

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER THOMAS GREEN,

Petitioner-Appellee,

UNPUBLISHED
June 13, 2013

v

SECRETARY OF STATE,

Respondent-Appellant.

No. 311633
Jackson Circuit Court
LC No. 12-001059-AL

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

The Secretary of State appeals as of right the trial court's order restoring full driving privileges to Christopher Thomas Green. We affirm.

On February 7, 2011, Green pleaded guilty in part to operating while intoxicated (OWI) with a Blood Alcohol Content (BAC) of .17 or more. As a result of the conviction, Green's driving privileges were suspended for a period of one year, from February 25, 2011, through February 24, 2012.¹ This was Green's only alcohol related driving offense.

After the first 45 days of his suspension, Green installed an ignition interlock device on his vehicle as required to obtain a restricted driver's license.² Green was granted a restricted license from May 27, 2011, through February 24, 2012. Pursuant to the relevant statute, Green was prohibited from having any "instances of reaching or exceeding a blood alcohol level of 0.025 grams per 210 liters of breath."³ On November 9, 2011, at approximately 8:06 a.m., the ignition interlock device reported Green's breath alcohol content (BrAC) as .030. A second attempt at 8:07 a.m. reported Green's BrAC at .041. Green was unable to start his vehicle, so he advised his supervisor that the ignition interlock device had malfunctioned, and took the bus to work. The next BrAC reading registered was on November 9, 2011, at 7:18 p.m. and was 0.000.

¹ MCL 257.319(8)(g).

² MCL 257.319(8)(h).

³ *Id.*

The company that installed and monitored Green's ignition interlock device advised the Secretary of State about the two failed BrAC readings.⁴ The Secretary of State then revoked Green's restricted license and suspended his driver's license for another one year term, from January 16, 2012, through January 15, 2013.⁵ Green was notified about the additional one-year suspension by the Secretary of State on January 6, 2012. The order indicated that the action was mandatory, was "not appealable,"⁶ and restricted driving privileges would not be granted. The order further indicated that an appeal to the Driver Assessment and Appeal Division or circuit court was only permitted based on a legal issue.

Green submitted a request for a driver license appeal hearing to the Secretary of State's Driver Assessment and Appeal Division on January 26, 2012. Green's request for a hearing was denied by the Secretary of State in a letter dated February 15, 2012. A petition was filed by Green in the Jackson Circuit Court on April 12, 2012, requesting restoration of his driving privileges. In the petition, Green asserted that it was improper for the Secretary of State to (1) summarily terminate his driving privileges without a hearing, and (2) to refuse to grant him a hearing after the suspension. He further asserted that the Jackson Circuit Court had jurisdiction to hear the case, and presented evidence in part to purportedly support that the ignition interlock device had malfunctioned.⁷

The Secretary of State failed to file an answer. A motion hearing was held on May 4, 2012. The Secretary of State argued that insufficient evidence was presented by Green to demonstrate that the ignition interlock device had malfunctioned. The trial court concluded that Green was entitled to a hearing as a "matter of procedural due process" and restored his driving privileges.

On May 21, 2012, the Secretary of State filed a motion for relief from the trial court's May 4, 2012, order restoring Green's driving privileges, as well as a supplemental brief in support of the motion. The Secretary of State argued that judicial review under MCL 257.323(3) does not include suspensions issued under MCL 257.319, thus the trial court's review is limited to that described in MCL 257.323(4). The Secretary of State additionally argued that Green was not deprived of due process when the additional suspension was imposed.⁸ The Secretary of State asserted that MCL 257.319 did not provide for a hearing after a license suspension, and therefore if the trial court found that Green should have been granted a hearing, the trial court would have to find that the statute is unconstitutional. The Secretary of State contended that the statute was not unconstitutional because Green's second suspension was the result of his OWI conviction, and he was afforded due process before that conviction.

⁴ *Id.*

⁵ MCL 257.319(8)(i).

⁶ MCL 257.323(3).

⁷ *Id.*

⁸ MCL 257.319.

Green filed an answer to the Secretary of State's motion on May 30, 2012, in which he conceded that MCL 257.323(3) did not grant the trial court authority to set aside the suspension and admitted that, to the extent he had argued otherwise in the previous motion, he was in error. Nevertheless, Green asserted that his alternative grounds for relief—that his due process rights were violated—remained valid. Therefore, he contended that the trial court's May 4, 2012, order should be affirmed. After a hearing, the trial court denied the Secretary of State's motion and again found that its denial of Green's request for a hearing for the additional license suspension violated his procedural due process rights.

We find that the trial court's order reinstating Green's driving privileges did not constitute error requiring reversal.

