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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1648

Tanner Homer Johnson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 17, 2014
Affirmed
Stauber, Judge

Dakota County District Court
File No. 19AVCV131184

Tanner H. Johnson, Burnsville, Minnesota (pro se appellant)

Lori A. Swanson, Minnesota Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

U N P U B L I S H E D   O P I N I O N

STAUBER, Judge

On appeal from the dismissal of his petition for judicial review of the order revoking his driver's license, appellant argues that the district court erred by dismissing his petition as untimely because the record does not support the district court's finding that appellant

received the notice of revocation order (NOR) at the time he was arrested on suspicion of driving while intoxicated (DWI) in January 2013. We affirm.

FACTS

On January 20, 2013, appellant Tanner Homer Johnson was arrested on suspicion of DWI. Appellant was transported to the police department, where he was belligerent and refused to provide a breath sample. Because he refused testing, appellant's driver's license was revoked. Appellant was then transported to a hospital for medical treatment.

On April 18, 2013, appellant filed a petition for judicial review of the license revocation order. In response, respondent Minnesota Commissioner of Public Safety (commissioner) filed a motion to dismiss for lack of jurisdiction on the basis that appellant's petition was untimely. Appellant opposed the motion claiming that he did not receive the NOR until April 8, 2013. Appellant argued that because the 30-day statute of limitations period set forth in Minn. Stat. § 169A.53, subd. 2(a) (2012), did not start to run until he received the NOR, his petition was timely.

At the hearing on the motion to dismiss, Officer Mitchell Carlson testified that after appellant was arrested for DWI, he was booked at the police department where appellant's personal items were placed in a property bag. Officer Carlson also testified that he read appellant the implied-consent advisory, but appellant refused testing and stated that he would "not do anything." According to Officer Carlson, he then completed the NOR form. Although Officer Carlson could not confirm "a hundred percent [that he] read the [NOR] form word for word to [appellant]," he testified that he "did inform [appellant] that his license would be revoked after seven days."

Officer Carlson testified that after he completed the NOR appellant refused to sign it, and he placed the form in appellant's property bag, which was kept open throughout the booking process. Officer Carlson also testified that an inventory list was composed, which included the items as they were placed into appellant's property bag. According to Officer Carlson, he did not complete the inventory list, but did witness the list as it was composed. Officer Carlson further testified that "[a]s soon as all the items get placed in the property bag, it gets sealed tight." Appellant's property bag was then transported with him to the hospital, and subsequently with him to the jail.

Appellant testified that he received his property bag when he was released from jail. He also acknowledged that he received all of his personal items listed on the inventory list, including his clipped driver's license. Appellant, however, claimed that the NOR was not in the property bag when he was released from jail. According to appellant, he did not receive the NOR until mid-April, when he received it from his lawyers.

The district court found that Officer Carlson completed the NOR, informed appellant of its contents, and placed it in the property bag along with appellant's personal property. The district court also found that the property bag was transferred to the hospital with appellant. Consequently, the district court found that appellant received the NOR in January 2013. Because appellant received the NOR in January 2013, but did not file his petition for judicial review until April 2013, the district court concluded that appellant's petition was untimely and granted the commissioner's motion to dismiss. This appeal followed.

D E C I S I O N

In reviewing a decision in an implied-consent proceeding, a district court's findings of fact are reviewed under a clearly erroneous standard. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). Findings of fact are clearly erroneous only when the reviewing court is "left with a definite and firm conviction that a mistake has been committed." *Id.* (quotation omitted). In reviewing findings of fact, "[d]ue regard is given [to] the district court's opportunity to judge the credibility of the witnesses." *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). But a district court's legal conclusions are reviewed de novo. *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

A driver may petition for judicial review of the revocation of his driver's license within 30 days after receipt of a notice and order of revocation. Minn. Stat. § 169A.53, subd. 2(a). "A failure to file a petition for judicial review within the 30-day statutory period deprives the district court of jurisdiction to hear the petition." *Thole v. Comm'r of Pub. Safety*, 831 N.W.2d 17, 19 (Minn. App. 2013), *review denied* (Minn. July 16, 2013). "[A]s a matter of public policy D.W.I. laws, including the implied consent statute, are . . . strictly applied." *Qualley v. Comm'r of Pub. Safety*, 349 N.W.2d 305, 306 (Minn. App. 1984). In fact, "the 30-day limitations period will be strictly construed even if a delay in filing is not the driver's fault." *McShane v. Comm'r of Pub. Safety*, 377 N.W.2d 479, 482 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986).

Appellant argues that the district court's findings that he received the NOR in January 2013 are clearly erroneous. We disagree. Officer Carlson testified that he

completed the NOR in appellant's presence, informed him of the contents of the NOR, and then placed it in appellant's property bag, which appellant acknowledged that he received when he was released from jail. This testimony supports the district court's findings that appellant received the NOR in January 2013. Although appellant testified that he never received the NOR, and that the NOR was not among the contents of his property bag, the district court did not believe appellant's testimony. Instead, the district court found Officer Carlson's testimony to be credible, and it is well settled that we defer to the district court's credibility determinations. *See Snyder*, 744 N.W.2d at 22.

Appellant also argues that Officer Carlson's testimony was incredible because, despite his testimony that he placed the NOR in the property bag and then sealed it, and that the property bag was not opened at the county jail, appellant's hospital papers somehow "found their way into the already sealed property bag." Appellant further argues that his "uncontroverted" testimony is that he never received the NOR and was never asked to sign anything. But although Officer Carlson testified that the property bag was not opened at the county jail, he testified that the property bag is "like a ziplock bag," and there is nothing in the record indicating that the property bag was not opened at the hospital and then resealed. Appellant's hospital papers could have been placed in the property bag at that point. More importantly, regardless of how the hospital papers ended up in the property bag, Officer Carlson testified that he completed the NOR and informed appellant of its contents at the police department. At that point, appellant received notice of the NOR because he was effectively served. *See* Minn. Stat. § 169A.52, subd. 6 (2012) (stating that a notice of revocation "becomes effective at the time . . . a peace

officer acting on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or both, and of revocation" and that the "notice must advise the person of the right to obtain administrative review as provided in section 169A.53"). Moreover, although appellant claimed that he was never shown the NOR form, or asked to sign anything, the district court did not find appellant's testimony to be credible. *See Snyder*, 744 N.W.2d at 22. Therefore, the district court's findings that appellant received the NOR in January 2013, are not clearly erroneous. *See Johnson v. Comm'r of Pub. Safety*, 394 N.W.2d 867, 868-69 (Minn. App. 1986) (affirming the district court's order dismissing the driver's petition for judicial review of his license revocation as untimely because the district court was "entitled to believe the testimony of the officer," who testified that he gave the NOR to the driver after he refused testing, "rather than the testimony of the driver," who testified that he was not given the NOR form).

Because the district court's findings that appellant received the NOR in January 2013 are not clearly erroneous, his petition for judicial review, filed on April 18, 2013, was filed well after the 30-day statute limitations set forth in section 169A.53, subdivision 2(a), had expired. As a result, appellant's petition for judicial review was untimely, depriving the district court of jurisdiction over the matter. Accordingly, the district court did not err by granting the commissioner's motion to dismiss.

Affirmed.