

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, DEPARTMENT
OF MOTOR VEHICLES,
Appellant,
vs.
MACTAN JOHN DELACRUZ,
Respondent.

No. 49356

FILED

APR 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting judicial review in a driver's license revocation matter.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant initially revoked respondent's driver's license based on his arrest for driving under the influence on February 12, 2006. Respondent contested this revocation through an administrative hearing, at which the revocation was upheld. Respondent then petitioned the district court for judicial review, which the court granted, reversing the revocation. This appeal followed.

The standard for reviewing petitions for judicial review is the same for this court and the district court, which is whether the agency's decision was an abuse of discretion.² In making this determination,

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005).

“neither this court nor the district court may go beyond the administrative record or substitute its judgment for that of the administrative agency concerning the weight of the evidence on questions of fact.”³

Based on our review of the record, we conclude that the administrative law judge did not commit an abuse of discretion in upholding the revocation of respondent’s driver’s license. Substantial evidence supported the arresting officer’s determination that respondent was driving while under the influence of alcohol, and therefore he properly administered the blood test to determine respondent’s blood alcohol level.⁴ The officer’s failure to sign the DLD-45 form did not preclude a finding of substantial evidence, particularly in light of the fact that the officer testified at the administrative hearing. Respondent admits as much in his answering brief.

Respondent argues that the entire revocation proceeding is void based on the officer’s failure to sign the DLD-45 form, relying on NRCP 11. However, while driver’s license revocation proceedings are civil, respondent provides no support for his assertion that NRCP 11 applies to the DLD-45 form. The officer completing the DLD-45 form is neither a party nor an attorney, so the rule does not apply. Additionally, the form is not a pleading, but instead a piece of evidence.

Furthermore, even if NRCP 11 applied, respondent failed to follow the proper procedure for objecting to the document based on the


³Id.

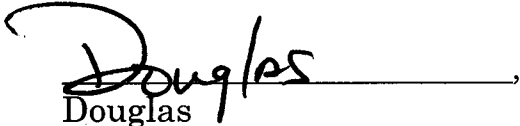
⁴See id. at 498-99, 117 P.3d at 196-97.

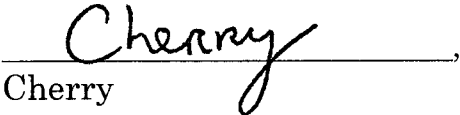
lack of a signature. We held in Cheek v. Bell⁵ that a defect in a filing under NRC P 11 does not allow a party or the court to “disregard the same and treat it as a nullity.”⁶ Instead, a party wishing to challenge the defective filing should bring a motion to strike or set aside the pleading, after which the other party should be provided an opportunity to correct the defect.⁷ Respondent failed to comply with this directive and therefore cannot now argue that the document should be stricken and the proceedings declared void.

Therefore, we conclude that the administrative law judge properly upheld the revocation of respondent’s driver’s license and the district court erred in granting the petition for judicial review. Accordingly we

ORDER the district court’s order granting judicial review REVERSED.

 J.
Parraguirre

 J.
Douglas

 J.
Cherry

⁵80 Nev. 244, 391 P.2d 735 (1964).

⁶Id. at 247, 391 P.2d at 736.

⁷Id.

cc: Hon. Jessie Elizabeth Walsh, District Judge
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