

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

JULIA ANN NELSON

Petitioner,

APPELLATE DIVISION (CIVIL)

CASE NO.: 502009CA013822XXXMB

Division: 'AY'

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES

Respondent.

Opinion filed:

October 5, 2009

✓ **Appeal from the Department of Highway Safety and Motor Vehicles**

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✓ For Respondent: Heather Rose Cramer, Esq.
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This Petition for Writ of Certiorari challenges the Department of Highway Safety and Motor Vehicles' ("DHSMV") order suspending Julia Nelson's driver's license. Nelson was adjudged incapacitated by the Honorable Jack Cook of the Fifteenth Judicial Circuit on December 12, 2008. The scope of the incapacity was limited, and Judge Cook only removed Nelson's rights to: 1) contract, 2) sue and defend lawsuits, and 3) manage property or to make any gift or disposition of property. Nelson was found limitedly incapacitated due to her agoraphobia and panic attacks. The form order included the specific option to remove Nelson's right to have a driver's license, but Judge Cook did not remove that right. Nelson received an

Order of License Revocation, Suspension, or Cancellation from the DHSMV shortly after she was adjudged incapacitated by Judge Cook.

Competent substantial evidence is defined as evidence that will establish a substantial basis of fact from which the fact at issue can be reasonably inferred and accepted as adequate by a reasonable mind. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

DHSMV suspended Nelson's license pursuant to section 322.27(1)(c)(2008), which provides:

- (1) Notwithstanding any provisions to the contrary in chapter 120, the department is hereby authorized to suspend the license of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee:
...
(c) is incompetent to drive a motor vehicle

§ 322.27(1)(c), Fla. Stat. (2008).

Judge Cook specifically did not find a sufficient basis had been established to remove or suspend Nelson's right to have a driver's license in his order adjudging her incapacitated. Judge Cook based his limited incompetency findings upon the reports of the examining committee.

Based on the record below, there was no additional evidence provided to the DHSMV as to Nelson's incapacity. Other than Judge Cook's order of limited incapacity, there was no "showing of its records" that Nelson is incompetent to drive a motor vehicle. Judge Cook's order, which specifically did not find Nelson unfit to drive, standing alone, is not competent substantial evidence and cannot support a contrary finding that Nelson is incompetent to drive a motor vehicle. Accordingly, the Petition for Writ of Certiorari is GRANTED and the DHSMV's order of suspension is quashed.

(ROSENBERG and MCCARTHY, JJ., concur.) (COX, J., dissents with an opinion.)

COX, J., dissenting.

I respectfully dissent from the majority opinion.

A factual understanding of this case is absolutely essential to resolving the Petition for Writ of Certiorari and requires an understanding of the events which occurred leading up to the Order Determining Incapacity of December 18, 2008. It also requires some determination of the purpose of Fla. Ch. 744 (Florida Guardianship Law). It is clear from a reading of the guardianship law that the purpose is to recognize every individual's unique needs and differing abilities and to permit incapacitated persons to participate as fully as possible in all decisions affecting them in meeting the essential requirements of their physical health and safety and in protecting their rights. (Fla. Stat. 744.1012 "Legislative Intent") An incapacitated person is one who has been judicially determined to lack the capacity to manage some of the essential health and safety requirements of that person. Therefore, the Statute on its face clearly charges the Court with protecting the safety and the rights of the incapacitated person. The Statute (Fla. Ch. 744) does not mandate that the Court protect the rights of the public in matters of safety.

Though the Legislature did not mandate public safety considerations under Fla. Ch. 744, the Legislature clearly mandated public safety under Fla. Stat. 322.27 "Authority of Department to Suspend or Revoke License."

Therefore, the analysis of this case depends upon what was Judge Cook charged to do (protect Julie Ann Nelson and her rights) and what was the Department of Highway Safety and Motor Vehicles charged to do (protect the public from Julie Ann Nelson).

Ms. Nelson's argument relies heavily on the fact that Judge Cook "specifically found that Ms. Nelson, your Petitioner retained the right to have a driver's license." That statement in the Petitioner's pleading is factually and legally incorrect. The ruling from Judge Cook states as follows:

“The areas in which QUITERIO CORTES’S capacity to make informed decisions about the care and treatment or to meet the essential requirements for his or her physical or mental health or safety and the specific RIGHTS which are REMOVED from QUITERIO CORTES, due to lack of capacity are.....

