[Cite as *Reed v. Dept. of Pub. Safety*, 2021-Ohio-4314.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

WALTER REED, :

Plaintiff-Appellant, :

No. 110401

v. :

DEPARTMENT OF PUBLIC SAFETY, :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: December 9, 2021

Administrative Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-914983

Appearances:

Huey Defense Firm and Blaise Katter, *for appellant*.

David Yost, Ohio Attorney General, and Brian R. Honen and Natasha Natale, Assistant Attorneys General, Executive Agencies Section, *for appellee*.

MARY J. BOYLE, A.J.:

{¶ 1} Plaintiff-appellant Walter Reed appeals an order of the Cuyahoga County Court of Common Pleas affirming the Ohio Bureau of Motor Vehicles ("BMV") Registrar's disqualification of Reed's commercial driver's license ("CDL"). Reed raises one assignment of error:

The trial court erred by concluding that the BMV's disqualification of Reed's CDL was in accordance with the law.

{¶ 2} Finding no merit in Reed's sole assignment of error, we affirm the judgment of the common pleas court.

I. Facts and Procedural History

{¶ 3} On October 1, 2018, a Public Utilities Commission of Ohio ("PUCO" or "Commission") officer stopped Reed, who was driving a commercial motor vehicle ("CMV") for Mars Trucking, Inc. on Ohio Interstate 77. The PUCO officer cited Reed for an alleged violation of 49 C.F.R. 392.82(a)(1), which prohibits a driver from using a handheld mobile telephone while driving a CMV. On October 4, 2018, pursuant to Ohio Adm.Code 4901:2-7-09, the Commission sent Reed a combined Notice of Apparent Violation and Notice of Intent to Assess Forfeiture in the amount of $250.00 and informed Reed that he could request a conference to contest the violation and assessment. On December 20, 2018, Reed paid the assessed forfeiture, and the Commission notified the BMV that Reed was "convicted" of a "CW" offense, prohibiting use of a "handheld mobile telephone," as defined by the Ohio Revised Code Offense & Conviction Code List. A "CW" offense is equivalent to R.C. 4511.204, which prohibits texting while driving.

{¶ 4} On December 11, 2018, a Southgate, Michigan police officer cited Reed for "IMP LANE USE," for which Reed was convicted in Michigan's 28th Judicial District Court the following day. The state of Michigan reported the conviction to the Ohio BMV as ABD Offense Code: M42, "IMP LANE CH" or

"improper or erratic (unsafe) lane changes," as defined by the American Association of Motor Vehicle Administrators. The Michigan reporting agency designated the offense a violation of Code 2840, "improper lane use," a violation of Mich.Comp.Laws Ann. 257.642(1) as defined by the Michigan Department of State's Offense Code Index for Traffic Violations.

{¶ 5} On January 4, 2019, the Ohio BMV sent Reed a Notice of Disqualification and Opportunity for Hearing, advising him that pursuant to R.C. 4506.16, he would be disqualified from driving a CMV for 60 days from February 8, 2019, to April 9, 2019, because he had "2 serious violations in 3 years." Reed timely requested a hearing. The hearing was originally scheduled for January 29, 2019, and, after two continuances, held on March 13, 2019, in Columbus. Following the hearing, the hearing examiner issued a report and recommendation. The hearing examiner recommended that Reed's disqualification be terminated and deleted from his record, finding that the Commission had no authority to convict Reed. The report also distinguished a PUCO "forfeiture" from a traffic "fine." In addition, the hearing examiner found that Mich.Comp.Laws Ann. 257.642(1) was not "substantially similar" to R.C. 4511.33 so that Reed's violation of 257.642(1) did not constitute a "serious traffic violation" under R.C. 4506.01(II).

