

15-1044

IN THE CIRCUIT COURT OF MONROE MONROE COUNTY, WEST VIRGINIA

FILED IN MONROE COUNTY
CIRCUIT COURT

2015 SEP 30 PM 3:49

JOSHUA D. BECKETT,
Petitioner

v.

Civil Action No: 15-C-25

PATRICIA S. REED, COMMISSIONER,
WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,
Respondent

ORDER REVERSING COMMISSIONER'S ORDER OF REVOCATION

On September 8, 2015, this matter came on for hearing on a Petition for Review, of the Commissioner's Revocation of Petitioner's driving privileges. Petitioner, Joshua D. Beckett, appeared in person and by counsel, Jeffrey A. Pritt, and the Respondent, Patricia S. Reed, appeared by counsel, Elaine L. Skorich. At the hearing, the Court heard arguments from the Petitioner supporting his Petition to Reverse the Commissioner's order revoking his driving privileges, and the Respondent offered arguments in response.

Having considered the Petition, the Responses, the arguments by counsel, and the pertinent legal authorities, this Court finds that the Respondent's final order of April 9, 2015, revoking the Petitioner's driving privileges should be reversed.

I. Factual Background

On February 4, 2012, Petitioner Joshua Beckett wrecked an ATV he was operating and was transported by ambulance to the Greenbrier Valley Medical Center for treatment. The medical records of the Petitioner indicated that the Petitioner's blood alcohol content at the time of the accident was seventeen hundredths of one percent (.17%). On April 4, 2012, Respondent

Department of Motor Vehicles (DMV) sent Petitioner an Order of Revocation, revoking his driving privileges for aggravated DUI. On May 1, 2012, the Petitioner filed a request for an administrative hearing with the Office of Administrative Hearings (OAH), and on October 11, 2012, a hearing was held. At this hearing the parties stipulated the accident took place on “private family farm property not open to the public.”

II. Discussion

Petitioner argues that Respondent has no jurisdiction, to revoke his driving privileges, because Petitioner’s activity occurred on private farm land, not accessible by the public. Respondent suggests that this Court is without jurisdiction to hear the appeal, because the Petitioner’s appeal was not filed in a timely manner. This Court will first address the timeliness of the appeal, and then address the issue of the Respondent’s jurisdiction over activities on private farm land not open to the public.

a. Timeliness of Appeal

Respondent argues that this Court is without jurisdiction, because the appeal was not filed in a timely manner. Specifically, Respondent suggests that Petitioner’s appeal was outside the thirty-day time limit for judicial review provided in W. Va. Code § 29A-5-4, because the first OAH order affirming the revocation of Petitioner’s license was issued on February 19, 2015, but Petitioner’s appeal to this Court was not filed until April 24, 2015. Respondent argues that the OAH had no authority to consider Petitioner’s Motion for Reconsideration after the original OAH Order of Revocation was entered, and the rescinding of that Order by the OAH did not toll the thirty-day statutory time limit Petitioner had to file the appeal to this Court.

Respondent relies on *Reed v. Thompson*, which held that the Code of State Rules in effect in 2013 did not give the OAH authority to rescind its orders, and therefore the OAH could not rescind or modify an order under the Code of State Rules as they applied before July 1, 2013. *Reed v. Thompson*, 235 W. Va. 211, 772 S.E.2d 617 (2015)

However, when Petitioner filed his Motion for Reconsideration with the OAH on February 27, 2015, the administrative regulations in effect did give the OAH authority to hear Motions for Reconsideration and rescind its own orders. The version of 105 CSR § 1-18.3 in effect on February 27, 2015, provides that the OAH “may, without motion from a party, rescind a final order in order to correct clerical or administrative error . . . or other legal deficiency . . .” This rule gave the OAH authority to rescind its earlier order revoking Petitioner’s license.

While 105 CSR § 1-18.1 does state that the filing of a Motion to Reconsider does not toll the jurisdictional time limits for judicial review, the original order affirming the Respondent’s revocation of Petitioner’s driving privileges was indeed rescinded by the OAH on March 2, 2015. Once that order was rescinded, there was no statutory time limit to toll; Petitioner had nothing left to appeal, for Petitioner had the outcome he sought. It was not until the final order was issued by the OAH on April 9, 2015, reinstating the initial order, that Petitioner had an order with an outcome appealable to this Court. This order further provided that an aggrieved party had 30 days to appeal, from the date of this order.

Therefore, Petitioner had no ruling to appeal to this Court until OAH’s final order revoking Petitioner’s driving privileges was issued on April 9, 2015. Petitioner’s appeal was filed on April 24, 2015, less than 30 days after the issuance and reinstatement of the order revoking his driving privileges, and was still within the thirty-day statutory time limit. This Court concludes that the Petitioner’s Appeal was filed in a timely manner.

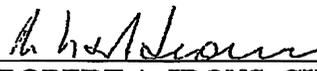
**b. Subject Matter Jurisdiction over vehicles being driven on Private Farm Land,
Not Open to Public**

Petitioner asserts that the DMV had no jurisdiction to revoke his license, for activities performed on private farm land, not open to the public. The West Virginia Supreme Court of Appeals held in *State v. Ball*, that according to the language of W. Va. Code §17C-2-1(1), "if Chapter 17C [of the West Virginia Code] is to apply elsewhere than upon streets and highways, a different place must be *specifically set forth*." *State v. Ball*, 164 W. Va. 588, 594, 264 S.E.2d 844, 847 (1980) (emphasis added). W. Va. Code §17C-5-2(a) does not specifically set forth any language stating where the statute should apply other than property open to the use of the public. Because the Petitioner's actions did not occur on land open to public use, the statute does not apply, and the Respondent has no jurisdiction to revoke the Petitioner's driving privileges.

Therefore, for the foregoing reasons, and it appearing proper to do so, it is hereby **ORDERED** and **ADJUDGED** as follows:

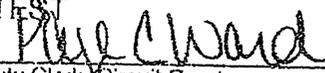
1. The Petitioner's Petition to Reverse the Commissioner's Order of Revocation is **GRANTED** and Petitioner's driving privileges are hereby reinstated.
2. The Circuit Clerk is directed to provide certified copies of this order to counsel of record.

Enter: September 18, 2015



ROBERT A. IRONS, CIRCUIT JUDGE

A TRUE COPY
ATTEST



Deputy Clerk, Circuit Court
Monroe Co., W.Va.

SHORT CASE NAME: Reed v. Beckett

CERTIFICATIONS

STATE OF WEST VIRGINIA

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and I have a good faith belief that an appeal is warranted.

October 22, 2015

Date

Eraine L. Storch
Counsel of record or unrepresented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

October 22, 2015

Date

Eraine L. Storch
Counsel of record or unrepresented party