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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0579**

Jerome Robert Beck, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed December 26, 2017
Affirmed
Halbrooks, Judge**

Cottonwood County District Court
File No. 17-CV-17-11

Paul M. Malone, Malone & Mailander, Slayton, Minnesota (for appellant)

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Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition to rescind a license-revocation order, arguing that the Commissioner of Public Safety failed to comply with its statutory duty under Minn. Stat. § 171.09, subd. 3(b) (2016), and violated appellant's due-

process rights by publishing an incorrect fax number on an application to remove a no-alcohol-use license restriction. We affirm.

FACTS

On July 3, 2005, respondent Commissioner of Public Safety cancelled appellant Jerome Beck's driver's license after an alcohol-related driving incident, finding him inimical to public safety. On July 20, 2006, after Beck completed a one-year rehabilitation requirement, the commissioner reinstated his driving privileges with a no-alcohol-use restriction on his license. The restriction stated that Beck "may not consume any drink or product containing alcohol or controlled substances." Beck could request removal of the restriction after ten years. Sometime after June 26, 2015, Beck faxed an application to the commissioner seeking removal of the license restriction, using the fax number on the application. Beck believed that the restriction would be removed by faxing the application.

On November 10, 2016, a Minnesota state trooper stopped Beck for "over fog, over center, and improper lane use." The trooper noticed an odor of alcohol. Beck admitted to drinking, and the trooper could see an open bottle in the back seat. Beck was arrested for violating the "no alcohol use" restriction on his driver's license and for driving with an open bottle.

After arresting Beck, the trooper asked the Minnesota Department of Public Safety Driver and Vehicle Services Division (DVS) to review Beck's license. DVS notified Beck that his license would be cancelled on December 23 because he violated the no-alcohol-use restriction on his license. DVS advised Beck that his license may be reinstated if he

submits evidence of chemical-dependence rehabilitation, completes an ignition-interlocking device program for three years, and applies for a new license.

After Beck realized that the license restriction had not been removed, he went to DVS and discovered that the commissioner had provided an incorrect fax number in the instructions on the license-restriction removal application. Beck moved the district court to rescind the order revoking his driver's license on the grounds that the commissioner violated his due-process rights by publishing an incorrect fax number on the application and that the commissioner failed to comply with its statutory duty under Minn. Stat. § 171.09, subd. 3 (2016). The district court denied his motion. This appeal follows.

DECISION

I.

Beck argues that the commissioner failed to comply with a duty imposed pursuant to Minn. Stat. § 171.09, subd. 3(b), by publishing an incorrect fax number on the license-restriction-removal application. “[S]tatutory construction is a question of law, which we review de novo.” *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). Our objective when interpreting the language of a statute is “to ascertain and effectuate the intention of the legislature.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000). If that intent is clear from the plain and unambiguous language of the statute, we apply the plain meaning of the statute. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Minn. Stat. § 171.09, subd. 3(b), states:

Upon proper application by a person having a valid driver's license containing the restriction that the person must not consume alcohol or controlled substances, who has not been

documented as having consumed alcohol or having possessed or used a controlled substance within the past ten years, and whose driving record contains no impaired driving incident within the past ten years, the commissioner must remove the no-alcohol/controlled substance restriction on the person's driving record and issue to the person a duplicate driver's license that does not show that restriction.

Under the plain meaning of subdivision 3(b), the commissioner's duty to remove the license restriction begins "[u]pon proper application." The district court found that "Beck did not make [a] proper application to the Commissioner for removal of the restriction [and] remained subject to the total abstinence restrictions." Beck does not dispute the district court's findings of fact. The district court received no testimony or other evidence demonstrating that the commissioner received Beck's application, and DVS has no record of receiving the application before Beck was arrested on November 10, 2016. Because the commissioner never received Beck's application, the commissioner did not violate its statutory duty under Minn. Stat. § 171.09, subd. 3(b).

II.

Beck argues that the commissioner violated his due-process rights by publishing an incorrect fax number on the application to remove the license restriction. To analyze Beck's due-process argument, we must analyze the "application of law to undisputed facts. Accordingly, our review is de novo." *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 413 (Minn. 2007). The Due Process Clause of the United States Constitution guarantees that no state shall "deprive any person of life, liberty or property, without due process of law." U.S. Const. amend. XIV, § 1. The Minnesota Constitution provides that no person shall be deprived of property rights without due process of law. Minn. Const. art. I, § 7.

“The due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States.” *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). The amount of process due depends on the particular situation. *Lamusga v. Comm’r of Pub. Safety*, 536 N.W.2d 644, 646 (Minn. App. 1995).

Beck asserts that his due-process rights were violated because the commissioner actively misled him as to his legal obligations. In support, Beck relies on a case in which a law-enforcement officer improperly informed a driver that he could be subjected to criminal penalties for refusing to take an implied-consent test. *Johnson v. Comm’r of Pub. Safety*, 887 N.W.2d 281, 285-88 (Minn. App. 2016), *review granted* (Minn. Jan. 25, 2017). This court held that the driver’s due-process rights were violated because “[d]ue process does not permit those who are perceived to speak for the state to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations.” *Id.* at 288. We reject Beck’s argument that the state actively misled him as to his legal obligations because Beck was under no legal obligation to remove the restriction. *See Black’s Law Dictionary* 978, 1179 (9th ed. 2009) (defining legal obligation as a “legal or moral duty to do or not do something”).¹ Instead, he had the option of

¹ Beck also argues the district court created a clerical-error exception and a citizen’s duty exception in its due-process analysis. We disagree that the district court created a clerical-error exception because this mischaracterizes the district court’s analysis. The district court stated that the “incorrect fax number is a clerical error, not a violation of the law” in concluding that the commissioner did not violate a statutory duty under Minn. Stat. § 171.09, subd. 3. We also disagree with Beck’s claim that the district court created a citizen’s duty exception. In addressing whether Beck’s reliance on the incorrect fax number was unreasonable, the district court stated that a reasonable person would have

submitting the application if he wanted the restriction removed. Minn. Stat. § 171.09, subd. 3(b).