On appeal, the Secretary of State argues that Green declined to take advantage of his right to a hearing by failing to submit legal or factual errors in writing to the Secretary of State, thus he was not denied due process. The Secretary of State asserted in the trial court, however, that even if the court were to find that a driver's license was a protected interest, the statute does not provide for a hearing after an additional license suspension.⁹ Additionally, it contended that Green was not entitled to a hearing because he was afforded due process before he was convicted of OWI. Because the Secretary of State raises a different argument on appeal, we find that the issue is unreserved.¹⁰ Thus, our review is limited to plain error affecting substantial rights.¹¹

It is well-settled that "a court does not grapple with a constitutional issue except as a last resort."¹² We find that this case can be resolved by statutory interpretation, which is reviewed de novo on appeal.¹³

"The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature."¹⁴ Therefore, "[w]hen faced with questions of statutory interpretation, this Court must first examine the specific language of the statute[.]"¹⁵ "Terms that are not defined in a statute must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions."¹⁶ "When construing a statute, the court should presume that

⁹ MCL 257.319(8)(i).

¹⁰ *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

¹¹ *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

¹² *Taylor v Auditor Gen*, 360 Mich 146, 154; 103 NW2d 769 (1960), overruled in part on other grounds 468 Mich 763 (2003).

¹³ *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004).

¹⁴ *Karpinsky v Saint John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 542-543; 606 NW2d 45 (1999).

¹⁵ *Id.* at 543 (internal citations omitted).

¹⁶ *Anzaldua v Neogen Corp*, 292 Mich App 626, 632; 808 NW2d 804 (2011).

every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory.”¹⁷

Moreover, when considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. While defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase, as well as its placement and purpose in the statutory scheme. A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained. The statute must be interpreted in a manner which ensures that it works in harmony with the entire statutory scheme.¹⁸

Thus, it is necessary to determine, looking at MCL 257.322 and MCL 257.319, whether Green was entitled to a hearing after his license was suspended for an additional one-year term under MCL 257.319(8)(i). Because there is no case law interpreting whether a suspension under MCL 257.319 can be reviewed under MCL 257.322, or which individuals are entitled to a hearing under MCL 257.322, this is an issue of first impression.

Here, after the Secretary of State was notified of the two failed BrAC readings, the Secretary of State suspended Green’s driver’s license for another one-year term. The relevant statute states:

(i) Beginning October 31, 2010, if an individual violates the conditions of the restricted license issued under subdivision (g) or operates or attempts to operate a motor vehicle with a blood alcohol level of 0.025 grams per 210 liters of breath, the secretary of state shall impose an additional like period of suspension and restriction as prescribed under subdivision (g).¹⁹ This subdivision does not require an additional like period of suspension and restriction for any of the following:

(i) A start-up test failure within the first 2 months after installation of the ignition interlock device. As used in this subdivision, “start-up test failure” means that the ignition interlock device has prevented the motor vehicle from being started. Multiple unsuccessful attempts at 1 time to start the vehicle shall be treated as 1 start-up test failure only under this subparagraph.

(ii) A start-up test failure occurring more than 2 months after installation of the device, if not more than 15 minutes after detecting the start-up test failure the

¹⁷ *Karpinsky*, 238 Mich App at 543.

¹⁸ *Petersen v Magna Corp*, 484 Mich 300, 340; 773 NW2d 564 (2009) (footnotes omitted).

¹⁹ Subdivision (g) states that the Secretary of State shall suspend the driver’s license of an individual who violates section 625(1)(c) for a period of one year.

person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(iii) Any retest prompted by the device, if not more than 5 minutes after detecting the retest failure the person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.²⁰

MCL 257.319(8)(i) uses the word “shall,” specifically “the secretary of state shall impose an additional like period of suspension” for a noted violation. The use of the word “shall” requires suspension.²¹ Thus, the Secretary of State had no choice but to suspend Green’s license for a “like period” on the violation of his restricted license.²² The statute does not provide or deny a hearing to Green related to such a suspension. Where a statute is silent, courts must not speculate regarding the intent of the Legislature.²³

However, MCL 257.322 addresses hearings and appeals with regard to final determinations made by the Secretary of State. Specifically, the statute states:

(1) The secretary of state shall appoint a hearing officer to hear appeals from persons aggrieved by a final determination of the secretary of state denying an application for an operator’s or chauffeur’s license, suspending, restricting, or revoking an operator’s or chauffeur’s license, or other license action.

(2) The appeal shall be in writing and filed with the secretary of state within 14 days after the final determination. Upon notice of the appeal, the hearing officer shall require production of all documents filed in the matter, together with a transcript of any testimony taken.

(3) In a hearing or matter properly before the hearing officer, he or she may do any of the following:

(a) Issue subpoenas to compel attendance of witnesses.

(b) Issue process to compel attendance.

(c) Punish for contempt any witness failing to appear or testify in the same manner as provided by the rules and practice in the circuit court.

