

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSES – Suspension—Administrative order suspending license was supported by competent substantial evidence that a breath or urine test was impossible or impractical where the Petitioner was transported to the hospital for a head injury, and was not taken to jail until more than 3 hours after the investigating officer's request - Petition denied. *Hale v. Dept. of Highway Safety and Motor Vehicles*, No. 13-000045AP-88B (Fla. 6th Cir. App. Ct. October 4, 2013).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

CHRISTINE MARIE HALE,
Petitioner,

Case No. 13-0045AP-88B

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,**
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the court on the Petition for Writ of Certiorari of Christine Marie Hale. Petitioner's license was suspended for refusing to submit to a DUI blood test after being requested to do so by a law enforcement officer. Because the chronology and other facts in the record show that transporting the Petitioner for purposes of a breath or urine test was impossible or impractical, the Court finds the Petition should be denied.

Statement of Facts

At approximately 11:45 p.m. on February 27, 2013, Petitioner was involved in a single vehicle accident and transported to the Largo Medical Center by ambulance. When the investigating officer arrived at the hospital, he detected the odor of alcohol coming from Petitioner's breath. At 12:55 a.m. on February 28, the officer read Petitioner her Miranda rights, and shortly thereafter requested a blood sample for chemical testing. Petitioner refused, and still refused after the officer read her implied consent warnings at 12:59 a.m. At 2:40 a.m., some three hours after the accident, Petitioner was arrested and cited for both DUI and refusal to

submit to a DUI blood test. The record shows she was booked at the Pinellas County Jail at 4:14 a.m., some four and a half hours after the accident.

The Department suspended Petitioner's driving privileges pursuant to Section 322.2615, Florida Statutes. Following a formal review hearing on April 24, 2013, the hearing officer upheld the suspension based on Petitioner's refusal to submit to blood alcohol testing.

Standard of Review

In reviewing the Department's order, this Court is limited to determining (1) whether procedural due process has been accorded, (2) whether the essential elements of law have been observed, and (3) whether the administrative findings are supported by competent, substantial evidence. *Vichich v. DHSMV*, 799 So. 2d 1069, 1073 (Fla. 2nd DCA 2001). It is not the job or function of the circuit court to reweigh evidence and make findings when it undertakes review of an administrative decision. *DHSMV v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). The hearing officer assigned to hear the case by the department is "the trier of fact and in the best position to evaluate the evidence." *DHSMV v. Favino*, 667 So.2d 305, 309 (Fla. 1st DCA 1995).

Law and Analysis

Section 316.1932(1)(c), Florida Statutes (2012) authorizes an officer to request a blood test

for the purpose of determining the alcoholic content of the blood . . . if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages . . . and the person appears for treatment at a hospital, clinic, or other medical facility *and the administration of a breath or urine test is impractical or impossible.* (emphasis supplied)

Arguing it was not shown that breath or urine testing was "impractical or impossible," Petitioner relies on the case of *Dente v. DHSMV*, CRC10-0008AP-88B (Fla. 6th Cir. App. Ct. July 22, 2010). In *Dente*, the arresting officer arrived at the accident scene at 3:15 a.m. and the petitioner's refusal was at 4:49 a.m., so the elapsed time between the accident and the request for a blood was similar to that in this case. Unlike this case, however, in *Dente* the Petitioner had already been discharged from the hospital at the time of refusal. Clearly, it was not impractical in that case to proceed to other testing.

Another case in which this Court invalidated a suspension based on refusal of a blood test, though not cited by Petitioner, is *Curry v. DHSMV*, No. 04-0061AP-88B (Fla. 6th Cir. App.

Ct. November 22, 2004). In that case Curry was, similarly, transported to the hospital by ambulance after an accident. Unlike the instant case, there is no recitation of the amount of time Curry spent receiving treatment or waiting at the hospital, and we stated we could find “no evidence in the record to support” the conclusion that transporting Curry for breath or urine testing would be impractical. We characterized the Department’s arguments to the contrary as merely speculative.

Under more similar facts, this Court upheld a suspension in *Stone v. DHSMV*, No. 10-000052AP-88B (Fla. 6th Cir. App. Ct. April 7, 2011). In *Stone*, the petitioner was involved in an accident and transported to a medical center for treatment. “Unlike the circumstances in *Curry*,” we observed that when the investigating officer arrived, Stone “was sitting on a hospital bed and awaiting medical treatment.” Although Stone tried to refuse medical treatment, he was unable to follow simple commands and had difficulty standing. “More significantly,” we noted, “the record indicates he was transported...only after he was medically released.” We found these facts constituted sufficient evidence that a breath or urine test was impossible or impractical.

Here, the record indicates Petitioner had suffered a head injury in the accident. The timeline indicates she was either awaiting or receiving treatment when the officer requested the blood sample, at a time already more than an hour post-accident. One and one-half hours ensued thereafter before her arrest, and one and one-half half more before she was booked. Record evidence supports the hearing officer’s conclusion that medical treatment made timely transportation to a testing facility impractical.

Accordingly, the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers in St. Petersburg, Pinellas County, Florida, this ____ day of _____, 2013.

Original order entered on October 4, 2013 by Circuit Judges Amy M. Williams, Pamela A.M. Campbell, and Jack Day.

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