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NO. COA12-384
NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2012

LARRY PATE WOOLARD,
Petitioner,

v. Craven County
No. 11 CVS 1127

MICHAEL ROBERTSON, COMMISSIONER
N.C. DIVISION OF MOTOR VEHICLES,
Respondent.

Appeal by respondent from an amended order entered 30 December 2011 by Judge Russell J. Lanier, Jr. in Craven County Superior Court. Heard in the Court of Appeals 14 November 2012.

Gary H. Clemmons of CHESTNUTT, CLEMMONS & PEACOCK, P.A., attorney for petitioner.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for respondent.

ELMORE, Judge.

The N.C. Division of Motor Vehicles (respondent) appeals from an amended order finding that a discussion of "reasonable grounds" for the implied consent offense of driving while intoxicated (DWI) during petitioner's criminal trial, satisfied the elements of collateral estoppel for purposes of the

companion civil license revocation hearing. After careful consideration, we affirm.

I. Background

On 27 March 2011, Trooper Michael Riggs was summoned to a single vehicle accident in Craven County. When Trooper Riggs arrived at the scene, he observed Larry Pate Woolard (petitioner) standing nearby. Petitioner acknowledged that the vehicle involved in the accident belonged to him, but he claimed that the vehicle had been stolen, and that someone else had dropped him off at the scene. Trooper Riggs did not observe anyone in the wrecked vehicle.

Trooper Riggs then began to question petitioner. During his questioning, Trooper Riggs noticed that petitioner had red, glassy eyes and that his breath smelled of alcohol. Trooper Riggs then informed petitioner of his Miranda rights, and at some point during the interrogation, petitioner told Trooper Riggs that he did not wish to answer any more questions. However, based on the information that petitioner had already given during the interrogation, Trooper Riggs determined that petitioner had in fact driven his car that evening, and that he steered the car off the road and hit a mailbox.

Trooper Riggs next attempted to administer a field sobriety test to petitioner, but petitioner declined to participate. Subsequently, Trooper Riggs arrested petitioner for the implied consent offense of DWI and transported him to the New Bern Police Department. There, petitioner refused to sign the implied consent rights form or to submit to chemical analysis pursuant to N.C. Gen. Stat. § 16.2(a).

On 5 April 2011, respondent issued a letter in accordance with N.C. Gen. Stat. § 20-16.2(d), revoking petitioner's driving privilege for twelve months based on his refusal to submit to chemical analysis. Petitioner then requested an administrative hearing to contest the revocation. That request was granted, and the hearing was set for 6 July 2011.

At the hearing, petitioner's counsel objected, under N.C. Gen. Stat. § 20-166.1(i), to the admission of any statements made by petitioner to Trooper Riggs in response to questions regarding the details of the accident. The hearing officer overruled the objection and affirmed petitioner's license revocation.

On 15 July 2011, petitioner filed a petition with the trial court for judicial review of the administrative decision alleging 1) that the charging officer did not have reasonable

grounds to believe that petitioner had committed the offense, 2) that the hearing officer did not have sufficient evidence to support the relevant findings of fact, and 3) that petitioner's license had therefore been erroneously revoked. The petition sought 1) reversal of the administrative hearing, 2) removal of the respondent's revocation of petitioner's driver's license, 3) and a temporary restraining order, preventing respondent from revoking petitioner's driving privileges pending judicial review. The temporary restraining order was granted by the trial court.

Meanwhile, on 4 August 2011, the trial court held the related DWI criminal proceeding. There, the trial court entered a suppression order, finding that there were "no reasonable grounds to believe that [petitioner] ha[d] committed an implied consent offense" and dismissing the DWI charges against petitioner.

Subsequently, the trial court addressed petitioner's petition for judicial review of the administrative decision. Initially, the trial court completed that review, and affirmed the agency's decision in a judgment entered 6 September 2011. Then, upon proper motion by petitioner, the trial court reassessed its decision to affirm the agency ruling, and in its

30 December 2011 amended order, the trial court reversed its 6 September 2011 judgment on the grounds that collateral estoppel prevented relitigation of the issues. Specifically, the amended order concluded that "the effect of the September 6, 2011 order is to 'relitigate' findings of law and fact against Petitioner that were finally and conclusively determined in Petitioner's favor in the DWI criminal proceeding by parties that are in privity with those presently before the Court." Respondent now appeals.

