

2008

William Huckins v. Nannette Rolfe, bureau chief
driver control bureau, driver license division,
department of public safety, State of Utah :
Response Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILLIAM HUCKINS, :

Petitioner/Appellee :

v. :

Appellate Case No. 20080108-CA

NANNETTE ROLFE, Bureau Chief Driver :
Control Bureau, Driver License Division,
Department of Public Safety, State of Utah :

Respondent /Appellant. :

RESPONSE BRIEF OF PETITIONER/APPELLEE

BREIF OF APPELLEE

Appeal from the judgment of the Third Judicial District Court in and for Salt Lake County Sate of Utah, the Honorable Denise Lindberg.

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Oral Argument Requested by Petitioner-Appellee

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Department of Public Safety, State of Utah :

Respondent /Appellant. :

**STATEMENT OF THE CASE
AND SUMMARY OF RELEVANT FACTS**

William Huckins, was arrested for Driving Under the Influence (DUI) by a Salt Lake City Police Officer in Salt Lake City, Utah, on July 18, 2007.

Subsequent to his arrest he was asked to submit to a breath test which he refused.

Following his arrest, Mr. Huckins filed a request for administrative hearing pursuant to U.C.A. 53-3-223. A hearing was held before the Driver License Division (DLD) on August 14, 2007. Following the hearing the DLD issued an order suspending Mr. Huckins' driver license for a period of 18 months based on his alleged refusal to submit to a chemical test at the time of his arrest. Mr. Huckins then filed a Petition for Judicial Review in the Third District Court. The Petitioner's Petition came before the Third District Court, Judge Lindberg, for a Trial de Novo on December 10, 2007. At the Trial de Novo, the Petitioner made

an oral motion asking the Court to Order the DLD to immediately reinstate his drivers license pursuant to U.C.A. § 53-3-223(7)(b)(ii). Judge Lindberg granted the Petitioner's motion and entered Findings of Fact, Conclusions of Law and Order on January 2, 2008, ordering the Respondent DLD to immediately reinstate the Petitioner's drivers license. The Respondent then filed this appeal.

SUMMARY OF THE ARGUMENTS

It is the position of the Defendant that pursuant to U.C.A. § 53-3-223 he is entitled to an immediate reinstatement of his driving privileges based on the dismissal of the criminal charges against him for DUI which stemmed from the same arrest and facts for which his license was and remains suspended by the Drivers License Division. As such, the Division's failure to reinstate his driving privileges is a "wrongful use of judicial authority" as set forth in Rule 65B(d) of the Utah Rules of Civil Procedure and he is entitled to relief in the form of an Order requiring the Division to immediately reinstate his driving privileges.

ARGUMENT

A. U.C.A. § 53-3-223 IS APPLICABLE TO ALL FORMS OF
SUSPENSIONS OR REVOCATIONS OF DRIVING PRIVILEGES AS A
RESULT OF AN ARREST FOR DUI INCLUDING REVOCATIONS
IMPOSED AS A RESULT OF THE DRIVER'S REFUSAL TO SUBMIT
TO A CHEMICAL TEST.

U.C.A. § 53-3-223, which was amended during the 2007 Legislative session, currently includes the following language pertinent to this matter:

(ii) 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**.

Mr. Huckins insists that this provision added in 2007 is applicable to all forms of suspensions or revocations of driving privileges as a result of an arrest for DUI including revocations imposed as a result of the driver's refusal to submit to a chemical test and Judge Denise Lindberg in the Third District Court agreed and correctly ordered the Petitioner's driver license be reinstated.

In order to determine the meaning of U.C.A. § 53-3-223, we first look to the language of the statute and apply a plain meaning to the words contained therein.

“Under our rules of statutory construction, we look first to the statute's plain language to determine its meaning.” *Mountain Ranch Estates v. State Tax Comm'n*, 2004 UT 86, ¶ 9, 100 P.3d 1206. This court presumes “that the terms of a statute are used advisedly” by the legislature. *Bd. of Educ. v. Salt Lake County*, 659 P.2d 1030, 1035 (Utah 1983). “Therefore, effect should be given to each such word, phrase, clause, and sentence where reasonably possible.” *Chris & Dick's Lumber & Hardware v. Tax Comm'n*, 791 P.2d 511, 516 (Utah 1990)

Sindt v. Ret. Bd., 2007 UT 16, ¶ 8, 157 P.3d 797, 799

“Under our rules of statutory construction, we look first to the statute's plain language to determine its meaning.” Sindt v. Ret. Bd., 2007 UT 16, ¶ 8, 157 P.3d 797 (internal quotation marks omitted). “We read the plain language of a statute ... as a whole and interpret its provisions in harmony with other provisions in the same statute.” Sill v. Hart, 2007 UT 45, ¶ 7, 162 P.3d 1099 (internal quotation marks omitted). “We do so because a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.” Id.