{¶ 6} The Registrar rejected the hearing examiner's recommendation, finding that Reed's citation for use of a handheld mobile telephone while driving a CMV constituted a "conviction" under 49 C.F.R. 383.5 and R.C. 4506.01(F). The Registrar observed that 49 C.F.R. 392.82 and R.C. 4511.204 prohibited the use of a

handheld mobile telephone while driving a CMV, and R.C. 4923.04 authorized the Commission to find the use of a handheld mobile telephone a violation of law and assess a forfeiture for this violation. The Registrar also found that despite "minor differences," Mich.Comp.Laws Ann. 257.642(1) and R.C. 4511.33 are substantially similar in that both statutes prohibit driving a vehicle in the center lane of a roadway divided into three lanes and providing for two-way movement of traffic, except when overtaking and passing another vehicle. The Registrar noted Reed's admission that he was driving in the center lane when he was stopped and cited. The Registrar issued these findings, ordered disqualification of Reed's CDL, and advised Reed of his right to appeal the order pursuant to R.C. 119.12.

{¶ 7} Reed timely appealed to the Cuyahoga County Common Pleas Court, which reviewed the parties' briefs and heard oral argument on October 1, 2019. The common pleas court affirmed the Registrar's order disqualifying Reed's CDL as supported by reliable, probative, and substantial evidence and in accordance with the law.

{¶ 8} Reed appeals this judgment.

II. Law and Analysis

{¶ 9} In his sole assignment of error, Reed argues that the common pleas court erred by concluding that the BMV's disqualification of Reed's CDL was in accordance with the law.[1] When a common pleas court reviews an administrative

[1] Reed does not contest the Ohio BMV Registrar's authority to disqualify his commercial driver's license under R.C. 4506.16 and Ohio Adm.Code 4501:1-1-24. The Registrar has authority to administer Ohio laws relative to the licensing of drivers of

order revoking a license, R.C. 119.12 provides the standard of review. *Capital Care Network of Toledo v. Ohio Dept. of Health*, 153 Ohio St.3d 362, 2018-Ohio-440, 106 N.E.3d 1209, ¶ 24.

{¶ 10} R.C. 119.12 provides in relevant part:

> The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

R.C. 119.12(M).

{¶ 11} "R.C. 119.12 requires a reviewing common pleas court to conduct two inquiries: a hybrid factual/legal inquiry and a purely legal inquiry." *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, ¶ 37. When conducting the factual inquiry, the common pleas court must give deference to the administrative agency's findings. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980).

{¶ 12} When conducting the legal inquiry, the common pleas court "must construe the law on its own." *Id.*; *see VFW Post 8586 v. Ohio Liquor Control Comm.*, 83 Ohio St.3d 79, 81, 697 N.E.2d 655 (1998) ("With respect to purely legal questions * * * the court is to exercise independent judgment"). If the agency's decision is supported by sufficient evidence and the law, the common pleas court

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motor vehicles pursuant to R.C. Chapter 4507. *Gurish v. BMV*, 8th Dist. Cuyahoga No. 98060, 2012-Ohio-4066, ¶ 8, citing *Doyle v. Ohio BMV*, 51 Ohio St.3d 46, 48, 554 N.E.2d 97 (1990).

may not review the agency's exercise of discretion. *Capital Care Network of Toledo*, 153 Ohio St.3d 362, 2018-Ohio-440, 106 N.E.3d 1209, at ¶ 25.

{¶ 13} An appellate court reviews purely legal questions de novo and may substitute its own judgment for that of common pleas court when determining whether the administrative order comports with the law. *Bartchy* at ¶ 43, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343, 587 N.E.2d 835 (1992).

{¶ 14} Reed argues that the common pleas court erred by affirming the Registrar's disqualification of Reed's CDL because Reed was not convicted of two serious traffic violations within a three-year period under R.C. 4506.16(D)(5)(a). A "conviction" and a "serious traffic violation" are defined terms.

A. Conviction under R.C. 4506.01(F)

{¶ 15} Reed contends that his December 2018 payment of the civil forfeiture that the PUCO assessed for his October 2018 use of a handheld mobile telephone while operating a CMV was not a "conviction" because (1) the Commission's rules differ from state law; (2) the Commission assesses civil forfeitures, not fines, for rule violations; and (3) payment of a civil forfeiture constitutes neither a conviction nor an admission of guilt. R.C. 4506.01 defines "conviction" as follows:

> "Conviction" means unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation

> of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

R.C. 4506.01(F).

{¶ 16} Reed does not dispute that the Commission is statutorily authorized to promulgate and enforce administrative rules. Rather, he initially argues that violation of an administrative rule differs from a violation of state law. The state argues that any rule issued by the Commission has the same force and effect as Ohio law. We agree. R.C. 4506.01(F) provides for "a determination that a person has violated * * * the law in * * * an authorized administrative tribunal." "An administrative regulation issued pursuant to statutory authority has the force and effect of law." *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St.3d 234, 2009-Ohio-2610, 910 N.E.2d 432, ¶ 23; *Doyle*, 51 Ohio St.3d 46, 554 N.E.2d 97 (1990), paragraph one of the syllabus.

{¶ 17} Pursuant to R.C. 4923.04, the Commission regulates motor vehicle transportation of persons and property in Ohio and "has adopted certain federal safety standards governing motor carriers engaged in interstate commerce, *see* R.C. 4923.04(A)(1), Ohio Adm.Code 4901:2-5-03." *In re LMD Integrated Logistic Servs.*, 155 Ohio St.3d 137, 2018-Ohio-3859, 119 N.E.3d 1250, ¶ 3. Among other federal regulations, the Commission has adopted 49 C.F.R. 392.82(a)(1), prohibiting a driver from using a handheld mobile telephone while driving a CMV. In October 2018, a PUCO officer stopped and cited Reed for driving his CMV while using a handheld mobile telephone, a violation of 49 C.F.R. 392.82(a)(1) as adopted

and enforced by the Commission. Reed did not contest the citation. This violation has the same force and effect as a violation of law.

{¶ 18} Next, Reed argues that the Commission's assessment of a forfeiture differs from a court's imposition of a fine because a forfeiture is a civil sanction and a fine is a criminal sanction. However, Reed cites no law to support this distinction in the context of an administrative rule violation. R.C. 4506.01(F) includes "payment of a fine or court cost" and does not expressly refer to "civil forfeiture" or "forfeiture." R.C. 4923.99 authorizes the PUCO to assess a "civil forfeiture" against any driver for violation of a rule. *In re LMD Integrated Logistic Servs.* at ¶ 3. Although fines are often coupled with court costs in criminal proceedings, so too are they coupled in civil proceedings. Further, R.C. 4923.99 is titled "penalties," and in the context of an administrative rule violation, a civil forfeiture has been likened to a "fine." *See In re OPC Polymers v. PUC*, 10th Dist. Franklin No. 12AP-735, 2013-Ohio-5443, ¶ 1 (describing "civil forfeiture" under R.C. 4923.99 as "essentially a regulatory fine").

{¶ 19} Lastly, Reed argues that payment of a civil forfeiture is not a conviction. If R.C. 4506.01(F) defined "conviction" solely as an "adjudication of guilt" or "a plea of guilty or nolo contendere accepted by a court," Reed's argument would be well taken. However, the statute's definition is more expansive. R.C. 4506.01(F) includes determination by an authorized administrative body that a driver has violated a law, as well as payment of a fine, both of which constitute a "conviction."

