

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 30, 2013

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THIS WEEK:

• Jurisdiction; Notice of Hearing

Jurisdiction; Notice of Hearing

Georgia Dep't of Driver Servs. v. Appling, A13A0908 (8/19/13)

In a discretionary appeal, the Georgia Department of Driver Services (the "Department") appealed from the superior court's reversal of an administrative law judge's ("ALJ") decision to suspend Robert Appling's driver's license. The Department appealed on several grounds, including that the superior court did not have jurisdiction to hear the appeal and that the trial court's order was void because the Department did not have proper notice of the hearing. The facts showed that after his second arrest for driving under the influence, Appling's driver's license was suspended pursuant to O.C.G.A. § 40-5-63. Two months later, Appling applied for and received a limited driving permit approving him to drive "[t]o and from work, school, [and] medical." Appling was subsequently cited for speeding, and his limited driving permit was revoked pursuant to O.C.G.A. § 40-5-64(g). A hearing concerning both the suspension of Appling's license and the revocation of his limited driving permit was held before an ALJ on May 29, 2012. The ALJ upheld the suspension and revocation in an order dated June 18, 2012. Appling then filed a motion for reconsideration, which was denied by the ALJ on July 12, 2012.

Appling then filed a petition for immediate judicial review with the superior court on August 14, 2012, more than thirty days after the ALJ entered an order denying

his motion for reconsideration. A hearing on Appling's petition for immediate judicial review was held on September 7, 2012. No one from the Department or the Attorney General's office representing the Department was present at the hearing, and the appellate record did not contain a rule nisi or other indication that notice of the hearing was sent to the Department or the Attorney General's office. On September 11, 2012, without knowledge that a hearing had already been held, the Attorney General filed an entry of appearance and a motion to dismiss the petition for judicial review. However, the superior court issued an order on September 24, 2012, finding in favor of Appling and directing the Department to immediately reinstate Appling's licenses. The superior court's order did not address the Department's motion to dismiss.

The Court agreed with the Department's contention that Appling's failure to file his petition for immediate judicial review with the superior court within 30 days after the ALJ's denial of his motion for reconsideration meant that the trial court was without jurisdiction to consider his petition. Under O.C.G.A. § 40-5-66(a), any decision by the Department can be appealed provided that "[s]uch appeal . . . must be filed within 30 days from the date the department enters its decision. . . ." Here, Appling did not file his petition for judicial review with the superior court until 31 days from the date of the denial of his motion for reconsideration. Thus, the Court held, the superior court was without jurisdiction to consider Appling's petition.

The Court also held that the superior court improperly granted full relief to Appling without proper notice of an evidentiary hearing to the Department. O.C.G.A. § 9-10-

2(1) provides that certain judicial actions taken in cases in which the State is a party are void unless “it affirmatively appears as a matter of record” that the Attorney General was given five days written notice of “the particular trial, hearing, or other proceeding” that resulted in the judicial action. This notice is “an absolute condition precedent” to the enumerated judicial action. The Court held that since there was nothing in the appellate record affirmatively stating that the Department or the Attorney General’s office was notified or waived notice of the hearing, the superior court’s judgment reinstating Appling’s license was void.