

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2369

EDWARD J. GUIDRY

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF PUBLIC SAFETY,
LICENSE CONTROL AND DRIVER IMPROVEMENT DIVISION

Judgment rendered June 8, 2012.



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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge Parish, Louisiana
Trial Court No. 578,171
Honorable Todd W. Hernandez, Judge

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OFFICE OF MOTOR VEHICLES

* * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

This appeal challenges the action of the trial court in ordering that plaintiff be given credit for the time (297 days) in which he had an ignition interlock device in his vehicle and that an ignition interlock hardship license be issued to plaintiff for 68 days, the balance of his driver's license suspension period. For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

On May 14, 2009, plaintiff, Edward J. Guidry, filed a Petition For Judicial Review Of Suspension Of License And Injunction, arguing that the Department of Public Safety and Corrections, Office of Motor Vehicles ("OMV"), had "failed to establish reasonable cause or meet the requirements established under [La. R.S.] 32:661-669, which are the minimal requirements before [his] driving privileges can subsequently be suspended for refusing to submit to the chemical test for intoxication." Plaintiff further asserted that the OMV was unable to "offer sufficient proof to sustain the suspension currently being imposed" and that the suspension should be recalled.¹ The trial court issued a temporary stay prohibiting the OMV from continuing to suspend plaintiff's driving privileges until a judicial review hearing could be held. The matter was scheduled for hearing on September 26, 2011.

At the judicial review hearing, documentary evidence was introduced verifying plaintiff's "monitoring period" as a condition of "probation" with the Smart Start ignition interlock device as being from December 4, 2009 through September 27, 2010. The issues were argued by counsel. Thereafter, the trial court rendered judgment, ordering that the OMV give plaintiff credit for the 297 days that he had the ignition interlock device on his vehicle and that the OMV issue plaintiff an ignition interlock hardship license for the

¹ Although the record is devoid of any evidence regarding the underlying offense that led to the suspension of plaintiff's driving privileges, plaintiff states in his brief to this court that his suspension was "mandated by Louisiana's Tests for Suspected Drunk Drivers law, La. R.S. §32:661 *et seq.*, based on the results of an Intoxilyzer test issued to [him] after he was arrested for operation of a motor vehicle while intoxicated." Plaintiff further maintains in his brief that he was ordered by the criminal court to install an ignition interlock device in his vehicle as a condition of completing a criminal pre-trial intervention program.

balance of his suspension, 68 days. A judgment in accordance with the trial court's findings was signed on October 4, 2011.

From this judgment, the OMV appeals, assigning the following specification of error for our review:

The trial court erred by holding the [OMV] must give [plaintiff] credit for the time period in which he had an ignition interlock device installed in his automobile as a condition of a criminal pre-trial intervention program, when the [OMV] and law enforcement were not able to monitor the device at the time it was installed and [plaintiff] did not obtain a restricted driver's license reflecting he had installed the device in any vehicle he operated, in contravention to La. R.S. §32:667(I)(2).²

ANALYSIS

On appeal, the OMV asserts that the trial court committed legal error when it held that plaintiff was entitled to credit for the 297 days during which he had an ignition interlock device installed in his vehicle not in conjunction with a restricted driver's license.

² Louisiana Revised Statutes 32:667(I) provides, in pertinent part, as follows:

I. (1) In addition to any other provision of law, an ignition interlock device shall be installed in any motor vehicle operated by any of the following persons whose driver's license has been suspended in connection with the following circumstances as a condition of the reinstatement of such person's driver's license:

(a) Any person who has refused to submit to an approved chemical test for intoxication, after being requested to do so, for a second violation of R.S. 14:98 or 98.1 or a parish or municipal ordinance that prohibits operating a vehicle while intoxicated and whose driver's license has been suspended in accordance with law.

(b) Any person who has submitted to an approved chemical test for intoxication where the results indicate a blood alcohol level of 0.08 percent or above and whose driver's license has been suspended in accordance with the law for a violation occurring within five years of the first violation.

....

(2) As to any person enumerated in Paragraph (1) of this Subsection, the ignition interlock device shall remain on the motor vehicle for a period of not less than six months. The ignition interlock device may be installed either prior to the reinstatement of the driver's license, if the person has lawfully obtained a restricted driver's license, or as a condition of the reinstatement of the driver's license. When the driver's license is suspended as described in this Subsection, the ignition interlock device shall remain on the motor vehicle for the same period as the suspension, with credit for time when the interlock device was installed and functioning as part of a restricted driver's license.

(3) The provisions of this Subsection shall not abrogate any other provision of law regarding the installation and maintenance of ignition interlock devices.

(4) When an ignition interlock device is required as a condition of reinstatement, the office of motor vehicles shall designate a restriction code and place such code on the license of a driver who is required to have an ignition interlock installed and maintained as a condition of reinstatement.

Arguing that the trial court's decision involved a legal question, the OMV maintains that appellate review of same is simply to determine whether the trial court was legally correct or legally incorrect. **Cangelosi v. Allstate Ins. Co.**, 96-0159, p. 3 (La. App. 1 Cir. 9/27/96), 680 So.2d 1358, 1360, writ denied, 96-2586 (La. 12/13/96), 692 So.2d 375.

Louisiana Revised Statutes 32:661-668 address the testing of individuals suspected of operating motor vehicles while under the influence of alcoholic beverages or controlled dangerous substances and provides sanctions for persons who refuse to submit to a chemical test or who submit to a chemical test yielding results that are presumptive of intoxication. **Flynn v. State, Dept. of Public Safety & Correction**, 608 So.2d 994, 995 (La. 1992). The statutes also provide the administrative procedures for sanctioning these individuals and for review of such decisions. *Id.*

Pursuant to La. R.S. 32:667, law enforcement officers are authorized to seize the driver's license and issue a temporary receipt when a person has been arrested for DWI and either refuses a chemical test or takes a test that results in a finding of a blood alcohol level presumptive of intoxication. Under La. R.S. 32:667(I)(1)(b), a motorist whose driving privileges have been suspended a second time in five years may reinstate those driving privileges upon installation of an ignition interlock device "as a condition of ... reinstatement." As set forth in La. R.S. 32:667(I)(2), the ignition interlock device must remain on any motor vehicle the motorist operates, as a condition of reinstatement, for the same period as the suspensive period. The law specifically states that an ignition interlock device "may be installed either prior to the reinstatement of the driver's license, **if the person has lawfully obtained a restricted driver's license**, or as a condition of the reinstatement of the driver's license." La. R.S. 32:667(I)(2) (emphasis added). Moreover, "the ignition interlock device shall remain on the motor vehicle for the same period as the suspension, with credit for time when the interlock device was installed and functioning as part of a restricted driver's license." *Id.*

According to plaintiff's counsel, it was undisputed that plaintiff was ordered by the criminal court to install an ignition interlock device in his automobile in connection with his

arrest for DWI.³ Plaintiff was facing his "second suspension in five years," as per his counsel's statement to the trial court below. Plaintiff's counsel acknowledged that there was no dispute as to the information in the suspension itself. The problem arose when plaintiff sought to have his license reinstated and was advised by the OMV that a condition of his reinstatement would be that he have an ignition interlock device on his vehicle for 365 days. Apparently, plaintiff did not notify the OMV that he had the device on his vehicle, nor did he obtain a restricted license as required by La. R.S. 32:667(I)(2). Nonetheless, counsel for plaintiff argued that he should be given credit for the time that he had the ignition interlock device and be allowed to serve out the balance of his suspension with an ignition interlock hardship license. In response, the OMV argued that during the time that plaintiff had the ignition interlock device in his vehicle, he had his full driving privileges and, as such, was not entitled to receive credit under the implied consent law. We agree with the OMV on this issue.

Legislative intent is the fundamental question in all cases of statutory interpretation, and rules of statutory construction are designed to ascertain and enforce the intent of the statute. **State v. Campbell**, 2003-3035, p. 7 (La. 7/6/04), 877 So.2d 112, 117. The starting point for the interpretation of any statute is the language of the statute itself. **SWAT 24 Shreveport Bossier, Inc. v. Bond**, 2000-1695, p. 12 (La. 6/29/01), 808 So.2d 294, 302. When a law is clear and unambiguous and its application does not lead to absurd consequences, it shall be applied as written, with no further interpretation made in search of the legislative intent. La. Civ. Code art. 9; La. R.S. 1:4. "The meaning and intent of a law is determined by considering the law in its

³ Plaintiff's counsel argued before the trial court and again in brief to this court that plaintiff completed a criminal pre-trial intervention program and ultimately had his DWI charge dismissed. However, there is nothing in the record to support counsel's argument in this regard. An appellate court must render its judgment upon the record on appeal. La. Code Civ. P. art. 2164; **In re Melancon**, 2005-1702, p. 7 (La. 7/10/06), 935 So.2d 661, 666. Clearly, argument by counsel does not constitute evidence. **Buelle v. Periou**, 2004-2733, p. 5 (La. App. 1 Cir. 12/22/05), 927 So.2d 1126, 1129, writ denied, 2006-0160 (La. 4/24/06), 926 So.2d 542. We find the record before us insufficient to make a finding on the status of plaintiff's underlying criminal charge. Cf. Boudreaux v. Louisiana Dept. of Public Safety and Corrections, 2011-1087, pp. 3-6 (La. App. 1 Cir. 12/21/11), 80 So.3d 767, 769-770 (holding that plaintiff's first arrest for DWI did not constitute a violation, for purpose of La. R.S. 32:667(I), because plaintiff completed a pre-trial intervention program, his DWI was dismissed, and plaintiff was never convicted of a violation of La. R.S. 14:98).

entirety and all other laws concerning the same subject matter and construing the provision in a manner that is consistent with the express terms of the statute and with the obvious intent of the lawmaker in enacting it." **SWAT 24 Shreveport Bossier, Inc.**, 2000-1695 at 11, 808 So.2d at 302.

The trial court's judgment is in direct conflict with the clear language of La. R.S. 32:667(I). The law specifically states that a motorist, such as plaintiff, whose driving privileges have been suspended for a second time in five years may reinstate his driving privileges under La. R.S. 32:667(I)(1)(b), upon installation of an ignition interlock device "as a condition of reinstatement." The device must remain on any motor vehicle the motorist operates for the same period as the suspension (365 days in plaintiff's case). La. R.S. 32:667(I)(2).⁴ The ignition interlock device may be installed prior to full reinstatement of a motorist's driver's license "if the person has lawfully obtained a restricted driver's license." *Id.* When such a device is required as a condition of reinstatement, the OMV is required to designate a restriction code and place it on the motorist's restricted license so that law enforcement officials know that the motorist is prohibited from operating any vehicle that does not contain an ignition interlock device. La. R.S. 32:667(I)(4). As argued by the OMV on appeal, such designation allows law enforcement officers to verify compliance with the ignition interlock device requirements.

Although plaintiff had a properly installed ignition interlock device on his vehicle for 297 days, and may have been monitored by the criminal court during that time, pursuant to the clear and unambiguous language of the statute, he is not entitled to any credit for same as he failed to follow the mandates of La. R.S. 32:667(I). As written, the statute only allows credit for time when the device "was installed and functioning as part of a restricted driver's license." La. R.S. 32:667(I)(2). Plaintiff never sought a restricted

⁴ We note, as did the trial court below, that there seems to be a breakdown in communication somewhere between the criminal court system and the OMV with regards to notifying the average citizen faced with this situation about the suspension/reinstatement procedure and how the criminal charges are completely separate and apart from the driver's licenses issues, which are handled through the OMV.

driver's license during the 267 days that he had the ignition interlock device on his vehicle.

The function of courts, in construing statutes, is to interpret legislative will, and not to supplement or supply it. **Hurt v. Superior Cable Installation, Inc.**, 99-2982, p. 6 (La. App. 1 Cir. 5/12/00), 762 So.2d 705, 708-709, writ not considered, 2000-1950 (La. 9/29/00), 769 So.2d 549 (citing **Levy v. New Orleans & N.E.R. Co.**, 20 So.2d 559, 562 (La. App. 1945)). The legislature has the authority to amend the statute to provide otherwise should it so desire.

Based on the above applicable law and our appreciation of the implied consent law, we conclude that the trial court erred in ordering the OMV to give plaintiff credit for the 297 days his vehicle was equipped with an ignition interlock device not accompanied by a restricted driver's license. Accordingly, we reverse the judgment of the trial court and remand to the trial court for a hearing at which time plaintiff will have the opportunity to present evidence to support his request for a restrictive or hardship driver's license in accordance with his request in the original petition.

CONCLUSION

For the above and foregoing reasons, we find the trial court erred in ordering the OMV to give plaintiff credit for the time his vehicle had an ignition interlock device in it. The trial court's finding is in direct contravention to La. R.S. 32:667(I). Therefore, we reverse the October 4, 2011 judgment of the trial court in its entirety and remand for further proceedings consistent with this opinion. All costs associated with this opinion are assessed against plaintiff-appellee, Edward J. Guidry.

REVERSED AND REMANDED.