

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

NICOLE STEVENSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2D08-5391
	)	
DEPARTMENT OF HIGHWAY	)	
SAFETY AND MOTOR VEHICLES,	)	
	)	
Respondent.	)	
_____	)	

Opinion filed September 23, 2009.

Petition for Writ of Certiorari to the  
Circuit Court for Hillsborough County;  
James D. Arnold, Judge.

Eilam Isaak, Tampa,  
for Petitioner.

Robin Lotane, General Counsel, and  
Damaris E. Reynolds, Assistant General  
Counsel, Department of Highway Safety  
and Motor Vehicles, Lake Worth, for  
Respondent.

NORTHCUTT, Judge.

The Department of Highway Safety and Motor Vehicles suspended Nicole Stevenson's driver's license after she refused to submit to a breath-alcohol test in a DUI investigation. In this petition for second-tier certiorari review, Stevenson challenges the circuit court's order that upheld the license suspension. We deny the petition.

Stevenson first maintains that the implied consent warning given her was improper because she was asked to submit to "a breath, urine, or blood" test when the circumstances justified only a breath test. Therefore, she contends, her refusal did not justify the license suspension. She relies on Department of Highway Safety & Motor Vehicles v. Clark, 974 So. 2d 416 (Fla. 4th DCA 2007), in support of her argument. However, this court has decided the issue to the contrary in Department of Highway Safety & Motor Vehicles v. Nader, 4 So. 3d 705 (Fla. 2d DCA 2009).

In her second argument, Stevenson attacks the proof that she was driving. But only the circuit court can determine whether the administrative findings are supported by competent, substantial evidence. Dep't of Highway Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247 (Fla. 2d DCA 2006). In the district court's review, we do not measure the administrative findings against the evidence. See Dep't of Highway Safety & Motor Vehicles v. Kurdziel, 908 So. 2d 607 (Fla. 2d DCA 2005) (noting that second-tier certiorari review is limited to whether the circuit court afforded procedural due process and applied the correct law).

Petition denied.

FULMER and SILBERMAN, JJ., Concur.