement Case Report and Supplemental Report dated 8/17/2003, Appendix pages 16-18; Order and Memorandum dated 3/02/2009, page 2, Appendix page 29.

²⁵ See Letter dated 10/08/2002, page 2, Appendix page 13.

²⁶ This would assume Petitioner Pallas had been cancelled and denied at least three times with rehabilitation of licensure satisfied twice. See, e.g. Minn. Rule 7503.1700. In this case, the Commissioner indicated that Petitioner Pallas would need only demonstrate four (4) years of sobriety. See Record of Hearing dated 5/19/2008, Appendix page 26.

Commissioner concedes that it has a “limited exception” to grant a driver’s license despite Petitioner Pallas’ inability to rehabilitate his privileges in Illinois, but has apparently decided not to exercise such discretion simply because “in very DWI in Minnesota he [Petitioner] has been uncooperative with police officers, and on occasion even fighting with police officers, fleeing a police officer, engaged in property damage, and things of that sort.”²⁷

However, the only evidence of Petitioner’s “uncooperative” nature would appear to be his refusal to submit to chemical testing following his three Minnesota arrests on suspicion of drunk driving. There is no indication Petitioner Pallas damaged property as a result of being under the influence, and there is no evidence Petitioner actually “fought” with police officers. It would seem, then, that the Commissioner has exercised its discretion to require a “clearance letter” from Illinois simply because Petitioner Pallas has exercised his right to refuse chemical testing following three of his arrests and has been categorized as “uncooperative” by law enforcement. The Commissioner is placing all the weight on the described nature and number of Petitioner’s arrests, charges or convictions, but giving little or no consideration to Petitioner’s demonstrated rehabilitation – arguably, the first serious attempt at rehabilitation the Petitioner has ever made. By only considering Petitioner’s past (the majority of which little information is actually unknown to the Commissioner save for an Illinois driving record) and giving little (if any) credence to Petitioner’s current and recent efforts – the decision to deny Petitioner Pallas a license until rehabilitation is made in Illinois is arbitrary and capricious.

²⁷ See Transcript of Hearing dated January 30, 2009, pages 8-9.

CONCLUSION

Because the District Court did not conduct a full hearing as required by Minn. Stat. 171.19, it erred in denying Petitioner Pallas' request for reinstatement without due process. Even if due process had been afforded, the Commissioner's decision to require a "clearance letter" from the state of Illinois before granting Petitioner a license is arbitrary and capricious. For these reasons, the District Court's order should be reversed and the matter should be remanded for further proceedings consistent with established case-law and strict statutory language.

Respectfully submitted,

MESHESHER & ASSOCIATES, P.A.

 #9281315

Steven J. Meshbesh
Attorney I.D. No. 127413
225 Lumber Exchange Building
10 South Fifth Street
Minneapolis, MN 55402
Telephone: (612) 332-2000

Dated: 8/3/09

CERTIFICATION AS TO BRIEF LENGTH

Pursuant to the Minnesota Rules of Civil Appellate Procedure, I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3. This brief was prepared using Microsoft Office Word (2007), compatible with Microsoft Windows XP, and contains 3,322 words.

MESHBESHER & ASSOCIATES, P.A.

 #328315
For Steven J. Meshbesh
Attorney I.D. No. 127413
225 Lumber Exchange Building
10 South Fifth Street
Minneapolis, MN 55402
Telephone: (612) 332-2000

Dated: 8/3/09