

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON GIVENS,	§	
	§	No. 696, 2011
Plaintiff Below-	§	
Appellant	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
DELAWARE HARNESS	§	
RACING COMMISSION	§	CA No. N10M-10-100
	§	
Defendant Below-	§	
Appellee	§	

Submitted: October 17, 2012

Decided: November 28, 2012

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

On this 28th day of November 2012, it appears to the Court that:

(1) Plaintiff-Below/Appellant, Brandon Givens, appeals from the Superior Court's denial of his request for a writ of prohibition and declaratory judgment against Defendant-Below/Appellee Delaware Harness Racing Commission ("the Commission"). Givens raises one claim on appeal. Givens contends that the Superior Court erred as a matter of law by denying his petition for a writ of prohibition as there was no other adequate legal remedy for the Commission's violation of his due process rights. We find no merit to Givens' appeal, and affirm.

(2) Givens had possessed a driver/trainer/owner license, issued by the Commission, since 2004. This license enabled Givens to participate in harness racing in Delaware, which was how Givens earned his living. In April 2010, the Commission notified Givens that he had been selected for human drug testing. Givens submitted a urine sample, which tested positive for cocaine, oxycondone, and oxymorphone. As a result, Givens' harness racing license was summarily suspended. This was the third time Givens had tested positive for drugs.

(3) The Commission informed Givens he was entitled to a summary suspension hearing within three racing days to determine whether he should remain suspended pending a final disciplinary hearing and ruling. Givens elected to receive a timely suspension hearing, which was held before the Commission's Board of Judges on April 18, 2010. The summary suspension hearing did not touch the merits of Givens' suspension; rather, it solely addressed the issue of whether Givens would remain suspended pending final determination of his case. The Board of Judges verbally issued an order that Givens would remain summarily suspended but did not schedule a final disciplinary hearing on the merits of the suspension because of Given's right to have confirmatory drug testing of his urine sample.

(4) In August 2010, a Commission investigator asked Givens whether he wanted confirmatory drug testing. Givens did not, but requested that the secondary sample be DNA tested instead. The Commission refused Givens' request. The

Commission advised Givens that he still had time to decide whether to agree to the confirmatory drug testing but still did not schedule a hearing on the merits.

(5) On October 1, 2010, Givens' attorney wrote the Commission contending that her client's "lengthy and indefinite 'unofficial' suspension" exceeded the Commission's authority and jurisdiction. She demanded that Givens' license be reinstated. The Commission's counsel responded that the Board of Judges was "awaiting Mr. Givens (*sic*) advice concerning whether he wants to proceed with confirmatory drug testing...." The Commission's attorney went on to explain it was "[his] understanding" that if Givens advised the Board of Judges that Givens wanted the confirmatory drug testing, and it failed to confirm the initial positive test, the license suspension would be lifted. The Commissions' attorney further explained that if the confirmatory test confirmed the initial results, or if Givens advised the Board of Judges that Givens did not want the confirmatory testing conducted, the Board of Judges could schedule Givens' hearing.

(6) Givens filed a complaint in the Superior Court for a writ of prohibition and declaratory judgment against the Commission with the Superior Court two weeks later. Givens requested the writ of prohibition on the grounds that the Commission violated his right to due process and acted in excess of its jurisdiction. The Commission moved to dismiss and Givens moved to stay the administrative proceedings before the Commission. The Superior Court ordered the DNA testing Givens sought and the results showed that Givens could not be excluded as the giver of the sample. The

Commission renewed its motion to dismiss, alleging that a writ of prohibition was inappropriate because Givens had an adequate legal remedy in the form of an administrative hearing and a right to appeal the resulting order under 3 *Del. C.* § 10026.

(7) The Superior Court issued an order on November 17, 2011 denying the Commissions' motions to dismiss, and denying Givens' request for a writ of prohibition.¹ The court concluded that Givens had an alternative legal remedy² and that the Commission had not denied Givens due process.³ This appeal followed.

(8) Meanwhile, the Commission's Board of Judges held a hearing on the merits of Givens' suspension on January 5, 2012. Givens pleaded no contest to the drug allegations. Givens did not raise any of his due process arguments during the hearing. The Board of Judges found Givens in violation of his license by testing positive for drugs and he was additionally found to have engaged in conduct injurious to racing. As this was Givens' third positive test for drugs, Givens was fined \$2,000 and suspended for five years. The period of suspension began on April 13, 2010, which credited Givens for the time he was summarily suspended. No appeal was taken.

