NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

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

KIM ANNETTE BEININGEN,
Petitioner,

Case No.: 2018-000059AP-88A
UCN: 522018AP000059XXXXCI

vs.

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

Opinion Filed: _____

Petition for Writ of Certiorari from
Decision of Hearing Officer
Bureau of Administrative Reviews
Department of Highway Safety and
Motor Vehicles.

Leslie M. Sammis, Esq.
Attorney for Petitioner

Christine Utt, General Counsel
Mark L. Mason, Asst. General Counsel
Attorneys for Respondent

PER CURIAM

ORDER AND OPINION

Petitioner, Kim Annette Beiningen, seeks certiorari review of the Department of Highway Safety and Motor Vehicle Hearing Officer's Final Order entered August 29, 2018 which permanently revoked Petitioner's driving privileges for Four or more DUI's (Driving Under the Influence) and the DHSMV Order of Revocation dated August 2, 2018. The Court reviews the underlying Final Order to determine whether Petitioner was afforded due process, whether the hearing officer's decision observed the essential requirements

of law and whether competent, substantial evidence supports the hearing officer's decision. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). For the reasons set for below, the Petition for Writ of Certiorari is denied.

FACTS AND PROCEDURAL HISTORY

Petitioner's driving privileges were suspended by court order for one year following a conviction for DUI in Pinellas County beginning on January 17, 2017. On August 2, 2018, the Department of Highway Safety and Motor Vehicles (Department) sent an Order of Revocation notifying Petitioner that effective January 19, 2017 her driving privileges were permanently revoked in the State of Florida. Petitioner's driving record also reflects that on July 27, 2018, the Department entered a notation on Petitioner's driving record for a permanent revocation for "DHSMV ACTION" for "4 OR MORE DUIS REVOCATION IS A RESULT OF VIOLATION NUMBER 13, 15, 16, 17, 18, 19" Number 13 is the Pinellas County DUI conviction effective January 19, 2017. The other numbers (15-19) refer to DUI convictions, resulting in a disposition of guilty, from the State of Minnesota:

1. Number 15 has an offense date of July 20, 2016 with a disposition date of September 25, 1987.
2. Number 16 has an offense date of March 24, 1988 with a disposition date of May 5, 1988.
3. Number 17 has an offense date of September 6, 1988 with a disposition date of September 16, 1998.
4. Number 18 has an offense date of November 9, 1996 with a disposition date of November 26, 1996.
5. Number 19 has an offense date of July 9, 1996 with a disposition date of November 26 1996.[1]

Petitioner requested a show cause hearing as authorized by Fla.Stat. §322.27(5) (a) which provides "any person whose license is revoked may, by petition, to the department, show cause why his or her license should not be revoked." Petitioner

[1] The last offenses, number 18 and 19 were separate offenses resulting in convictions entered the same day. Florida law treats the earlier offense date as the earlier conviction for the purposes of enhancing a suspension or revocation period. Fla.Stat.§322.28(2)(a)(2); *Boulineau v. Department of Highway Safety and Motor Vehicles*, 247 So.3d 660 (Fla. 1st DCA 2018).

also requested, through a public records request, any and all documents/record to support the Department's action of the permanent revocation. Petitioner received 12 pages from the Department which included the Petitioner's Florida Driving Record and CDL Helpdesk printout related to Petitioner's Minnesota Driving Record. The show cause hearing was held August 27, 2018. Petitioner objected to the Florida Driving Record and CDL Helpdesk printout were not admissible for the following reasons; they were not signed, notarized or certified, the documents were inadmissible hearsay, the documents did not reflect a "guilty" finding, only a "conviction date" and the notations for the out of state convictions were over twenty years old and thus barred by laches, estoppel or statute of limitations. The Hearing Officer overruled all Petitioner's objections. Petitioner's position at the August 27, 2018 hearing was that the hearing was "to show cause why the Department does not have sufficient evidence to uphold the suspension. So this is the driver's opportunity to see what do you have." The hearing officer stated the purpose of the hearing was for the Petitioner "to provide evidence or testimony as to why the record is incorrect. It's not made to invalidate the suspension for this hearing. It's whether you provide sufficient evidence to show that the record is incorrect." The Final Order was entered August 28, 2018 stating:

> "The Department of Highway Safety and Motor Vehicles revoked the driving privilege of Kim Annette Beiningen, effective January 19, 2017, for Four or more DUI's as authorized by section 322.27F.S.
>
> A hearing was conducted as noticed on August 27, 2018 to afford Petitioner the opportunity to submit evidence to show her driving privileges should not have been revoked.
>
> Upon review of the Department's records and information received at the review, this officer finds, that there is competent substantial evidence to find that the Petitioner's driving privilege was properly revoked by the Department. The Department's Order revoking the Petitioner's driving privilege is affirmed.
>
> Appeal of this order may be initiated by filing a petition for writ of certiorari in the circuit court within 30 calendar days of this order by following the procedure specified in section 322.31, F.S."

[i]STANDARD OF REVIEW

This Court's standard of review for first-tier review of an administrative decision is limited to:

1. Whether due process was accorded

2. Whether the essential requirements of law were observed and
3. Whether the administrative findings and judgment were supported by competent, substantial evidence.

DISCUSSION

Petitioner raised the following issues in her initial brief. Petitioner states the Department departed from the essential requirements because it is not authorized under Fla.Stat. §322.27 to order a permanent revocation for four or more DUI's, the Hearing Officer cited to the incorrect statute in her Final Order, the Department relied upon uncertified records of Petitioner's driving history, Fla.Stat.§322.27 and 322.28(d) are unconstitutional on their face and finally that the actions of the Department are barred by the Statute of Limitation, Equitable Doctrines of Estoppel or Waiver or Laches.

Florida is a member of the Drivers License Compact, which is an agreement among the states providing that a suspension or revocation of a driving privilege in one state will result in a suspension or revocation of a driving privilege in the driver's home state. The Drivers License Compact has been codified in Fla.Stat.§322.44. The statute requires Florida to enter into agreements for the exchange of driver license records with other jurisdictions for the purposes of the Commercial Driver's License Information System or the National Driver Register. Fla.Stat.§322.65. As such, the Department is authorized to suspend a driving privilege upon conviction for certain offenses in another state. Fla.Stat.§322.27 specifically lists the offenses from another state the Department may consider in revoking a driving privilege.

Petitioner's license was permanently revoked based upon her driving record showing four or more DUI convictions. The Department was authorized to take action on a license without a preliminary hearing upon a showing of its records that the licensee has committed an offense in another state, which, if committed in this state would be grounds for suspension or revocation. Fla.Stat.§322.27. The show cause hearing is authorized by Fla.Stat.§322.27(5)(a) which states that "any person whose license is revoked may, by petition to the department, show cause why his or her license should not be revoked". In the case at bar, Petitioner argues the Department has the burden of showing why the Petitioner's license was revoked. The Department stated the purpose

of the hearing "was to provide evidence or testimony as to why the record is incorrect. It's not made to invalidate the suspension for this hearing. It's whether you provide sufficient evidence to show that the record is incorrect."

The Department is able to rely upon the documents furnished by Minnesota as to Petitioner's driving record under the Drivers License Compact. Florida is considered the home state and Minnesota is the reporting state. Article III of the Driver License Compact imposes no duty on the reporting state to submit certified court documents to the one state to prove the veracity of its conviction report. While reports of convictions in abstracts from other states that are not certified or notarized are sometimes challenged by drivers, it is not appropriate for a circuit court to quash orders entered by the Department or require the best evidence of underlying convictions. *Vichich v. DHMSV*, 799 So.2d 1069 (Fla. 2nd DCA 2001). See also *DHMSV v. Sperberg*, 257 so.2d 560 (Fla. 3rd DCA 2018),"Florida courts have held that a circuit court acting in its appellate capacity on first-tier certiorari review, fails to apply the correct law when the circuit court goes beyond the appropriate standard/scope". *Denson v State,* 711 so.2d 1225 (Fla 2nd DCA 1998).

Petitioner asserts the permanent revocation was entered in error as the Hearing Officer cited the incorrect statute in the Final Order and this was an essential departure from the law. The Hearing Officer cited to Fla.Stat.322.27, not Fla.Stat.§322.28. The Department argues that Fla.Stat.322.27(1)(e) provides "if someone commits an offense in another state that would be grounds for suspension or revocation in this state, the Department may take action on the license without preliminary hearing". The Final Order refers to the revocation of Petitioner's driving privileges "for Four or more DUI's

Petitioner contends "the Department only used uncertified records to support any showing of the Petitioner's four or more DUIs which did not provide enough evidentiary support for finding that competent substantial evidence supported Petitioner's drivers license revocation". Petitioner cites to *Sperberg v. Florida Department of Highway Safety and Motor Vehicles*, 26 Fla. L. Weekly Supp. 4a (2018). *Sperberg* was overturned after Petitioner filed the Petition for Writ of Certiorari. *Department of Highway Safety and Motor Vehicles v. Sperberg*, 257 So2d 560 (Fla. 3rd DCA 2018). In *Sperberg*, the

