

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GREG KOWALSKI, a/k/a GREGORY  
CHARLES KOWALSKI,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

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UNPUBLISHED  
September 13, 2007

No. 269670  
Genesee Circuit Court  
LC No. 05-082286-AL

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals by leave granted from a circuit court order that set aside “additional 904 suspensions” and directed that an immediate hearing be conducted before the Driver’s License Appeal Division (DLAD). For the reasons set forth in this opinion, we reverse the rulings and orders of the trial court and remand for further proceedings.

Petitioner has an extensive record of driving violations. After he was convicted of alcohol-related driving offenses committed in 1990 and 1991, after which respondent revoked petitioner’s license pursuant to MCL 257.303(2). Petitioner continued to drive, and he received additional citations, following which respondent again imposed periods of license revocation pursuant to MCL 257.904. Petitioner received a third alcohol-related driving conviction in 1996, and his eligibility date for review of his license revocation was extended to December 24, 2001. He received citations for driving with a revoked license in 2001 and 2005, resulting in additional periods of license revocation. On March 14, 2005, petitioner’s eligibility date for review of his license revocation was extended to April 22, 2010.

On September 12, 2005, petitioner filed a petition with the circuit court. He stated that he had received a citation for driving while his license was “suspended” that precluded him from a hearing before the (DLAD). He asked the court to set aside “the additional 904 suspension” and order the DLAD to conduct an immediate hearing. Initially, respondent did not challenge the petition, and the circuit court signed an order directing that “the additional 904 suspensions be set aside and an immediate DLAD hearing be conducted.” Respondent thereafter filed a motion for relief from judgment pursuant to MCR 2.612(C)(1)(a) (mistake), (d) (judgment is void for lack of subject-matter jurisdiction), and (f) (any other reason justifying relief from judgment). The circuit court denied the motion, and respondent now appeals. Respondent argues that the

circuit court exceeded its statutory authority by overturning petitioner's revocations and directing that a review hearing be held before the DLAD.

This appeal involves a matter of statutory interpretation, which is reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). The primary goal of statutory interpretation is to give effect to the intent of the Legislature as expressed in the language of the statute. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). "The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). The Legislature is presumed to intend the meaning it plainly expressed. *Guardian Photo, Inc v Dep't of Treasury*, 243 Mich App 270, 276-277; 621 NW2d 233 (2000).

The petition filed in circuit court was brought pursuant to MCL 257.323, which provides, in pertinent part:

(1) A person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license, a vehicle group designation, or an indorsement on a license or revoking, suspending, or restricting an operator's or chauffeur's license, vehicle group designation, or an indorsement may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed pursuant to section 625f or pursuant to the order of a trial court under section 328 or, in all other cases, in the circuit court in the person's county of residence. The person shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the person to file [the] petition within 182 days after the determination is made. . . .

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(3) The court may take testimony and examine all the facts and circumstances relating to the denial, suspension, or restriction of the person's license under sections 303(1)(d), 320, or 904(10) or (11), a licensing action under section 310d, or a suspension for a first violation under section 625f. The court may affirm, modify, or set aside the restriction, suspension, or denial . . . . The court shall enter the order and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) Except as otherwise provided in this section, in reviewing a determination resulting in a denial, suspension, restriction, or revocation under this act, the court shall confine its consideration to a review of the record prepared pursuant to section 322 or 625f or the driving record created under section 204a for a statutory legal issue, and shall not grant restricted driving privileges. The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

(a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the secretary of state's statutory authority or jurisdiction.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

Under MCL 257.323(1), petitioner was permitted to request that the circuit court "review" the secretary of state's March 14, 2005, determination. MCL 257.323(3) authorizes the circuit court to "affirm, modify, or set aside" a "restriction, suspension, or denial" following a fact-finding hearing in the circuit court. At issue here, then, is whether the statute also authorizes the circuit court to set aside a *revocation* of petitioner's license. We find that the Legislature has clearly expressed an intent to proscribe that authority.

Significantly, the version of MCL 257.323(3) that was in effect prior to October 1, 1999, authorized these actions regarding the "denial, suspension, restriction, or revocation of the person's license." However, 1998 PA 346, which took effect on October 1, 1999, changed this section by deleting any reference to revocation. The circuit court's authority to grant relief was thereby truncated to include only situations where a petitioner's license had been subjected to "denial, suspension, or restriction." "A change in statutory language is presumed to reflect a change in the meaning of the statute." *Edgewood Dev, Inc v Landskroener*, 262 Mich App 162, 167-168; 684 NW2d 387 (2004). Our reading of 1998 PA 346 leads us to the conclusion that the Legislature intended to restrict the authority of the circuit court to "affirm, modify, or set aside" a determination by the secretary of state pursuant to MCL 257.323(3) only if that determination entailed a restriction, suspension, or denial of a license. The Legislature specifically removed the circuit court's authority to "affirm, modify, or set aside" determinations by the secretary of state that entailed revocation of licenses.

A circuit court's review of a license revocation must therefore be confined to "a review of the record prepared pursuant to section 322 or 625f or the driving record created under section 204a for a statutory legal issue." MCL 257.323(4). Further, the court "shall set aside" the secretary of state's determination "only if the petitioner's substantial rights have been prejudiced" in one of several enumerated ways. In its order, the circuit court did not state which, if any, of those enumerated statutory conditions were met.

Petitioner argued in the circuit court that the only way to produce a record for the circuit court to review under MCL 257.323(4) was to set aside the additional revocations and order a hearing before the DLAD. We disagree. Under MCL 257.322, an individual aggrieved by a decision who wishes to have a record prepared must file an appeal in writing with the secretary

of state within 14 days of the determination. Such an appeal is heard by a hearing officer, and a record of the hearing and of the officer's determinations must be made. Therefore, the Motor Vehicle Code does provide a route to production of a record of the secretary of state's determination. There is no indication in the circuit court record that petitioner appealed the secretary of state's March 14, 2005, imposition of additional sanctions within 14 days or in writing to the secretary of state. The means to produce a record existed, but petitioner simply did not avail himself of it.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Bill Schuette

/s/ Stephen L. Borrello