

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
TERRANCE DUNN	:	Case No. 2013CA00122
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Canton Municipal Court, Case No. 2013TRC01766

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT: August 12, 2013

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, J.

{¶1} On March 29, 2013, appellant, Terrance Dunn, was charged with operating a motor vehicle under the influence in violation of R.C. 4511.19. Because appellant refused to take a breathalyzer test, he received a one year administrative license suspension. On April 2, 2013, appellant appealed the suspension.

{¶2} A jury trial commenced on May 29, 2013, and appellant was found not guilty. On June 10, 2013, appellant filed a motion to terminate his suspension and the reinstatement fee for failure to hold an evidentiary hearing on his appeal. By judgment entry filed June 11, 2013, the trial court denied the motion.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT-APPELLANT'S MOTION TO TERMINATE THE ADMINISTRATIVE LICENSE SUSPENSION."

I

{¶5} Appellant claims the trial court erred in denying his motion to terminate his administrative license suspension as it failed to hold an evidentiary hearing on his appeal. We agree.

{¶6} R.C. 4511.197(A) provides for an appeal of an administrative license suspension. Subsection (C) sets forth a list of conditions for the imposition of an administrative license suspension. Subsection (D) states the following:

(D) A person who appeals a suspension under division (A) of this section has the burden of proving, by a preponderance of the evidence, that one or more of the conditions specified in division (C) of this section has not been met. If, during the appeal, the judge or magistrate of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, magistrate, or mayor shall uphold the suspension, continue the suspension, and notify the registrar of motor vehicles of the decision on a form approved by the registrar.

{¶7} In *State v. Norman*, 5th Dist. Knox No. 2005CA00022, 2005-Ohio-5791, ¶ 17, this court reversed a case for lack of evidentiary hearing on an administrative license suspension appeal, stating the following:

We have read R.C. 4511.197, and find the statute does not expressly set forth the procedure a trial court is to follow in reviewing an appeal of an administrative license suspension. The statute clearly provides for an appeal as a means to seek relief from an administrative license suspension. We find inherent in an ALS appeal is an opportunity for an individual to be heard. The statute expressly places the burden of proof of a *preponderance of the evidence* on the person appealing the ALS. Here the appellant was denied both.

{¶8} The state concedes the issue in its brief at 3.

{¶9} Upon review, we reverse the trial court's decision on appellant's motion to terminate his administrative license suspension, and remand the matter for an evidentiary hearing.

{¶10} The sole assignment of error is granted.

{¶11} The judgment of the Canton Municipal Court of Stark County, Ohio is hereby reversed.

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

Hon. Sheila G. Farmer

Hon. Patricia A. Delaney

Hon. Craig R. Baldwin

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TERRANCE DUNN	:	
	:	
Defendant-Appellant	:	CASE NO. 2013CA00122

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Canton Municipal Court of Stark County, Ohio is reversed, and the matter is remanded to said court for further proceedings consistent with this opinion. Costs to appellee.

Hon. Sheila G. Farmer

Hon. Patricia A. Delaney

Hon. Craig R. Baldwin