✓ to contract
✓ to sue and defend lawsuits
✓ to manage property or to make any gift or disposition of property”

Nowhere did Judge Cook specifically find that Ms. Nelson “retained the right to have a driver’s license.”

The Petitioner concedes in its petition that Judge Cook did find that the nature and the scope of Nelson’s agoraphobia and panic attacks are incapacitating. On this issue, the Petitioner is correct, but the Order of Judge Cook is more specific than that and what Judge Cook said in his Order keeps this matter from coming under the rules set forth in Dobrin v. Florida Department of Highway Safety and Motor Vehicles, 874 So2d 1171 (Fla. 2004). Judge Cook’s Order reads as follows:

“The Court, having considered the reports of the examining committee appointed by this Court and the evidence adduced at the hearing, finds by clear and convincing evidence that QUITERIO CORTES, is incapacitated and that the scope of the incapacity is
_____ Plenary ✓ Limited.

The nature and scope of the incapacity is agoraphobia and panic attacks.”

What Judge Cook specifically referred to in his Order (besides the fact that Ms. Nelson is afflicted with panic attacks and agoraphobia) is that he specifically considered the three reports of examining committee members pursuant to Fla. Stat. 744.331(3) using the “clear and convincing” evidence standard.

Unlike the Police Report in the Dobrin case, the three reports of the examining committee members show specific reasons why the Petitioner, Julie Ann Nelson should not drive. Yes, it is

true that one of the reports is consistent with Judge Cook's ruling stating, "Yes, she is able to drive her own car in absence of a finding that she lacks the ability to have a driver's license." But it's the other two reports. The one that says, "Sometimes drives; anxious can't drive" and "She sometimes drives but when panicked doesn't." And then there's the third report which says, "Drive own car with DMV approval" and "Lacks the ability to exercise the following rights: ✓ to have a driver's license with DMV approval."

Additionally, one of the reports showed a recommended course of treatment for Petitioner Nelson to continue with her psychiatrist and remain on Prozac, Abilify, and Ketamine. In protecting Petitioner Nelson's rights under Fla. Ch. 744, Judge Cook was required to make findings on the basis of "clear and convincing evidence" in determining that a party was incapacitated and being very cautious in taking away the rights which the Legislature ordered be protected.

But the Legislature in Fla. Stat. 322.263 "Legislative Intent" directed the Department of Highway Safety and Motor Vehicles that the purpose of that Statute was to provide maximum protection for all persons who travel or otherwise use the public highways of the State. And it provides to the Department of Highway Safety and Motor Vehicles, under Fla. Stat. 322.27 "Authority of Department to Suspend or Revoke License" the absolute right and authority to suspend the license of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle. The public policy of the State of Florida and the clear Legislative direction is for the Department of Highway Safety and Motor Vehicles to exercise "absolute right and authority" to protect and provide the maximum safety for all persons who travel or otherwise use the public highways of the State. Ms. Nelson's personal right and privilege of driving is subordinate to the rights of

other citizens who are entitled to expect that they will receive maximum protection and safety from people like Ms. Nelson who at this point in her life is regrettably incapacitated. It's incontrovertible that Ms. Nelson suffers from agoraphobia, has panic attacks, and suffers from anxiety. A quick review of the Internet shows that people taking Prozac are warned to use caution when driving, operating machinery, or performing other hazardous activities. Prozac may cause dizziness or drowsiness. People who take Abilify are similarly warned to use caution when driving, operating machinery, or performing other hazardous activities, and that Abilify may cause dizziness or drowsiness. But it is Ketamine which cautions users from driving an automobile and describes the performance effects as overall decreases in awareness, increased reaction time, distorted perceptions of space, non-responsiveness, and blurred vision. Some users of Ketamine have likened it to the physical effects of those of PCP and the visual effects of LSD.

The reports which would alert the Department of Highway Safety and Motor Vehicles were specifically referenced in Judge Cook's Order. Even without seeking those reports it would be the common understanding of anyone being advised that Petitioner Nelson suffered from agoraphobia, panic attacks, and anxiety that they would not believe that allowing Ms. Nelson to continue to drive would provide the maximum safety for all of the persons who travel or otherwise use the public highways of the State of Florida. For that reason I would deny the Petition for Writ of Certiorari and affirm the decision of the Department of Highway Safety and Motor Vehicles in issuing its Order of License Revocation Suspension and Cancellation dated March 20, 2009.