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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

Petitioner,

v. NO. 15--1044

JOSHUA D. BECKETT,

Respondent.

FROM THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

BRIEF OF THE DIVISION OF MOTOR VEHICLES

Respectfully submitted,

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Division of Motor Vehicles,

By Counsel,

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I. ASSIGNMENT OF ERROR

The Circuit Court of Monroe County misinterpreted W. Va. Code § 17C-5-2a(a) (1983).

II. STATEMENT OF THE CASE

Per stipulation of the parties below, on February 4, 2012, Mr. Beckett, Respondent herein, was operating an all-terrain vehicle ("ATV") on private farm land in Monroe County, West Virginia and subsequently crashed the ATV. (App[1]. at P. 91.) Christopher Miller, an Emergency Medical Technician ("EMT") employed by the Union Rescue Squad, was dispatched to the wreck which occurred near Pickaway, Monroe County, West Virginia. (App. at P. 149 and PP. 211-212.) The Monroe County 911 Center was notified of the crash at approximately 1:20 a.m. (App. At P. 149), and when EMT Miller arrived at the scene of the crash, he located Mr. Beckett in the back seat of an unknown person's vehicle and assisted in loading Mr. Beckett into the ambulance. (App. at P. 213.) Mr. Beckett stated to EMT Miller that he, Mr. Beckett, had consumed alcohol and was not wearing a helmet. (App. at P. 214.) Mr. Beckett was transported to the Greenbrier Valley Medical Center for treatment. *Id.*

Deputy M. Bradley of the Monroe County Sheriff's Office, the Investigating Officer ("I/O") in this matter, was notified by dispatch of Mr. Beckett's crash and learned that Mr. Beckett had already been taken to the hospital. (App. at PP. 217-218.) The following day, the I/O viewed the scene of Mr. Beckett's crash and was informed by Lance Pruitt, who witnessed the accident, that Mr. Beckett was operating the ATV in a fielded area on private property when the accident occurred. (App. at P. 219.) The I/O received Mr. Beckett's medical records (App. at PP.

[1] App. refers to the Appendix filed contemporaneously with the Brief of the Division of Motor Vehicles.

151-192) which indicated that Mr. Beckett's blood alcohol content was seventeen hundredths of one percent (.17%) at the time of his blood draw at 2:30 a.m. (App. at P. 183), and as a result, on February 28, 2012, the I/O charged Mr. Beckett with the offense of driving while under the influence ("DUI") of alcohol with a blood alcohol content greater than .15% (a.k.a. aggravated DUI.) (App. at 147-149 and P. 220.)

On April 4, 2012, the Division of Motor Vehicles ("DMV") sent Mr. Beckett an *Order of Revocation* revoking Petitioner's driver's license for aggravated DUI. (App. at P. 78.) On May 1, 2012, the Office of Administrative Hearings ("OAH") received Mr. Beckett's request for an administrative hearing. (App. at P. 80.) On October 11, 2012, the OAH conducted an administrative hearing. (App. at P. 90.) Petitioner failed to testify at the very hearing which he requested. (App. at P. 92.) On February 19, 2015, the OAH entered its Order affirming Mr. Beckett's license revocation. (App. at PP. 90-100.)

On February 27, 2015, Mr. Beckett filed a *Motion for Reconsideration* with the OAH. (App. at PP. 108-114.) On March 2, 2015, the OAH entered an *Order Rescinding the Office of Administrative Hearings' Final Order Pending Reconsideration.* (App. at PP. 116-117.) On April 8, 2015, the DMV filed its *Opposition to Petitioner's Motion for Reconsideration.* (App. at PP. 129-130.) On April 9, 2015, the OAH entered its *Order Reinstating Final Order.* (App. at PP. 132-133.) On April 24, 2015, Mr. Beckett filed a *Petition for Review* with the Circuit Court of Monroe County. (App. at PP. 6-24.) On July 31, 2015, Mr. Beckett filed *Petitioner's Brief in Support of Petition for Review.* (App. at PP. 25-35.) On August 3, 2015, the DMV filed the *Response Brief of the Division of Motor Vehicles.* (App. at PP. 36-56.) On August 13, 2015, Mr. Beckett filed *Petitioner's Reply Brief in Support of Petition for Review.* (App. at PP. 57-72.) On

September 30, 2015, the Circuit Court of Monroe County entered its *Order Reversing Commissioner's Order of Revocation.* (App. at PP. 2-5.) On October 22, 2015, the DMV filed the instant matter with this Court.

III. SUMMARY OF ARGUMENT

In *State v. Ball*, 164 W. Va. 588, 264 S.E.2d 844 (1980), this Court determined that a drunk driver could not be found guilty for operating his motor vehicle in a private parking lot because W. Va. Code § 17C-2-1 (1972) contained language limiting DUI offenses to those which occurred on the public streets and highways. One year after *Ball* was decided by this Court, the Legislature enacted W. Va. Code § 17C-5-2a (which was amended in 1983). Said statute makes drunk driving a criminal offense if the DUI event occurs *anywhere within the physical boundaries of this State*. The Circuit Court of Monroe County erred in relying upon the limiting language of the DUI statutes as interpreted by this Court in *State v. Ball*, 164 W. Va. 588, 264 S.E.2d 844 (1980) and ignored the long-standing language in W. Va. Code § 17C-5-2a (1983).

