

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

The Honorable DeAndrea Benjamin, Presiding Circuit Court Judge

Docket No. 2017-CP-40-04199
Appellate Case No. 2018-001305

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SC Court of Appeals

John McPartland, Appellant,

v.

State of South Carolina Dept. of Motor Vehicles, Respondents.

FINAL REPLY BRIEF OF APPELLANT

February 26, 2019

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STATEMENT OF THE ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR DISMISSING THE COMPLAINT ON THE BASIS OF ITS FINDING THAT THE APPELLANT HAD FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES?

STATEMENT OF THE CASE

On July 13, 2017, the Appellant, John McPartland, a South Carolina resident, brought this action against the South Carolina Department of Motor Vehicles (“SCDMV”) seeking a declaratory judgment that S.C. Code § 56-1-40(2) and 56-1-240 are unconstitutional as applied to him as well as an injunction against the SCDMV requiring it to issue Appellant a driver’s license. The parties stipulated to the facts in the case and held a hearing on the matter on June 18, 2018.

On June 26, 2018, the Circuit Court dismissed the case without reaching the merits based on a finding that the Appellant had failed to exhaust his administrative remedies by not appealing the NYSDMV appeal board’s denial of his appeal to the New York State Supreme Court. On July 6, 2018, Appellant filed a Rule 59(e) motion to alter or amend the dismissal of the Complaint. On July 13, 2018 the Circuit Court denied the Rule 59(e) motion, again without addressing the merits of the case. On July 16, 2018 McPartland filed his Notice of Appeal in this Court and properly served the Defendant.

The Circuit Court did not address the merits of the case in its order of dismissal. Therefore, the merits are not being addressed by the Appellant in this appeal. If this Court is inclined to review the merits of the case then Appellant respectfully requests that this Court issue an order requiring the parties to brief those issues.

STANDARD OF REVIEW

The decision to dismiss a case is within the purview of the trial court and will not be disturbed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. *In Re Miller*, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

FACTS

Between 1982 and 1999, while a resident of New York state, Appellant McPartland was convicted of five alcohol related driving offenses resulting in the permanent revocation of his New York driver's license when a new law went into effect in 2012. The exact dates of the offenses are set forth in the Stipulation of Facts, which was filed with the Circuit Court and will be added to the Record on Appeal. McPartland moved to South Carolina in 2000 and obtained a South Carolina driver's license on June 15, 2000. McPartland renewed the S.C. license on June 15, 2005 and June 11, 2015. McPartland was, in fact, never eligible to be issued a license because while the suspension period for his last DUI had expired, he had apparently never taken the steps necessary to clear the suspension in New York. McPartland maintains that he was unaware of this fact when he applied for his licenses in South Carolina beginning in the year 2000 because he believed the suspension period in New York elapsing was all that was required. The responses on his SCDMV applications were, therefore, incorrect as to whether he was suspended in other jurisdictions. McPartland never received any alcohol related offenses against his license in South Carolina or otherwise committed any offense that would result in the suspension or revocation of his South Carolina driver's license.

Pursuant to standard procedure when someone applies for a license or renews their license in

South Carolina, the SCDMV ran a background check on McPartland when he renewed his license on June 11, 2015. For the first time since he obtained his license in South Carolina in the year 2000, the SCDMV obtained a “hit” on his background showing a revoked status on his license in New York. As a result, pursuant to S.C. Code §§ 56-1-40 (2) and 56-1-240, the SCDMV sent McPartland a letter dated June 12, 2015 informing him that his license was being cancelled due to the problem in New York. McPartland requested, and was granted, a 60 day extension to attempt to resolve the New York state problem but his license in South Carolina was ultimately canceled on October 9, 2015. S.C. Code §§ 56-1-40 and 56-1-240 together require the SCDMV to deny the issuance or renewal of a license application for anyone who is suspended or revoked in another state at the time of the application for issuance or renewal.

The problem in New York arose because of a change in the law of the state of New York with the passage of 15 NYCRR § 136.5 on or about December 24, 2012. This amendment to the New York state laws mandated a lifetime driving ban for anyone who has five or more alcohol related offenses any time in their lifetime. This mandatory ban for anyone with McPartland’s record is subject to a discretionary waiver that may be granted by the Commissioner of Motor Vehicles in New York. In practice, almost no one who has applied for the waiver has had it granted, with only 4 out of 1,031 applications for a waiver being granted according to a September 28, 2016 affidavit filed in a New York case.

After he was notified by the SCDMV that his license here was being canceled, he filed for his license to be reinstated in New York, which was denied, and did file an appeal of the denial to the New York DMV appeal board, which was also denied. He did not appeal the appeal board decision to a New York court. The Circuit Court in this case dismissed his Complaint in this action because it

interpreted his failure to seek judicial review of the administrative appeal board's decision as a failure to exhaust his administrative remedies. This appeal followed.

ARGUMENT

The purpose of requiring someone aggrieved by a state agency's decision to exhaust their administrative remedies is not served by requiring someone in the Appellant's position to litigate the matter through all levels of judicial – not administrative – appeal in another state. *See Brief of Respondent p. 6* (quoting *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (2010) (“The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.”)(citations omitted).

The Appellant in this case has sought to remedy this issue in New York by filing for a waiver to the revocation of his New York license and has appealed the denial of the waiver to the highest level within the NYSDMV. *See Stipulation of Facts Ex. F p. 2-4 (R. pp. 88-90)*. At this point, the Appellant was free to pursue a remedy to his problem in the courts because he had exhausted the possibility of resolving the matter within the agency. There is no logical justification in any of the exhaustion case law supporting the Respondent's request to add an additional requirement that a party must pursue out of state litigation in the out of state courts prior to seeking relief in South Carolina when the issue at hand is the as-applied constitutionality of a South Carolina statute and the case is being brought by a South Carolina resident.

Stated as succinctly as possible, the Respondent brought this action seeking essentially the same relief as the litigants in *Hipp v. SCDMV*, 381 S.C. 323, 673 S.E.2d 416 (2009) and *Wilson v. SCDMV*, 419, S.C. 203, 796 S.E.2d 541 (2017). The Respondent's assertion that there is a distinction between this case and *Hipp* and *Wilson* because those cases were about a delayed reporting of criminal convictions while this case is about a delayed reporting of a suspension is without merit.

The issue is the fundamental fairness of the revocation. Both this case and the prior case law involve a litigant bringing a challenge based on fundamental fairness due process to the application of a suspension of their South Carolina license for things that were not reported for years. If anything, this case is more egregious than *Hipp* and *Wilson* because in those cases the litigants actually did deserve to have their licenses suspended for some period of time and never served the suspension, whereas the Appellant is being suspended in South Carolina based on a New York policy that this state has not even adopted.

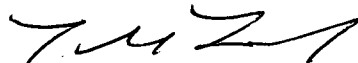
The SCDMV has argued in its initial brief that the South Carolina statutory scheme does not permit any exception to §56-1-40(2) and therefore the Appellant is asking the SCDMV to violate the statute. *See Brief of Respondent* p. 19. This is precisely the reason why this case had to be brought in Court. The Appellant has agreed from the beginning that the SCDMV has no authority to grant an exception to the statute on its own. *See Responsible Econ. Dev. V. S.C. Dep't of Health & Env'tl. Control*, 641 S.E.2d 425, 428 (2007) (regulatory agencies have only the authority granted them by the legislature). The Appellant is not asking the SCDMV to violate the law. Rather, the Appellant, like the litigants in *Hipp* and *Wilson*, seeks to have the courts provide a remedy to an otherwise fundamentally unfair result.

Finally, the SCDMV has gone into a rather lengthy discussion regarding the level of constitutional scrutiny to be applied in this matter. The Appellant submits that this entire line of analysis is unnecessary as the Appellant does not claim to be part of any suspect class and prays that the Court use the same scrutiny that was used in *Hipp* and *Wilson*.

CONCLUSION

Based on the foregoing, the Appellant respectfully requests that this Court reverse the circuit court's order dismissing the complaint and return the case to the circuit court for adjudication on the merits.

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