

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR 14 2006

MICHAEL S. RICHIE
CLERK

REBECCA A. HICKS,)
)
Plaintiff/Appellant,)
)
vs.)
)
STATE OF OKLAHOMA, EX REL.,)
DEPARTMENT OF PUBLIC SAFETY,)
)
Defendant/Appellee.)

Case No. 102,815

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE ROBERT E. DAVIS, TRIAL JUDGE

AFFIRMED

GeorGe R. Lamb
Oklahoma City, Oklahoma

For Plaintiff/Appellant

A. DeAnn Taylor
OKLAHOMA DEPARTMENT
OF PUBLIC SAFETY
Oklahoma City, Oklahoma

For Defendant/Appellee

OPINION BY KEITH RAPP, VICE CHIEF JUDGE:

Trial court plaintiff, Rebecca A. Hicks (Hicks), appeals the trial court's order sustaining the revocation and modification of her driving privileges. Hicks' single allegation of error is that she should have been allowed to read the implied consent test request before being required to sign it.

BACKGROUND¹

Hicks was placed under arrest for operating or being in actual physical control of a motor vehicle while under the influence of alcohol (DUI) on February 20, 2005, by an officer of the Yukon Police Department. A second officer of the Yukon Police Department arrived at the scene at approximately the time Hicks exited her vehicle and was present at the time the first officer arrested her. After conducting an inventory of her vehicle, the arresting officer transported Hicks to the Yukon Police Department and escorted Hicks to the Intoxilyzer room at the police department. Hicks was subsequently booked for DUI.

At the district court trial, the arresting officer testified that he believed he had read her the implied consent test request (implied consent) before transporting

¹ Hicks does not raise an issue concerning the reasonableness of the stop or her arrest and, therefore, this Opinion addresses only those facts pertinent to the issue raised on appeal.

her to the Yukon Police Department.² He stated he did not recall whether Hicks declined the test at that time. He also testified that the second officer read the implied consent to Hicks at least three times at the police station and she “eventually . . . said ‘No’.” He further stated that Hicks never expressed that she wanted to take the sobriety test.

The second officer also testified at trial concerning reading the implied consent to Hicks. He testified that he was present at the scene when the arresting officer read the implied consent to her. He also stated that as an Intoxilyzer

² The arresting officer testified that the request for implied consent that he read to Hicks was the same as that contained on the back of DPS Exhibit 2, Officer’s Affidavit and Notice of Revocation/Disqualification, which states:

You have been arrested and the arresting officer has reasonable grounds to believe that you were driving or in actual physical control of a motor vehicle while under the influence of intoxicants.

You are requested to submit to a test or tests for the purpose of determining the presence and concentration of intoxicants in your body.

The test will be a (BREATH)(BLOOD) test and will be administered at no cost to you. In addition to this test, you may at your own expense have an additional test of your choice, provided that a sufficient quantity of any specimen obtained shall be available to the state for testing.

You are not entitled to consult with an attorney prior to making your decision on whether or not to submit to the state’s test.

You may refuse the state’s test, but as a consequence your driver’s license will be revoked or denied by the Department of Public Safety.

If you consent to testing, are 21 years of age or older and the test result is 0.08 or more alcohol concentration, your driver’s license will be revoked or denied by the Department of Public Safety. If you are under the age of 21 and consent to testing and the test result is 0.02 or more alcohol concentration, your driver’s license will be revoked or denied by the Department of Public Safety.

Will you take the state’s test?

operator, he was responsible for reading the implied consent to Hicks at the alcohol testing room at the police department, and that he read it to her at least three times. In addition, he testified that after he read the implied consent to Hicks the first time, she said that she did not understand it. He then read it to her a second time and she did not respond. The second officer testified he read it to her a third time and she stated "No" and then signed the refusal. In addition, he testified Hicks never stated that she wanted to take the test.

On cross-examination, the second officer testified that he did not recall Hicks saying she wanted to read the implied consent, but that he offered to let her read it. He also stated she did not ask for her glasses to read the document, but did ask for her glasses when it was time for her to sign the document. He does not recall whether she received her glasses.

Hicks also testified at the district court trial concerning her arrest and being read the implied consent. She testified that she asked to read the document and asked for her glasses so that she could read it. In addition, she stated her request for her glasses was denied and she then signed the implied consent without her glasses. She also testified the police officers were very angry with her, yelled at her, and acted very unprofessional.

On redirect, Hicks testified that she did not refuse the test, but that she refused to sign the implied consent because she could not read it. She also stated that she did not hear either officer mention “Breathalyzer test.”