State v. Gallegos, 171 P.3d 426 (Utah 2007).

We assume that the legislature used the different terms advisedly and we enforce them as plainly set forth in the statute. *See, e.g., In re Z.C.*, 2007 UT 54, ¶ 6, 165 P.3d 1206 (“ ‘When examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning.’ ” (quoting State v. Martinez, 2002 UT 80, ¶ 8, 52 P.3d 1276)); Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶ 46, 164 P.3d 384 (same).

State v. Johnson, 2007 UT App 392, 2007 WL 4336314.

A plain language reading of this statute and in consideration of the entire statute supports the Petitioner’s position that the immediate reinstatement provision is applicable to all suspensions or revocations. The clear language of U.C.A. § 53-3-223, does not specifically state that the immediate reinstatement provision is applicable only to 90 day suspensions. Likewise, the statute does not specifically state that immediate reinstatement is specifically prohibited in certain types or lengths of suspensions or revocations. It simply states that “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.” The statute, simply put, indicates that upon showing proof of a dismissal of the criminal charge of DUI the driver’s license should be immediately reinstated.

The trial court in this case found that the Salt Lake City Prosecutor’s Office decision not to file a formal DUI charge against the Petitioner and his plea to the remaining traffic violations was the functional equivalent of a “dismissal” as the term is used in U.C.A. § 53-3-223. Thus, under the clear and plain language of the statute the Petitioner was entitled to the immediate reinstatement of his driver license based on the “dismissal” of the criminal charge of DUI by the Salt Lake City Prosecutor.

Although neither the Utah Court of Appeals nor the Utah Supreme Court have had the opportunity to rule in any case interpreting the new language contained in U.C.A. § 53-3-223 as the statute was just recently passed and made effective in May of 2007, the trial court rendered a fair and reasonable interpretation of this language in ruling in favor of the Petitioner and ordering the immediate reinstatement of his driver license.

At the time of the Trial de Novo before Judge Lindberg and in its Brief, the DLD argued that the language of U.C.A. § 53-3-223(7)(b)(ii) applied only to 90 day suspensions imposed by the DLD and not to an 18 month refusal suspension like the one imposed on the Petitioner. In its opening brief the Appellant DLD argues that “the district court interpreted this subsection out of context with the remaining parts of Section 53-3-223” (See Brief of Respondent pg. 7) but seems to

ignore the fact that several portions of U.C.A. § 53-3-223 either deal specifically with “refusal” to submit to a chemical test or are applied equally to both 90 day suspensions and refusal suspensions.

Although Utah’s Implied Consent law can be found in U.C.A. § 41-6a-520, whether the driver submitted to a chemical test or whether he refused the chemical test, the request for an administrative hearing is always made pursuant to U.C.A. § 53-3-223 (6)(a).

(6) (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the day on which notice is provided under Subsection (5).

Pursuant to U.C.A. § 53-3-223, following a request for an administrative hearing submitted by the driver within 10 days pursuant to U.C.A. § 53-3-223(6)(a) the Driver License Division shall hold a hearing and:

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

(ii) *whether the person refused to submit to the test*; and

(iii) the test results, if any.

U.C.A. § 53-3-223 (emphasis added)

As such, it is clear that many portions of U.C.A. § 53-3-223 are applied to both 90 day suspensions as well as refusal suspensions therefore an interpretation that the immediate reinstatement provision of U.C.A. § 53-3-223(7)(b)(ii) applies to refusal suspensions in the absence of language specifically limiting it to 90 days

suspensions would not be inconsistent with the remainder of U.C.A. § 53-3-223 because many of the provisions apply to all suspensions. Appellant argues that such an interpretation would be “nonsensical or absurd.” What does not make sense is that if the legislature specifically intended the immediate reinstatement provision to apply only to 90 days suspension why did the legislature not specifically state that the immediate reinstatement provision of U.C.A. § 53-3-223(7)(b)(ii) applied solely to 90 day suspensions. Rather the prior version of U.C.A. § 53-3-223(7)(b)(ii) which was in effect at the time of the Petitioner’s Trial de Novo contained no such language restricting the application of the immediate reinstatement provision to 90 day suspensions.

