

256 P.3d 896 (Table)

Unpublished Disposition

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Court of Appeals of Kansas.

Owen McQUADE, Appellant,

v.

KANSAS DEPARTMENT OF REVENUE, Appellee.

No. 102,045. | June 11, 2010.

Appeal from Ellis District Court; [Thomas L. Toepfer](#), Judge.

Attorneys and Law Firms

[Michael S. Holland II](#), of Holland and Holland, of Russell, for appellant.

James G. Keller, of Kansas Department of Revenue, for appellee.

Before [RULON](#), C.J., [MARQUARDT](#) and [GREENE](#), JJ.

Opinion

MEMORANDUM OPINION

PER CURIAM.

*1 Owen McQuade appeals the decision of the district court which affirmed the decision of the Kansas Department of Revenue (KDR) suspending his driving privileges.

The facts of this case are not in dispute.

McQuade was arrested for DUI but refused to submit to testing. Eventually, McQuade was served with notice of suspension, a form DC-27, and he filed a timely request for an administrative hearing. After that hearing, the suspension of McQuade's driving privileges was upheld. The suspension order contained notice to McQuade that action would be taken on his driving privileges unless he timely filed a petition for review with the district court.

Eventually, McQuade filed a petition for judicial review of the agency action in district court. Thereafter, on July

4, 2008, KDR sent McQuade two documents. The form titled "suspension notice" informed McQuade his driving privileges would be suspended from July 25, 2008 through July 25, 2010, based on his test refusal. KDR sent a separate notice informing McQuade his commercial driver's license was permanently revoked effective July 25, 2008. However, KDR also sent McQuade a notice that his driving privileges would be extended pending a final order of the district court because McQuade filed a timely petition for judicial review.

In the district court, McQuade abandoned all issues surrounding the suspension of his license based on his test refusal and relied solely on his argument the KDR's letter of July 4, 2008, was a notice his license had been suspended before de novo review had taken place in the district court. McQuade argued the denial of due process required the action against him should be dismissed. The district court found McQuade's arguments without precedent and without merit. We agree with the district court.

Whether McQuade had been denied due process is a question of law and we exercise unlimited review. See [Hemphill v. Kansas Dept. of Revenue](#), 270 Kan. 83, 89, 11 P.3d 1165 (2000).

For McQuade to prevail on his claim of denial of due process, he must show he has a due process right, and such right was abridged under the color of state law without the appropriate process. See [Murphy v. Nelson](#), 260 Kan. 589, 597-98, 921 P.2d 1225 (1996). Unquestionably, McQuade is entitled to due process protections in a driving license suspension case. See [Kempke v. Kansas Dept. of Revenue](#), 281 Kan. 770, 776, 133 P.3d 104 (2006). However, a party must show prejudice; even if the administrative proceeding is erroneous in some way. See [State v. Wonders](#), 27 Kan.App.2d 588, 591, 8 P.3d 8, rev. denied 269 Kan. 940 (2000).

McQuade asks us to conclude KDR violated his right to due process of law by sending him the July 4 letter indicating his license would be suspended prior to his hearing in district court. McQuade argues KDR's action was in essence structural error which requires dismissal of the case against him even though he was given subsequent notification that his temporary driving privileges would be extended pending the outcome of the court proceedings.

*2 Structural error only occurs in very limited circumstances where errors defy analysis by 'harmless-error' standards. [Boldridge v. State](#), 289 Kan. 618, 627, 215 P.3d 585 (2009).

We conclude the better practice for KDR was to have included language in the letter of July 4, 2008, informing McQuade his temporary driving privileges would be extended pending a decision by the district court. But failure to include such language did not prejudice McQuade. McQuade timely filed his petition for judicial review and his temporary driving privileges were not suspended as a result of the challenged letter.

Affirmed.

Parallel Citations

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