In analyzing Beck’s due-process claim, we rely on a three-factor balancing test we have previously used to determine whether an individual was erroneously deprived of a driver’s license. *Hamilton v. Comm’r of Pub. Safety*, 587 N.W.2d 845, 847 (Minn. App. 1999) (citing *Mathews v. Eldridge*, 424 U.S. 319, 321, 96 S. Ct. 893, 896 (1976)), *aff’d*, 600 N.W.2d 720 (Minn. 1999). We consider:

[1], the private interest that will be affected by the official action; [2], the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [3], the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. (alteration in original) (quotations and citation omitted).

The first factor considers “the nature and the weight of the private interest affected by the official action challenged.” *Davis v. Comm’r of Pub. Safety*, 509 N.W.2d 380, 388 (Minn. App. 1993). The private interest in a driver’s license revocation case “is the drivers’ interest in the continued possession of a license.” *Id.* Beck’s private interest is therefore his interest in possessing a license.

In addressing the weight given to Beck’s private interest, we consider “(1) the duration of the revocation; (2) the availability of hardship relief; and (3) the availability of

checked on the status of the application. The district court did not hold, as Beck claims, that he had a duty “to verify that the Commissioner of Public Safety is complying with the statutory imposed duty.”

prompt post-revocation review.” *Williams v. Comm’r of Pub. Safety*, 830 N.W.2d 442, 446 (Minn. App. 2013) (quotation omitted). Due-process analysis is flexible and “calls for procedural protections as the particular situation demands.” *See Bendorf*, 727 N.W.2d at 415. As to the first factor, Beck may not apply for a new license until he completes chemical-dependence rehabilitation and uses an ignition-interlocking device for three years. But Beck has access to hardship relief because he may still drive before he receives an unrestricted license so long as he uses the ignition-interlocking device. The third factor, the availability of a post-revocation review, is not relevant to Beck’s case. Therefore, we do not analyze it.

Next, we consider the risk of erroneous deprivation and the probable value, if any, of additional or substitute procedural safeguards. *Hamilton*, 587 N.W.2d at 847. The risk that an individual would be erroneously deprived of his driver’s license because of the procedures used in this case, particularly by the commissioner providing an incorrect fax number on an application, is low. The benefits of additional procedural safeguards would also have minimal value here. The application instructions stated that the applicant “[would] be notified to apply for a duplicate or renewal driver license to have the restriction removed” if the background check showed no reference to alcohol consumption. The application also provided a website link and telephone number for questions.

The district court found:

A reasonable person in Beck’s situation would have taken steps to verify his fax transmitted successfully. The form also clearly informs him that he will be notified to apply for a duplicate driver’s license. With this information in mind, a reasonable person in Beck’s situation would have contacted

DVS to inquire about the status of his application after a period of time passed and he did not receive a new license with “any use of alcohol or drugs invalidates license” removed from it.

We agree with the district court’s reasoning. Because the application informed Beck that more steps were required before the restriction-removal process was complete and the application included contact information to allow him to inquire about his application’s status, there is a low risk that others would be erroneously deprived of a driver’s license because of the procedures used in this case. The risk is also low because an applicant could mail the application or take it to a DVS location. Although we would not expect an applicant to submit the application through multiple delivery methods, the risk of erroneous deprivation decreases because the commissioner’s mistake would not affect every applicant.

Third, we consider “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quotation omitted). In applying procedural due-process factors to an alcohol-related license revocation, the Minnesota Supreme Court has held that the state has a “compelling interest in highway safety justifying efforts to keep impaired drivers off the road.” *Bendorf*, 727 N.W.2d at 417. The government also has “an interest in avoiding the increased costs and administrative burdens that additional procedures would entail.” *Sawh*, 823 N.W.2d at 635.

Here, the commissioner has a strong interest in ensuring that a driver’s license restriction is only removed for those who have complied with the ten-year abstinence

restriction. The state has addressed this interest by only removing the restriction upon receipt of a proper application and verification that the applicant has no history of alcohol use within the last ten years. *See* Minn. Stat. § 171.09, subd. 3(b). The state and the commissioner also have an interest in preserving scarce resources. It would impose an unreasonably high burden on the state if we held that Beck's due-process rights were violated based on a typographical error on the application, particularly when we consider that Beck had not checked on the status of his application despite being informed that the process would not be complete until the commissioner notified him to apply for a new license.

In weighing these three factors, we conclude that Beck's due-process rights were not violated. Although Beck has a significant private interest in maintaining his driver's license and preventing a job loss that may result from the requirement of an ignition-interlocking device, Beck will only be required to use the device for three years. The procedural safeguards in place adequately protected his private interest. Beck could have called to check on the status of his application, as he was never notified to apply for a new license. Additionally, the government has a strong interest in maintaining public safety and removing license restrictions only upon receipt of a proper application. Although we acknowledge that Beck suffered unfortunate consequences because of the commissioner's error, this conduct did not rise to a violation of Beck's due-process rights.

III.

Beck argues he is entitled to equitable relief as a result of the commissioner's error and neglect. We will not consider an issue on appeal if the appellant does not support the

allegation with analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (citing *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519, 187 N.W.2d 133, 135 (Minn. 1971)). Because Beck cites no supporting authority to show that he is entitled to equitable relief, we do not consider this argument.

Affirmed.