

15-0865

IN THE CIRCUIT COURT OF TUCKER COUNTY, WEST VIRGINIA

TAMMY L. ROBBINS,
Petitioner,

v.

Civil Action No.: 14-P-14
OAH Case No. 363758A

DIVISION OF MOTOR VEHICLES,
Respondent.

BOOK NO. _____ PAGE NO. _____
DONNA JEAN BAYNE, CLERK
CIRCUIT COURT OF
TUCKER CO. WVA

ADMITTED TO RECORD
2015 AUG -3 PM 4: 14

ORDER

This matter comes before Judge Phil Jordan for consideration of an appeal from Tammy L. Robbins contesting a DUI suspension by DMV. Counsel for Ms. Robbins, Chris Cooper, and for DMV, Elaine Skorich, have agreed to submit on their written memoranda.

Most of the facts are not disputed. In the early morning hours of May 20, 2012, Ms. Robbins had been drinking wine at a friend's home, and headed to her home. She drove her car into a ditch with her head hitting the windshield. She was alone and there was no damage to the property of another. There was extensive damage to her vehicle. Ms. Robbins called her father, who owns a towing company, to have the car towed. She did not report the accident.

Ms. Robbins was driven by a friend to Davis Memorial Hospital in Elkins where she came to the attention of a state trooper, who was there on another matter. His investigation resulted in a DUI arrest and a DMV hearing.

The unusual question in this case is that DMV's Hearing Examiner found that there was not sufficient evidence against this driver. However, the Chief Hearing Examiner reviewed the same evidence and came to the conclusion that Ms. Robbins' license should be suspended.

COPY TO: (DATE) 8-3-15
____ PLAINTIFF/ATTORNEY C. Cooper
____ DEFENDANT/ATTORNEY Ms Skorich
____ OTHER (SPECIFY) _____

The Court recognizes that the Chief Hearing Examiner has the authority to make the final call for DMV. However, for years DMV's attorneys have been stressing that the Hearing Examiner was there and heard the testimony and great deference should be afforded his determinations. In this instance, DMV is asking the Court to virtually ignore the determination of its own Hearing Examiner.

The Hearing Examiner found there was insufficient evidence to prove by a preponderance of the evidence that Ms. Robbins was under the influence at the time of the accident. He felt that her head injury and the alcohol ingested after the accident made it difficult to construct a timeline.

The Chief Hearing Examiner chose to put more weight upon the fact that Ms. Robbins did not report the accident and did not complete the DUI Information Sheet. DMV's brief says: "The facts of the case did not change between the Hearing Examiner's analysis and the CHL's analysis. The only thing that changed was the weight given to those facts."

This Court **FINDS** that the original Hearing Examiner for DMV got it right. There was not enough evidence to meet the preponderance of evidence standard in the case.

This Court **FINDS** that the Chief Hearing Examiner's decision was clearly wrong based upon the evidence and was an abuse of discretion.

The DMV decision is reversed and the Petitioner's license shall be reinstated.

The Clerk will provide a copy of this Order to Mr. Cooper and Ms. Skorich of DMV.

Entered this 3rd day of August, 2015.

Phil Jordan
JUDGE PHIL JORDAN

A TRUE COPY:
ATTEST: S/DONNA JEAN BAVA, C
CIRCUIT COURT OF TUCKER CO.
Donna Jean Bava DEPUTY

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. _____

STEVEN O. DALE, Acting Commissioner,
Division of Motor Vehicles,

Petitioner,

v.

TAMMY L. ROBBINS,

Respondent.

CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, do hereby certify that the foregoing *Notice of Appeal* was served upon the opposing party by depositing a true copy thereof, postage prepaid, certified mail, in the regular course of the United States mail, this 2nd day of September, 2015, addressed as follows:

Christopher Cooper, Esquire
Blackwater Law PLLC
333 2nd Street, Suite 1
Parsons, WV 26287

The Honorable Donna Jean Bava
Clerk of the Circuit Court
Tucker County Courthouse
215 First Street
Parsons, WV 26287


ELAINE L. SKORICH