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NO. COA13-223
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN RE: JERRY'S SHELL, LLC
NC DMV ACTION NO. 27867

Rowan County
No. 12 CVS 660

Appeal by petitioner from order entered 19 November 2012 by Judge Richard L. Doughton in Rowan County Superior Court. Heard in the Court of Appeals 15 August 2013.

Ralph E. Stevenson, III, for petitioner.

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

DAVIS, Judge.

Petitioner Jerry's Shell, LLC ("Jerry's Shell") appeals from the trial court's order affirming the final agency decision of the North Carolina Division of Motor Vehicles (the "DMV") suspending its emissions inspection station license for a period of ninety days and imposing a civil penalty assessment of \$250. The primary issue raised on appeal is whether a limited

liability company must be represented by legal counsel in hearings before the DMV. Because we hold that such companies cannot appear *pro se* in DMV hearings, we reverse the trial court's order and remand.

Factual Background

On 6 October 2011, Inspector George Bryan Hunt ("Inspector Hunt") of the License and Theft Bureau of the DMV was assigned to conduct a covert audit of Jerry's Shell. He disabled the Malfunction Indicator Light ("MIL") bulb on a 2003 Dodge Caravan and then presented the vehicle for a safety inspection at Jerry's Shell. Inspector Hunt observed Donald St. Charles ("St. Charles"), a licensed mechanic who was authorized to perform state emissions and safety inspections, take the car keys and begin the inspection. St. Charles returned the car after he completed the inspection and informed Inspector Hunt that the vehicle had passed the inspection. Inspector Hunt was given a "Receipt/Statement" that indicated the MIL bulb was functional and had received a "Pass." Inspector Hunt examined the Dodge Caravan immediately after St. Charles returned the vehicle and determined that the MIL bulb was still nonfunctional.

Based on this audit, Inspector Hunt served Jerry's Shell with a Notice of Charge alleging that it had violated N.C. Gen. Stat. § 20-183.8C(d) by "issu[ing] an emissions electronic inspection authorization to a vehicle after performing an

emission inspection with the MIL . . . bulb functioning improperly or MIL bulb remaining on." St. Charles was also charged criminally for a violation of vehicle inspection law.

Todd Alligood ("Alligood"), the owner and operator of Jerry's Shell, requested an administrative hearing before the DMV upon receipt of the Notice of Charge. A hearing was held on 22 November 2011. Jerry's Shell was not represented by an attorney at this hearing. Instead, Alligood appeared on Jerry's Shell's behalf, and the hearing officer allowed him to represent Jerry's Shell on a *pro se* basis.

On 10 January 2012, Hearing Officer A. G. Cody entered an Official Hearing Decision and Order determining that Jerry's Shell had committed a Type II violation and had committed two other Type II violations within the past three years. The order directed that Jerry's Shell's emissions inspection license be suspended for 90 days and imposed a civil penalty assessment of \$250.

Jerry's Shell requested review by the Commissioner of the DMV. The Commissioner subsequently issued a final agency decision affirming the decision of the hearing officer. Jerry's Shell sought judicial review of the final agency decision in Rowan County Superior Court pursuant to N.C. Gen. Stat. § 20-183.8G(g) and Article 4 of Chapter 150B. The trial court entered an order 19 November 2012 affirming the final agency

decision. Jerry's Shell filed a timely appeal to this Court.

Analysis

The primary contention by Jerry's Shell on appeal is that the trial court erred in allowing Alligood to represent it at the DMV hearing because Alligood is not a licensed attorney and a limited liability company is precluded under North Carolina law from appearing *pro se* in a DMV hearing. For the reasons set forth by this Court in *In re Twin County Motorsports*, No. COA13-21, ___ N.C. App. ___, ___ S.E.2d ___ (filed Nov. 5, 2013), we agree and reverse the order of the trial court.

Twin County Motorsports raised the identical issue presented here – that is, whether a corporate entity must be represented by legal counsel in hearings before the DMV. In our decision in that case, we determined that corporations cannot appear *pro se* in DMV hearings based on this Court's decision in *Lexis-Nexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205, 573 S.E.2d 547 (2002).¹

¹ The rule articulated in *Lexis-Nexis* requiring corporations to be represented by legal counsel has been applied to limited liability companies as well. See *Bodie Island Beach Club Ass'n, Inc. v. Wray*, ___ N.C. App. ___, ___, 716 S.E.2d 67, 74 (2011) (holding that trial court properly denied defendant limited liability company's motion for leave to amend answer because Dr. Smith, a non-attorney, could not file answer on behalf of defendant SRS North Carolina Properties, LLC). Therefore, our analysis in *Twin County Motorsports* – which was based on *Lexis-Nexis* – applies equally to both corporations and limited liability companies who are parties in DMV hearings.

Consequently, North Carolina law did not permit Alligood to appear on behalf of Jerry's Shell at the hearing before the DMV hearing officer. For this reason, we reverse the trial court's decision and remand for further proceedings.²

Conclusion

For the reasons stated above, we reverse the trial court's order affirming the final agency decision and remand to the trial court for further remand to the DMV to conduct a new hearing where Jerry's Shell shall be represented by legal counsel.

REVERSED AND REMANDED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).

² Because we are reversing and remanding for a new hearing, we decline to address Jerry's Shell's remaining arguments regarding the merits of the agency's decision.