²⁰ MCL 257.319(8)(i).

²¹ *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 601; 822 NW2d 159 (2012).

²² MCL 257.319(8)(i).

²³ See *Mich Residential Care Ass’n v Dep’t of Social Servs*, 207 Mich App 373, 376-377; 526 NW2d 9 (1994).

(d) Swear witnesses, administer oaths, and exemplify records in any matter before the officer.

(e) Take additional testimony he or she considers appropriate.

(4) A verbatim record shall be made of the hearing.

(5) After a hearing, the hearing officer may affirm, modify, or set aside a final determination of the secretary of state denying an application for an operator's or chauffeur's license, suspending, restricting, or revoking an operator's or chauffeur's license, or any other license action. The hearing officer shall include his or her findings of fact and conclusions of law in the record.

(6) Except as provided in subsection (7), if a person whose license has been denied or revoked under section 303(2)(c), (d), or (g) applies for a license or reinstatement of a license after the time period specified in section 303(4) has elapsed, the hearing officer may issue a restricted license to that person, setting restrictions upon operating a vehicle as the hearing officer determines are appropriate. If the hearing officer issues a restricted license following a hearing held after October 1, 1999, he or she shall do both of the following:

(a) Require a properly installed and functioning ignition interlock device on each motor vehicle the person owns or intends to operate, the costs of which shall be borne by the person whose license is restricted.

(b) Condition issuance of a restricted license upon verification by the secretary of state that an ignition interlock device has been installed.

(7) The hearing officer shall not issue a restricted license under subsection (6) that would permit the person to operate a commercial motor vehicle that hauls hazardous material.

(8) If the hearing officer issues a restricted license to a person who intends to operate a vehicle owned by his or her employer, the secretary of state shall notify the employer of the employee's license restriction that requires the installation of an ignition interlock device. An employer who receives notice under this subsection is not required to install an ignition interlock device on the employer-owned vehicle. This subsection does not apply to a vehicle that is operated by a self-employed individual who uses the vehicle for both business and personal use.

(9) If the hearing officer issues a restricted license requiring an ignition interlock device, the initial period for requiring the device shall be not less than 1 year.²⁴

²⁴ MCL 257.322.

It is first necessary to determine whether appeals under MCL 257.322 apply to license suspensions under MCL 257.319(8)(i). We find that MCL 257.322 does apply. Looking at the plain language of the statute, MCL 257.322(1) states that the Secretary of State “shall appoint a hearing officer to hear appeals from persons aggrieved by a final determination . . . suspending . . . an operator’s . . . license.” As previously noted, “the Legislature’s use of the word ‘shall’ indicates a mandatory and imperative directive.”²⁵ The meaning of the term “aggrieved” is not defined in the statute, but, according to the dictionary definition, includes “deprived of legal rights or claims.”²⁶ The meaning of “final determination” is also not defined in the statute. The word “final” means “ultimate,” “conclusive or decisive: a final decision.”²⁷ Therefore, MCL 257.322 mandates that the Secretary of State put in place a forum for hearing appeals from people who are deprived of legal rights or claims, by an ultimate or conclusive decision of the Secretary of State. The only limitations placed on “persons” for whom the hearing officer “shall . . . hear appeals” is that they be “aggrieved by a final determination of the secretary of state,” which includes suspension of an operator’s license.²⁸ The Secretary of State concedes in its brief on appeal that the suspension was a final determination. The statute does not exempt individuals, like Green, who have had their license suspended for an additional period,²⁹ or by any other particular subsection. In other words, there is no indication that someone “aggrieved” by an additional one-year suspension under the relevant statute³⁰ would be precluded from taking advantage of the hearing provided by MCL 257.322. We will not read language into a statute that is not within the manifest intent of the Legislature as derived from the actual language used.³¹ Had the Legislature intended appeals by hearing in only certain cases, it would have expressly stated the limitations. “The Legislature is presumed to be familiar with the rules of statutory construction and . . . the consequences of its use or omission of statutory language.”³² Therefore, there is no indication from the plain language of the statute that Green would be excluded from those individuals who are afforded a hearing under the statute.

Additionally, we note that a hearing officer by statute is granted the authority to set aside final determinations without any limitations:

After a hearing, the hearing officer may affirm, modify, or set aside a final determination of the secretary of state denying an application for an operator’s or

²⁵ *Burton v Reed City Hosp Corp*, 471 Mich 745, 752; 691 NW2d 424 (2005).

²⁶ *Random House Webster’s College Dictionary* (2000).

²⁷ *Id.*

²⁸ MCL 257.322(1).

²⁹ MCL 257.319(8)(i).

