



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 27, 2018

To:

Hon. Frank D. Remington
Circuit Court Judge
215 S. Hamilton St., Br. 8, Rm 4103
Madison, WI 53703

S. Michael Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Randy Paul
P.O. Box 286
Mc Farland, WI 53558-0286

You are hereby notified that the Court has entered the following opinion and order:

2017AP1768

Randy Paul v. State of Wisconsin Department of Natural Resources
(L.C. # 2017CV541)

Before Sherman, Blanchard and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Randy Paul appeals a circuit court order that affirmed an administrative decision by the Wisconsin Department of Natural Resources (DNR) to revoke Paul's certificate of title to a boat. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We further conclude that the circuit court's decision identified and applied the proper legal standards to the relevant facts to reach the correct conclusion. Specifically, we agree with the circuit court's analysis that the department's

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

discovery of public records contradicting information that Paul had provided on his title application about the prior owner of the boat constituted substantial evidence supporting DNR's determination that the application failed to meet the requirements of WIS. STAT. § 30.533(1)(f). Failure to meet the application requirements constituted a valid basis to revoke the certificate of title under WIS. STAT. § 30.577(1)(a). We therefore incorporate into this order the circuit court's decision, which we are attaching, and summarily affirm on that basis. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009).

IT IS ORDERED that the circuit court's order affirming the administrative decision of the Wisconsin Department of Natural Resources is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

RANDY PAUL,
Petitioner,

v.

Case No. 17-CV-541

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,
Respondent.

FILED

AUG - 1 2017

DANE COUNTY CIRCUIT COURT

DECISION AND ORDER AFFIRMING RESPONDENT'S DECISION

INTRODUCTION

Petitioner, Randy Paul, *pro se*, seeks judicial review of a decision by the Wisconsin Department of Natural Resources ("DNR") to revoke the certificate of title to a boat. Pursuant to Wis. Stat. § 30.577(1)(a), DNR revoked the certificate of title on the ground that it was erroneously issued.

This case comes before this court under Wis. Stat. Ch. 227. That Chapter provides for judicial review of the administrative agency's decision and the inquiry is limited to only the facts contained in the administrative record. The parties have filed briefs and the court has reviewed the record.

STATEMENT OF FACTS

The court adopts and incorporates the statement of facts presented by DNR in the response brief filed June 12, 2017. However, in the interests of completeness, the court restates the facts below.

On June 9, 2016, Mr. Paul applied for a certificate of title and registration on a 2001 Glastron boat. (R. at 6-8.) According to DNR records of Mr. Paul's in-person application, DNR staff was given information that Mr. Paul purchased the boat from Rene Caminata for \$5,000 on June 23, 2010. (R. at 9.) Based on the information provided by Mr. Paul, DNR granted Paul's application for certificate of title and registration on June 9, 2016. (R. at 7.)

DNR title and registration records reflect that, on June 23, 2010, Ronald and Kristi Siegel conveyed title to the boat to Rene Caminata. (R. at 2-3.) Further, records show that the boat was registered in Caminata's name from June 24, 2010 through March 31, 2016. (R. at 1, 4.)

On January 18, 2017, DNR sent Mr. Paul a letter requiring that he provide additional information. (R. at 10.) DNR instructed Mr. Paul to provide a statement of the title history and purchase history of the boat on Form 9400-469 entitled "Factual Statement for Transfer of Recreational Vehicle or Boat." (R. at 10-11.) DNR advised Mr. Paul that without this information, it would be suspending the previously issued title and registration. (R. at 10.)

Mr. Paul timely responded with a notarized statement on Form 9400-469. (R. at 18-19.) Mr. Paul stated that he bought the boat from Ronald and Kristi Siegel for \$5,000 on June 23, 2010, and subsequently titled the boat in Caminata's name in order to use her condominium's boat slip. (R. at 18.)

On February 8, 2017, DNR notified Paul that it was revoking the certificate of title issued to him on June 9, 2016. (R. at 25-26.) DNR stated that it determined that title was issued erroneously. (R. at 25.)

Mr. Paul has petitioned for judicial review of DNR's decision.

STANDARD OF REVIEW

On Chapter 227 review, an agency's decision is presumed to be correct, and the reviewing court may reverse or modify the agency's action only if one or more of the specific reasons listed in sections 227.57(4)-(8) are present. Wis. Stat. § 227.57(2).

In a petition for review under Wis. Stat. ch. 227, the administrative agency is not required to justify its decision; the burden is on the petitioner to show that the administrative decision should be overturned. *Sterlingworth Condo. Ass'n, Inc. v. State, Dep't of Natural Res.*, 205 Wis. 2d 710, 726, 556 N.W.2d 791, 796 (Ct. App. 1996). The agency's decision should not be overturned if it can be affirmed upon any legal ground, even one not decided by the agency. *Cty. of La Crosse v. Emp't Relations Comm'n*, 174 Wis. 2d 444, 455, 497 N.W.2d 455 (Ct. App. 1993), *rev'd on other grounds*, 182 Wis. 2d 15, 513 N.W.2d 579 (1994). Review is limited to the administrative record. *See* Wis. Stat. § 227.57(1).

Under Chapter 227, the reviewing court must accept an agency's findings of fact if there is substantial evidence to support them. Wis. Stat. § 227.57(6); *see also Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54- 55, 330 N.W.2d 169 (1983). Substantial evidence is a lower standard of proof than preponderance of the evidence in that any set of facts that will sustain the finding on a reasonable view of the evidence will suffice. *Id.* at 52-54. "Substantial and credible evidence" means that, after considering all evidence in the record, reasonable minds could arrive at the same conclusion the agency did. *L&H Wrecking Co., Inc. v. Labor & Indus. Review Comm'n*, 114 Wis. 2d 504, 508, 339 N.W. 2d 344 (Ct. App. 1983).

When reviewing agency determinations, courts are not bound by, but may grant deference to, an agency's interpretation of a statute. Deference, however, does not relieve the reviewing court of the responsibility to interpret statutes and decide questions of law. The court

ultimately determines the reasonableness of the agency's action. Only reasonable decisions are given any deference. *Racine Harley-Davidson, Inc. v. State*, 2006 WI 86, ¶¶ 11-15, 292 Wis. 2d 549.

Wisconsin courts have developed three levels of judicial deference with respect to agencies' conclusions of law, including their interpretation and application of statutes: (1) "great weight"; (2) "due weight"; or (3) "no deference." *Milwaukee Symphony Orchestra, Inc. v. Wis. Dep't of Revenue*, 2010 WI 33, ¶ 34, 324 Wis. 2d 68, 781 N.W.2d 674. Great weight deference is warranted when (1) the agency is charged by the legislature with administering the statute in question; (2) the agency interpretation is of long standing; (3) the agency employed its specialized knowledge or expertise in interpreting the statute; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. *Id.* 135.

Due weight deference is owed when "the agency is charged by the legislature with enforcement of the statute and has experience in the area, but has not developed expertise that necessarily places the agency in a better position than the court to interpret the statute." *Milwaukee Symphony*, 324 Wis. 2d 68, ¶ 36. Courts applying due weight deference will sustain an agency's statutory interpretation "if it is not contrary to the clear meaning of the statute and no more reasonable interpretation exists." *Id.*

Finally, the "no deference" standard applies when any of the following conditions are met: "(1) the issue presents a matter of first impression; (2) the agency has no experience or expertise relevant to the legal issue presented; or (3) the agency's position on the issue has been so inconsistent as to provide no real guidance." *Id.* at ¶ 37.

