

STATE OF MICHIGAN
COURT OF APPEALS

DANNY LEE ROBERTS,

Plaintiff-Appellee,

v

SECRETARY OF STATE,

Defendant-Appellant.

UNPUBLISHED

February 2, 1999

No. 205616

Macomb Circuit Court

LC No. 97-001371 AL

Before: Markman, P.J., and Jansen and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court's order granting plaintiff's petition to reinstate his operator's license with restrictions. We reverse.

Defendant revoked plaintiff's driver's license on November 11, 1993, as required by MCL 257.303(2)(f); MSA 9.2003(2)(f), because plaintiff had three alcohol-related driving convictions within ten years. Pursuant to statute, revocation was for a minimum of one year beginning November 3, 1993, after which plaintiff had the right to seek an administrative review hearing before defendant's Driver License Appeal Division (DLAD). Following a hearing before the DLAD in December 1994, the hearing officer declined to restore plaintiff's license. Plaintiff requested and received another hearing before the DLAD on April 3, 1996, at which time a different hearing officer issued an order declining plaintiff's appeal.

On March 21, 1997, plaintiff filed a petition for restoration of his driver's license in the Macomb Circuit Court seeking relief from the April 3, 1996, decision of the DLAD. Following a hearing on June 16, 1997, the circuit court entered an order restoring plaintiff's license with restrictions. The order further specified that if plaintiff complied with the terms and conditions of the order for a period of six months, his full driving privileges would be restored after review by the court.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

On appeal, defendant argues that the circuit court exceeded its authority when it modified the hearing officer's April 3, 1996, decision by granting plaintiff a restricted license. Alternatively, defendant argues that plaintiff's petition to the court was untimely and should not have been heard.

In *Rodriguez v Secretary of State*, 215 Mich App 481; 546 NW2d 661 (1996), this Court held that the circuit court's authority to review a revocation imposed by the Secretary of State under MCL 257.323(6); MSA 9.2023(6) is limited. The circuit court may only "set aside" the Secretary of State's decision; it cannot modify it by granting a restricted license. *Rodriguez, supra*, pp 482, 484. Similarly, in this case, the circuit court did not set aside the Secretary of State's decision, but rather, modified the decision when it granted plaintiff a restricted license. Under *Rodriguez*, the trial court exceeded its statutory authority. We also note that had the trial court set aside the license, such an action would have been improper because none of the six statutory criteria set forth in MCL 257.323(6); MSA 9.2023(6) could be met in this case.

In addition, we also agree that plaintiff's petition to the circuit court was untimely under MCL 257.323(1); MSA 9.2023(1), which provides in relevant part:

. . . a person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license . . . may petition for a review of the determination in the circuit court The person shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the person to file petition within 182 days after the determination is made.

Because plaintiff did not file a petition within 63 or 182 days from defendant's decision, the circuit court lacked jurisdiction to review the matter.

We decline to review defendant's final issue since the issue is not properly before this Court. In granting leave to appeal, the order stated that the appeal was limited to the issues raised in the application. The issue was not raised in defendant's application. Moreover, given our resolution, the issue is moot.

Reversed.

/s/ Stephen J. Markman
/s/ Kathleen Jansen
/s/ Joseph B. Sullivan