



**IN THE
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MICHAEL STRUP,)	
)	
Respondent,)	WD69508
v.)	
)	Opinion Filed: June 23, 2009
)	
DIRECTOR OF REVENUE,)	
)	
Appellant.)	

APPEAL FROM THE CIRCUIT COURT OF JOHNSON COUNTY, MISSOURI
The Honorable Joseph P. Dandurand, Judge

Before Division Three: James M. Smart Jr., Presiding Judge, Joseph M. Ellis, Judge
and James E. Welsh, Judge

The Director of Revenue for the State of Missouri appeals from a judgment entered in the Circuit Court of Johnson County ordering the Director to reinstate the commercial driving privileges of Michael Strup. For the following reasons, the judgment is affirmed.

On June 22, 2006, Strup was arrested in Johnson County, Missouri, for driving while intoxicated after having been involved in a one-car accident. Strup held a commercial driver's license but was not driving a commercial vehicle on the date of his

arrest. Strup was informed by the Director of Revenue that his base driving privileges were being suspended, and Strup subsequently requested an administrative hearing to challenge that suspension.

On August 23, 2006, the Director of Revenue sent Strup a letter informing him that, because of his arrest for driving while intoxicated, he was going to be disqualified from driving a commercial motor vehicle for a period of one year starting September 24, 2006. On September 21, 2006, Strup filed a petition for review of that disqualification in the Circuit Court of Cass County, his county of residence.

A hearing was conducted on September 27, 2006, related to Strup's base driving privilege. The following day, the hearing officer sustained the suspension of that driving privilege.

Also on September 28, 2006, the Director of Revenue sent Strup a "Notice of Disqualification of Your Driving Privilege From Operating Class A, B and/or C Commercial Motor Vehicle," notifying him that his commercial driving privilege was being suspended for one year as a result of the outcome of the administrative proceeding suspending his regular driving privileges for driving while intoxicated. The Director stated that this decision was final, but the decision could be appealed to the circuit court in Strup's county of residence.

On October 13, 2006, Strup filed a petition in the Circuit Court of Johnson County for a trial *de novo* regarding the suspension of his base driving privilege. On October 27, 2006, Strup filed a second petition for review of the suspension of his commercial driving privileges in the Circuit Court of Cass County.

In May 2007, Strup filed a motion to consolidate his two Cass County petitions and to have that consolidated case transferred to Johnson County. That motion was granted, and on November 9, 2007, the circuit court conducted a trial *de novo* regarding the suspension of both Strup's regular and commercial driving privileges.

On February 27, 2008, the trial court entered its judgment in favor of the Director with regard to the suspension of Strup's base driving privileges under § 302.505,¹ finding that Strup had been arrested upon probable cause to believe he was driving while intoxicated. On March 11, 2008, the trial court reversed the Director's suspension of Strup's commercial driving privileges, however, concluding that the procedure followed by the Director was contrary to the provisions of § 302.505 and that Strup's due process rights were violated when the Director issued its final decision in that matter without an administrative hearing or opportunity to present evidence. The Director appeals from the latter judgment.

As in any court-tried case, "[o]ur review of the trial court's judgment is governed by *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)." ***Jones v. Director of Revenue***, 237 S.W.3d 624, 625 (Mo. App. E.D. 2007). "Thus, we will affirm the judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law." ***Id.*** On factual questions, "[w]e view the evidence and all reasonable inferences therefrom in the light most favorable to the trial court's judgment, and we disregard all evidence and inferences to the contrary." ***Midwest Bankcentre v. Old Republic Title Co.***, 247 S.W.3d 116, 122

¹ All statutory references are to RSMo Cum. Supp. 2007 unless otherwise noted.

(Mo. App. E.D. 2008). "Our review of questions of law is *de novo*." *Id.* "Our primary concern is the correctness of the trial court's judgment, not the route it took to get that result, and therefore, we will affirm the judgment if it is supported by any reasonable theory, even if different from that expressed by the trial court." *O'Dell v. Mefford*, 211 S.W.3d 136, 138 (Mo. App. W.D. 2007) (internal quotations omitted).

Section 302.505.1 provides that the Director "shall suspend or revoke the license of any person upon its determination that the person was arrested upon probable cause to believe such person was driving a motor vehicle while the alcohol concentration in the person's blood, breath, or urine was eight-hundredths of one percent or more by weight." The arresting officer "shall forward to the department a certified report of all information relevant to the enforcement action," § 302.510.1, and the Director then makes the determination to suspend or revoke on the basis of that report. § 302.505.2. Once that determination is made, the driver may request a hearing pursuant to § 302.530 within 15 days of receipt of the Director's notice. At the hearing provided for in § 302.530, "[t]he sole issue . . . shall be whether by a preponderance of the evidence the person was driving a vehicle pursuant to the circumstances set out in section 302.505." A driver aggrieved by the hearing officer's decision may then request a trial *de novo* in the circuit court of the county where the arrest occurred within 15 days of the mailing of notice of that decision. § 302.535 & 302.530.7. This procedure was followed in suspending Strup's base driving privileges.

