

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCIA LOUISE MEYER,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
AND PUBLIC SAFETY,
Respondent.

No. 43689

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of a Department of Motor Vehicles (DMV) revocation of appellant's drivers license. Sixth Judicial District Court, Lander County; Richard Wagner, Judge.

Administrative decisions are subject to judicial review under the Nevada Administrative Procedure Act. More particularly, NRS 233B.135 provides, in pertinent part, as follows:

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

Our review of an administrative decision is identical to that of the district court, which reviews whether the administrative tribunal abused its discretion. In this, the reviewing court must address whether substantial evidence supports the agency's decision.¹

Under NRS 484.387(2), the scope of driver's license revocation hearings is restricted to whether, at the time of an evidentiary test, the licensee had "a concentration of alcohol of 0.10 or more in his blood or breath." We conclude that substantial evidence before the administrative law judge in this matter supports this statutory criterion for revocation. We also conclude that appellant's claim of legal error under State Department of Motor Vehicles v. Tilp² was rendered moot by the admission of certain documents before the administrative tribunal.

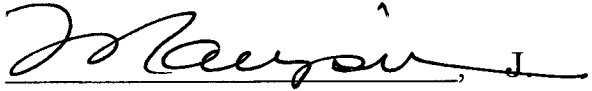
¹See United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).

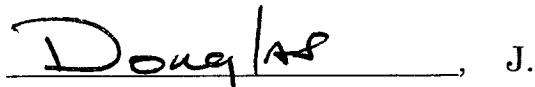
²107 Nev. 288, 810 P.2d 771 (1991).

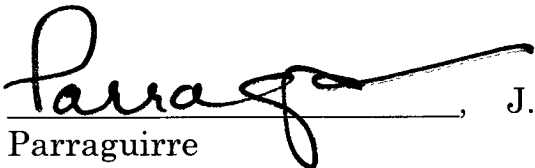
Finally, we conclude that the consideration by the administrative law judge of matters outside the record constitutes harmless error.³

In light of the above, we hereby

ORDER the judgment of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

cc: Hon. Richard Wagner, District Judge
Theodore C. Herrera
Attorney General Brian Sandoval/DMV/Carson City
Lander County Clerk

³See Barnier v. State, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003) (“NRS 178.598, requires that ‘[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.’”).