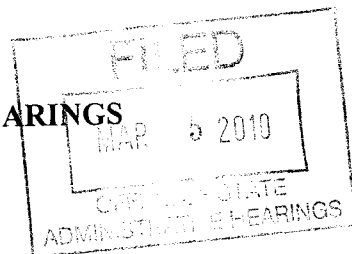


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



[REDACTED]

Plaintiff,

v.

DEPARTMENT OF DRIVER SERVICES,
Defendant.

Docket No.:
OSAH-DDS-ALS-1020963-110-Baxter

Agency Reference No.: 039656524

FINAL DECISION

Plaintiff requested a hearing in response to Defendant's issuance of an administrative license suspension of Plaintiff's driver's license or privilege to drive in the State of Georgia in accordance with the provisions of O.C.G.A. § 40-5-67.1. For the reasons indicated below, Defendant's action is **AFFIRMED**.

I. Findings of Fact

The Judge has considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following findings of fact:

1. The arresting officer initiated a stop after being dispatched to the Plaintiff's house regarding a noise complaint that someone was revving a vehicle's engine. When the arresting officer arrived, he witnessed the Plaintiff in a truck that was stuck in the mud in his backyard. The Plaintiff was attempting to move the vehicle out of the mud.
2. The Plaintiff was in actual physical control of a moving motor vehicle in this State at the time of the initial stop.
3. After approaching the Plaintiff, the arresting officer noticed that the Plaintiff had (a) a strong odor of an alcoholic beverage, (b) bloodshot eyes, (c) watery eyes, and (d) slurred speech. The Plaintiff also admitted to consuming three beers.
4. The arresting officer requested that the Plaintiff perform the following field sobriety evaluations which were not completed to the satisfaction of the arresting officer: (a) HGN (six out of six clues), (b) one leg stand (two out of four clues), (c) walk and turn (four out eight clues), and (d) alcosensor (positive).
5. These facts caused the arresting officer to believe that the Plaintiff had consumed an unknown quantity of alcohol in such a manner as to make the Plaintiff a less safe driver.
6. The Plaintiff was thereupon lawfully placed under arrest for driving under the influence of alcohol and properly read the applicable implied consent notice.
7. After being properly advised of the applicable implied consent notice, the Plaintiff initially refused. At the jail, however, the Plaintiff rescinded his refusal and, at the request of the arresting officer, submitted to the state-administered chemical test to determine the blood concentration of alcohol in his body. The state administered chemical test was properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument in good working order and approved by the Division. The results of the test indicated that the Plaintiff exceeded the minimum alcohol concentration allowable by statute

and was greater than 0.08 (0.134 and 0.131). (Defendant Exhibits D-1 and D-2.)

II. Conclusions of Law

Based upon the above findings of fact, the Judge makes the following conclusions of law:

1. The arresting officer had reasonable grounds to believe the Plaintiff was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol and was lawfully placed under arrest for violating O.C.G.A. § 40-6-391 and O.C.G.A. § 40-5-67.1(g)(2)(A)(i). Because he was operating the vehicle in his backyard and had no intention of leaving his property with the vehicle, the Plaintiff argues that the statutes should not apply. The case law, however, confirms that the statutes apply anywhere in the state, regardless of whether the Plaintiff was on private property. Cook v. State, 220 Ga. 463, 465 (1964) (holding it is unlawful for person under influence of alcohol to operate or drive a vehicle anywhere in the State); Madden v. State, 252 Ga. App. 164, 166 (finding driver guilty of DUI notwithstanding fact that he was driving on private property).

2. At the time of the request for the test, the arresting officer informed the Plaintiff of his implied consent rights and the consequence of submitting or refusing to submit to such test. O.C.G.A. § 40-5-67.1(g)(2)(B).

3. The test results indicated an alcohol concentration of 0.08 grams or more. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).

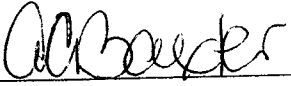
4. The tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences, and the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results shall satisfy the requirements of this subparagraph. O.C.G.A. § 40-5-67.1(g)(2)(D).

Accordingly, the suspension of the Plaintiff's driver's license and driving privilege by Defendant was proper. O.C.G.A. § 40-5-67.1.

III. Decision

IT IS HEREBY ORDERED THAT the decision of Defendant to administratively suspend the Plaintiff's driver's license, permit or privilege to operate a motor vehicle or commercial motor vehicle in this state is **AFFIRMED**.

SO ORDERED, this 5th day of March, 2010.



AMANDA C. BAXTER
Administrative Law Judge