

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

NEIL NETTLETON,)
)
 Appellant,)
)
 v.)
)
 JENNIFER L. COHAN,)
 DIRECTOR OF THE)
 DELAWARE DIVISION OF)
 MOTOR VEHICLES,)
)
 Appellee.)

C.A. No. N14A-07-016 CEB

OPINION

Date Submitted: January 25, 2016
Date Decided: March 2, 2016

*Upon Consideration of Appeal
From the Court of Common Pleas.*
REVERSED.

Kevin O'Neill, Esquire, Wilmington, Delaware. Attorney for Appellant.

Ann C. Cordo, Delaware Department of Justice, Esquire, Wilmington, Delaware.
Attorney for Appellee.

BUTLER, J.

FACTUAL BACKGROUND

In the beginning there were cars. And then there were drivers. And they all had to be licensed. And then the licensing job fell to the states, each of which developed their own motor vehicle laws. State legislatures being how they are, it became necessary to have an Interstate Driver's License Compact to try to sort out how these disparate state laws could all coexist.¹ The interplay of Delaware's motor vehicle laws, the Illinois' motor vehicle laws, and the Interstate Compact is what brings this dispute before the Court.

The following facts are not disputed by either party. The Delaware Division of Motor Vehicles ("DMV") holds a computerized Driving Record for Mr. Nettleton. Here is a chronological detail of the highlights for these purposes:

- *1990*: Delaware license issued to Mr. Nettleton
- *January 1992*: Mr. Nettleton is convicted of DUI (first offender program) in Delaware; Delaware license suspended
- *August 1994*: after accruing suspensions for driving while revoked or without insurance, Delaware license suspension lifted—Mr. Nettleton is clear to drive
- *February 2000*: Mr. Nettleton is licensed in Illinois
- *April 2000*: Mr. Nettleton is convicted of DUI in Illinois²
- *July 2000*: Mr. Nettleton surrendered Illinois license to Delaware DMV³

¹ See 21 *Del. C.* § 8101 et seq.

² Per a January 28, 2013 letter from Illinois Secretary of State. See Appellant's Br. Ex. B.

³ Whether this surrender was "voluntary" because Nettleton moved back to Delaware or was simply a recognition that Illinois had revoked his driving privileges pursuant to his then existing Illinois license is not clear from the record. We will assume for these purposes that he was revoked pursuant to 625 *Ill. Comp. Stat.* 5/6-208.1(a)(4).

- *June 2004*: convicted of DUI in New Jersey⁴ resulting in revocation of Delaware license
- *March 2006*: convicted of DUI in Delaware
- *October 2010*: Delaware license revocation lifted

It seems that sometime around 2007, Nettleton finally had the notion that all these DUI, driving while revoked, and no insurance charges were not the way to go, because he has been “infraction free” since then.

Although the last official record indicates “revocation lifted” in 2010, that is apparently not the case. From here, we pick up the trail with an (uncontested) affidavit filed by Nettleton. It says, in pertinent part:

I am told by Delaware Motor Vehicles that my current status is “cancelled.”⁵ . . . I have been told me [sic] quite a few times there is a permanent revocation of my privileges from the State of Illinois due to a 1999 Driving Under the Influence conviction in that State, and that I am permanently barred from driving privileges in Delaware. This is because Illinois has a permanent revocation of driving privileges law, although Delaware does not have a law of this type. Delaware feels they [sic] must honor the Illinois law.

And that, as simply put as Mr. Nettleton could put it, is his problem.

Apparently in response to DMV’s refusal to give him a license, Mr. Nettleton set off to Illinois to see if he could get a valid license there that he could then turn in for a valid Delaware license, but Illinois refused. According to correspondence from the Secretary of State of Illinois, Nettleton is precluded from

⁴ Appellant’s Br. Ex. B.