(9) In this appeal from the denial of the writ of prohibition, Givens argues that the Commission's regulations, on their face and as applied, deprived him of due process. Givens contends that the Commission stripped itself of jurisdiction by

¹ *Givens v. Delaware Harness Racing Comm'n*, 2011 WL 5822626 at *2 (Del. Super. Nov. 17, 2011).

² *Id.* at *5.

³ *Id.* at *6.

violating his due process rights,⁴ leaving him no adequate legal remedy but a writ of prohibition, which would restore his harness racing license. Delaware courts have observed that “the issuance of a [writ of prohibition] rests within the sound discretion of the [trial court].”⁵ Accordingly, we review a trial courts denial of a writ of prohibition for abuse of discretion. We review issues of a constitutional dimension *de novo*.⁶

(10) A writ of prohibition is an “extraordinary remedy” and legally equivalent to an injunction.⁷ It issues from a Superior Court to a lower tribunal “only for the purpose of preventing the inferior tribunal from exceeding the limits of its jurisdiction.”⁸ The writ of prohibition is designed to “keep the administration of justice in orderly channels, and to prevent unwarranted assumption of power over persons or matters not within the legitimate cognizance of the inferior tribunal.”⁹ Because the writ of prohibition is an extraordinary remedy, it “cannot be used as a substitute for an appeal.”¹⁰ The writ will be denied “if the petitioner has another adequate and complete remedy at law for the correction of the asserted error of the court below.”¹¹

⁴ See generally *Barry v. Barchi*, 443 U.S. 55 (1979).

⁵ *Family Court v. Dept. of Labor & Indus. Relations*, 320 A.2d 777, 780 (Del. Ch. 1974).

⁶ *CML V, LLC v. Bax*, 28 A.3d 1037, 1040 (Del. 2011) (citing *Stigars v. State*, 674 A.2d 477, 479 (Del. 1996)).

⁷ *Petition of Barbee*, 693 A.2d 317, 318 (Del. 1997) (citing *Abrahams v. Superior Court*, 131 A.2d 662, 670-71 (Del. 1957)).

⁸ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁹ *Id.* (citing *Canaday v. Superior Court*, 116 A.2d 678, 681 (Del. 1955)).

¹⁰ *Workers' Compensation Fund v. Indus. Acc. Bd.*, 929 A.2d 785, 2007 WL 2323494 at *1 (Del. 2007).

¹¹ *Canaday*, 116 A.2d at 682.

(11) In *Steigler v. Superior Court*, we explained that while the basis for issuing a writ of prohibition will ordinarily be lack of jurisdiction over the subject matter or person, it may be issued in other circumstances. One such circumstance is “where fundamental constitutional rights have been violated during the course of the proceedings leading to the order.”¹² A court’s jurisdiction, existing at the commencement of judicial proceedings, “may be ‘lost’ in the course of the proceedings by deprivation of constitutional rights. . .the court [will then] no longer [have] jurisdiction to proceed.”¹³ Thus, a writ of prohibition “may lie where the lower court has lost jurisdiction to enter the order in question, by reason of violation of a defendant’s fundamental constitutional rights, provided there is no other adequate legal remedy.”¹⁴

(12) Under *Steigler*, our analysis is two-fold: (1) was there an adequate legal remedy available to Givens other than a writ of prohibition, and (2) if not, was the Commission acting in excess of its jurisdiction by violating Givens’ due process rights? We find the answer to the first prong to be in the affirmative; accordingly, there is no need for us to reach the issue of whether the Commission deprived Givens of due process.¹⁵

¹² *Steigler v. Superior Court*, 252 A.2d 300, 303 (Del. 1969).

¹³ *Steigler*, 252 A.2d at 303 (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)).

¹⁴ *Id.*

¹⁵ We do note that in the context of another professional license the General Assembly has directed that a hearing must be scheduled within 60 days of a temporary suspension. *See 24 Del. C. § 1923(d)*. The General Assembly could address the scheduling of the hearing by amending 3 *Del. C. § 10026* or the Commission could do so under its rulemaking authority. *See 3 Del. C. § 10005*.

(13) The Superior Court correctly found on the facts of this case that Givens had an adequate legal remedy in his right to appeal the Commission's order after exhausting his administrative remedies. This is provided for by the Commission's enabling statute,¹⁶ and by Rule 10.3.15 of the Commission's regulations.¹⁷ Based on the foregoing, the Superior Court did not err in concluding Givens had an adequate legal remedy. Nor did the Superior Court abuse its discretion in refusing to issue a writ of prohibition on the facts of this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹⁶ 3 Del. C. § 10026

¹⁷ 3 Del. Admin. Code 501-10.3.15.