

IN THE UTAH COURT OF APPEALS

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Arlene Nolen,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20050877-CA	
v.)		
)	F I L E D	
Judy Hamaker-Mann, Director,)	(March 9, 2006)	
Utah Driver's License)		
Division,)	<table border="1"><tr><td>2006 UT App 97</td></tr></table>	2006 UT App 97
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Respondent and Appellee.)		

Second District, Layton Department, 040604864
The Honorable Thomas L. Kay

Attorneys: Glen W. Neeley, Ogden, for Appellant
Mark L. Shurtleff, Brent A. Burnett, and Rebecca D.
Waldron, Salt Lake City, for Appellee

Before Judges Billings, Davis, and Thorne.

PER CURIAM:

Arlene Nolen appeals the suspension of her driver license based on the trial court's determination that she refused to take a breath test as required under Utah Code section 41-6-44.10. See Utah Code Ann. § 41-6-44.10 (Supp. 2004).¹ We affirm.

Nolen argues that the trial court erred in finding that she refused to take the test. "The determination that [a driver's] failure to respond to the officer or to take the test amounts to a refusal is a factual finding which we will not disturb when supported by substantial evidence." Lee v. Schwendiman, 722 P.2d 766, 767 (Utah 1986). "A party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. App. P. 24(a)(9). To properly challenge a fact finding, an appellant must marshal the evidence and "then demonstrate that even viewing [the evidence] in the light most favorable to the court below, the evidence is insufficient to

¹This section has since been amended and renumbered but was the controlling law at the time of Nolen's arrest and refusal.

support the findings." Tanner v. Carter, 2001 UT 18, ¶17, 20 P.3d 332. If the appellant fails to marshal the evidence, this court need not consider the challenge to the finding. See id.

Nolen fails to marshal the evidence supporting the determination of refusal. Instead, she presents only facts favorable to her, ignoring the substantial evidence supporting the fact that she refused the test. As a result, this court need not reach her challenge to the trial court's finding. See id.

Affirmed.

Judith M. Billings, Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge