

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TONYA MECCARIELLO,  
  
Petitioner,

Appellate Division (Civil)  
Case No.: 502010CA014372XXXXMB  
Division "AY"

Opinion/Decision filed: **AUG 24 2010**

v.

Appealed from the Department of Highway  
Safety and Motor Vehicles

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,

Respondent.

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Opinion filed:

**AUG 24 2010**

Appeal from the Department of Highway Safety and Motor Vehicles.

For Petitioner: Eric Schwartzreich, Esq.  
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For Respondent: Heather R. Cramer, Esq.  
Assistant General Counsel  
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PER CURIAM.

Tonya Meccariello seeks review of the order sustaining the suspension of her driver's license. We find that the hearing officer's decision was not based on competent, substantial evidence, and therefore remand this matter in order for the hearing officer to conduct a new

evidentiary hearing and determine whether the suspension or disqualification is supported by a preponderance of the evidence.

On March 31, 2010, the Department of Highway Safety and Motor Vehicles ("DHSMV") sent Meccariello an Order of License Revocation, Suspension, or Cancellation. The order stated that Meccariello's driver's license had been suspended effective April 20, 2010 for a period of one year because she committed an offense for which mandatory revocation/suspension of license is required upon conviction. Meccariello requested a formal review, which was held on May 12, 2010 before Hearing Officer Ann Gosier. At the hearing, Hearing Officer Gosier asked Meccariello what evidence she would like to present. Meccariello, in turn, asked what records or support the DHSMV had in support of its suspension of her driver's license, and argued that the burden was on the DHSMV to establish that her license was validly suspended. Hearing Officer Gosier sustained the suspension and this timely Petition for Writ of Certiorari followed.

Chapter 322 does not specify the scope of the hearing officer's required record review in this type of case. Cf. § 322.2615(6), Fla. Stat. (2010) (pertaining to formal reviews where the driver either refused to submit to a breath or blood alcohol test, or tested above the legal limit). The DHSMV is authorized to suspend the license of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee has committed an offense for which mandatory revocation of license is required upon conviction. § 322.27(1)(a), Fla. Stat. (2010). Therefore, the DHSMV argues that per section 322.27(1)(a), the final review hearing only required a showing of its records that Meccariello committed an offense for which mandatory revocation of license is required upon conviction. However, the plain language of section 322.27(1) merely authorizes such a suspension *without preliminary hearing*, and does not in any way codify the requirements of a final review hearing. Thus, section 322.27(1)(a) merely

mandated Meccariello's initial drivers' license suspension without a preliminary hearing, but that section is inapplicable to the final review hearing.

Florida Administrative Code Rule 15A-6.013 regulates the procedure of a DHSMV formal review hearing, including the introduction of evidence. It provides, in pertinent part, that the hearing officer shall determine whether the suspension or disqualification is supported by a preponderance of the evidence. Fla. Admin. Code R. 15A-6.013(7). In its Response, the DHSMV states that its records contain evidence that Meccariello committed the offense of DUI manslaughter, DUI manslaughter failure to render aid, and leaving the scene of an accident involving death. That evidence consists of: three Florida Uniform Traffic Citations, the information from the Office of the State Attorney; a request from the State Attorney that the Department suspend Meccariello's driver's license, and an arrest affidavit.<sup>1</sup> These documents would have been competent, substantial evidence to support Hearing Officer Gosier's suspension pursuant to section 322.27(1)(a). However, it is clear from the transcript of the hearing that none of these documents were considered by Hearing Officer Gosier:

**Mr. Schwartzreich:** ... And I ask if you have any records or anything to support at this juncture a suspension or what's in your file in order to validate the suspension that's been entered into evidence so there's a record of why there is a suspension and how it is that you know she – what proof you have that she committed this offense.

**The Court:** Okay. At this time all I have is the driving record, which indicates that her license was suspended.  
**Normally in this process the driver is required to bring in a crash report which we don't have on record at this time.**

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<sup>1</sup> None of these materials were made part of the record reviewed by Hearing Officer Gosier, and they are therefore outside the scope of what the Court may review. See Fla. R. App. P. 9.190(c)(4) ("Appendices may not contain any matter not made part of the record in the lower tribunal."); see also *Darnley v. DHSMV*, 13 Fla. L. Weekly Supp. 116a (Fla. 6th Jud. Cir. 2005) (holding that the circuit court cannot consider the documents attached to the DHSMV's Response, as those documents were not presented to the hearing officer for consideration).

And the purpose of the hearing is for the client of the driver to present evidence as to why she feels she should not be suspended at this time.

Thus, it is clear that the only "evidence" reviewed by the Hearing Officer was the driving record itself, distinguishing this case from *Elliott v. DHSMV*, 3 Fla. L. Weekly Supp. 11a (Fla. 9th Jud. Cir. 1994), which the DHSMV offered in support of their argument that Hearing Officer Gosier's decision was supported by competent, substantial evidence. The Ninth Judicial Circuit denied the petition for writ of certiorari because it found that there was competent substantial evidence in the record, which consisted of an accident report and two Uniform Traffic Citations charging the driver with DUI manslaughter and vehicular homicide. *Id.* In the instant case, however, Hearing Officer Gosier did not review anything other than the driving record. In *Darnley v. DHSMV*, the Sixth Judicial Circuit likewise determined that the record did not contain competent substantial evidence because the hearing officer only reviewed a printout of the driving record. 13 Fla. L. Weekly Supp. 116a (Fla. 6th Jud. Cir. 2005). The DHSMV's argument that the driving record is itself competent substantial evidence is circular, as the driving record cannot be competent, substantial evidence in support of the driving record.

Hearing Officer Gosier did not rely on competent substantial evidence in support of the suspension; rather, she solely relied upon the fact that the driving record indicated that Meccariello's license was suspended, and then improperly shifted the burden of proof to Meccariello to offer evidence to demonstrate why the suspension was improper. Rule 15A-6.013 requires that the suspension be supported by a preponderance of the evidence, not that the driver must show that the suspension was improper by a preponderance of the evidence. Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The order sustaining Meccariello's driver's license suspension is quashed, and the matter is remanded to conduct a new evidentiary hearing.

BARKDULL, COX, and McCARTHY, JJ., concur.