STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM DAVID BLEHM, Petitioner-Appellee,	UNPUBLISHED August 23, 2002
V	No. 228251 Saginaw Circuit Court
SECRETARY OF STATE, Respondent-Appellant.	LC No. 99-030178-AL

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Respondent appeals by leave granted the circuit court's order reinstating petitioner's restricted driver's license. The circuit court reversed respondent's administrative decision revoking petitioner's license for consuming alcohol in violation of the restrictions imposed on his license. The court also added the requirement that petitioner install an ignition interlock device on his car, which prevents a car's operation unless a nearly alcohol-free breath sample is given. We reverse.

This Court reviews a circuit court's decision on an administrative agency's ruling for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 232, 234-235; 559 NW2d 342 (1996). In doing so, we must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Id*. at 234. Substantial evidence is that "amount of evidence that a reasonable mind would accept as sufficient to support a conclusion." *In re Payne*, 444 Mich 679, 692 (Boyle, J.); 514 NW2d 121 (1994). Where such evidence is presented, the circuit court may not substitute its discretion for that of the agency, even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). Further, an agency's findings of fact are afforded deference, especially concerning witness credibility and evidentiary questions. *Id*.

Respondent argues that the circuit court clearly erred in (1) considering evidence outside the administrative record, (2) modifying the conditions of petitioner's restricted license upon

reinstatement, and (3) concluding that respondent's decision to revoke petitioner's license was arbitrary, capricious, and an abuse of discretion. We agree with each of these contentions.[1]

Pursuant to MCL 257.320e(6), judicial review of an administrative licensing sanction is governed by the version of the statute "in effect at the time the offense was committed." Former MCL 257.323(6), which applies because it was in effect at the time of petitioner's last conviction and references the section under which petitioner's license was revoked, provided:

> In reviewing a determination resulting in a denial or revocation under section 303(1)(d) or (e) or 303(2)(c), (d), or (e), *the court shall confine its consideration to a review of the [administrative] record* . . . , and shall not grant relief pursuant to subsection (3). The court shall set aside the determination of the secretary of state *only if substantial rights of the petitioner have been prejudiced* because the determination is any of the following:
>
> (a) In violation of the Constitution of the United States, of the state constitution of 1963, or of a statute.
>
> (b) In excess of the statutory authority or jurisdiction of the secretary of state.
>
> (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
>
> (d) Not supported by competent, material, and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law. [(Emphasis added).]

As indicated by the language emphasized above, the circuit court was required to limit its review to the evidence presented in the administrative proceedings below. Thus, the circuit court erred in considering testimony offered by petitioner on appeal from those proceedings. See *Rodriquez v Secretary of State*, 215 Mich App 481, 483-484; 546 NW2d 661 (1996).

The circuit further erred in modifying the conditions of petitioner's restricted license upon reinstatement. As correctly argued by respondent, in addition to limiting the record for review by the circuit court, MCL 257.323(6) prohibited the granting of relief pursuant to MCL 257.323(3), which authorized the court to "affirm, *modify*, or set aside the restriction, suspension,

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[1] Although the first two issues raised by respondent on appeal were not preserved below, we may nonetheless review them because they are legal questions for which the necessary facts have been presented. *Providence Hospital v Labor Fund*, 162 Mich App 191, 194-195; 412 NW2d 690 (1987).

revocation, or denial . . . ." (Emphasis added). Thus, pursuant to MCL 257.323(6), the circuit court was limited to either affirming or setting aside the revocation. *Rodriguez*, *supra* at 482.

Moreover, the court could only set aside the revocation if petitioner's substantial rights had been prejudiced in one of the six ways enumerated in subsections (a) through (f). Here, however, although the circuit court found respondent's decision was "[a]rbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion" under former MCL 257.323(6)(e), it is clear that the circuit court misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Boyd*, *supra*. First, petitioner admitted lying under oath during a previous hearing concerning whether he had stopped drinking alcohol. As a result, the evidence supported respondent's finding that petitioner was not credible, a determination that should not be disturbed on appeal. *Black*, *supra*; see also *Arndt v Dep't of Licensing & Regulation*, 147 Mich App 97, 101; 383 NW2d 136 (1985). Second, petitioner failed to present "clear and convincing evidence" that his drinking problem was under control and likely to remain under control. See 1992 AACS, R 257.313; MCL 257.323(6)(e); *Boyd*, *supra*. While the circuit court's decision may have been supportable in general, substantial evidence in the record also supported respondent's determination that petitioner was drinking alcohol in violation of his restricted license. *In re Payne*, *supra*. Accordingly, respondent's determination was neither arbitrary, capricious, nor an abuse of discretion, and the circuit court improperly substituted its judgment for that of respondent, which was substantially supported. *Boyd*, *supra*; *Black*, *supra*.

We reverse.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell