Court of Appeals, State of Michigan

ORDER

Sterling Heights Police Officers v Herbert Davis Jr

Docket No. 258421

LC No. 04-001401-AV

Henry William Saad
Presiding Judge

Mark J. Cavanagh

Pat M. Donofrio
Judges

Pursuant to MCR 7.205(D)(2), the circuit court's September 2, 2004 order affirming the decision of the Driver's License Appeal Division (DLAD) is REVERSED. The circuit court "misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Motycka v General Motors Corp*, 257 Mich App 578, 579; 669 NW2d 292 (2003). It is clear from the administrative record that, at the time respondent refused to submit to the preliminary breath and chemical tests that he was in custody and under arrest for an offense under MCL 257.625c(1), and he was therefore subject to license sanctions under MCL 257.625f. A contrary conclusion is not supported by competent, material and substantial evidence on the whole record. MCL 257.323(4). This matter is REMANDED to the DLAD for further proceedings not inconsistent with this order.

The application for leave to appeal is otherwise DENIED for lack of merit in the grounds presented.

This Court retains no further jurisdiction.

Judge Cavanagh would GRANT the application for leave to appeal,

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 22 2005
Date

Sandra Schultz Mengel
Chief Clerk