Section 302.505 relates solely to the suspension of the base driving privilege upon a determination that the driver was arrested upon probable cause to believe the

driver was driving a motor vehicle with their blood alcohol content over the legal limit. The administrative review provided for in § 302.505 and § 302.530 applies only to a suspension or revocation on that basis. Accordingly, administrative review under those provisions is not applicable to a suspension of a commercial driver's license under § 302.755.

Pursuant to § 302.755.1(1), "a person is disqualified from driving a commercial motor vehicle for a period of not less than one year if he or she is **convicted of driving under the influence of alcohol or a controlled substance.**"² *Jones*, 237 S.W.3d at 625 (emphasis added). The term "conviction" refers to "an 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 proceeding.**" § **302.700.2(8)** (emphasis added). Review of the Director's decision to disqualify a person from driving a commercial vehicle under § 302.755 is governed by § 302.311. See *West v. Director of Revenue*, 184 S.W.3d 578, 579 (Mo. App. S.D. 2006); *Grantham v. Director of Revenue*, 67 S.W.3d 711, 712-13 (Mo. App. E.D. 2002). Under § 302.311, a driver disqualified from driving a commercial vehicle by the Director may petition the circuit court in his or her county of residence for a trial *de novo* on the issue

² Clearly, the Director's letter of August 23, 2006, notifying Appellant that his commercial driver's license was going to be revoked as a result of his arrest for driving while intoxicated was a misstatement and misapplication of the law by the Director since § 302.755 requires a conviction for driving under the influence of alcohol and not just an arrest.

within 30 days of the Director's decision. There is no provision for an administrative hearing contained in that statute. Strup filed a petition for *de novo* review and received a trial *de novo* on his claim. That trial was sufficient to satisfy due process. The trial court erred in concluding to the contrary.

Despite that erroneous conclusion of law, we must still affirm the trial court's judgment if it is supported by any reasonable theory. *O'Dell*, 211 S.W.3d at 138. In this case, the Director presented no evidence that Strup was convicted in a court of driving while intoxicated.³ Rather, it relied upon the "**authorized administrative proceeding,**" § 302.700(8), that resulted in revocation of his regular driver's license under § 302.505 as the predicate "conviction" required by § 302.755.1(1) to authorize suspension of Strup's commercial driving privilege.

To disqualify a person from driving a commercial motor vehicle, § 302.755.1(1) requires a "conviction" for "[**d]riving a motor vehicle under the influence of alcohol or a controlled substance."** § 302.755.1(1). A "conviction" means "an unvacated adjudication of guilt . . . or a determination that a person has violated or failed to comply with the law." § 302.700.2(8) (emphasis added). Accordingly, the Director was required to prove that Strup had been adjudicated guilty of driving a motor vehicle under the influence of alcohol or a controlled substance.

The judgment upholding the suspension of Strup's base driving privileges, relied upon by the Director, stated:

³ According to Appellant's uncontroverted testimony, the misdemeanor driving while intoxicated charges against him were dismissed.

[T]he Court . . . finds and concludes that based upon a preponderance of the evidence [Strup] is found to have been arrested upon probable cause to believe that he was driving a motor vehicle while the alcohol concentration in his blood was .08% or more.

THEREFORE, it is ordered, adjudged and decreed that the suspension of Petitioner's Missouri Driver's License is authorized and required by Sections 302.500 through 302.541 RSMo.

Thus, the judgment merely found and concluded that there was ***probable cause to believe Strup was driving under the influence***, while the disqualification statute required an adjudication that ***he was in fact guilty of driving under the influence***. Accordingly, the Director had no authority under § 302.755.1(1) to disqualify Strup from driving a commercial motor vehicle.⁴

Under the clear language of the statute, absent evidence that Strup had been adjudged guilty of driving under the influence of alcohol by a court of original jurisdiction or in an authorized administrative proceeding, Strup's commercial driving privileges could not be suspended or revoked pursuant to § 302.755.1(1). The judgment of the trial court is affirmed.

Joseph M. Ellis, Judge

All concur.

⁴ Obviously, since his base driving privileges have been suspended, Strup will not be able to drive a vehicle of any type for that period as his privilege to drive a commercial vehicle is derivative of the base driving privilege.