

2009 WL 1089547

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Court of Appeals of Utah.

Curtis COUSINO, Petitioner and Appellee,

v.

Nanette ROLFE, Bureau Chief Driver
Control Bureau, Driver License Division,
Department of Public Safety, State
of Utah, Respondent and Appellant.

No. 20080740-CA. | April 23, 2009.

Third District, Salt Lake Department, 080904484; The
Honorable [Kate A. Toomey](#).

Attorneys and Law Firms

[Mark L. Shurtleff](#) and [Brent A. Burnett](#), Salt Lake City, for
Appellant.

[Jason Schatz](#), Salt Lake City, for Appellee.

Before Judges [GREENWOOD](#), [DAVIS](#), and [McHUGH](#).

Opinion

MEMORANDUM DECISION (Not For Official Publication)

PER CURIAM:

*1 Appellant Nanette Rolfe, Chief of the Driver Control Bureau of the Driver License Division, challenges the district court's decision reinstating Appellee Curtis Cousino's driver license, which had been suspended as a result of his refusal to submit to a chemical test. The issue presented in this case is indistinguishable from the issue addressed in [Huckins v. Rolfe](#), 2009 UT App 22. Rolfe moves for summary reversal.

Cousino's driver license was revoked for twenty-four months pursuant to [Utah Code section 41-6a-521](#) based upon his refusal to submit to a chemical test, *see* [Utah Code Ann. §](#)

[41-6a-521](#)(1)(d) (Supp.2008). After a jury trial, Cousino was acquitted of driving under the influence of alcohol (DUI). Cousino obtained extraordinary relief, successfully asserting that his acquittal entitled him to reinstatement of his license under the language of [Utah Code section 53-3-223](#)(7) then in effect.¹ *See* [Utah Code Ann. § 53-3-223](#)(7)(b)(ii) (2007). At the time of Cousino's driver license revocation, [section 53-3-223](#)(7)(b)(ii) stated, "The division shall immediately reinstate a person's license upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517." *Id.* In *Huckins*, the district court ruled that the foregoing provision applied to revocations resulting from a driver's refusal to submit to a chemical test under [Utah Code section 41-6a-521](#), *see id.* [§ 41-6a-521](#) (Supp.2008). The district court in Cousino's case reached the same conclusion and ordered the reinstatement of Cousino's license following his acquittal of the DUI charge.

In *Huckins*, we were asked to determine "whether the driver license reinstatement provisions contained in [Utah Code section 53-3-223](#), governing license suspensions for impaired driving, are applicable to driver license revocations imposed under [Utah code sections 41-6a-520](#) and -521 for failure to submit to chemical testing." 2009 UT App 22, ¶ 6. We concluded that "[section 53-3-223](#) provides for early reinstatement only for ninety-day suspensions, pursuant to subsection (7)(a)(i) and not for one-year suspensions under subsection (7)(a)(ii) or for revocations under [section 41-6a-521](#) or any other statute." *Id.* ¶ 9. Accordingly, we held that "[t]he district court erred when it applied the reinstatement provisions of [Utah Code section 53-3-223](#)(7) (b) to the revocation of Huckins's driver license for failure to submit to a chemical test under [sections 41-6a-520](#) and -521." *Id.* ¶ 12.

The *Huckins* decision is dispositive of this appeal. Therefore, we grant the motion for summary reversal, reverse the district court's order reinstating Cousino's driver license, and remand this matter for further proceedings in the district court.

Parallel Citations

2009 UT App 110

Footnotes

¹ The Utah Legislature has amended [Utah Code section 53-3-223](#)(7)(b) since the date of Cousino's license revocation. *See* [Utah Code Ann. § 53-3-223](#)(7)(b)(iii) (Supp.2008) (stating that the driver license reinstatements in section (7)(b) "only apply to a 90 day

suspension imposed under Subsection (7)(a)(i)"). We rely solely on the language of the statute in effect at the time of Cousino's revocation, which was the same language applied in [Huckins v. Rolfe, 2009 UT App 22](#).