{¶ 20} The Commission sent Reed a combined Notice of Apparent Violation and Notice of Intent to Assess Forfeiture in the amount of $250.00 and advised Reed that he could request a conference to contest the violation and assessment. *See* Ohio Adm.Code 4901:2-7-09. Specifically, these combined notices informed Reed of the rule he was alleged to have violated, provided a description of the violation, gave instructions for contesting the violation by timely requesting a conference, and advised that failure to contest the violation would conclusively establish its occurrence and constitute a waiver to further contest liability for the assessed forfeiture. *See* Ohio Adm.Code 4901:2-7-05 and 4901:2-7-07. The notices also advised Reed that a violation of 49 C.F.R. 392(a), as adopted by PUCO under the Ohio Administrative Code, may disqualify Reed from driving a CMV for a minimum of 60 days. The notices incorporated the definition of "conviction" as provided by 49 C.F.R. 383.5, with emphasis on "an authorized administrative tribunal" and "payment of a fine."

{¶ 21} Reed did not timely request a conference to contest the alleged violation. Instead, he paid the assessed forfeiture of $250.00. By paying this forfeiture, Reed was "convicted" within the meaning of 49 C.F.R. 383.5 and R.C. 4506.01(F). R.C. 4506.01(II)(2)(a)(ii) defines use of a handheld mobile telephone as a "serious traffic violation." Therefore, Reed's conviction for violating 49 C.F.R. 392(a)(1), as adopted by the Ohio Administrative Code, constituted the first of two serious traffic violations that would subject Reed to disqualification under R.C. 4506.16(D)(5)(a).

B. Serious Traffic Violation under R.C. 4506.01(II)

{¶ 22} Reed likewise contends that his December 2018 conviction for violating Mich.Comp.Laws Ann. 257.642(1) was not "substantially similar" to R.C. 4511.33 to constitute a "serious traffic violation" as defined by R.C. 4506.01(II). R.C. 4506.16(II)(3)(f) defines a violation of R.C. 4511.33, or "substantially similar" law of another state or political subdivision of that state, as a "serious traffic violation." R.C. 4506.01 does not define "substantially similar." This legal question may be resolved by comparing Mich.Comp.Laws Ann. 257.642(1) to R.C. 4511.33. *See Zurzolo v. Ohio Dept. of Pub. Safety*, Summit C.P. No. CV-2015-11-5134, 2016 Ohio Misc. LEXIS 13579, 10 (Apr. 20, 2016) (reviewing the substance, prohibited conduct, and intent of each law to determine similarity as contemplated by R.C. 4506.16(D)(1) and substantial similarity as contemplated by R.C. 4506.16(E)).[2] *Zurzolo* compared Akron City Code 73.30 and R.C. 4549.03 and found them substantially similar. We find the *Zurzolo* Court's analysis helpful and therefore compare the substance, prohibited conduct, and intent of Mich.Comp.Laws Ann. 257.642(1) to that of R.C. 4511.33 to determine whether these laws are substantially similar as contemplated by R.C. 4506.16(II)(3)(f).

{¶ 23} Mich.Comp.Laws Ann. 257.642 provides in relevant part:

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[2] The *Zurzolo* Court also reviewed the penalty for violating each law to determine whether the laws were substantially similar. We do not compare the penalty for violating Mich.Comp.Laws Ann. 257.642(1) to that of R.C. 4511.33 because the penalty for violating each statute is provided under a different section of the statute and was not raised on appeal.

(1) When a roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this act apply:

> (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the operator has first ascertained that the movement can be made with safety. Upon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing, but shall not cross the center line of the roadway except where making a left turn.
>
> (b) Upon a roadway that is divided into 3 lanes and provides for 2-way movement of traffic, a vehicle shall not be operated in the center lane except when overtaking and passing another vehicle traveling in the same direction, when the center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where the center lane is at the time allocated exclusively to traffic moving in the same direction the vehicle is proceeding and the allocation is designated by official traffic control devices.

{¶ 24} R.C. 4511.33 provides in relevant part:

(A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

> (1) A vehicle * * * shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.
>
> (2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle * * * shall not be driven in the center lane except when overtaking and passing another vehicle * * * where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle * * * is proceeding and is posted with signs to give notice of such allocation.

