IN THE UTAH COURT OF APPEALS

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| State of Utah,<br><br>Plaintiff and Appellee,<br><br>v.<br><br>Greg C. Johnson and Kerry E. Lynn,<br><br>Defendants and Appellants. | ) | MEMORANDUM DECISION<br>(Not For Official Publication)<br><br>Case No. 20080701-CA<br><br>F I L E D<br>(January 7, 2010)<br><br>2010 UT App 1 |

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Sixth District, Loa Department, 011600026, 011600027
The Honorable Wallace A. Lee

Attorneys: Mary Ann Hansen, Orem, for Appellants
Mark L. Shurtleff and Brent A. Burnett, Salt Lake City, for Appellee

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Before Judges Davis, Thorne, and Bench.[1]

THORNE, Judge:

Greg C. Johnson and Kerry E. Lynn (Defendants) appeal from the district court's refusal to modify the administrative suspensions of their hunting privileges imposed by the Division of Wildlife Resources (the Division). We affirm.

In April 2002, Defendants each pleaded guilty to wanton destruction of a trophy deer without a valid license, a third-degree felony, see Utah Code Ann. § 23-20-4 (Supp. 2009). Defendants' criminal sentences did not order or otherwise address suspension of their hunting privileges. However, in August 2002, the Division sent Defendants notices that it intended to administratively suspend their hunting privileges as a result of their convictions. The Division's notices informed Defendants that they could request hearings before the Division, at which they would be allowed to testify, call witnesses, and present evidence on their behalf. Defendants failed to request hearings

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1. The Honorable Russell W. Bench, who retired on January 1, 2010, participated in resolving this appeal and voted to concur in this opinion prior to his retirement.

or otherwise respond to the Division's notices, and the Division entered default orders suspending Johnson's hunting privileges for fourteen years and Lynn's hunting privileges for twenty-one years.

In January 2005, Defendants filed motions in the district court to reduce their criminal convictions from felonies to misdemeanors, see Utah Code Ann. § 76-3-402 (2008), and to suspend their hunting privileges for five years from the date of conviction.[2] The district court, with the prosecutor's approval, granted the Defendants' motions by signing orders prepared by Defendants' counsel (the 2005 Orders). The 2005 Orders reduced Defendants' convictions to misdemeanors and ordered that Defendants' "hunting privileges are suspended until April 22, 2007, which is five years from the date of conviction." After April 22, 2007, Defendants attempted to have their hunting privileges reinstated by the Division pursuant to the 2005 Orders, but the Division refused to issue hunting licenses to Defendants because their administrative revocation periods remained in effect.

Defendants returned to the district court, seeking a ruling interpreting the 2005 Orders as ordering the Division to reinstate Defendants' hunting privileges. See generally Utah Code Ann. § 23-19-9.1 (2007) ("The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court." (emphasis added)). The district court denied Defendants' request, ruling that the 2005 Orders "did not direct the Division to do anything" and that Utah Code section 23-19-9.1 did not apply.

On appeal, Defendants challenge the district court's interpretation of the 2005 Orders, arguing that "[i]t is clear that the [2005] Orders are orders modifying the suspension term of the Division Default Orders and they direct the Division to reinstate the hunting privileges of [Defendants] effective April 22, 2007." We disagree.

"A court's interpretation of its own order is reviewed for clear abuse of discretion and we afford the district court great deference." Uintah Basin Med. Ctr. v. Hardy, 2008 UT 15, ¶ 9,

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2. We note that neither Defendants' motions nor the accompanying orders apprised the district court of Defendants' current contention that Defendants intended the five-year criminal suspension periods to govern the length of Defendants' administrative suspensions.

179 P.3d 786.[3] Contrary to Defendants' argument on appeal, the 2005 Orders stated that Defendants' hunting privileges were "suspended until April 22, 2007," not that such privileges must be reinstated as of that date. The language of the 2005 Orders merely defined the time period during which Defendants were ineligible to obtain hunting licenses as a result of their criminal convictions; it did not render them self-executing orders of reinstatement. The district court, accordingly, acted within its discretion in denying Defendants' requests.

Although we readily affirm the district court's interpretation of the 2005 Orders based solely on their plain language, we note several other factors that bear on the district court's exercise of its discretion in this matter. Defendants claim on appeal that they negotiated for a five-year loss of hunting privileges as part of their plea agreements and that this time limitation was specifically intended to avoid the longer impending administrative suspensions. However, the record on appeal does not contain any indication of the contents of Defendants' plea agreements, and we assume that the missing plea agreements are not inconsistent with the 2005 Orders. See Gorostieta v. Parkinson, 2000 UT 99, ¶ 34, 17 P.3d 1110 ("[T]he burden is upon the appellant to provide an adequate record for review, and without an adequate record, we must assume the regularity of the proceedings below."). Further, Defendants could have raised any incompatibility between the plea agreements and the Division's suspension periods had they requested hearings in 2002, when the Division notified them of its intent to administratively suspend their hunting privileges.

We also note that criminal and administrative actions are separate actions serving separate purposes, and there is thus no inherent reason to interpret a criminal order of revocation as controlling a separate administrative suspension order. Cf. Beller v. Rolfe, 2008 UT 68, ¶ 26, 194 P.3d 949 ("'[T]he purpose of [administrative driver license revocation proceedings] is not to punish the inebriated drivers; such persons are subject to separate criminal prosecution for the purpose of punishment. The administrative revocation proceedings [exist] to protect the

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3. Defendants agree that the appropriate standard of review is abuse of discretion but argue that we should grant only limited deference to the district court's interpretation of the 2005 Orders because different judges entered the 2005 Orders and the later interpretations of those orders. Even if we were to limit our deference to the district court's interpretation in light of the change in judges, we would still affirm the district court's interpretation in light of the circumstances discussed in the body of this opinion.

public, not to punish individual drivers.'" (third alteration in original)). The period of the Division's default orders were also in accordance with its statutory authority to revoke hunting privileges for various wildlife offenses. See Utah Code Ann. § 23-19-9 (Supp. 2009) (providing for administrative suspension of hunting privileges).

In sum, the district court did not exceed the bounds of its discretion in ruling that the 2005 Orders only determined the period of the criminal suspension of Defendants' hunting privileges and had no effect on the Division's separate administrative suspensions of those same privileges. Accordingly, we affirm the district court.

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William A. Thorne Jr., Judge

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WE CONCUR:

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James Z. Davis,
Presiding Judge

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Russell W. Bench,
Senior Judge