II. Arguments

Respondent presents three arguments on appeal: 1) that the trial court failed to apply the correct standard of review in its amended order, thereby erroneously applying collateral estoppel to reverse the agency's decision; 2) that the trial court erred in barring respondent from litigating on post-Miranda statements made by petitioner; and 3) that the trial court erred in failing to affirm the agency decision. We disagree with respondent's first argument. As such, we decline to address respondent's remaining arguments.

III. Analysis

Five elements must be shown for a court to invoke the doctrine of collateral estoppel: "(1) a prior suit resulting in

a final judgment or decree; (2) between identical parties or those in privity; (3) involving one or more identical issues; (4) that the specific issue was litigated and necessary to the prior judgment; and (5) that the specific issue was actually determined." *Powers v. Tatum,* 196 N.C. App. 639, 642, 676 S.E.2d 89, 92 (2009) (citation omitted).

At issue here is factor 3, regarding whether one or more identical issues existed in both proceedings. Although "a civil license revocation case and a criminal DWI case are independent of each other in terms of outcome . . . it does not prohibit the application of collateral estoppel between the two cases," provided that the requisite elements are shown. *State v. Summers*, 132 N.C. App. 636, 642, 513 S.E.2d 575, 579 (1999), *aff'd*, 351 N.C. 620, 528 S.E.2d 17 (2000).

Thus, what we must review is whether the issue before the trial court in the DWI criminal proceeding, whether grounds existed to believe defendant committed the offense, would reappear before the trial court upon review of the agency's decision. In essence, what we must determine is if under the appropriate standard of review of an agency's decision by the trial court, would the trial court again be faced with determining whether Trooper Riggs had proper grounds to believe

that petitioner committed the offense? We conclude that they would.

This Court faced the identical question in *Brower v. Killens*, 122 N.C. App. 685, 472 S.E.2d 33 (1996). There, the trial court was asked to review *de novo* the petitioner's license revocation based on his refusal to submit to chemical breath analysis. This court held that the respondent, DMV, was collaterally estopped from relitigating the existence of probable cause to arrest the petitioner for DWI, since the corresponding criminal prosecution had determined that the trooper had insufficient probable cause to arrest the petitioner. We determined that "the quantum of proof necessary to establish probable cause to arrest in criminal driving while impaired cases and civil license revocation proceedings, notwithstanding the different burdens on the remaining elements, is virtually identical." *Id.* at 690, 472 S.E.2d at 37.

Nonetheless, respondent argues that the standard of review referenced by this Court in *Brower, de novo,* has changed, and as a result, under the new standard of review prescribed in N.C. Gen. Stat. § 20-16.2(e), the trial court would not be faced with determining whether grounds existed to believe petitioner committed the offense. We disagree.

Indeed, the standard of review prescribed in the statute was changed by our General Assembly in 2007. As indicated by *Brower*, the old standard of review on appeal from a license revocation hearing was *de novo*. However, according to the new statute, the trial court's review of the agency's decision "shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license." N.C. Gen. Stat. § 20-16.2 (2012).

However, regardless of this change, it is clear from the new standard of review that the trial court would nonetheless be making a determination of the application of the appropriate law. The language "whether the commission committed an error of law" implies a *de novo* review of the applicable law and its application to the facts and conclusions made by the reviewing agency. Here, the applicable law to be reviewed was probable cause, or grounds, to believe petitioner committed the offense charged. This is the same issue determined by the trial court, in petitioner's favor, in its 4 August 2011 order.

The trial court correctly identified this premise in its 30 December 2011 amended order from which respondent appeals.

There, the trial court correctly noted that "with respect to determining whether the Commissioner committed 'errors of law' the standard of review remains *de novo*." As such, we are unable to agree with respondent that the trial court applied the incorrect standard of review. It is clear from its order that the trial court closely followed the standard of review prescribed in N.C. Gen. Stat. § 20-16.2(e). As a result, we conclude that the trial court did not err in determining that collateral estoppel prevented relitigation of the issues.

Affirmed.

Judges STROUD and BEASLEY concur.

Report per Rule 30(e).