RECEIVED
Dec 08 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H. W. Funderburk, Jr., Administrative Law Judge

---

Case No. 2020-000980

Shante Michele Eugene . . . . Respondent,

v.

South Carolina Department of Motor Vehicles . . . . Appellant.

FINAL REPLY BRIEF OF THE APPELLANT

BRANDY A. DUNCAN, SC Bar # 72052
Assistant General Counsel
FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: (803) 896-9900
Facsimile: (803) 896-9901
Email: hearingsprocessingunit@scdmv.net
Attorneys for the Appellant

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities iii

Statement of Issues Presented 1

Statement of the Case 1

Standard of Review. 1

Argument:

1) THE ALJ ERRONEOUSLY ENGAGED IN A REWEIGHING OF THE EVIDENCE IN THIS CASE IN VIOLATION OF S.C. CODE §1-23-380(A) 2

Conclusion 9

TABLE OF AUTHORITIES

CASES

State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973) ---------- 6, 7

Davis v. S.C. Dept. of Motor Vehicles, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017). ---------- 6, 7

Hipp v. S.C. Dept. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) ---------- 6

US Fidelity and Guaranty Company v. Security Fire and Indemnity Company, 248 S.C. 307, 149 S.E.2d 647 (1966) ---------- 5

Wilson v. S.C. Dept. of Motor Vehicles, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017) ---------- 6, 7

STATUTES

S.C. Code §1-23-380(A) ---------- 1, 2

S.C. Code §56-1-40(2) ---------- 5

S.C. Code §56-7-30 ---------- 5

S.C. Code §56-9-500 ---------- 5

S.C. Code §56-9-540 ---------- 5

S.C. Code §56-9-630 ---------- 5

S.C. Code §56-10-535 ---------- 5

S.C. Code §56-10-540 ---------- 5

S.C. Code §56-10-650 ---------- 5

S.C. Reg. §90-002(D) ---------- 5

S.C. Reg. §90-006(B) ---------- 5

STATEMENT OF ISSUES ON APPEAL

1) THE ALJ ERRONEOUSLY ENGAGED IN A REWEIGHING OF THE EVIDENCE IN THIS CASE IN VIOLATION OF S.C. CODE §1-23-380(A).

STATEMENT OF THE CASE

Appellant retains the statement of the case set forth in its Brief.

STANDARD OF REVIEW

Appellant retains the standard of review set forth in its Brief.

ARGUMENT

1) THE ALJ ERRONEOUSLY ENGAGED IN A REWEIGHING OF THE EVIDENCE IN THIS CASE IN VIOLATION OF S.C. CODE §1-23-380(A).

Appellant retains all arguments under this section set forth in its Brief, except for part of one paragraph on page 31 of Brief of Appellant, and adds the following arguments.[1]

a) Respondent Argues an Issue that is Not on Appeal

Inexplicably, Respondent spends paragraphs 2, 4, and 5 of her Statement of the Case discussing a matter that is not on appeal in this case; that is, SCDMV's opinion presented to the hearing officer that the correct date of conviction for UTT # 57873GO was January 11, 2018, not January 13, 2016. R. p. 205-206 and 261. Respondent opposed this interpretation of the facts, and this was hotly contested matter at the Office of Motor Vehicle Hearings (hereinafter, "OMVH") hearing. The OMVH Hearing Officer made a factual ruling on this issue, finding that the date of conviction for UTT # 57873GO was January 13, 2016. R. p. 196, specifically footnote 2, and R. p. 200-201. Since the OMVH Hearing Officer's ruling regarding the date of conviction for UTT #

[1] The section no longer retained consists of the last three sentences of the paragraph that is completely contained on page 31 of Brief of Appellant.

57873GO was supported by substantial evidence in the record of this case, SCDMV never appealed this particular issue.[2] In fact, in its Statement of the Case contained in Brief of Appellant, SCDMV specifically listed the date of conviction for UTT # 57873GO as January 13, 2016. Additionally, throughout Brief of Appellant UTT # 57873GO SCDMV repeatedly referred to this conviction as taking place in "January 2016," consistent with the factual finding made by the OMVH Hearing Officer. Therefore, there appears to be no reason for Respondent to have included these paragraphs in her Statement of the Case except to foster feelings of animosity against SCDMV for having presented a reasonable factual argument before the OMVH Hearing Officer in the contested case hearing. Since this issue is not on appeal, these arguments should be disregarded in their entirety.

b) Substantial Evidence Supported a Factual Finding that SCDMV Received UTT # 57873GO on January 18, 2018

Next, Respondent argues there is no evidence in the record to support a finding that SCDMV received UTT # 57873GO on January 18, 2018. Brief of Respondent, paragraph 5 of Statement of the Case. Again, this is not an issue on appeal in this case and, therefore, is improperly contained in Brief of Respondent. Respondent's argument in this regard, however, is not accurate. The Final Order and Decision specifically states in footnote 3 "The ticket inventory sheet is dated January 12, 2018, and it is stamped received by the SC DMV on January 18, 2018." R. p. 197. Additionally, the Final Order and Decision discussed the date of receipt of UTT # 57873GO in detail on pages 6-7. R.

[2] SCDMV understands that even if it disagrees with a factual finding made by an OMVH Hearing Officer, so long as that factual finding is supported by substantial evidence, then the matter is not appealable under S.C. Code §1-23-380(A)(5)(e).

p. 200-201. Further, the following exhibits all list the received date for UTT # 57873GO as January 18, 2018:

1) Certification for Court Driver Record for Respondent (under "VIOL: 496 – Driving Under Suspension" beside "Recd:" R. p. 206.
2) South Carolina Traffic Citation Transmittal Form. R. p. 208 and 228-229.
3) The UTT itself (bottom left hand corner). R. p. 260-261.
4) Official 10 Year Driver Record for Respondent (under "VIOL: 496 – Driving Under Suspension" beside "Recd:" R. p. 267.

Additionally, SCDMV provided copies of ticket inventory reports for UTT # 57873GO for the years 2014, 2015, and 2016. R. p. 256-259. These reports showed the following: in 2014 the ticket was listed as "Unused," which indicates the ticket had not yet been issued to anyone, in 2015 the ticket was listed as still in Court, and in 2016 the ticket was listed as still in Court. *Id.* There are not ticket inventory reports after 2016 because the law requiring such reports to be completed each year was repealed. Obviously, with a 2016 ticket inventory dated July 11, 2016, this ticket should not have been listed as still in Court if Respondent had been convicted of this offense on January 13, 2016. SCDMV has been unable to reconcile this difference in the UTT, the ticket inventory, and the OMVH Hearing Officer's ruling regarding the date of conviction. However, these ticket inventory reports are all consistent with SCDMV not being provided with a copy of UTT # 57873GO until at least sometime after July 11, 2016.

Finally, Respondent's own evidence clearly stated that the Beaufort County Magistrate Court had "no record of when the yellow copy [of the ticket] was sent to SCDMV." R. p. 213 and 232. Therefore, all of the evidence presented demonstrated that

UTT # 57873GO was first transmitted to SCDMV on January 12, 2018 by the Beaufort County Sheriff's Office and received by SCDMV from the Beaufort County Sheriff's Office on January 18, 2018.[3]

Thus, for the reasons set forth above, Respondent's argument that there is no evidence in the record to support a finding that SCDMV received UTT # 57873GO on January 18, 2018 is not accurate and should be disregarded. Additionally, as already stated above, the issue about what date UTT # 57873GO was submitted to SCDMV is not on appeal in this case. Therefore, Respondent's arguments in this regard have no usefulness in this case.

c) Form SR-22

Respondent argues that she suffered fundamental unfairness in this case because she "met the requirements for reinstatement (including obtaining Sr-22 [*sic*] insurance…" Brief of Respondent, p. 5. This statement is misleading.[4] There is no such thing as "SR-22 insurance" in South Carolina. Rather, SR-22 is the number of the form that must be completed by a person's insurance company and filed with the SCDMV to prove that the person's vehicle is insured. This form was created by SCDMV in response to statutory requirements for people suspended for certain offenses and combinations of offenses to provide "proof of financial responsibility" to SCDMV before SCDMV could reinstate

---

[3] Significantly, there is actually no evidence in this record that the Beaufort County Magistrate Court ever transmitted this conviction to the SCDMV despite clear statutory requirements to do so. S.C. Code §56-7-30 "After final trial court action or nolle prosequi, disposition information must be forwarded electronically to the Department of Motor Vehicles by the appropriate court within five business days of the trial date."

