STATE OF MICHIGAN

COURT OF APPEALS

LORNE NANTHAN MORGAN, Petitioner-Appellant,	UNPUBLISHED March 13, 2012
v	No. 301641 Wayne Circuit Court
SECRETARY OF STATE, Respondent-Appellee.	LC No. 10-011305-AL

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Petitioner appeals as of right and order denying his appeal of the revocation of his driver's license by respondent. We reverse and remand for further proceedings.

Petitioner first argues that the trial court erred in failing to review the record. We agree.

In order to preserve an issue for appellate review, it has to be raised before, addressed, and decided by the lower court. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). In this case, the trial court stated that it did not have a transcript of the Driver Assessment and Appeal Division (DAAD) hearing and petitioner offered no objection based on any argument that the trial court was not reviewing the record. Thus, this issue is not preserved for appeal. This Court reviews unpreserved issues for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Since petitioner was unable to persuade respondent that his driving privileges should be reinstated, petitioner then appealed to the circuit court, pursuant to MCL 257.323(1). MCL 257.323(4) governs the review process in the trial court, and states that:

> (4) [e]xcept as otherwise provided in this section, in reviewing a determination resulting in a denial, suspension, restriction, or revocation under this act, the court shall confine its consideration to a review of the record prepared pursuant to section 322 or 625f or the driving record created under section 204a for a statutory legal issue, and shall not grant restricted driving privileges. The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

> (a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.
> (b) In excess of the secretary of state's statutory authority or jurisdiction.
> (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.

As seen from the language quoted above, MCL 257.323(4) requires that a trial court must "confine its consideration to a review of the record prepared pursuant to section 322 or 625f or the driving record created under section 204a." In this case, the trial court specifically stated that it did not have a transcript of the DAAD hearing although both the petitioner and respondent acknowledge that the petitioner paid the fee to have the transcript and record transmitted. The trial judge stated that she was reading respondent's order and that, from that order, she would not reverse respondent's decision. Thus, the evidence indicates that the trial court did not have the DAAD transcript and did not review it. Furthermore, there was no indication in the record that the trial court received a copy of petitioner's driving record or that the trial court reviewed petitioner's driving record.

In *Roman v Secretary of State*, 213 Mich App 592, 596; 540 NW2d 474 (1995), this Court addressed an instance where there was no evidence that the trial court reviewed the hearing transcript or the petitioner's driving record. This Court stated:

> [t]he circuit court cannot confine its review to the record of the hearing or petitioner's driving record if it does not have either of the records to examine. Thus, the circuit court erred in reviewing the matter and issuing a decision in this case without the record of the hearing or petitioner's driving record.

Likewise in this case, the evidence indicates that the trial court did not have a copy of the DAAD transcript or petitioner's driving record. As this Court stated in *Roman*, 213 Mich App 596, "in order to afford the circuit court an opportunity to adequately address the issue and articulate its findings," remand was necessary. *Roman*, 213 Mich App at 597.[1] Thus, the trial court's failure

[1] The only relevant change in MCL 257.323(4) is that at the time of the *Roman* decision, the language of MCL 257.323(4) stated that a trial court should confine its review of the record "prepared pursuant to section 322 or the driving record created under section 204a." *Roman*, 213 Mich App at 596. The statute was slightly modified in 1991, and now states that a trial court should confine its review of "the record prepared pursuant to section 322 *or 625f* or the driving record created under section 204a." MCL 257.323(4) (emphasis added). In this case, there was no record created pursuant to 625f, as 625f involves requesting a hearing when a person refuses to submit to a chemical test. See MCL 257.625f. Thus, this Court's analysis in *Roman* is still applicable.

in this case to review the record was plain error affecting petitioner's substantial rights, as a full review of the record could have altered the outcome of the appeal.

Petitioner next argues that the trial court erred in failing to find that respondent relied on improper evidence and that respondent violated petitioner's First Amendment rights. We agree, in part.

Because MCL 257.323 governed the trial court's behavior, whether the trial court erred is a matter of statutory construction. *Oxendine v Secretary of State*, 237 Mich App 346, 348; 602 NW2d 847 (1999); See also *Taylor v Secretary of State*, 216 Mich App 333, 336; 548 NW2d 710 (1996). Questions of statutory construction are reviewed de novo. *Oxendine*, 237 Mich App at 348-349.

The trial court stated that it did not have the Lannie McRill substance abuse evaluation or a transcript of the DAAD hearing. Without reviewing the McRill evaluation or the DAAD hearing transcript, the trial court was unable to determine the date the evaluation was completed, to verify whether respondent's interpretation of the McRill evaluation was accurate, or to ascertain who presented the McRill evaluation at the DAAD hearing. Thus, any decision made by the trial court regarding the validity of the McRill evaluation or the appropriateness of respondent's reliance on the McRill evaluation was done without a review of the record, in violation of MCL 257.323(4). Likewise, any decision about whether respondent considered all of the evidence presented at the hearing was improper, as it appears that the trial court did not even review what evidence was presented at the DAAD hearing.

However, any argument relating to petitioner's First Amendment rights is not properly before this Court and will not be considered. Petitioner raises this claim in one sentence in his statement of facts, and does not mention it in the issues presented section of his appellate brief. This Court has recognized repeatedly that an issue is not properly presented for appeal if it is not raised in a party's statement of the issues presented. *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999); *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990); See also MCR 7.212(C)(5) (stating that an appellant's brief must include "[a] statement of questions involved, stating concisely and without repetition the questions involved in the appeal. Each question must be expressed and numbered separately…."). Moreover, other than one sentence stating that the revocation of his license infringed on his First Amendment right to freedom of religion, petitioner does not explain or articulate this conclusory statement. This Court has also held that it is not enough for a party to "'simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad