

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,169

ALEX FISHER,
Appellant,

v.

KANSAS DEPARTMENT OF REVENUE,
Appellee.

SYLLABUS BY THE COURT

1.

An administrative agency derives subject matter jurisdiction over a matter from statutes.

2.

The plain language of K.S.A. 8-1002(f) grants the Kansas Department of Revenue subject matter jurisdiction to review an officer's certification and notice of suspension upon receipt and, if it satisfies the requirements of K.S.A. 8-1002(a), to suspend an individual's driving privileges. If the certification and notice does not satisfy the requirements of K.S.A. 8-1002(a), the Kansas Department of Revenue must dismiss the administrative proceeding.

3.

An officer's error in filling out information required by K.S.A. 8-1002(d) on a certification and notice of suspension does not impair the Kansas Department of Revenue's subject matter jurisdiction.

Review of the judgment of the Court of Appeals in an unpublished opinion filed July 22, 2022. Appeal from Johnson District Court; JAMES F. VANO, judge. Opinion filed March 31, 2023. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Tricia A. Bath, of Bath & Edmonds P.A., of Leawood, argued the cause, and *Thomas J. Bath Jr.* and *Mark E. Hartman*, of the same firm, were on the brief for appellant.

Nhu Nguyen, of Legal Services Bureau, Kansas Department of Revenue, argued the cause and was on the brief for the appellee.

The opinion of the court was delivered by

WILSON, J.: Alex Fisher claims that the Kansas Department of Revenue (KDOR) lacked subject matter jurisdiction to suspend his driving privileges because a law enforcement officer made a mistake in entering the date on his officer's certification and notice of suspension form, commonly called a DC-27. While acknowledging the mistake, we disagree that there was no subject matter jurisdiction for KDOR to act. We consequently affirm the judgments of the Court of Appeals and district court affirming KDOR's suspension of Fisher's driving privileges.

FACTS AND PROCEDURAL BACKGROUND

On August 25, 2019, Johnson County Sheriff's Deputy Mark Burns pulled Fisher's vehicle over for a traffic violation. Fisher agreed to take a breath test, which he failed. Burns then filled out a DC-27 informing Fisher that his driving privileges were suspended and that he had the right to petition KDOR for review. Although the record contains a DC-27 with the correct date, Burns first filled out another version of the form

documenting the date as April 25, 2019, instead of August 25; the parties agree that Burns gave Fisher the form with the incorrect date. On the DC-27 given to Fisher, the relevant paragraphs read:

"1. On *April 25, 2019*, reasonable grounds/probable cause existed to believe the above-named person, within the State of Kansas, in JO County, had been operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance, or county resolution.

....

"8. A copy of this document which contains a Notice of Driver's License Suspension is being served on the above-named person on *April 25, 2019* by . . . personal service." (Emphases added.)

KDOR held an administrative hearing. At the hearing, Fisher argued that the incorrect date on the DC-27 deprived KDOR of jurisdiction. The hearing officer affirmed the suspension.

Fisher petitioned the district court for review. The district court denied Fisher's petition noting that the "complete findings of fact and conclusions of law are as stated in a Memorandum Decision" dated March 23, 2021. Although Fisher attached a copy of this memorandum decision to his petition for review, it is missing from the record on appeal.

Fisher then appealed to the Court of Appeals, arguing that the incorrect date on the DC-27 form—which impacted the information required in K.S.A. 8-1002(d)—deprived KDOR of jurisdiction. A panel of the Court of Appeals disagreed. *Fisher v. Kansas Dept. of Revenue*, No. 124,169, 2022 WL 2904053, at *1 (Kan. App. 2022) (unpublished

opinion). While the panel acknowledged some cases that treated certain errors on DC-27 forms as jurisdictional infirmities, the panel sided with other cases that "refused to treat strict compliance with K.S.A. 8-1002 as jurisdictional." 2022 WL 2904053, at *3. Instead, the panel rejected the notion that "jurisdiction [is] such a transient concept." 2022 WL 2904053, at *4.

Fisher petitioned this court for review, which it granted.

ANALYSIS

Fisher's sole argument recapitulates his claim below: the officer's failure to correctly fill out paragraphs one and eight on the DC-27 deprived the KDOR of subject matter jurisdiction to suspend his driving privileges. We note that Fisher makes no claim of prejudice resulting from the officer's error; instead, his sole claim for relief centers on KDOR's jurisdiction.

