2012 IL App (4th) 110828-U

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NO. 4-11-0828

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MELISSA NORVILLE,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
JESSE WHITE, Secretary of State,	)	No. 09MR893
Defendant-Appellee.	)	
	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: (1) That the record contains no proof the Illinois Department of Transportation (IDOT) sent plaintiff a written request for an accident report does not necessitate a reversal of the suspension of her driving privileges.

(2) IDOT's certification to the Secretary of State plaintiff failed to provide proof of liability insurance or sufficient funds to cover damages did not deprive her of a property right and thus did not deny her due process.

(3) The Secretary of State's decision to suspend plaintiff's driving privileges was not barred by a statute of limitations.

(4) The Secretary of State's decision to suspend plaintiff's driver's license was not against the manifest weight of the evidence.

(5) The record does not establish the hearing officer was biased.

¶ 2 In December 2009, plaintiff, Melissa Norville, filed a *pro se* complaint seeking administrative review of a decision of the defendant, Illinois Secretary of State (the Secretary),

suspending her driver's license. Following an administrative hearing, the Secretary (1) found a reasonable possibility a civil judgment in excess of $500 would be entered against Melissa and (2) suspended her driver's license and driving privileges after Melissa failed to provide proof of adequate insurance or the ability to pay for such judgment. The circuit court affirmed the Secretary's decision. Melissa appeals, arguing (1) the Illinois Department of Transportation (IDOT) unlawfully failed to send her a written request for a missing report of the accident when it had not received such a report from her; (2) IDOT's failure to send her such a request denied her due process of law; (3) a statute of limitations bars the Secretary's actions because the Secretary failed to timely send her notice of suspension; (4) both the Secretary's decision and the decision of the court are against the manifest weight of the evidence; and (5) the hearing officer was biased. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 11, 2009, Melissa was involved in a motor-vehicle accident when her car and a car driven by her friend, Kai Baker, collided. The car driven by Melissa was owned by her parents, Matthew and Felicia Norville. The car driven by Baker belonged to Baker's stepfather, Rick Radun. The Geneva police arrived at the scene and prepared an Illinois traffic crash report. No citations were issued. According to the report, damage was estimated to be between $501 and $1,500. Melissa's car had damage on the front passenger side, while Baker's car had damage in the middle of the driver's side.

¶ 5 Baker filed a report, which he signed on January 12, 2009, with IDOT. Baker reported his vehicle was stopped at a stop sign when Melissa tried to go around him and "slid on black ice." Melissa's car slid into the back door on the driver's side.

¶ 6 On June 22, 2009, IDOT sent a document entitled "certification" to the Secretary regarding the January 2009 accident. According to the certification, Melissa was involved in a crash that resulted in property damages of $2,450 to Radun and Progressive Insurance Company, listed as Melissa's insurer on the police report, denied coverage. The certification further states the following: "Your failure to furnish [IDOT] with evidence of liability insurance or other means to pay for damages resulting from the above mentioned crash compels [IDOT] to certify your name as an uninsured motorist to [the Secretary] for possible suspension of your driving or registration privileges."

¶ 7 Later, the Secretary sent plaintiff and her parents a notice of suspension, dated July 13, 2009. According to the notice, the Secretary made a preliminary finding "there is a reasonable possibility of a civil judgment in excess of the statutory amount being entered against" her. Melissa and her parents were informed they had to provide the Secretary proof of insurance, make a deposit to the Secretary for $2,450, or request an administrative hearing. The Norvilles requested a hearing.

¶ 8 On October 1, 2009, the requested administrative hearing was held. Melissa, her parents, and Radun were present. Baker was not present.

¶ 9 Melissa testified on January 11, 2009, she was traveling northbound on a two-lane road; Baker was traveling in the same direction. For approximately one mile, Baker was behind Melissa. Melissa testified, as she approached the stop sign of an intersection, Baker pulled in front of her. Melissa stated she was driving "[s]ix miles an hour," at this point. She was braking for the stop sign. Melissa testified when she was "about a car length" from the stop sign, Baker moved in front of her on the left. Baker was also slowing to a stop. Baker reached the stop sign.

Approximately four feet separated the two cars.

¶ 10 Melissa testified she swerved to the left and her car then slid on ice. Melissa testified Baker was supposed to be following her, because he did not know where he was going. Melissa was taking her friend to her house. Melissa testified the collision did not cause much, if any, damage to her car. The Norvilles did not obtain an estimate.

