STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1299

Paige Suzanne Severinson, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 17, 2008
Reversed
Willis, Judge

Hennepin County District Court
File No. 27-CV-06-22102

James M. Ventura, 1000 Twelve Oaks Center Drive, Suite 100, Wayzata, MN 55391 (for respondent)

Lori Swanson, Attorney General, Peter D. Magnuson, Matthew Frank, Assistant Attorneys General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for appellant)

Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Shumaker, Judge.

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

WILLIS, Judge

Appellant commissioner challenges the decision of the district court rescinding the revocation of respondent's driver's license. Appellant argues that the district court erred

by concluding that the Hennepin County court system's scheduling policy for implied-consent hearings on petitions for judicial review (1) fails to comply with the timing requirement of Minn. Stat. § 169A.53, subd. 3(a) (2006) and (2) violated respondent's due-process right to prompt judicial review. We reverse.

FACTS

This is one of a series of recent challenges regarding the scheduling in Hennepin County and Ramsey County of implied-consent hearings on petitions for judicial review of license revocations. The facts are not disputed.

On December 2, 2006, respondent Paige Suzanne Severinson was arrested for driving while impaired. The arresting officer gave Severinson a notice and order of revocation of her driver's license and issued her a seven-day temporary license. On December 8, Severinson filed a petition for judicial review of her license revocation, and her temporary license expired the next day.

On December 14, the Hennepin County District Court administrator informed Severinson by letter that, in accordance with a Hennepin County standing order, she would be granted, upon written request, a stay of the balance of her revocation until the related criminal case against her was resolved and an implied-consent hearing was held. On December 15, Severinson requested such a stay, which the district court granted that same day, and, three days later, appellant Commissioner of Public Safety stayed the balance of the revocation.

The criminal case against Severinson was resolved in late January 2007, and her implied-consent hearing was held on March 26, 2007, which was 108 days after she had

petitioned for judicial review. The district court rescinded the revocation of Severinson's license, concluding that the 108-day delay between the filing of the petition for judicial review and the implied-consent hearing violated Minn. Stat. § 169A.53 (2006) and Severinson's due-process rights. The commissioner appeals.

D E C I S I O N

I. Severinson has standing to challenge Hennepin County's scheduling policy for implied-consent hearings.

As an initial matter, the commissioner argues that Severinson lacks standing to challenge Hennepin County's policy of not scheduling implied-consent hearings until after resolution of the related criminal cases because she suffered no injury in fact. This court recently held that an individual similarly situated to Severinson had standing to challenge a similar scheduling policy. *See Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 873 (Minn. App. 2008), *review denied* (Minn. May 20, 2008). We conclude, therefore, that Severinson has standing to challenge Hennepin County's scheduling policy.

II. Hennepin County's policy for scheduling implied-consent hearings later than the 60-day requirement of Minn. Stat. § 169A.53, subd. 3(a) (2006) does not warrant rescinding the revocation of Severinson's license.

An individual whose driver's license has been administratively revoked under Minn. Stat. § 169A.52 (2006) may petition for judicial review of the revocation. Minn. Stat. § 169A.53, subd. 2(a) (2006). A hearing on that petition "must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review." *Id.*, subd. 3(a) (2006). The filing of the petition does not

automatically stay the revocation but the district court "may order a stay of the balance of the revocation . . . if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper." *Id.*, subd. 2(c) (2006).

The commissioner argues that the district court erred by rescinding the revocation of Severinson's license on the ground that Hennepin County's scheduling policy failed to comply with the 60-day requirement in section 169A.53. In *Riehm*, this court held that the 60-day requirement in section 169A.53 is directory, rather than mandatory, and, thus, the failure to comply with that requirement does not warrant rescinding the revocation of an individual's license absent proof that the failure resulted in prejudice to the individual. 745 N.W.2d at 876. Here, Severinson requested and received a stay of the revocation, which limited the time that she was without her license to nine days, and the stay remained in effect until her criminal case was resolved and her implied-consent hearing was held. Under these circumstances, Severinson suffered no prejudice resulting from the failure to comply with section 169A.53 that would entitle her to a rescission. *See id.* (concluding that an individual had not suffered prejudice warranting a rescission because he could have requested and received a stay of his license revocation); *see also Szczech v. Comm'r of Pub. Safety*, 343 N.W.2d 305, 308 (Minn. App. 1984) (concluding that the remedy for an individual whose implied-consent hearing is not held within 60 days is a stay of the revocation temporarily reinstating the license and not a rescission and that the availability of the stay allows the driver to limit any prejudice).

III. Hennepin County's policy for scheduling implied-consent hearings does not violate Severinson's due-process rights.

Lastly, the commissioner argues that the district court erred by concluding that Severinson's due-process rights had been violated. In *Bendorf v. Comm'r of Pub. Safety*, the supreme court considered whether an individual's due-process rights had been denied by a delay in the scheduling of his implied-consent hearing. 727 N.W.2d 410, 416 (Minn. 2007). In concluding that there had been no due-process violation, the supreme court explained that because the individual had "availed himself of hardship relief by moving for a stay of his revocation," which allowed him to "maintain his driving privileges throughout the process of judicial review," the "minimal" impact of a nine-day revocation "does not outweigh the state's compelling interest in maintaining an administrable system to keep its highways free from impaired drivers." *Id.* at 416-17. Here, as was true for Bendorf, Severinson was without her driver's license for only nine days. And as was the case for Bendorf, this is not sufficient prejudice to constitute a violation of Severinson's due-process rights.

Severinson maintains that her case is distinguishable from *Bendorf* because, unlike the scheduling policy at issue in *Bendorf*, Hennepin County's policy makes no effort to schedule hearings on petitions for judicial review within 60 days after the filing of such a petition. Again, this court's recent decision in *Riehm* is controlling. In *Riehm*, this court rejected the same argument and held that Ramsey County's scheduling policy, which the court explained is essentially the same as Hennepin County's, did not "deprive a driver of

due process as long as the balance of the driver's license revocation is capable of being stayed pending the implied-consent hearing." 745 N.W.2d at 877.

IV. It is unnecessary to address the merits of Severinson's motion to strike.

The commissioner's appendix includes a newsletter article that reported on the goals and effectiveness of Hennepin County's policy for scheduling implied-consent hearings. Severinson moves to strike this article and the references to it in the commissioner's brief as being beyond the record on appeal. "Appellate courts may not consider matters outside the record on appeal and will strike references to such matters from the parties' briefs." *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007). We did not rely on the information in the article or the commissioner's references to it in arriving at our decision. Accordingly, it is unnecessary to address the merits of Severinson's motion, and we decline to do so. *See Berge v. Comm'r of Pub. Safety*, 588 N.W.2d 177, 180 (Minn. App. 1999) (finding it unnecessary to address the merits of a motion to strike portions of a brief that were not relied on in reaching a decision).

Reversed.