⁵ There is no entry on Nettleton’s DMV record indicating “cancelled” and the specific meaning of the term is not otherwise explained.

applying for an Illinois license because he has four DUI convictions, including the two that occurred years *after* he surrendered his Illinois license. The Secretary (correctly) explained that pursuant to Illinois Vehicle Code § 6-208(b)(4), four-time convicted DUI drivers are prohibited from applying for an Illinois driver's license. But the Secretary went on to write, "This driving record has a mandatory lifetime revocation and no driving relief of any type may be issued. Therefore, you are barred from making application for any driving privilege for life in the State of Illinois." That is not entirely true.

Illinois Vehicle Code § 6-208(b)(4), which the Illinois Secretary of State cites in its letter, references a number of exceptions to a lifetime ban from applying for an Illinois license. Indeed, even fourth-time offenders may apply for driving privileges subject to certain conditions.⁶ Thus, the Secretary of State should have written in its letter, "you are banned from applying for life *unless*...."

So, the Illinois Secretary of State gave some somewhat misleading information to Mr. Nettleton: so what? Nettleton's problems are further

⁶ Pursuant to sections 5/6-205(c)(1.5) and 206(c)(3)(F) of Illinois' Vehicle Code, fourth DUI offenders may make application for restricted driving permit after 5 years from date of revocation provided that the person demonstrates a minimum of 3 years of uninterrupted abstinence from alcohol and successful completion of any rehabilitative treatment recommended based on assessment of the person's alcohol or drug use. More relevant to the case at bar, section 5/6-208(b)(4.5) provides: "[a] bona fide resident of a foreign jurisdiction who is subject to [a lifetime ban from applying as a result of a fourth DUI conviction] may make application for termination of the revocation after a period of 10 years from the effective date of the most recent revocation."

complicated by the fact that Delaware DMV then misread the Illinois correspondence to mean that Illinois applies a lifetime revocation on drivers with four DUI convictions, no exceptions. The characterization of the Illinois lifetime ban from applying for an Illinois license as a “lifetime revocation” is at the center of DMV’s position.

And by the way, what is Illinois doing in this dispute anyway? Nettleton “surrendered” his Illinois license to Delaware some 15 years ago and Illinois won’t let him get a license there today because of DUI convictions that occurred 4 and 6 years *after* he was no longer a licensed Illinois driver. Does Delaware have some reason to deny Nettleton a license besides the Illinois Secretary of State’s misleading response made to Nettleton himself?

In his pleading, Plaintiff explains that “[o]riginally the Division told him that he might be able to get a conditional license from Delaware, so that he could driving [sic] in any state of the country except the State of Illinois. Later, Mr. Nettleton was told by the Division that it would not agree to any sort of conditional license, and that he must appeal to the Court of Common Pleas.”⁷ So much for consistency.

Nettleton duly appealed to the Court of Common Pleas, which denied his claim and this appeal followed.

⁷ Appellant’s Br. at 7.

STANDARD & SCOPE OF REVIEW

When reviewing a decision of the Court of Common Pleas, the Superior Court acts as an intermediate appellate court where the function is the same as the Supreme Court.⁸ The standard of review for an appeal from the Court of Common Pleas to this Court is two-fold. “First, errors of law are reviewed *de novo*. Second, ‘this Court is bound by findings of fact made by the Court of Common Pleas which are supported by the record and which are the product of a logical and deductive process.’”⁹

The Court writes only to settle the rather narrow question of whether a lifetime ban on applying for an Illinois license prevents Delaware DMV from considering Mr. Nettleton’s request for a Delaware license, assuming he otherwise qualifies and, for the reasons stated, we decide here that it does not.

DISCUSSION

The main statutory actor on this stage is the Interstate Compact, to which Illinois and Delaware are both signatories. It provides that each signatory state, “for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to

⁸ *Fletcher v. Shahan*, 2002 WL 499883, at *2 (Del. Super. Mar. 6, 2002).

⁹ *Wilson v. Klabe*, 2004 WL 1732217, at *2 (Del. Super. July 29, 2004) (internal citations omitted).