¶ 11 Melissa testified she was driving the vehicle for her own use that day. She was not "doing anything" for either of her parents. When asked about Baker's vehicle, Melissa stated the damage was minor. According to Melissa, at the scene of the accident, she spoke to Baker's mother over the phone. Baker's mother told Melissa not to worry. Baker's mother said she would pay for the repair.

¶ 12 Matthew testified he owned the vehicle Melissa was driving. He stated he had thrown away the insurance information for that vehicle and did not know who the insurer was. Matthew testified he had changed insurers. Matthew testified Melissa did not have his permission to drive that day; he was not home. He also testified the collision caused a dent in the front passenger side fender. Matthew testified he did not get an estimate because it was an old car. Matthew further argued the Secretary's action was barred by the statute of limitations.

¶ 13 Felicia testified she also did not give Melissa permission to drive that day, but stated Melissa had her own set of car keys.

¶ 14 Radun testified the damage to the driver's side was moderate to severe. It had not been repaired because, Radun testified, the Norvilles had not paid for it. Radun testified his insurance company would not pay because Radun was unable to pay the $1,000 deductible. Radun testified the estimate to repair the damage was almost $2,500.

¶ 15 On an unspecified date, the hearing officer entered recommendations and findings. The hearing officer found Melissa's testimony "was unpersuasive because it was inconsistent with the distance between the two vehicles before swerving and the first point of impact to the Baker vehicle." The hearing officer determined Melissa had not met her burden of proof her negligence did not cause the collision. The hearing officer determined the cause of the collision was "the result of driving too fast for the slippery road conditions" by Melissa. The court found credible the testimony of the other witnesses. The hearing officer determined an agency relationship did not exist at the time of the collision between Melissa and her parents. The hearing officer concluded "[t]here is a reasonable possibility of a judgment in excess of $500" against Melissa and recommended the suspension of Melissa's driving privileges and driver's license.

¶ 16 In November 2009, the Secretary issued an order accepting the conclusions and recommendations of the hearing officer and suspending Melissa's driver's license and privileges as of December 3, 2009.

¶ 17 In December 2009, Melissa filed a complaint for administrative review. In August 2011, the circuit court affirmed the Secretary's decision.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Melissa first argues, under section 7-201.1 of the Illinois Vehicle Code (Code) (625 ILCS 5/7-201.1 (West 2008)), IDOT was required to send her a written request for information and, upon receipt of such request, she had 15 days to respond before IDOT could send a certification to the Secretary. Melissa maintains because IDOT did not send her such a

request, IDOT did not know her version of the event which would have prevented IDOT from sending the certification for the suspension of her driver's license. She claims she was denied due process of law.

¶ 21 The Secretary does not claim IDOT sent Melissa a written request for a report. The Secretary argues section 7-201.1 did not require IDOT to do so unless it found the information before it insufficient.

¶ 22 This dispute requires this court to construe section 7-201.1. Statutory construction is a matter of law, subject to *de novo* review. *In re Andrew B.*, 237 Ill. 2d 340, 348, 930 N.E.2d 934, 939 (2010). When asked to construe a statute, we seek to ascertain the legislature's intent. *Gruchow v. White*, 375 Ill. App. 3d 480, 483, 874 N.E.2d 921, 923 (2007). The language of the statute provides the surest indicator of that intent. *Gruchow*, 375 Ill. App. 3d at 483, 874 N.E.2d at 923. When that language is clear and unambiguous, we enforce it as written. *Hines v. Department of Public Aid*, 221 Ill. 2d 222, 230, 850 N.E.2d 148, 153 (2006).

¶ 23 Section 7-201.1 provides the following:

> "If the Administrator has not received a report required to be filed under Sections 11-406 and 11-410, or if the information contained in a report is insufficient, the Administrator shall send to the person required to file the report a written request for the missing report or the missing information. The Administrator shall send such request no later than 45 days after the accident or 7 days after receiving information that such accident has occurred, whichever is later.

> If the request is sent to a driver involved in an accident, the request or an attachment thereto shall contain in bold print a warning that failure to comply with the request within 15 days may result in the suspension of the driver's license." 625 ILCS 5/7-201.1 (West 2008).

