STATE OF MICHIGAN

COURT OF APPEALS

CHARLES HAROLD SMITH, Petitioner-Appellee,	UNPUBLISHED April 6, 2001
v	No. 220520 Washtenaw Circuit Court
SECRETARY OF STATE, Respondent-Appellant.	LC No. 99-010510

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Respondent appeals by leave granted from the circuit court order that reversed the decision of a hearing officer and granted petitioner's application for a commercial driver's license upon passing the requisite test. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that the circuit court lacked jurisdiction to review respondent's denial of petitioner's commercial license application under MCL 257.323(8); MSA 9.2023(8). We disagree, in part. The underlying issue in this case concerns whether respondent has properly construed § 323(8), not necessarily whether respondent's denial of petitioner's application was proper. The former is a purely legal question, while the latter is a mixed question of law and fact. A question of statutory construction is a question of law subject to de novo consideration on appellate review, whether the reviewing court is the circuit court or this Court. See *Oxendine v Secretary of State*, 237 Mich App 346, 348-349; 602 NW2d 847 (1999).

Respondent relies on *Taylor v Secretary of State*, 216 Mich App 333, 335, 338; 548 NW2d 710 (1996), in which this Court held that the circuit court did not have jurisdiction to review the respondent's denial of the petitioner's application for a group A vehicle designation, which had been denied pursuant to MCL 257.312f(4)(a); MSA 9.2012(6)(4)(a). However, even the *Taylor* Court recognized that the disputed issue was one of statutory interpretation, which mandated review de novo. *Id.* at 336. Only after a full review of the applicable statutory language did this Court conclude that the circuit court was without jurisdiction to hear petitioner's appeal because "'plain, clear, and unambiguous language [of § 323] clearly establishes the Legislature's intent to prohibit appeals from the Secretary of State's' denial of a

* Circuit judge, sitting on the Court of Appeals by assignment.

vehicle group designation." *Id.* at 338, quoting *Paulson v Secretary of State*, 154 Mich App 626, 633; 398 NW2d 477 (1986).

Accordingly, to the extent that the circuit court was acting as an appellate court in reviewing the question of law whether respondent's construction of § 323(8) was proper, the court's exercise of jurisdiction was appropriate.[1]

Turning to the substantive issue in dispute, we conclude that respondent's interpretation and application of § 312f(4)(a) was entitled to deference by the judiciary and was proper. "'[T]he construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.'" *Collingsworth v Director, Dep't of Social Services*, 146 Mich App 186, 195; 379 NW2d 417 (1985), quoting *Red Lion Broadcasting Co, Inc v Federal Communications Comm*, 395 US 367, 381; 89 S Ct 1794; 23 L Ed 2d 371 (1969).

Here, even acknowledging that § 312f(4)(a) is ambiguous inasmuch as it can be read two different ways, there is no compelling reason for this Court to conclude that respondent's construction of the statute is wrong. To reiterate, the question is whether the legislature intended for the 36-month period of § 312f(4)(a) to run from the actual date of a petitioner's license suspension or revocation or from the end of that suspension or revocation period. Given that the length of a period of suspension or revocation can vary greatly, applying the 36-month period to the actual date of suspension or revocation would lead to arbitrary and inconsistent application, including the possibility of an application being filed *during* a period of suspension or revocation. Clearly, this was not the legislature's intent.

To avoid arbitrariness and capriciousness, we find it probable that the legislature intended for the 36-month period to begin at the end of an individual's period of suspension or revocation. Such an interpretation removes from the equation the variance in suspension and revocation periods and creates consistency in application. Moreover, this construction is in accord with this Court's interpretation of the statutory language, albeit in unpublished dicta. See *Kuhlman v Secretary of State*, unpublished opinion per curiam of the Court of Appeals, issued September 22, 1995 (Docket No. 174213).

Accordingly, in light of the deference due respondent regarding its construction of the statutory language, and the lack of any compelling reason to believe that its construction is wrong, we reverse the circuit court's order to the extent that it directed respondent to allow petitioner to take the commercial driver's license test and to issue the license if he passed the test.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard

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[1] We also note that MCL 257.323; MSA 9.2023 has been amended, effective October 1, 1999, to delete subsection (8).