Standard of review

Appellate courts review questions of subject matter jurisdiction de novo. *Kingsley v. Kansas Dept. of Revenue*, 288 Kan. 390, 395, 204 P.3d 562 (2009). A jurisdictional deficiency in an agency's exercise of authority also infects any appeal from that exercise of authority, preventing a district or appellate court from obtaining jurisdiction over it. *Sandlin v. Roche Laboratories, Inc.*, 268 Kan. 79, 85, 991 P.2d 883 (1999).

Appellate courts also review de novo issues involving interpretation of statutes, which present a question of law. *Kingsley*, 288 Kan. at 395.

"All Kansas courts use the same starting point when interpreting statutes: The Legislature's intent controls. To divine that intent, courts examine the language of the provision and apply plain and unambiguous language as written. If the Legislature's intent is not clear from the language, a court may look to legislative history, background considerations, and canons of construction to help determine legislative intent." *Jarvis v. Dept. of Revenue*, 312 Kan. 156, 159, 473 P.3d 869 (2020).

Discussion

As an agency of the executive branch, KDOR derives authority to initiate an agency proceeding—what we call subject matter jurisdiction—from statutes. *Rodewald v. Kansas Dept. of Revenue*, 296 Kan. 1022, 1038, 297 P.3d 281 (2013); *Stutsman v. Kansas Dept. of Revenue*, No. 119,528, 2019 WL 1303063, at *3 (Kan. App. 2019) (unpublished opinion). Cf. *Kingsley*, 288 Kan. at 395. We begin by examining those statutes.

K.S.A. 8-1002(a) authorizes law enforcement officers to issue a certification and notice of suspension of an individual's driving privileges "[w]henver a test is requested pursuant to this act and results in either a test failure or test refusal." The DC-27 form sets forth this certification and notice. *Meats v. Kansas Dept. of Revenue*, 310 Kan. 447, 451, 447 P.3d 980 (2019); *State v. Baker*, 269 Kan. 383, 387, 2 P.3d 786 (2000). K.S.A. 8-1002(a) further sets forth the information which an officer must certify and thus which a DC-27 must include:

"(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is

under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

"(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

"(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment." K.S.A. 8-1002(a).

K.S.A. 8-1002(d) enumerates additional information required on a DC-27:

"(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the

reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that: (1) Constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing as provided in K.S.A. 8-1020(o) and (p), and amendments thereto; and (2) all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division."

K.S.A. 8-1002(f) addresses the Legislature's grant of authority for KDOR to act. It states: "Upon receipt of the law enforcement officer's certification, the division shall review . . ." By considering these two clauses only, the Legislature has made clear that at a certain moment in time—"upon [KDOR's] receipt of the certification"—KDOR is authorized to do something: "review." That review is an action that requires, at a minimum, a KDOR staff member to look at something and consider what it says. In other words, when a certification is received, KDOR has subject matter jurisdiction to proceed further. Under the plain language of K.S.A. 8-1002(f), then, Fisher's claim fails.

To be sure, once the "review" has occurred, K.S.A. 8-1002(f) then presents KDOR with two potential courses of action. KDOR must "suspend the person's driving privileges in accordance with the notice of suspension previously served" *if* the certification "meets the requirements of subsection (a)"; otherwise, "the division shall dismiss the administrative proceeding and return any license surrendered by the person." Thus the plain language of K.S.A. 8-1002(f) grants KDOR subject matter jurisdiction to review a

DC-27 and—if the DC-27 satisfies the requirements of K.S.A. 8-1002(a)—to suspend the driver's driving privileges. If the DC-27 does not satisfy the requirements of K.S.A. 8-1002(a), the agency continues to have the authority to take action, but that action is limited to dismissing the case and returning the license to the driver; K.S.A. 8-1002(f) precludes it from doing anything else.

We pause to note Fisher's assertion that he lacks any mechanism to challenge an incorrect date on a DC-27 form. We concede only that Fisher lacks any mechanism on appeal to challenge the date on the form because of the way he framed the sole issue before us. We also offer no opinion on whether other challenges can be made.

CONCLUSION

We affirm the judgments of the Court of Appeals panel and the district court affirming KDOR's administrative suspension of Fisher's license.

STANDRIDGE, J., not participating.