When questioned by the trial court, Hicks admitted she did not ask either officer about taking a Breathalyzer test and she never agreed to take one. She also told the court that she understood she was at the police station to be booked for DUI and was aware a Breathalyzer test was usually administered.

A hearing was conducted before a hearing officer for the Department of Public Safety (DPS) on May 12, 2005. DPS found, in part, that “[Plaintiff] was informed her driver’s license would be revoked if she refused to submit to the test or tests” and sustained the one hundred eighty day revocation of Hicks’ driving privileges.

Hicks appealed the DPS decision to the District Court of Canadian County, which heard the appeal *de novo* on October 11, 2005. The trial court sustained the revocation and granted the agreed upon modification of her driving privileges. Hicks appeals.

STANDARD OF REVIEW

Generally, in an appeal from an implied consent revocation, the appellate court “will not reverse or disturb a finding of a lower court if there is any evidence,

or any reasonable inference to be drawn therefrom, which tends to support its findings.” *Smith v. State ex rel. Dept. of Public Safety*, 1984 OK 16, ¶ 7, 680 P.2d 365, 368. However, the issue here presents a question of statutory construction, which is an issue of law. *Weeks v. Cessna Aircraft Co.*, 1994 OK CIV APP 171, ¶ 5, 895 P.2d 731, 733 (approved for publication by the Oklahoma Supreme Court). “Issues of law are reviewable by a *de novo* standard and an appellate court claims for itself plenary independent and non-deferential authority to reexamine a trial court’s legal rulings.” *Kluver v. Weatherford Hosp. Auth.*, 1993 OK 85, ¶ 14, 859 P.2d 1081, 1084 (quoting *Salve Regina College v. Russell*, 499 U.S. 225, 231, 111 S. Ct. 1217, 1221, 113 L.Ed.2d 190 (1991)). If a statute is unambiguous and its meaning clear and there is no reason to apply rules of statutory construction, this Court will apply the meaning expressed by the language used. *TRW/Reda Pump v. Brewington*, 1992 OK 31, ¶ 5, 829 P.2d 15, 20.

ANALYSIS

The single issue Hicks raises on appeal is whether an individual should be allowed to read the implied consent test request before he or she is required to sign it. Hicks does not question the validity or reasonableness of the stop or her arrest.

When the revocation of an individual's driver's license is based upon his or her refusal to submit to a breath or blood test, the scope of the revocation hearing is whether:

- (a) the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways, streets or turnpikes while under the influence of alcohol or intoxicating liquor,
- (b) the person was placed under arrest,
- (c) the person refused to submit to the test or tests and,
- (d) the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test or tests.

Smith v. State ex rel. Dept. of Public Safety, 1984 OK 16 at ¶ 6, 680 P.2d at 368

Here, Hicks does not contest the adequacy of the first three elements, but only raises issue with the final element.

Title 47 O.S. Supp. 2005, § 754 provides only that a person be informed that his or her driving privileges will be revoked or denied if he or she refuses to take the test. *See Abdo v. State ex rel. Dept. of Public Safety*, 1990 OK CIV APP 2, ¶ 9, 788 P.2d 1389, 1392. Section 754(F) provides in pertinent part:

F. The hearing before the Commissioner of Public Safety or a designated hearing officer shall be conducted in the county of arrest or may be conducted by telephone conference call. The hearing may be recorded and its scope shall cover the issues of whether the officer had reasonable grounds to believe the person had been operating or was in

actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance as prohibited by law, and whether the person was placed under arrest.

. . . .

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that driving privileges would be revoked or denied if the person refused to submit to the test or tests.

Section 754 clearly does not require that the licensee be allowed to first read the implied consent test request.

The undisputed trial evidence shows the arresting officer read Hicks the request for an implied consent test at the scene of the arrest and the second officer read her the implied consent three times at the police station's alcohol testing room. Further, Hicks testified, when questioned by the trial court, that she understood she was at the police station because she had been arrested for DUI and a test was usually administered under such circumstances. It is clear the police officers' actions here were sufficient to "inform" the licensee that her driving privileges would be revoked if she refused to submit to the test, as required by

Section 754. This Court finds the officers' actions provided Hicks information and notice sufficient to make a knowing and voluntary decision as to whether she wanted to refuse or submit to testing.

This Court, on record review, finds the trial court's order sustaining the revocation of Hicks' driving privileges with modifications will be affirmed.

AFFIRMED.

GABBARD, P.J., and REIF, J., concur

March 14, 2006