[4] The undersigned believes that Respondent and her Counsel are unintentionally misleading in this section due to a lack of understanding regarding the history and current uses of form SR-22. This misunderstanding, unfortunately, is common in South Carolina and perpetuated by misleading advertisements made insurance companies.

their driving privileges/driver's license.[5] See S.C. Reg. §90-002(D), S.C. Reg. §90-006(B), S.C. Code §§56-10-535, -540, -650; §§56-9-500, -540, and -630; and for some general historical background please see *US Fidelity and Guaranty Company v. Security Fire and Indemnity Company*, 248 S.C. 307, 149 S.E.2d 647 (1966). Additionally, insurance companies do charge a fee for completion of Form SR-22, typically $25 per year. Any increase in insurance rates beyond the $25 per year charge is based on the insurance company's assessment of insuring that particularly individual.

d) Georgia Fines and Fees

Respondent also argues that she has suffered fundamental unfairness because she had to clear up her suspension issues, including fines and fees, in Georgia. On cross examination, however, Respondent admitted that no matter when her habitual offender suspension started relating to these convictions, she would have had to eventually deal with the Georgia suspension issues and get those issues resolved to regain and keep her driver's license. R. p. 135, lines 13-24 and see S.C. Code §56-1-40(2). There is no evidence in this record that demonstrates that the fines and fees paid by Respondent in December 2017 were any higher than they would have been if the conviction at issue in this case had been timely filed with SCDMV. In fact, historically, fines and fees increase over time (for example, SCDMV's reinstatement fee has never decreased, but has always increased over the years). Thus, Respondent paying the fines and fees she owed in Georgia was something she was going to have to do no matter when she sought to reinstate her driver's license in South. Since Respondent was going to have to pay these

---

[5] For example, SCDMV also has a Form SR-26, which is used by insurance companies to notify SCDMV that insurance has been cancelled for a person who must report proof of financial responsibility.

fines and/or fees no matter when she sought to reinstate her driver's license, the payment of those fines and/or fees cannot be prejudicial to the Respondent.

e) When the Delay in Reporting a Conviction is Neither Party's Fault, There is Not an Immediate Presumption that SCDMV Loses

Respondent argues that because the delay in this case was neither party's fault that the fault analysis automatically tilts in her favor. The cases that have involved delay have addressed only whether the <u>driver</u> bore any fault in the delay or took any action to overcome the delay.[6] In cases where there is no evidence that either party caused the delay or took any action to overcome the delay, the fault prong does not lean in either party's favor and simply remains neutral. *Id.* Contrary to Respondent's arguments, when the fault prong does not lean in either party's favor, the case law still requires Respondent to provide some sort of evidence of fundamental unfairness that has been created due to the delay. Alternatively, when the fault prong tilts one way or the other, due to some action by one of the parties that caused the delay, that tilt may be a significant factor considered by the court in determining the outcome of the case. In keeping with this consideration to be weighed, it appears the OMVH Hearing Officer did not discuss fault in depth because no fault existed against either party and, as such, fault in the delay did not provide any guidance in deciding the case. Rather, the OMVH Hearing Officer went straight into a fundamental unfairness analysis examining those items for which Respondent attempted to provide evidence of prejudice.

[6] *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973); *Hipp v. S.C. Dept. of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009); *Davis v. S.C. Dept. of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017); and *Wilson v. S.C. Dept. of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017).

f) Respondent's Burden of Proof was Greater Than "Potential Prejudice"

Respondent argues that all that must be demonstrated in this case for her to prevail is a "high likelihood of injury or potential prejudice" such as a "potential loss of employment and inability to pay two mortgages." Brief of Respondent, p. 6 (emphasis added). Contrary to this argument, the case law says that a driver in a case such as this must provide "sufficient evidence of prejudice" (*Wilson*, 419 S.C. at 209), "evidence... support[ing] a finding [driver] would suffer prejudice" (*Davis*, 420 S.C. at 106), "all other cases coming to our attention support the proposition that where... there is nothing other than an unexplained delay on the part of the reporting officials, unaccompanied by any showing of real prejudice to the driver, the driver is not entitled to any relief..." (*Chavis*, 200 S.E.2d at 392)(emphasis added). Thus, the case law demonstrates that there must be real, sufficient evidence of prejudice. Therefore, Respondent's argument that all she has to show is "potential prejudice" is a significant reduction in the burden of proof. Moreover, in addition to other factors considered by the *Wilson* court, the court held that fundamental unfairness would result because losing her current job (which required Wilson to drive as part of her job duties) would cause "**severe** economic hardship because [Ms. Wilson] has two mortgage payments and would not have a steady stream of income to make these payments." *Wilson*, 419 S.C. at 208. For these reasons, the OMVH Hearing Officer's prejudice analysis correctly examined whether Respondent had presented real, sufficient evidence of prejudice as a result of the delay in this case.