Article III of this compact, as it would if such conduct had occurred in the home state in the case of conviction for [DUI].”¹⁰

One would think this pretty much ends any discussion of the Interstate Compact—Delaware is instructed to treat a fourth DUI conviction in any other state as if it were a fourth DUI conviction in Delaware and apply the suspension time applicable to a fourth offense DUI under Delaware law. DMV does not see it that way.

Rather, DMV argues that “[a]s a signatory to the Compact, Delaware was required to give effect to the permanent revocation of [Mr. Nettleton’s] driving privileges by the State of Illinois and deny his request for a Delaware driver’s license, a decision that was properly upheld by the Court of Common Pleas.”¹¹ So, if the Court takes DMV at its word, any state imposing a more draconian suspension on a driver than any other state controls the licensing of a driver in all signatory states. Applying this logic, legislatures are not sovereign in their own states when it comes to licensing. Rather, the “sovereign” is whatever state imposes the most onerous sanction. If this all seems grossly illogical and unfair, DMV’s best response is that “the situation he now finds himself is entirely of his

¹⁰ 21 *Del. C.* § 8101 art. IV(a)(2).

¹¹ Appellee’s Br. at 8-9.

own making and is solely as a result of a series of choices he, and not the State of Delaware made.”¹²

Well, now, the Court is not so sure it agrees with that assessment. By DMV’s records, Mr. Nettleton “surrendered” his Illinois license to Delaware’s DMV in 2000. He was no longer a licensed Illinois driver nor did he live there. He picked up DUIs number three and four in 2004 and 2006 and it was Illinois (or at least its computer) that elected to bar him from applying for a license (in Illinois) for life (subject to exceptions as previously mentioned) and it was DMV that chose to “give effect” to the Illinois lifetime revocation, not Mr. Nettleton. And as we have seen, the Interstate Compact is not a bar to licensing Mr. Nettleton.

To circle back briefly to the nagging question of Illinois’ interest in Mr. Nettleton’s license, the Court notes that it is Delaware DMV’s practice to “suspend” Delaware “licenses” that do not exist. So, for example, a DUI conviction in Delaware carries a one year license revocation.¹³ If the driver has no Delaware license whatsoever, DMV wants to ensure that he is not able to come to apply for a license a week after his conviction and receive a driver’s license during the period for which he would be suspended if he had a license prior to the conviction. Delaware DMV therefore assigns an unlicensed DUI offender an

¹² Appellee’s Br. at 10.

¹³ 21 *Del. C.* § 4177A(a)(1).

identifying number and “suspends” the unlicensed driver for the period of suspension applicable to the offense. This is standard practice and acts as a “thumbtack” of sorts so that if the offending driver appears at DMV, the computer will spot him and he will be rejected for a new license during the period of license suspension.

To Delaware’s credit, once the statutory period of suspension has terminated, Delaware’s computer updates the entry to “suspension lifted” and the unlicensed driver is now eligible to get a license (assuming he can otherwise qualify).

If that is what happens in Delaware, why did it not happen in Illinois? Well, a number of reasons suggest themselves, but the most obvious one is that under Illinois law, there is no termination date on the period of revocation for a fourth-offense DUI—the offender must affirmatively petition for an exception and demonstrate his rehabilitation to the satisfaction of the Illinois authorities. Assuming Illinois records these matters the way Delaware does, he would logically be forever “flagged” in their computer as “revoked” unless and until he qualified for an exception listed in section 6-208(b)(4) of the Illinois Vehicle Code.

But why is it that because Illinois makes a data entry barring him from licensing in Illinois he must be forever barred everywhere? DMV suggests that the answer lies in Article V of the Compact, which provides that a state shall not issue

a driver's license to an applicant for a new license whose out-of-state license has been revoked "if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked such person may make application for a new license if permitted by law."¹⁴ The Court is not entirely convinced that Article V applies to this case: Mr. Nettleton is not applying for a new license. Rather, he is seeking reinstatement of a Delaware license that by DMV's own records was revoked and the revocation subsequently lifted.

