

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001737-MR

ALAN E. MIRACLE

APPELLANT

V. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 97-CI-257

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: This is an appeal from a summary judgment granted by the Oldham Circuit Court in an action contesting the revocation of appellant's driver's license for driving under the influence of alcohol (DUI). For the reasons stated hereafter, we affirm.

Appellant was convicted of DUI in Indiana in August 1993. On March 20, 1997, he was convicted of DUI by the Oldham District Court, which ordered the conviction to be treated as a first offense. The court stated as follows:

[T]he prosecution having insufficient evidence to present to the Court or the jury

of any prior offenses either within the state of Kentucky or from any other state for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, . . . it is hereby ORDERED AND ADJUDGED that the Defendant's conviction on March 20, 1997, is and shall for all purposes be determined a First Offense for Operating a Motor Vehicle Under the Influence of Alcohol (K.R.S. 189A.010) for all purposes including fines, a possible jail time, necessary alcohol driver education programs, eligibility for hardship licenses, and period of revocation of operator's license.

Despite the court's order, appellee Transportation Cabinet, Division of Driver Licensing (cabinet), treated the 1997 conviction as a second offense and revoked appellant's driving privileges for one year.

Appellant filed this action in the circuit court, seeking to have the March 1997 conviction treated as a first offense for license revocation purposes. The court eventually granted the cabinet's motion for summary judgment, finding that although the district court did not err by treating the 1997 conviction as a first-offense DUI for purposes of KRS 189.010 since the Commonwealth failed to prove the earlier conviction, the cabinet was authorized to treat the 1997 conviction as a second-offense DUI for purposes of revoking appellant's license pursuant to KRS 189A.070. This appeal followed.

First, although appellant admits that there is no real disagreement over the material facts herein, he argues that there is a dispute as to the conclusions of law to be drawn from those facts, and hence, that summary judgment was improper. Contrary to appellant's contention, however, a summary judgment is not precluded where, as here, certain disputed legal conclusions turn

upon the court's statutory interpretation and construction, rather than turning upon the interpretation of disputed facts.

Next, appellant argues that the court erred by construing KRS 189A.010 and KRS 189A.070 together so as to require his out-of-state DUI conviction to be treated as a "prior offense" for purposes of calculating the length of his license revocation. We disagree.

KRS 189A.010(4) sets out mandatory DUI sentences which increase in severity according to the number of prior DUI offenses. KRS 189A.010(4)(e) provides that

[f]or purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction. (Emphasis added.)

KRS 189A.070(1) in turn provides that

[u]nless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010 shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:

- (a) For the first offense within a five (5) year period, ninety days;
- (b) For the second offense within a five (5) year period, twelve (12) months;

. . . .

- (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(4)(e). (Emphasis added.)

Appellant cites Sutton v. Transportation Cabinet, Commonwealth of Kentucky, Ky. App., 775 S.W.2d 933 (1989), to support his argument that by amending KRS 189A.010 in 1991, the Kentucky General Assembly used the phrase "[f]or purposes of this subsection" to clearly show its intention that the KRS 189A.010(4)(e) definition of "prior offenses" should be applied only to the penalties set out in KRS 189A.010(4). However, we are not persuaded that Sutton is applicable to the instant action since it involved an earlier version of KRS 189A.010 which omitted any reference to out-of-state convictions. Moreover, in 1991 the General Assembly specifically indicated in KRS 189A.070(1)(e) that the calculation of periods of license revocation should be tied to the "prior offense" definition set out in KRS 189A.010(4)(e), and there is no merit to appellant's contention that such cross-referencing is prohibited either by the language of KRS 189A.010(4), or by the fact that KRS 189A.070 imposes civil rather than criminal penalties. It follows, therefore, that the court did not err by finding that appellant's 1997 conviction should be treated as a second offense for purposes of calculating the length of his license revocation pursuant to KRS 189A.070.

The court's summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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