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to W. Va. Rev. R. App. Pro. 19 (2010), the Commissioner requests oral argument in this case because this matter involves a narrow issue of law.

V. ARGUMENT

A. Standard of Review

Judicial review of license revocations is under the Administrative Procedures Act. *Dean v. W. Va. Dep't of Motor Vehicles*, 195 W. Va. 70, 464 S.E.2d 589 (1995) (per curiam).

> Upon judicial review of a contested case under the West Virginia Administrative Procedure Act, Chapter 29A, Article 5, Section 4(g), the circuit court may affirm the order or decision of the agency or remand the case for further proceedings.

> The circuit court shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions, or orders are: "(1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Shepherdstown Volunteer Fire Dep't v. SER, State of W. Va. Human Rts. Comm'n,* 172 W. Va. 627, 309 S.E.2d 342 (1983). Findings of fact are accorded deference unless the reviewing court believes the findings to be clearly wrong, and conclusions of law are reviewed *de novo. Groves v. Cicchirillo,* 225 W. Va. 474, 694 S.E.2d 639 (2010) (per curiam).

B. The Circuit Court of Monroe County misinterpreted W. Va. Code § 17C-5-2a(a) (1983).

The circuit court below erred in relying upon *State v. Ball*, 164 W. Va. 588, 264 S.E.2d 844 (1980) to determine that W. Va. Code § 17C-5-2a(a) is inapplicable to the instant matter. In *State v. Ball, supra*, this Court addressed W. Va. Code § 17C-2-1(1972) which stated that the provisions of Chapter 17 relating to the operation of vehicles refer exclusively to the operation of vehicles upon streets and highways except where a different place is specifically referred to in a given section. This Court held that

> penal statutes must be strictly construed and notwithstanding our own inferences with regard to the Legislature's intent in changing the language of this particular section, we must find that W. Va. Code, 17C-2-1 (1972) requires that if chapter 17C is to apply elsewhere than upon streets and highways a different place must be specifically set forth. In the criminal law the question is never what the Legislature intended, but rather what a person of ordinary intelligence would infer from a plain reading of the statute involved. In this regard W. Va. Code, 17C-5-2 (1976) does not specifically refer to another place. Consequently, we must hold that the charge of driving while under the influence of intoxicating liquors cannot

> be sustained against the appellant because the State was unable to show that he was drunk while on a street or highway.

164 W. Va. 588, 593-95, 264 S.E.2d 844, 847-48 (1980).

One year after this Court determined *Ball*, the Legislature enacted W. Va. Code §17C-5-2a(a) which provides:

> For purposes of this article and article five-A of this chapter, the phrase "in this State" shall mean anywhere within the physical boundaries of this State, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel.

Articles 5 and 5A are specifically concerned with drunk driving. The plain meaning of the statute, which has not been amended since 1983, is that a person cannot drive *anywhere within the physical boundaries of this State* while under the influence. The statute is not ambiguous.

In deciding the meaning of a statutory provision, "[w]e look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed." *Appalachian Power Co. v. State Tax Dep't,* 195 W.Va. 573, 587, 466 S.E.2d 424, 438 (1995). *Davis Memorial Hosp. v. W. Va. State Tax Comm'r*, 222 W.Va. 677, 682, 671 S.E.2d 682, 687 (2008). " ...[D]isagreement [between the parties] is not dispositive of the question of whether the statute is plain or ambiguous; we have repeatedly explained that "[t]he fact that parties disagree about the meaning of a statute does not itself create ambiguity or obscure meaning. *T. Weston, Inc. v. Mineral County,* 219 W.Va. 564, 568, 638 S.E.2d 167, 171 (2006) (citing *Deller v. Naymick,* 176 W.Va. 108, 112, 342 S.E.2d 73, 77 (1985); and *Estate of Resseger v. Battle,* 152 W.Va. 216, 220, 161 S.E.2d 257, 260 (1968))." *Id.*, Fn. 8.

"While this Court need not consider the legislative history of this unambiguous statute,

such history makes clear that the statute accommodates, and specifically contemplates the issue presented." *Biafore v. Tomblin*, No. 16-0013 (W. Va., Jan. 22, 2016) (Loughry concurring.) *See State v. Boatwright*, 184 W. Va. 27, 29, 399 S.E.2d 57, 59 (1990) (quoting *Cooper v. Tazewell Square Apartments, Ltd.,* 577 F.Supp. 1483, 1487 (W.D.Va. 1984), *rev'd on other grounds*, 606 F.Supp. 1397 (W.D.Va. 1985) ("When the statute is unambiguous on its face, there is no real need to consider its legislative history.").