¶ 24 Section 11-406, referenced in section 7-201.1, mandates the driver of a vehicle involved in an accident in Illinois that results in property damage exceeding $1,500 shall report the accident within 10 days of that accident. 625 ILCS 5/11-406(a) (West 2008). Section 11-410 mandates if the driver of a vehicle involved in an accident fails to make the requisite report, the owner of the vehicle "shall, as soon as practicable, make said report." 625 ILCS 5/11-410 (West 2008).

¶ 25 On this issue, the language in section 7-201.1 is clear and unambiguous: IDOT must send a written request for an accident report to anyone required to file such a report, but apparently failed to do so, under section 11-406 or 11-410. 625 ILCS 5/7-201.1 (West 2008). Contrary to the Secretary's argument, the "or" in section 7-201.1 does not relieve IDOT of this obligation, but results in two situations where such requests must be sent: (1) where an individual failed to comply with sections 11-406 or 11-410 and (2) where any report filed pursuant to those sections is inadequate. 625 ILCS 5/7-201.1 (West 2008).

¶ 26 While our reading of sections 7-201.1, 11-406, and 11-410 leads us to conclude a written request should have been sent to Melissa, this conclusion does not necessitate reversal of Melissa's suspension. Melissa has identified no language in the statute that bars IDOT from proceeding without proof such written notice was sent. Melissa does argue her suspension must

be reversed because she was denied due process because of IDOT's failure to send her a written request. Melissa maintains had IDOT heard her version of the event it would have concluded she did not cause the accident and her cause would not have been certified. In her reply brief, Melissa further maintains had IDOT timely sent her the required request, she would have been able to provide the necessary information to IDOT. She claims because over five months passed before she did receive notice, she no longer had the required information.

¶ 27 Our first task in determining whether an individual has been denied due process is to "first ascertain that a protected interest has been interfered with by the state." *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 241, 840 N.E.2d 1174, 1186 (2005). Due-process protections are triggered only when a deprivation of life, liberty or property occurs. *Big Sky Excavating*, 217 Ill. 2d at 241, 840 N.E.2d at 1186. Melissa does not argue IDOT's actions deprived her of life or liberty. Before we even consider what process is due, we must find Melissa has been deprived of property. See *Big Sky Excavating*, 217 Ill. 2d at 241, 840 N.E.2d at 1186. Melissa has made no such showing.

¶ 28 Melissa has cited no argument or authority IDOT's action resulted in a deprivation of property. She has forfeited this argument. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (mandating the argument of the appellant brief contain "citation of the authorities and the pages of the record relied on" and stating "[p]oints not argued are waived").

¶ 29 Moreover, we find IDOT did not deprive Melissa of a property right. According to Melissa's argument, we would have to find a deprivation of a property right occurred when IDOT certified to the Secretary that Melissa "was involved in a motor vehicle crash" that "resulted in injury/property damage" and she failed to furnish IDOT with evidence of liability

insurance or other means to pay for damages. The result of this certification was the "possible suspension" of her driving privileges. IDOT's actions did not cause the suspension. Its actions prompted the certification she lacked adequate insurance and started the process by which she was able to tell her side of the story. IDOT did not deprive Melissa of property.

¶ 30 We note the record shows IDOT, pursuant to section 7-201.1, sent Matthew, the owner of the vehicle, a request for a report in April 2009. Under section 11-410, Matthew was required to complete an accident report when the driver of the vehicle failed to do so. 625 ILCS 5/11-410 (West 2008). The record shows Matthew completed the form sent by IDOT and attached additional information, but the record does not contain the referenced attachment. In her reply brief, Melissa states Matthew reported her version of the collision. Thus, even if IDOT did not send the written request to Melissa under section 7-201.1, it was informed liability was contested.

¶ 31 Melissa next argues her suspension must be reversed because the Secretary did not mail her notice of the suspension within 15 days of receiving the certification from IDOT. Melissa cites section 7-205 of the Code as setting a 15-day statute of limitations, which, if violated, bars the Secretary from pursuing suspensions. Melissa emphasizes 21 days spanned the time between IDOT's certification and the Secretary's mailing of her notice of suspension.

¶ 32 The Secretary contends the plain language of section 7-205 does not set a statute of limitations. The Secretary maintains, at best, the statute gives the Secretary a reasonable time frame in which to make the determination and Melissa misunderstands the term "statute of limitations."