³⁰ *Id.*

³¹ *Omne Fin, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

³² *Tellin v Forsyth Twp*, 291 Mich App 692, 701; 806 NW2d 359 (2011) (quotation marks and footnote omitted).

chauffeur's license, suspending, restricting, or revoking an operator's or chauffeur's license, or any other license action. The hearing officer shall include his or her findings of fact and conclusions of law in the record.³³

Therefore, authority for review and modification of any final determination is clearly afforded by the statute. According to its plain language, this subsection includes final determinations of the Secretary of State "denying an application for an operator's or chauffeur's license, suspending, restricting, or revoking an operator's or chauffeur's license, or any other license action."³⁴

We further note that at least one other subsection of 257 assumes that a hearing has been held before the circuit court review, even where the suspension was issued under MCL 257.319. Specifically, MCL 257.323(4), which both parties agree applies to circuit court review of a suspension under MCL 257.319, states in pertinent part:

Except as otherwise provided in this section, in reviewing a determination resulting in a denial, suspension, restriction, or revocation under this act, the court shall confine its consideration to a review of the record prepared pursuant to section 322 or 625f or the driving record created under section 204a for a statutory legal issue, and shall not grant restricted driving privileges.³⁵

Therefore, read as a whole, section 257 supports affording a hearing under subsection 322 for a suspension mandated by MCL 257.319.

"When a trial court reaches the right result for the wrong reason, the ruling will not be disturbed."³⁶ Accordingly, the trial court's determination that Green should have been granted a hearing was not error requiring reversal. Because this case can be decided on statutory grounds, we find that it is unnecessary to reach the constitutional arguments presented or the merits of the reasoning upon which the trial court rendered its ruling.³⁷

The Secretary of State, appearing to concede that a hearing may have been warranted, now argues, however, that Green could have obtained a hearing if he would have submitted his legal or factual argument in writing. Although an issue is not preserved for appeal unless it is "raised in and decided by the trial court,"³⁸ we "may overlook preservation requirements . . . if consideration is necessary for a proper determination of the case, or if the issue involves a

³³ MCL 257.322(5).

³⁴ *Id.*

³⁵ Subsection 625f considers failure to request a hearing after refusal to submit to a chemical test.

³⁶ *Miller-Davis Co v Ahrens Constr, Inc (On Remand)*, 296 Mich App 56, 70; 817 NW2d 609 (2012) (citation and quotation marks omitted).

³⁷ *Taylor*, 360 Mich at 154.

³⁸ *Fast Air, Inc*, 235 Mich App at 549.

question of law and the facts necessary for its resolution have been presented.”³⁹ Because the trial court’s determination was regarding whether or not Green was entitled to a hearing, the issue of whether he properly requested a hearing was not fully developed in the record below. Thus, all of the facts necessary to properly review this issue have not been presented.

This Court notes that it is disingenuous for the Secretary of State to assert that Green could have obtained a hearing had he submitted his legal or factual claim in writing when the Secretary of State’s argument before the trial court was that there was no authority under the statute to grant a hearing. Additionally, the record is undeveloped regarding whether the “Request for Driver License Appeal,” which Green sent to the Secretary of State, was incorrect or insufficient to obtain a hearing under MCL 257.322. Indeed, other than its own bold assertions, the Secretary of State cites no authority to support that the form filled out by Green was insufficient and that a separate written request—as referenced in the letter denying the hearing—was legally required and would have resulted in the desired hearing. Therefore, no relief is warranted based on the Secretary of State’s assertion on appeal that Green would have been granted a hearing if he would have submitted a legal or factual claim in writing.

In reaching our conclusion, this Court notes that MCL 257.322 does not require any legal or factual assertion in writing in order to obtain review by a hearing officer. Moreover, the Secretary of State has not cited any internal agency rule that would dictate otherwise. In fact, the general form used to request a driver’s license appeal hearing, which was created by the Secretary of State, only has lines for a petitioner’s full name, address, date of birth, license number, and telephone number. The form does not have any spaces requesting the legal or factual error alleged. Nor does it instruct an applicant to include this information. Accordingly, there was no plain error.⁴⁰

With regard to the remedy granted by the trial court, the reinstatement of Green’s driving privileges, MCL 257.323(4), states that “[t]he court shall set aside the secretary of state’s determination only if the petitioner’s substantial rights have been prejudiced because the determination is . . . (a) [i]n violation of the Constitution of the United States, the state constitution of 1963, or a statute.” Here, the Secretary of State’s denial of Green’s request for a hearing was in violation of the statute; thus, it was not plain error for the trial court to set aside the Secretary of State’s determination.⁴¹

Affirmed.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

³⁹ *Gen Motors Corp v Dep’t of Treasury*, 290 Mich App 355, 387; 803 NW2d 698 (2010).

⁴⁰ *Kern*, 240 Mich App at 336.

⁴¹ *Id.*