

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

BENJAMIN WYNNE	:	C.A.#03-11-080
	:	
<i>Appellant</i>	:	
v.	:	
MICHAEL SHAHAN	:	
	:	
<i>Appellee</i>	:	

Submitted March 29, 2004  
Decided May 11, 2004

*Edward C. Gill, Esquire, appearing for Defendant below, Appellant.  
James J. Hanley, Esquire, Deputy Attorney General, appearing for the  
State, Appellee.*

**APPEAL FROM COMMISSIONER’S RECOMMENDATIONS**

This is an appeal by Benjamin Wynne from the Commissioner’s Recommendation dismissing an Appeal of the Department of Motor Vehicle’s Order revoking his driver’s license pursuant to the provisions of 21 *Del. C.* § 2742(d).

**FACTS**

The Division of Motor Vehicles (hereinafter “DMV”) revoked the driver’s license of Benjamin Wynne (hereinafter “Wynne”) pursuant to 21 *Del. C.* § 2742. According to the language of the statute:

No revocation . . . is effective until the Secretary or a police officer or other person acting on the Secretary’s behalf notifies the person of revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective.

21 *Del. C.* § 2742(d). Wynne requested a hearing within the 15-day period but failed to appear on the date of the scheduled hearing. The DMV subsequently revoked Wynne’s license. Wynne appealed the revocation of his license to this Court. On February 6, 2004, the Court of Common Pleas Commissioner recommended dismissal of the appeal. The Commissioner held that the Court of Common Pleas lacked jurisdiction to hear the appeal pursuant to 21 *Del. C.* § 2744 since the DMV never conducted a hearing on the matter. Wynne has appealed the Commissioner’s Recommendation.

### STANDARD OF REVIEW

The dismissal of an appeal is case-dispositive. The proper standard of review of a Commissioner’s Recommendation for case-dispositive matters is *de novo*. See *CCPCIV.R.112(A)(4)(iv.)*. The decision by the Commissioner to dismiss an appeal of a DMV order revoking Appellant’s license is case-dispositive and must be reviewed *de novo*. The Judge has the power to “accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner.” *Id.*

Appeals from Orders issued by the DMV shall be heard in this Court on the record. See *CCPCIV.R.72.1(a)* and *72.1(g)*. In particular, an appeal involving a DMV order under 21 *Del. C.* § 2744 must be reviewed on the record. *Shahan v. Landing*, 643 A.2d 1357, 1359 (Del. 1994). As a result, the appropriate scope of review is limited to correcting errors of law and determining whether the record below supports the lower court’s findings of fact and conclusions of law. *Mills v. Voshell*, 1993 WL 543997 (Del. Super. Ct.) *citing Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991). Therefore, while this Court must make a *de novo* review of the Commissioner’s Recommendation, it is also required to limit its review of the DMV Order to the record made below.

## APPEALS WITHOUT A DMV HEARING

Under 21 *Del. C.* § 2744, the Secretary's decision is final and may not be appealed unless the defendant requests a hearing and the Secretary rules against the defendant at that hearing. If no hearing has been held the right to appeal the Secretary's decision has not been perfected and, the Court of Common Pleas has no jurisdiction to entertain such an appeal.

This Court has no jurisdiction to hear appeals from the denial of a DMV hearing. *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.). In *Desantis*, the Court held, "That 21 *Del. C.* § 2744 does not provide appellant an avenue of appeal from that decision since no hearing ever was held on this matter. Thus, appellant has no statutory right of appeal. Absent statutory or constitutional right of appeal, this Court has no appellate jurisdiction over this appeal." *Id.* The Superior Court concluded that since there was no right to appeal, the Court could only review the case by writ of certiorari. *Id.* at \*3.

Even when a defendant timely requests a hearing he still may not have the right to appeal if no hearing occurred. If he requests a continuance of the hearing and the hearing officer denies it, or if he fails to appear at the hearing and a default judgment is entered against him, there is no statutory right to an appeal. *Schroeder v. Shahan*, 1994 WL 89794 (Del. Super. Ct.).

## NOTICE

After receiving the Order of the DMV revoking his driving privileges, Wynne requested a DMV hearing according to the provisions of 21 *Del. C.* § 2742(d). A hearing was scheduled, but Wynne failed to appear. He claims that he never received notice of the hearing. Wynne argues that this failure to notify him of the date, time, and location of the requested hearing is a violation of his right to due process. While this argument may have merit, it is not within this Court's jurisdiction to decide this issue. The Court of Common Pleas is a court of limited jurisdiction created solely by statute. There is no statutory authority for this Court to hear this appeal as either 21 *Del. C.* § 2744 nor any other

statute within the Delaware Code confers such power. Therefore, Wynne's due process argument cannot be addressed by this Court.

That is not to say that Appellant is left without the possibility of redress. As explained in *Desantis*, even where there exists no right to appeal, the Superior Court may review by writ of certiorari. *Supra*. This remedy is unavailable in this Court, however, since the Court of Common Pleas has no power to issue a writ of certiorari to a lower court. *Brandywine Apartments Assocs. v. Justice of the Peace Court*, 1999 WL 33255921 at \*2 (Del. Com. Pl.) and *State v. Curtis*, Del. Com. Pl., C.A. No. 0304007852, Clark, J., (May 10, 2004).

I find that this Court has no jurisdiction to hear this appeal, Defendant's appeal of the Commissioner's Recommendation is **DISMISSED**.

**IT IS SO ORDERED.**

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ROSEMARY BETTS BEAUREGARD,  
JUDGE