¶ 33 Section 7-205 provides the following, in relevant part:

"The Secretary of State, within 15 days after receipt of the determination of the Administrator that a deposit of security is required under this Code, shall review all reports, documents and other pertinent evidence in his possession, and make a preliminary finding as to whether or not there is reasonable possibility of a civil judgment being entered in a court of proper jurisdiction against the person so certified by the Administrator under this Code.

(a) Upon a preliminary finding that there is such a reasonable possibility, the Secretary of State shall notify such person by mail that his driving privileges, driver's license or registration will be suspended 45 days after the date of the mailing of the notice unless the person can prove to the satisfaction of the Secretary of State that he has deposited or has had deposited and filed on his behalf the security required under this Code or, within 15 days of the mailing of such notice, requests a formal hearing to determine whether his driving privileges, driver's license or registration should be suspended or whether the Secretary should enter an order of exoneration[.]" 625 ILCS 5/7-205 (West 2008).

¶ 34 We agree Melissa misunderstands the term "statute of limitations." The term "governs the time within which lawsuits may be commenced after a cause of action *** accrue[s]." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 61, 857 N.E.2d 229, 237 (2006). It is, by definition, set by a statute, which explicitly bars claims filed outside of the set time period. See

e.g., 5 ILCS 315/11(a) (West 2008) (establishing a six-month statute of limitations for an unfair-labor claim). While section 7-205 contains language directing the Secretary to act within a certain time, it does not bar further action, *i.e.*, a suspension, when the Secretary fails to do so. This is a strong indication the legislature intended this provision to be directory and not mandatory. See generally *O'Brien v. White*, 219 Ill. 2d 86, 96, 846 N.E.2d 116, 122 (2006).

¶ 35 We find further problems with Melissa's argument. A plain reading of section 7-205 indicates the Secretary need only review the record and "make a preliminary finding as to whether or not there is reasonable possibility of a civil judgment being entered" within 15 days. 625 ILCS 5/7-205 (West 2008). Section 7-205 does not require the Secretary to mail its decision within 21 days. The lapse of six days by itself does not indicate the Secretary did not comply with section 7-205.

¶ 36 Melissa next argues the Secretary erroneously concluded there was a reasonable possibility plaintiff was at fault in the accident and a civil judgment would be entered against her. Melissa, citing *Spaulding v. Howlett*, 59 Ill. App. 3d 249, 375 N.E.2d 437 (1978), maintains the reports used against her contained impermissible hearsay. Melissa argues, without those reports, her testimony was the only admissible evidence and such testimony established the motor-vehicle accident was not her fault.

¶ 37 The Secretary distinguishes *Spaulding*, arguing the *Spaulding* plaintiff objected to the introduction of accident reports on hearsay grounds and such reports were admitted over objection. The Secretary contends in this case, however, Melissa did not object to the admission of such reports into evidence. The Secretary, citing *Mahonie v. Edgar*, 131 Ill. App. 3d 175, 476 N.E.2d 474 (1985), concludes because the hearsay evidence was properly admitted, it could be

afforded its natural probative weight and serve as the basis for its findings.

¶ 38 On administrative review, this court will not overturn a decision of an administrative agency unless that decision is against the manifest weight of the evidence. *Briggs v. State*, 323 Ill. App. 3d 612, 617-18, 752 N.E.2d 1206, 1211 (2001). A decision is against the manifest weight of the evidence only if the opposite result is clearly evident. *Briggs*, 323 Ill. App. 3d at 618, 752 N.E.2d at 1211.

¶ 39 We agree with the Secretary: *Spaulding* is distinguishable. In *Spaulding*, the plaintiff who had been involved in a motor-vehicle accident with another vehicle brought an administrative-review action, like the one here, seeking review of the Secretary's decision to suspend the plaintiff's driving privileges. *Spaulding*, 59 Ill. App. 3d at 249, 375 N.E.2d at 438. At the hearing, the plaintiff was the only individual involved in the accident to appear. *Spaulding*, 59 Ill. App. 3d at 250, 375 N.E.2d at 439. When the Secretary attempted to admit the accident report filed by the other driver, the plaintiff objected on hearsay grounds. *Spaulding*, 59 Ill. App. 3d at 250, 375 N.E.2d at 439. The hearing officer admitted the report over objection and treated the facts in the report as establishing a *prima facie* case. *Spaulding*, 59 Ill. App. 3d at 250, 375 N.E.2d at 439. The plaintiff did not testify or offer evidence in rebuttal. *Spaulding*, 59 Ill. App. 3d at 250, 375 N.E.2d at 439. The hearing officer suspended the plaintiff's driving privileges after concluding there was a reasonable possibility a civil judgment would be entered against the plaintiff for damages. *Spaulding*, 59 Ill. App. 3d at 250, 375 N.E.2d at 439. On appeal, the First District concluded the report of the other driver was inadmissible hearsay and affirmed the trial court's reversal of the Secretary's decision. *Spaulding*, 59 Ill. App. 3d at 251, 253, 375 N.E.2d at 440, 441.