Assuming, *arguendo*, that Article V does apply, DMV proceeds from this very shaky premise to argue that it is barred from licensing Mr. Nettleton because no 1-year exception exists under Delaware law. Mr. Nettleton contends that the exception is provided by 21 *Del. C.* § 2707(b)(2). The section states, "The Department shall not issue an operator's or chauffeur's license to any: . . . (2) Person whose license has been revoked under this chapter until the expiration of 1 year after such license was revoked."¹⁵ But the simple answer to this is that he has not been "revoked under this chapter." Rather his revocation stems from the actions of the state of Illinois. If Mr. Nettleton is "revoked" due to the Interstate Compact, (which we have already seen refers the host state back to its own laws on revocation) the Interstate Compact is not in "this chapter," it is in Chapter 81 of

¹⁴ 21 *Del. C.* § 8101 art. V(2).

¹⁵ 21 *Del. C.* § 2707(b)(2).

Title 21. Section 2707(b)(2) is no basis upon which to grant *or* deny Mr. Nettleton's license application.

Undaunted, DMV argues that section 2707(b)(1) says it shall not issue a license to any person "whose license has been suspended, during the period for which license was suspended," and, so the argument goes, since Mr. Nettleton's license was suspended for life in Illinois, he is suspended for life in Delaware. This issue might be more persuasive if Mr. Nettleton had an Illinois license and it was suspended. The problem is that according to DMV's own records, Mr. Nettleton "surrendered" his Illinois license to the Delaware DMV when he returned to Delaware after being convicted of his second DUI in Illinois in 2000. He is not a "person whose license has been suspended."

Further, and without trying to plumb the depths of the subtle differences between "revoked" and "suspended," more than necessary, it is certain that Delaware's motor vehicle code makes distinctions between "revoked" and "suspended," using the terms individually in some cases and together in others.¹⁶ We may fairly infer that a suspension involves the doing of some remedial act (i.e., paying a fine) that will easily restore the driver's legal status, while a revocation is irremediable without further demonstrations of rehabilitation before a license is reissued. While DMV uses the terms interchangeably in the case of Mr. Nettleton,

¹⁶ For example, the fee to reinstate a suspended license is \$50, 21 *Del. C.* § 2737, while the fee to reinstate a previously revoked license is \$200, 21 *Del. C.* § 2738.

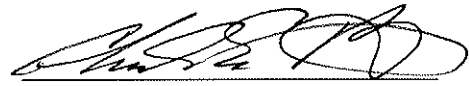
its position is that he is revoked, forever, in Illinois. This reading is consistent with the Illinois statute, which will only allow a fourth-offense DUI driver to obtain an Illinois restricted license upon a showing of substantial rehabilitation. In addition, DMV's own record shows that the last entry on Mr. Nettleton's record is "revocation lifted" as of October 2010. Therefore, the provision in 21 *Del. C.* § 2707(b)(1) that a license may not be issued to one whose license is "suspended" is inapplicable to Mr. Nettleton.

Finally, nothing said here is to suggest that DMV must give Mr. Nettleton a license. The Court merely rules that the Illinois action in making whatever computer entry it made that caught the attention of Delaware authorities cannot suffice as a basis, without more, to forever ban Mr. Nettleton from a driver's license in Delaware. The current legislative policy of Delaware is that four DUI convictions results in a 60-month revocation. Nettleton should be subject to the same consequences as his fellow Delaware citizens who engage in the same conduct.

In this case, DMV agrees it did not consider whether it will be "safe to grant to such person the privilege of driving a motor vehicle on the public highways" and DMV retains its discretion to refuse to grant a license to one who cannot pass a fitness test or otherwise comply with DMV's criteria.

For the reasons stated, the Court reverses the decision of the Court of Common Pleas, but because the dispute must now either continue on to the Delaware Supreme Court or be resolved at the DMV, there is no particular reason to remand it to the Court of Common Pleas.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Charles E. Butler', written in a cursive style.

Judge Charles E. Butler