Even though history is inapplicable when a statute is unambiguous, it is important to note that the Legislature used the words "in this State" for a reason, and the words "but not limited to" may indicate a field on private property. The revocation provisions are not penal in nature, and should be read in accord with the general intent of our traffic laws to protect the innocent public. *Johnson v. Commissioner, Dept. of Motor Vehicles*, 178 W. Va. 675, 677, 363 S.E.2d 752, 754 (1987) ("The administrative sanction of license revocation is intended to protect the public from persons who drive under the influence of alcohol.") Allowing a drunk driver to evade revocation because he is on private farmland does not comport with the Legislature's intent to protect the public.

The gist of Mr. Beckett's position was that the government cannot interfere with what was occurring on private property. However, that position fails to consider that Mr. Beckett's actions on private property put him and others in harm's way. Mr. Beckett crashed his ATV and called 911, a public service, for assistance. An ambulance service was dispatched, and an EMT was required to go onto private land to tend to Mr. Beckett's injuries. If Mr. Beckett wanted the consequences of his actions to remain private, then he should have tended to his own injuries or obtained private transportation to the hospital instead of calling 911. Moreover, under Mr.

Beckett's theory, he could drive his car drunk through all of his neighbor's yards in an unincorporated subdivision and not face a consequence for DUI. Clearly, the Legislature responded to *Ball, supra*, in an effort to curb all drunk driving in this state.

Before both the OAH and the circuit court, Mr. Beckett never challenged the fact that he was under the influence of alcohol, or that he was operating a motor vehicle in this State when he wrecked. Instead, Mr. Beckett's defense concerned whether operating an ATV on private farmland is "in this State." Accordingly, Mr. Beckett asked for the circuit court to interpret a non-existent exception in the statue thereby authorizing DUI in West Virginia on private land, and the circuit court erred in holding that "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." Simply put, Mr. Beckett violated W. Va. Code §17C-5-2(e)(2010), which provides, "[A]ny person who drives a vehicle *in this state* while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor..." (Emphasis added).

It is undisputed that the Mr. Beckett's blood alcohol content was .17% and that he drove an ATV in this state. In *State v. Byers,* 159 W. Va. 596, 224 S.E.2d 726 (1976), this Court, relying on the statutory language pertaining to DUI offenses, determined that an arrest is lawful if the arresting officer has "reasonable grounds" to believe the offense was committed. The *Byers* Court concluded that "The evidence reflecting symptoms of intoxication and consumption of an alcoholic beverage was sufficient to justify submission of the case to the jury." 159 W. Va. 609, 224 S.E.2d 734.

Deference is owed to the fact finder in this case. Unless the findings of fact are clearly

wrong and without any basis, they must be affirmed.

> In this case, the DMV and the OAH determined that Ms. Dingess drove a motor vehicle while under the influence of alcohol. A guiding principle has been that "[w]e must uphold any of the [administrative agency's] factual findings that are supported by substantial evidence, and we owe substantial deference to inferences drawn from these facts[.]" *Webb v. W. Va. Bd. of Medicine*, 212 W.Va. 149, 156, 569 S.E.2d 225, 232 (2002) (per curiam) (quoting *Martin v. Randolph County Bd. of Educ.*, 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995)). See also Syl. pt. 2, *Shepherdstown Volunteer Fire Dept. v. State ex rel. State of W. Va. Human Rights*, 172 W. Va. 627, 309 S.E.2d 342 (1983) ("Upon judicial review of a contested case under the West Virginia Administrative Procedure Act, Chapter 29A, Article 5, Section 4(g), the circuit court may affirm the order or decision of the agency or remand the case for further proceedings. The circuit court shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are: '(1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.' ").

Dale v. Dingess, 232 W. Va. 13, 17, 750 S.E.2d 128, 132 (2013).

Here, it is undisputed that a field in Monroe County, West Virginia is within the State of West Virginia and that Mr. Beckett was operating the ATV while he had a blood alcohol content in excess of .15%; therefore, the order from the Circuit Court of Monroe County must be reversed, and the OAH order must be affirmed.

VI. CONCLUSION

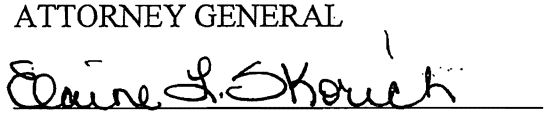
For the above-reasons, the circuit court should be reversed.

Respectfully submitted,

PATRICIA S. REED, COMMISSIONER,
DIVISION OF MOTOR VEHICLES,

By Counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



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

Petitioner,

v. **NO. 15--1044**

JOSHUA D. BECKETT,

Respondent.

CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, does certify that I served a true and correct copy of the forgoing **BRIEF OF THE DIVISION OF MOTOR VEHICLES** on this 29th day of January, 2016 by depositing it in the United States Mail, first-class postage prepaid addressed to the following, *to wit:*

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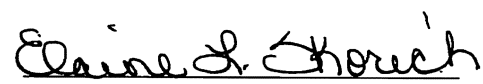

Elaine L. Skorich