{¶ 25} The substance of Mich.Comp.Laws Ann. 257.642(1)(b) and R.C. 4511.33(A) is substantially similar. First, both statutes apply to roadways divided into two or more clearly marked lanes for traffic. Second, the first sentence of Mich.Comp.Laws Ann. 257.642(1)(a), when read in conjunction with (1)(b), reflects R.C. 4511.33(A)(1). These sections require, "as nearly as [is] practicable," drivers to maintain a single lane until movement to a new lane can be made safely. At least one Michigan court has noted the similarity between Michigan's softening of this requirement by the phrase "as nearly as practicable" and 17 other state laws that do the same, including Ohio's marked lane statute. *See People v. Kocevar*, Mich.App. No. 329150, 2017 Mich. App. LEXIS 414, 12 (Mar. 16, 2017), fn. 5 ("Our research reveals that 17 state statutes, including MCL 257.642, use the term 'as nearly as practicable.'"). Third, Mich.Comp.Laws Ann. 257.642(1)(b) and R.C. 4511.33(A)(2) both prohibit driving a vehicle in the center lane of a three-lane roadway on which traffic is moving in the same direction, except when passing another vehicle and the center lane is clear of other vehicles. Based on these similarities, the two statutes are substantially similar.

{¶ 26} Mich.Comp.Laws Ann. 257.642(1)(b) and R.C. 4511.33(A) also prohibit the same conduct. However, Reed points out that Mich.Comp.Laws Ann. 257.642(1)(a) prohibits conduct that R.C. 4511.33 does not, specifically, that "[u]pon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing, but shall not cross the center line of the

roadway except where making a left turn." Reed argues that because the Michigan marked lane statute contains this extra prohibition, it differs from the Ohio marked lane statute. Reed's focus on the second sentence of 257.642(1)(a) to distinguish these statutes is misplaced. The distinction is irrelevant in this case. Both Mich.Comp.Laws Ann. 257.642(1)(b) and R.C. 4511.33(A)(2) prohibit driving in the center lane if it cannot be done safely. Reed admitted and the Registrar found that Reed was driving in the center lane when he was stopped and cited. Based on the conduct asserted in this case, the statutes prohibit substantially similar conduct.

{¶ 27} The statutes' intent is also substantially similar. Mich.Comp.Laws Ann. 257.642(1) prohibits traveling outside a marked lane because it increases the likelihood of a traffic accident. *See Henderson v. Detroit*, Mich.App. No. 350858, 2021 Mich. App. LEXIS 1769, 12 (Mar. 18, 2021) ("[A] driver has a statutory duty to ascertain whether movement into a lane can be safely made before changing into the lane. MCL 257.642(1)(a)."); *People v. Leshock*, Mich.App. No. 352480, 2020 Mich. App. LEXIS 7555, 8 (Nov. 12, 2020) ("[D]efendant crossed the fog line twice and the lane dividing line once. As such, [the officer] had an articulable and reasonable suspicion to believe that defendant had violated MCL 257.642. This alone justified the stop."); *Martin v. Horton*, Mich.App. No. 344875, 2019 Mich. App. LEXIS 2167, 21 (May 16, 2019) (remanding to the trial court to determine whether defendant violated MCL 257.642 when the defendant switched lanes when it was not safe to do so); *People v. Wolfbauer*, Mich.App. No. 298949, 2012 Mich. App. LEXIS 1661, 4 (Aug. 23, 2012) (finding traffic stop

warranted when the defendant's vehicle crossed lane dividers three times in violation of MCL 257.642(1)(a)); *People v. Boyd*, Mich.App. No. 289045, 2010 Mich. App. LEXIS 694, 5 (Apr. 20, 2010) ("The traffic stop was lawful because driving outside a traffic lane constituted a traffic violation" under MCL 257.642(1)(a)).

