

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO -AP-08-004
WB-1 PEN- 3/24/2008

IAN DICKEY,

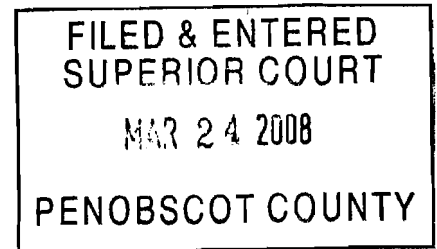
Plaintiff,

v.

STATE OF MAINE, SECRETARY OF
STATE, BUREAU OF MOTOR VEHICLES,

Defendant.

ORDER



Hearing was held on the plaintiff's motion for temporary restraining order and preliminary injunction on March 7, 2008. The parties appeared by counsel. In his motion the plaintiff seeks to enjoin the defendant from enforcing an administrative suspension of his license to operate a motor vehicle, a suspension for 275 days as a result of a report that he had operated a motor vehicle while under the influence of alcohol and that he failed to submit to a test to determine his blood alcohol level. The plaintiff requested a hearing in a timely fashion but was not provided a hearing until 44 days after the request and did not receive a decision until 15 additional days had elapsed. According to 29-A MRSA 2483(2), the Secretary of State shall conduct such a hearing and issue a decision within 30 days. Both parties agree that to prevail, the petitioner must demonstrate a likelihood of success on the merits as well as irreparable harm.


Although the court may agree with the irreparable harm claim, the court does not find that the petitioner has a likelihood of success on the merits. The court does not read McGee v. Secretary of State, 2006 ME 50, 896 A.2d 933 as overruling the case the state relies upon, Davric Maine Corporation v. Maine Harness Racin Commission, 1999 ME 99, 732 A.2d 289. The fact that the statute establishing administrative hearing time limits, 29-A MRSA 2483(2), does not contain a penalty provision for the state's violation

of the time limits still distinguishes the case from McGee, which dealt with a statute containing a specific sanction should its time limit provisions be violated. In the absence of such a penalty provision, it is likely that the statutory time limits are directory, not mandatory.

Motion Denied.

The clerk is directed to incorporate this Order into the docket by reference.

Dated: March 14, 2008



WILLIAM ANDERSON
JUSTICE, SUPERIOR COURT

Date Filed 2/4/07 Penobscot County Docket No. AP-2008-4

Action Rule 80C Appeal
ASSIGNED TO JUSTICE KEVIN M. CUDDY
REASSIGNED TO WILLIAM R. ANDERSON

IAN D. DICKEY vs. STATE OF MAINE, SECRETARY OF STATE,
BUREAU OF MOTOR VEHICLES

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Date of
Entry