g) SCDMV was Not Required to Develop or Flesh Out Evidence of Prejudice for Respondent

Respondent argues that SCDMV cannot attack lack of evidence of prejudice in this case because SCDMV had the opportunity to cross examine Respondent and more

fully develop this evidence on Respondent's behalf. According to the case law in this area, the burden of producing and developing evidence of prejudice resides with the driver. None of the case law in this area has ever required SCDMV to explore or develop evidence of prejudice on behalf of a driver. By presenting this argument, Respondent is attempted, essentially, to shift her burden of demonstrating prejudice from herself to SCDMV. Contrary to this attempt, if the evidence is lacking, vague, or undeveloped, the fault for such failure can only fall on the driver. In such a situation, the court can only proceed on the evidence that was actually presented and cannot jump to conclusions or make assumptions, as was done by the Administrative Law Judge in this case. This is the same evidentiary standard applied to any party that carries a burden of proof in a case. Following Respondent's argument that SCDMV had to fully develop her evidence for her, Respondent could have simply testified "Serving this suspension now would be much harder on me now than if the conviction was timely reported to SCDMV" and then SCDMV would lose the case unless SCDMV could provide evidence this assertion was untrue. This would be akin to a criminal defendant being required to prove his or her innocence. That is not the evidentiary standard in any case. Rather, the party that carries the burden of proof is always responsible for fully developing and fleshing out the evidence.

h) SCDMV had to Move for Reconsideration of the ALC's Final Order issued on February 6, 2020 Because the February 6, 2020 Final Order Required SCDMV to Perform Illegal Actions

Respondent also greatly criticizes SCDMV for moving for reconsideration of the ALC's Final Order issued on February 6, 2020. As set forth in detail in SCDMV's Motion for Reconsideration in Part (cited as if repeated verbatim in this brief), SCDMV

moved for reconsideration because the ALC's Final Order issued on February 6, 2020 ordered SCDMV to perform illegal actions. R. p. 32-39. For example, the ALC Final Order required SCDMV to issue a route restricted driver's license to Respondent and waive the statutorily mandated payment of reinstatement fees and filing of Form SR-22. *Id.* None of these things are permitted by state law, as set forth in detail in SCDMV's Motion for Reconsideration in Part. *Id.* In short, any time a court orders SCDMV to engage in illegal actions, SCDMV must either move for reconsideration (and explain the illegal actions ordered by the court) or must appeal. For Respondent to so harshly criticize SCDMV for moving for reconsideration of the February 6, 2020 Final Order in order to notify the court of the statutory prohibitions that prevented SCDMV from fully implementing the February 6, 2020 Final Order is simply remarkable.

CONCLUSION

For the reasons set forth above and in Appellant's Brief, the SCDMV respectfully requests that that ALJ orders reweighing the evidence in this case be vacated in their entirety and the OMVH's Final Order and Decision be affirmed.

Respectfully submitted,

s/Brandy A. Duncan
FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
BRANDY A. DUNCAN, SC Bar # 72052
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: 803.896.9900
Email: hearingsprocessingunit@scdmv.net
Attorneys for the Appellant

December 8, 2020
Blythewood, South Carolina

RECEIVED
Dec 08 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H. W. Funderburk, Jr., Administrative Law Judge

Case No. 2020-000980

Shante Michele Eugene . . . . Respondent,

v.

South Carolina Department of Motor Vehicles . . . . Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Reply Brief of Appellant complies with Rule 211(b) SCACR.

s/Brandy A. Duncan
Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
S.C. Department of Motor Vehicles

December 8, 2020
Blythewood, SC