Department permanently revoked Mr. Sperberg's Florida driving privileges based on records that Mr. Sperbeg had four DUI convictions in the State of Virginia. The Department of Highway Safety and Motor Vehicles attached Mr. Sperberg's uncertified driving transcript which he argued was inadmissible under the best evidence rule. The Circuit Court granted the petition for Writ of Certiorari and the Department appealed. Florida courts have held that a circuit court, acting in its appellate capacity on a first-tier certiorari review, fails to apply the correct law when the circuit court goes beyond the appropriate standard/scope of review. *Miami-Dade County v. Omnipoint Holdings, Inc*. 863 So.2d 195 (Fla. 2003). The 3rd District court cautioned "This Court must exercise caution not to expand certiorari jurisdiction to review the correctness of the circuit court's decision" citing *Futch v. Fla. Dep't Highway Safety & Motor Vehicles*, 189 So.3d, 131, 132 (Fla. 2016). The Department may suspend the license of any person, without preliminary hearing upon a showing of its record or other sufficient evidence that the licensee has committed an offense in another state which, if committed in this state, would be grounds for suspension or revocation. Fla.Stat. 322.27(1) (d). In the case at bar, the Department relied upon the out of state driving record of Petitioner, of which the Petitioner was aware and had been provided pursuant to her public records request to the Department.

Petitioner's third issue is Florida Statute §322.27 and §322.28(d) are unconstitutional on their face as vague, an improper delegation of legislative authorization, a violation of due process, a violation of article I, section 9 and a violation of article II section 3 of the Florida Constitution. Assuming arguendo the Petitioner is correct, a petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance. *Miami-Dade County*, 863 So.2d at 199. Petitioner argues that the DHSMV official are left without any standards for guidance. Fla.Stat. §322.27 specifically provides that the department may take action on a license without a preliminary hearing upon a showing of its records that the licensee has committed an offense in another state which, if committed in this state, would be grounds for suspension or revocation. The Department had records from the State of Minnesota reflecting five prior convictions for DUI in Minnesota and it relied upon those records in permanently revoking Petitioner's driving privileges.

Petitioner's final argument is that the revocation based on DUI convictions that occurred, if at all, more than 20 years ago is barred by the Statute of Limitation, or alternatively, the Equitable Doctrines of Estoppel or Waiver or Laches. There is no prescribed time limitation or period in which the Department must take action to suspend or revoke an individual's driving privileges. *Department of Highway Safety and Motor Vehicles v. Hagar*, 581 So.2d 214 (Fla. 5th DCA 1991). Fla. Stat.§322.28(2) (d) provides that the convictions count toward a permanent revocation provided at least one of the convictions for a violation of s. 316.193 or former 316.1931 was for a violation that occurred after 1982. In this case, Petitioner's out of state convictions were all after 1982. Additionally, as noted in *Jennifer Lynn Wallace v. State Department of Highway Safety and Motor Vehicles* (Fla. 12th Jud. Circ. May 8, 2018) referring *to Landes v. Department of Professional Regulation*, 441, So.2d 686 (Fla. 2nd DCA 1983), civil and criminal statutes of limitation are inapplicable to administrative license revocation proceedings absent legislative authority.

Petitioner cites to *Mari Beth Fury v. State Department of Highway Safety and Motor Vehicles,* 25 Fla. L. Weekly Supp. 421 a. (Fla. 13th Jud. Cir. June 14, 2017) in which the circuit court found that a statute of limitation applied to the suspension of a drivers license by fraud. In *Fernando Hincapie Escobar v Department of Highway Safety and Motor Vehicles*, 2017-CA-008090 (Fla. 13th Cir. Ct., June 15, 2018), the court declined to apply the *Fury* decision, noting that neither *Landes* nor *Sarasota County v. National City Bank of Cleveland, Ohio*, 902 So.2d 233, 234 (Fla. 2nd DCA 2005) which cautioned against equating an administrative proceeding with a civil action, where presented to the Fury Court. This Court is mindful of the *Fury* decision and declines to apply it to this case.

CONCLUSION

The Court is not to reweigh the evidence but is to determine only if competent substantial evidence supports the Hearing Officers findings. In reviewing all the evidence of record, the Court concludes that reliable, competent, substantial evidence supports the

Hearing Officer's Final Order and the permanent revocation of Petitioner's driving privileges by the Department. The Petition for Writ of Certiorari is denied.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this _8th___ day of August, 2019.

TRUE COPY

Original Order entered on August 8, 2019, by Circuit Judges Jack R. St. Arnold, Patricia Muscarella, and Keith Meyer.

Copies furnished to:

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