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

MATTHEW M. VENTRE,
Petitioner,

vs.

Ref. No.: 15-0053AP-88B
UCN: 522015AP000053XXXXCI

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

ORDER AND OPINION

Petitioner challenges the order cancelling his participation in the Special Supervision Services DUI program and causing the revocation of his restricted hardship license. Petitioner asserts that competent substantial evidence does not support the order because an acknowledgment of a history of alcohol use on a medical form is not evidence of any current use. For the reasons set forth below, the Petition for Writ of Certiorari is granted.

Facts and Procedural History

After his third DUI in January 2008, Petitioner's driver's license was revoked for ten years. In 2011, he obtained a restricted hardship license. A condition of reinstatement required Petitioner to be supervised by a DUI program and abstain from the use of all alcohol. In May 2015, Petitioner went to his primary care doctor. During that visit, the nurse practitioner completed a medical progress notes form, which, under "social history," indicated that Petitioner used alcohol socially. Petitioner asserts that when the nurse asked him whether he smoked, used drugs, or drank alcohol, he replied, "Yes I smoke and I *did* drink alcohol socially" (meaning that he used to drink, but not presently). The nurse then asked follow-up questions about smoking only.

In July 2015, Petitioner returned to the doctor and told her that "on my last office visit [the nurse] wrote that I drink socially but what I meant was that I did drink socially. I don't drink

anymore since January 7, 2008." The doctor wrote this statement down on a second medical progress notes form. Both sets of the doctor's progress notes were given to the DUI program, and Petitioner's enrollment in the program was cancelled "based on continued alcohol use." Pursuant to the program's rules, Petitioner appealed the cancellation to a second DUI program, which, after meeting with Petitioner, upheld the action taken by the first DUI program. Petitioner's license was then revoked, and he filed the instant Petition for Writ of Certiorari.

Standard of Review

The DUI program's actions are examined "under a three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Discussion

Although the standard of review requires this Court to only look for evidence that supports the decision below, the evidence is still required to be competent and substantial. *See Dep't of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1087 (Fla. 1st DCA 2002). Substantial evidence cannot "merely create[] a suspicion or [give] equal support to inconsistent inferences" *Id.* (citations omitted). Respondent asserts that two cases decided by this Court establish that the DUI program's order is supported by competent substantial evidence. In 2008, the Court found that competent substantial evidence supported the revocation of the petitioner's hardship license when the petitioner's blood test revealed that he took barbiturates. *Paul v. State of Florida, Dep't of Highway Safety & Motor Vehicles*, 15 Fla. L. Weekly Supp. 1043a (Fla. 6th Cir. App. Ct. Sept. 15, 2008). In 2012, this Court again found that competent substantial evidence supported a petitioner's hardship license revocation based on a police officer's sworn arrest affidavit that indicated the petitioner was intoxicated. *Maher v. State of Florida, Dep't of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 1119a (Fla. 6th Cir. App. Ct. June 19, 2013). However, unlike a

blood test indicating drug use or a sworn arrest affidavit, here a nurse simply wrote "social alcohol use" under "social history."

In 2011, this Court's Pasco County Appellate Panel reviewed a similar case in which the petitioner self-disclosed alcohol use on a "medical history" form when he went to the hospital. *Truxton v. State of Florida, Dep't of Highway Safety & Motor Vehicles*, No. 10-CA-005908-WS (Fla. 6th Cir. App. Ct. Jan. 28, 2011). The Court held that although the form was competent evidence because the information came from someone with direct knowledge (the petitioner), it was not substantial "due to its vagueness." The form did not indicate a time frame for "medical history" and "the common interpretation of history is the past," therefore making it unclear when the petitioner actually consumed alcohol. The Court granted the petition because "[t]o have been considered substantial, some evidence as to when [the petitioner] consumed alcohol was necessary." In the instant case, the evidence is not substantial because it does not indicate when Petitioner consumed alcohol, and it is less competent than the evidence in *Truxton* because here, the information was entered by the nurse and not Petitioner himself. Because the DUI program's order was not supported by competent substantial evidence, it is therefore

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is GRANTED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this 14th day of December 2015.

Original Order entered on December 14, 2015, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

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