RELEVANT STATUTES

- Wis. Stat. § 30.50(9) defines “owner” as “the person who has lawful possession of a boat by virtue of legal title or equitable interest therein which entitles the person to lawful possession.”
- Wis. Stat. § 30.531(2) states that “an applicant’s eligibility for a certificate of title is a prerequisite to registration of the boat.”
- Wis. Stat. § 30.533(1) provides that “[e]ach application for certificate of title shall contain the following information:
 - (a) The name and address of the owner.
 - (b) The name and address of the previous owner.
 - ...
 - (f) If the boat is a used boat which was last previously registered or titled in this state, or both, the applicant shall furnish any certificate of number or other evidence of registration and any certificate of title previously issued by this state and a statement pertaining to the title history and ownership of the boat, such statement to be in the form [DNR] prescribes.”
- Wis. Stat. § 30.577(1) states that DNR “shall suspend or revoke a certificate of title, certificate of number, or registration for a boat if it finds any of the following:
 - (a) The certificate of title, certificate of number, or registration was fraudulently procured, erroneously issued, or prohibited by law.”
- Wis. Stat. § 30.578 provides that DNR “shall refuse issuance of a certificate of title if any required fee is not paid or if it has reasonable grounds to believe that any of the following exists:
 - (1) The person alleged to be the owner of the boat is not the owner.
 - (2) The application contains false or fraudulent statement.
 - (3) The applicant fails to furnish information or documents required by the department.”

DISCUSSION

Mr. Paul does not discuss what standard of review the court should apply to DNR's decision in this case. DNR argues that under any standard of review, the court should affirm DNR's revocation of title. The court agrees with DNR that under any standard of review, the court would affirm DNR's revocation of title in this case.

Mr. Paul argues that there is no credible evidence in the record to support DNR's finding that he is not the owner of the boat. The court finds that DNR's decision is reasonable and supported by substantial evidence. Therefore, DNR properly revoked the previously issued certificate of title.

Even though DNR initially granted Mr. Paul's in-person application, based on the information provided with the application, the review of public records provided reasonable grounds to believe that Mr. Paul did not own the boat. According to the information supplied with the application, Mr. Paul purchased the boat from Rene Caminata for \$5,000 on June 23, 2010. (R. at 9.) However, DNR title and registration records indicated that in fact it was Caminata who purchased the boat from Ronald and Kristi Siegel on June 23, 2010, and that she has been the boat's registered owner since then. (R. at 2-4.)

Based on this record and without any proof that Mr. Paul acquired ownership by means other than buying the boat from Caminata in 2010, DNR had reasonable ground to believe that Mr. Paul did not own the boat.

In addition, the written statements provided by Mr. Paul to DNR on Form 9400-469, provided additional grounds to believe that Mr. Paul was not the owner of the boat. Contrary to the information provided with the application, on Form 9400-469, Mr. Paul stated that he – not

Caminata – purchased the boat from Ronald and Kristi Siegel for \$5,000 on June 23, 2010. (R. at 18.) He stated that the boat had been titled in Caminata’s name continuously since 2010 only because he wanted to moor the boat at Caminata’s condominium boat slip. (R. at 18-19.)

It is irrelevant why the boat was titled in Caminata’s name or who paid for the boat in 2010. The record does not contain any evidence that Mr. Paul acquired title to the boat from the last registered owner of the boat – Caminata. Therefore, it was reasonable for DNR to conclude that Mr. Paul was not the owner of the boat. Because DNR initially issued the certificate of title to Mr. Paul based on erroneous belief that he was the owner of the boat, DNR properly revoked the certificate of title on February 8, 2017.

CONCLUSION AND ORDER

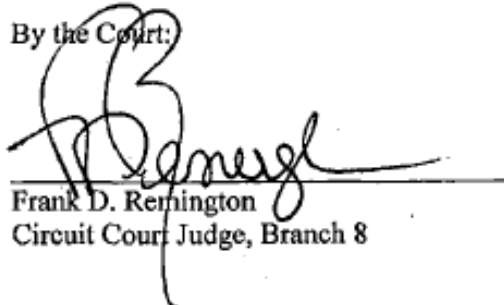
DNR decision to revoke the certificate of title to the boat at issue is reasonable and supported by substantial evidence.

IT IS HEREBY ORDERED that DNR’s decision to revoke the certificate of title to the boat is **AFFIRMED**.

This decision and order is final for the purposes of appeal. *See Wambolt v. West Bend Mut. Ins. Co.*, 2007 WI 35, ¶ 49, 299 Wis. 2d 723, 728 N.W.2d 670.

Dated: August 1, 2017

By the Court:



Frank D. Remington
Circuit Court Judge, Branch 8

cc: AAG Sandra L. Tarver
Randy Paul