- B. THE CHANGES IN THE STATUTE SHOULD NOT BE APPLIED RETROACTIVELY IN THIS CASE AS THEY DO NOT SIMPLY CLARIFY THE MEANING OF THE STATUTE BUT SIGNIFICANTLY ALTER THE STATUTE IN A WAY THAT WOULD “DEPRIVE A PARTY [PETITIONER] OF HIS RIGHTS” TO HAVE HIS LICENSE IMMEDIATELY REINSTATED BASED ON THE DISMISSAL OF THE DUI CHARGE AGAINST HIM.

Following the ruling by Judge Lindberg and in direct response to Judge Lindberg’s interpretation of U.C.A. § 53-3-223, representatives from the Driver License Division conferred with members of the legislature to propose changes to the language of U.C.A. § 53-3-223(7)(b)(ii) to limit the immediate reinstatement provisions to 90 day suspensions. In response, during the last legislative sessions changes were made to U.C.A. § 53-3-223(7)(b)(ii) as set forth in the Respondent’s

brief.

The DLD argues that the changes made by the Utah Legislature to U.C.A. § 53-3-223 and the provision in question here serves to clarify the legislature's original intent as to the application of the immediate reinstatement provision. The DLD further argues that it should be applied retroactively in this case to interpret the language of U.C.A. § 53-3-223 (7)(b)(ii) as it was written at the time of the Petitioner's Trial de Novo and which was interpreted by the trial court in the Petitioner's favor. Mr. Huckins urges that the changes in the statute should not be applied retroactively in this case as they do not simply clarify the meaning of the statute but significantly alter the statute in a way that would "deprive a party [Petitioner] of his rights" to have his license immediately reinstated based on the dismissal of the DUI charge against him.

U.C.A. § 68-3-3 specifically states that "No part of these revised statutes is retroactive, unless expressly so declared." Although S.B. 15 indicates that it "clarifies that certain license reinstatement provisions only apply to a certain 90 day suspension period imposed by the Driver License divisions", it make no mention of a retroactive application of the alleged "clarification" of the immediate reinstatement statute. The amended version of U.C.A. § 53-3-223(7)(b)(ii) contains significant changes that completely alter the meaning of the previous statute and go far beyond a simple clarification of the prior statute. As argued above, a plain language interpretation of the previous version of U.C.A. § 53-3-223 (7)(b)(ii) clearly gives the Petitioner a right to have his license reinstated

immediately after showing proof of the dismissal of the DUI charge. The Petitioner concedes that under the new version of U.C.A. § 53-3-223(7)(b)(ii), the Petitioner would not be entitled to immediate reinstatement because the new language of the statute, particularly U.C.A. § 53-3-223(7)(b)(iii) specifically limits the reinstatement provisions to “only apply to a 90 day suspension period”, something that the previous version of the statute did not do.

As such, the new limitation to apply the immediate reinstatement provisions only to 90 day suspensions set forth in the new version of U.C.A. § 53-3-223 is more than a clarification of the prior statute; and since it contains no specific language indicating that it is to be applied retroactively, it must not be applied retroactively in this case and deprive the Petitioner of his right to have his license reinstated.

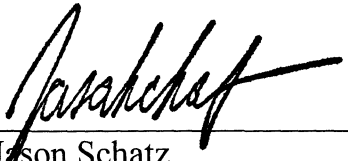
CONCLUSION

Based on the reasons set forth above the Defendant respectfully requests that this Court affirm the District Court’s ruling that U.C.A. § 53-3-223 (7)(b)(ii) as previously written applies to all driver license suspension including refusal suspensions and further uphold the District Court’s order that the DLD immediately reinstate the Petitioner’s driver license.

ORAL ARGUMENT

The Defendant\Appellant respectfully requests that the Court of Appeals set this matter for oral argument upon the filing of all briefs by the parties.

DATED this 23rd day of June, 2008 .




Jason Schatz
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on this 23rd day of June, 2008, I personally mailed and/or hand delivered true and correct copies of the foregoing Brief of Appellant to the following:

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A handwritten signature in black ink, appearing to read "Brent Burnett", is written over a horizontal line.