STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0810

Jason Michael Vonderharr, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed June 17, 2008
Affirmed
Willis, Judge

Lac Qui Parle County District Court
File No. 37-CV-07-65

Ronald R. Frauenshuh, Jr., 129 Northwest Second Street, Ortonville, MN 56278 (for appellant)

Lori Swanson, Attorney General, David Koob, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent)

Considered and decided by Willis, Presiding Judge; Johnson, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant challenges the district court's decision sustaining the cancellation of his restricted driver's license for violating a requirement that he totally abstain from the use of alcohol. We affirm.

FACTS

Appellant Jason Michael Vonderharr was convicted of three alcohol-related driving violations between 1995 and 1997. As a result, respondent commissioner of public safety cancelled Vonderharr's driver's license as inimical to public safety in February 1997. In March 1998, after having completed rehabilitation requirements, Vonderharr signed a "Statement Attesting to Abstinence From Alcohol and Controlled Substances," and the commissioner reinstated his license subject to a restriction that he totally abstain from the use of alcohol.

On March 30, 2007, Vonderharr was driving near Marshall when his vehicle became stuck in a highway median. A state highway patrol officer stopped to investigate and assisted Vonderharr in getting his vehicle out of the median. During the encounter, the officer ran a driver's-license check and learned that Vonderharr had a license restriction requiring total abstinence from the use of alcohol. When the officer asked Vonderharr if he had been drinking, Vonderharr admitted that he had drunk one beer. The officer administered a preliminary breath test, which showed that Vonderharr's alcohol concentration was 0.011. The officer notified the commissioner, and the

commissioner cancelled Vonderharr's driver's license in November 2006 for having violated the total-abstinence restriction on his license.

In January 2007, Vonderharr filed a petition under Minn. Stat. § 171.19 (2006) to have his driver's license reinstated. At the hearing on the petition, Vonderharr admitted that he had consumed alcohol on March 30, 2006, but claimed that he was given no notice that the total-abstinence restriction was a "lifetime" restriction and that the failure to give him such notice violated his due-process rights. The district court disagreed and sustained the commissioner's cancellation of Vonderharr's license. Vonderharr appeals.

D E C I S I O N

Vonderharr's argument on appeal is that he was not given adequate notice that the restriction on his driver's license, which required that he abstain from the use of alcohol, is a "lifetime restriction" and that this lack of notice denied him his constitutional right to due process. The issue of whether an individual has been denied due process is reviewed de novo. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

The commissioner may reinstate a license that has been cancelled because a driver has had three or more alcohol-related violations within ten years, provided that the driver has completed "rehabilitation" and the reinstatement is conditioned on the "continued abstinence from the use of alcohol." Minn. R. 7503.1600 (2007); *see also Askildson v. Comm'r of Pub. Safety*, 403 N.W.2d 674, 677 (Minn. App. 1987) (recognizing the commissioner's authority to require total abstinence from alcohol as a condition of reinstatement), *review denied* (Minn. May 28, 1987). As a requirement of rehabilitation, the driver must sign a statement acknowledging that he is aware that abstinence from the

use of alcohol is a condition of licensure. Minn. R. 7503.1700, subp. 4 (2007). The statement includes the date on which the driver last consumed alcohol, as well as an advisory that the license will be cancelled if the commissioner has sufficient cause to believe that the driver has consumed alcohol after the documented date of abstinence. *Id.*, subps. 4, 6 (2007).

Vonderharr claims that the commissioner "failed to provide adequate notice to put [him] on notice that certain conduct would cause a loss of [his] license and criminal actions by the state." He claims that without having been notified "at the time of the reinstatement [of his license] of potential criminal [penalties] and significant loss of property rights . . . as long as ten or more years [later]," the commissioner's cancellation of his license was arbitrary and capricious.

The arguments in Vonderharr's brief are unclear and do not cite authority that is directly on point. The cases that he does cite are relevant to his due-process claim only to the extent that they stand for the general proposition that a person is entitled to due process, which includes notice, before being deprived of an important property interest. But they do not address the specific issue that Vonderharr raises—that is, whether the notice he was given adequately informed him of the duration of the total-abstinence restriction. Because of the way Vonderharr framed the issue in his brief and at oral arguments, we understand his argument to be that the total-abstinence restriction on his license violates the due-process requirement of definiteness because the commissioner failed to adequately inform him that consuming alcohol nine years after his license was reinstated could result in cancellation of his license.

This court has previously considered, in the context of a criminal appeal by a defendant who was convicted of driving a car in violation of a restricted license, whether a total-abstinence restriction comported with the due-process requirement that the terms of the restriction be sufficiently definite to inform the defendant of "what she can or cannot do." *See State v. Tofte*, 563 N.W.2d 322, 324-25 (Minn. App. 1997). This court concluded that the terms of the restriction on the defendant's license "clearly informed [her] as to what is prohibited and the consequences of violating the restriction[]," and, thus, the restriction was "not void for uncertainty." *Id.* at 325. In reaching this conclusion, this court relied on the fact that the restricted license that the defendant had been issued clearly stated that any use of alcohol would invalidate the license and that the defendant had signed an acknowledgement declaring: "'I understand that if I fail to maintain total abstinence all driving privileges will be cancelled and denied indefinitely.'" *Id.* Although here, the issue of whether the terms of a total-abstinence restriction are sufficiently definite arises in a civil action regarding a cancellation of a license rather than in a criminal action, we conclude that the same analysis applies.

Based on the record evidence, we agree with the district court that Vonderharr was adequately informed of the duration of the total-abstinence restriction. Vonderharr signed a statement attesting to his abstinence, which included the following declarations: (1) "I last consumed alcohol . . . on [January 25, 1997]"; (2) "I understand that if I use or consume alcohol or controlled substances after my abstinence date, my driving privileges will be or will remain canceled and denied"; and (3) "I understand that abstinence is required at all times, even if a motor vehicle is not involved." In addition, Vonderharr

acknowledged at the hearing that the restriction appeared on the back of his driver's license and did not specify any end date and that he had never been "given anything" by the commissioner indicating that there was an end date to the restriction.

Because Vonderharr was adequately informed that the total-abstinence restriction on his license was permanent, we conclude that Vonderharr's due-process rights were not violated.

Affirmed.