¶ 40 Here, unlike in *Spaulding*, Melissa did not object to the admission of Baker's or Radun's reports. This case, as the Secretary argues, is more like *Mahonie*. In *Mahonie*, the plaintiff sought administrative review of the decision of the Secretary suspending the plaintiff's driving privileges. *Mahonie*, 131 Ill. App. 3d at 176, 476 N.E.2d at 475-76. At the hearing, the *Mahonie* plaintiff did not object to the admission of the other driver's report. *Mahonie*, 131 Ill. App. 3d at 178, 476 N.E.2d at 477. This, according to the First District, was the crucial difference between its case and the *Spaulding* decision. *Mahonie*, 131 Ill. App. 3d at 178, 476 N.E.2d at 477. The court concluded hearsay evidence admitted "without objection may be given its natural probative weight." *Mahonie*, 131 Ill. App. 3d at 178, 476 N.E.2d at 477. The *Mahonie* court then determined when the hearsay evidence "is considered, the liability for the accident is dependent on whether one accepts plaintiff's version or [the other driver's] version about how the accident happened." *Mahonie*, 131 Ill. App. 3d at 178, 476 N.E.2d at 477. The *Mahonie* court found because "the trier of fact at a trial could choose to believe either [the other driver] or plaintiff, a reasonable possibility exists that plaintiff could be found liable" and affirmed the Secretary of State's decision. *Mahonie*, 131 Ill. App. 3d at 178, 179, 476 N.E.2d at 477, 478.

¶ 41 We find the *Mahonie* decision convincing. Because Melissa did not object to the admission of the reports, the information in those reports was properly considered. Baker gave a different version of the accident. A trier of fact could choose to believe either Baker or Melissa, making it a reasonable possibility Melissa could be found liable. See *Mahonie*, 131 Ill. App. 3d at 178, 179, 476 N.E.2d at 477, 478. The hearing officer's decision is not against the manifest weight of the evidence.

¶ 42 Melissa last argues the hearing officer was biased. We address the allegations made by Melissa individually.

¶ 43 The first alleged proof of bias is Melissa's allegation she, before the hearing began, overheard the hearing officer say to her parents she disagreed with the law that mandates "parents are not financially responsible for anything a child does when you don't give the child permission to use the car or the child is not running errands for you." In support of this alleged fact, Melissa cites the complaint she filed for administrative review. We find insufficient proof of bias. The hearing officer, though stating she did not agree with the law, enforced it as it is written. The hearing officer found for the parents and concluded there was not a reasonable possibility of a civil judgment being entered against them. Moreover, this alleged conversation was not part of the administrative record and thus may not be reviewed. See 735 ILCS 5/3-110 (West 2008).

¶ 44 The second allegation of evidence of bias is that Radun and the hearing officer "seemed upset" Matthew was a pastor and had a website. Melissa contends Radun printed a copy of one of Matthew's lessons and showed it to the officer. Melissa maintains this occurred at the hearing, but when the tape of the proceedings was not recording. This argument is meritless on a number of grounds. First, it is not part of the administrative record and is not subject to review. See 735 ILCS 5/3-110 (West 2008). Second, Melissa has not presented any proof the hearing officer gave any weight to Radun's alleged comments.

¶ 45 The last allegation of evidence of bias is the fact the hearing officer would not permit her "to file some things such as that IDOT had never sent [her] a request for information about the accident" and the Secretary violated the statute of limitations. We have reviewed

IDOT's alleged failure to send Melissa a request for information and the Secretary's alleged failure to timely mail the notice of decision and determined there was no error. The hearing officer was aware of Melissa's arguments and did not demonstrate bias not allowing Melissa to submit additional information on these failing arguments.

¶ 46 III. CONCLUSION

¶ 47 We affirm the circuit court's judgment.

¶ 48 Affirmed.