{¶ 28} Like the Michigan marked lane statute, R.C. 4511.33 has two separate components: (1) "R.C. 4511.33(A) establishes that clear markings on a roadway determine whether two or more lanes are present," and (2) "R.C. 4511.33(A)(1) then requires a vehicle to stay as nearly as possible within that lane unless the driver can determine that he can move from that lane safely." *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842, ¶ 25. The Ohio Supreme Court has agreed with the Seventh District Court of Appeals' explanation of the Ohio marked lane statute's purpose:

> The legislature did not intend for a motorist to be punished when road debris or a parked vehicle makes it necessary to travel outside the lane. Nor, we are quite certain, did the legislature intend this statute to punish motorists for traveling outside their lane to avoid striking a child or animal. We are equally certain the legislature did not intend the statute to give motorists the *option* of staying within the lane at their choosing. Common sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable.

(Emphasis sic.) *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 19, quoting *State v. Hodge*, 147 Ohio App.3d 550, 2002-Ohio-3053, 771 N.E.2d 331, ¶ 43 (7th Dist.).

{¶ 29} Similar to the Michigan statute, R.C. 4511.33 does not just prohibit improper lane changes, but also failure to maintain the proper lane. *See Mays* at syllabus ("A traffic stop is constitutionally valid when a law-enforcement officer witnesses a motorist drift over the lane markings in violation of R.C. 4511.33, even without further evidence of erratic or unsafe driving"); *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, ¶ 25 ("Drifting across a marked lane on a roadway can be a violation of R.C. 4511.33(A)(1)"); *Cleveland v. Collins*, 2018-Ohio-958, 109 N.E.3d 208, ¶ 26-27 (8th Dist.) ("[W]hen an officer could reasonably conclude from a person's driving outside the marked lanes that the person is violating a traffic law, the officer is justified in stopping the vehicle."), quoting *Mays* at ¶ 20. Based on similarities between Michigan courts' interpretation and application of Mich.Comp.Laws Ann. 257.642(1) and Ohio courts' interpretation and application R.C. 4511.33(A), the statutes are substantially similar in their intent.

{¶ 30} Reed does not contest his December 2018 conviction for violating Michigan's marked lane statute. Rather, he argues that Michigan's marked lane statute, Mich.Comp.Laws Ann. 257.642(1), is not substantially similar to Ohio's marked lane statute, R.C. 4511.33(A). However, Reed's admission and the Registrar's finding that Reed was driving in the center lane triggers 257.642(1)(b) of the statute and renders the second sentence of 257.642(1)(a) irrelevant to our analysis. Because a violation of 257.642(1)(b) must be read in conjunction with the first sentence of 257.642(1)(a), Mich.Comp.Laws Ann. 257.642(1) and R.C. 4511.33(A) are substantially similar in substance and prohibit substantially

similar conduct. Moreover, Michigan and Ohio case law shows substantial similarity in these statutes' intent, interpretation, and application. Because Mich.Comp.Laws Ann. 257.642(1) and R.C. 4511.33 are "substantially similar," Reed's violation of Mich.Comp.Laws Ann. 257.642(1) is a "serious traffic violation" as contemplated by R.C. 4506.01(II)(3)(f). This violation constituted Reed's second serious traffic violation in the same year.

{¶ 31} Pursuant to R.C. 4506.16(D), the Registrar shall disqualify a commercial driver for 60 days upon conviction of two serious traffic violations that arise from separate incidents while driving a CMV and that occur within a three-year period. R.C. 4506.16(D)(5)(a). Reed's December 2018 conviction for violating 49 C.F.R. 392.82(a)(1) for use of a handheld mobile telephone while operating a CMV constituted the first serious traffic violation. Reed's December 2018 conviction for violating Mich.Comp.Laws Ann. 257.642(1) constituted the second serious traffic violation in the same year. Accordingly, the Registrar's decision to disqualify Reed's commercial driving privileges for a period of 60 days pursuant to R.C. 4506.16(D)(5)(a) is in accordance with the law.

{¶ 32} Reed's sole assignment of error is overruled.

{¶ 33} Judgment affirmed.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR