STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1167

Elizabeth Leah Barth, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed April 22, 2008
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. IC 468071

Peter J. Timmons, 700 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431 (for appellant)

Lori Swanson, Attorney General, Jeffrey F. Lebowski, Sean R. McCarthy, Peter D. Magnuson, Assistant Attorneys General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the Fourth Judicial District's (Hennepin County) procedures for providing judicial review of the revocation of her license pursuant to Minnesota's implied-consent laws. She claims that Hennepin County's standing policy of not

scheduling implied-consent hearings until after any criminal case associated with a license revocation is resolved violates both the state statute and due process. Because we conclude that appellant's due-process rights have not been violated and that Hennepin County's noncompliance with the timing requirements of the relevant statute do not warrant rescission of her license revocation, we affirm.

FACTS

The facts underlying this appeal are not in dispute. Judicial review of implied-consent license revocations in Hennepin County is governed by what is known as the "Fast-Track DWI Program." This program began in 2000 and was implemented pursuant to a standing order issued by the chief judge. The primary goal of the program is to expeditiously dispose of pending driving-while-impaired (DWI) cases by attempting to schedule DWI cases for trial within 45 days of the driver's first court appearance. A secondary goal of the program is to increase the efficiency of the processing of implied-consent license revocations. This is accomplished by not scheduling a requested judicial-review hearing on the revocation of the driver's license until after the criminal case associated with the revocation, if any, is resolved. Disposing of the associated criminal case will often obviate the need for judicial review of a driver's administratively revoked license.

Recognizing that these scheduling procedures prevent drivers from receiving a prompt judicial review of their license revocation, the fast-track program allows drivers to avail themselves of hardship relief in the form of a stay of the revocation. Hennepin County simultaneously sends a driver notice that the Commissioner of Public Safety

intends to revoke their license as well as a letter notifying the driver of the above-discussed procedures and a copy of the standing order implementing them. This letter informs the driver that if he or she "chooses to request a stay of the balance of the [license] revocation period pursuant to Minn. Stat. § 169A.53, subd. 2(c), that judicial stay would be granted and revocation of petitioner's driving privileges will be stayed pending resolution of the criminal and the [i]mplied [c]onsent hearings."

Appellant was arrested for DWI in Hennepin County on October 2, 2005. She submitted to a breath test that disclosed an alcohol concentration above the legal limit. Appellant was issued a notice that her license would be revoked pursuant to Minn. Stat. § 169A.52 (2004 & Supp. 2005), effective on October 9, 2005, with the expiration of her seven-day temporary license. Appellant petitioned for judicial review of her license revocation and for a stay of the revocation on October 6, 2005. The following day the district court stayed the revocation of appellant's driving privileges.

On December 9, 2005, appellant pleaded guilty to the amended charge of careless driving. An implied-consent hearing was scheduled for January 17, 2006. On that date, for reasons that are unclear from the record, the district court was unwilling to take under advisement appellant's challenge to the fast-track program, and her implied-consent hearing was rescheduled for March 8, 2006. Approximately 153 days passed between the date that appellant petitioned for judicial review of her license revocation and the implied-consent hearing.[1] Following arguments and the submission of memoranda on the

[1] In the district court's order sustaining appellant's license revocation, it states 123 days, not 153, separated the date appellant petitioned for judicial review from the March 8,

matter, the district court rejected appellant's challenge to Hennepin County's procedures and sustained the revocation of her driver's license. This appeal follows.

D E C I S I O N

I.

The commissioner initially argues that, aside from the merits of appellant's claims, appellant has no standing to bring the current challenge. When the facts are not in dispute, whether a party has standing is a question of law, which we review de novo. *State v. McBride*, 666 N.W.2d 351, 360 (Minn. 2003).

Standing is essential to an appellate court's exercise of jurisdiction. *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). "Drivers may not . . . challenge the constitutionality of implied consent laws unless they can show they have standing." *Nordvick v. Comm'r of Pub. Safety*, 610 N.W.2d 659, 662 (Minn. App. 2000). "Standing is acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). "An injury-in-fact is a concrete and particularized invasion of a legally protected interest." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992)).

The commissioner contends that appellant has no standing to challenge the delayed scheduling procedures associated with the fast-track program "because [she]

2006 hearing date. This is either a typo or a mathematical error. Regardless, it has no bearing on our conclusions contained herein.

avoided any prejudice or injury by requesting a stay" of her license revocation. But this argument fails to realize that a party can meet the injury prong of a standing inquiry by showing that the party has suffered an actual injury *or* by showing such injury is imminent. *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S. Ct. 1717, 1723 (1990)), *review denied* Minn. Oct. 18, 2005); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02, 103 S. Ct. 1660, 1665 (1983) (stating that, to demonstrate standing, "a plaintiff must show that he has sustained *or* is immediately in danger of sustaining some direct injury" (quotation marks omitted) (emphasis added)).

It is undeniable that the loss of one's driving privileges is a direct and concrete injury. Here, the commissioner initiated formal proceedings against appellant in an attempt to immediately revoke her driving privileges. Appellant's request to be granted a temporary stay of her revocation in no way terminated the commissioner's attempt to revoke her license. At all times both before and after appellant received her stay, the license-revocation procedures initiated by the commissioner against appellant were pending. We have previously held that the pendency of formal proceedings against a party that, if resolved unfavorably to the party, would result in the party suffering a concrete injury demonstrates sufficient imminency to meet the injury prong of a standing inquiry. *See Woolston*, 701 N.W.2d at 262 (finding that if the judgment underlying an unlawful-detainer action was found to be valid and enforceable, it would result in the respondent being evicted from her home, and thus reasoning that the attempt to enforce the judgment through formal legal proceedings posed an "imminent injury sufficient to

establish constitutional standing" allowing respondent to challenge the validity of the judgment). Similarly, we conclude that appellant has shown that injury is imminent based on the pending loss of her driving privileges. Accordingly, appellant has standing to challenge the fast-track program.

II.

Appellant contends that Hennepin County's fast-track program does not comply with Minn. Stat. § 169A.53, subd. 3(a) (Supp. 2005), which requires judicial-review hearings of license revocations be held within 60 days of a petition for such review. She is one of many appellants currently making such a claim before this court. But in the recent case of *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 873-76 (Minn. App. 2008), *pet. for review filed* (Minn. Apr. 4, 2008), we rejected this precise argument. We reaffirmed that the timing requirements contained in Minn. Stat. § 169A.53, subd. 3(a), are directory, not mandatory, and, as a result, noncompliance does not warrant rescission of a license revocation absent a showing of prejudice. *Id.* at 875-76.

Based on *Riehm*, we reject appellant's argument that she has demonstrated prejudice. But we do note that the policy goals implicated by the fast-track program (increased efficiency and conserving scarce judicial resources), while desirable, conflict with the legislative intent as expressed by the language and procedures of Minn. Stat. §§ 169A.52, .53 (2004 & Supp. 2005): to immediately remove drivers with a proclivity for driving while impaired from Minnesota roadways with a provision for a prompt judicial review of the decision to revoke a driver's privileges. *See First Nat'l Bank of the N. v. Auto. Fin. Corp.*, 661 N.W.2d 668, 670 (Minn. App. 2003) (stating that, generally,

courts "focus on the words of the statute to 'ascertain and effectuate the intention of the legislature'" (quoting Minn. Stat. § 645.16 (2002)). Hennepin County's procedures frequently do not remove potentially dangerous drivers from the road—because a stay of their license revocation is automatically granted upon request—nor do they provide for prompt judicial review.

In addition, we note that "statutory provisions defining the time and mode in which public officers shall discharge their duties . . . are . . . designed . . . to secure order, uniformity, system, and dispatch in public business are . . . deemed directory." *First Nat'l Bank of Shakopee v. Dep't of Commerce*, 310 Minn. 127, 132, 245 N.W.2d 861, 864 (Minn. 1976) (quotation omitted). If individual counties begin to systematically ignore Minn. Stat. § 169A.53, or other directory statutes attempting to accomplish this same goal, and implement procedures that best fit their particular circumstances, state-wide uniformity and order is quickly lost. Regardless of these concerns, the principles of stare decisis and the *Riehm* precedent preclude rescission of appellant's license for the violation of Minn. Stat. § 169A.53, subd. 3(a)'s timing requirements.

III.

Appellant also challenges the fast-track program on the ground that it violates her procedural due-process rights. Application of constitutional principles to undisputed facts is a question of law, which we review de novo. *State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007).

To the extent that appellant's challenge to the fast-track program is a facial one, this argument was also raised, and squarely rejected, in *Riehm*. *Riehm*, 745 N.W.2d at

877-78. To the extent that appellant contends that due process requires the rescission of her license revocation based on the particular facts of her case, *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 415 (Minn. 2007), forecloses any relief. In that case, Bendorf's license was revoked effective March 20, 2005. *Bendorf*, 727 N.W.2d at 412. Upon Bendorf's request, the district court stayed revocation on March 29. *Id.* Ultimately, Bendorf did not receive a judicial-review hearing of his (stayed) license revocation within 60 days. *Id.* at 413. He appealed, claiming that due process requires that a review hearing be held within 60 days, and thus rescission of his license revocation was warranted. *Id.*

The *Bendorf* court rejected this argument. Instead, it stated that the proper inquiry when faced with this particular type of due-process issue is to focus on the level of prejudice that the driver with a revoked license has suffered, using the three-factor *Matthews* test to aid in this determination. *Id.* at 415-16 (citing *Matthews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976)). Because the stay of Bendorf's license revocation allowed him to "maintain his driving privileges throughout the process of judicial review," the supreme court held that the "minimal" impact of the nine-day revocation did not violate his procedural due-process rights. *Id.* at 417. Here, appellant has suffered less prejudice than the appellant in *Bendorf*, as she did not lose her driving privileges for even one day. If the prejudice in *Bendorf* was deemed to be minimal, the prejudice to appellant is more appropriately characterized as nominal. Accordingly, appellant's procedural due-process rights were not violated.

Affirmed.