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DISTRICT III

June 22, 2021

To:

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

2020AP840

Pat Schottler v. The Department of Transportation Secretary
Dave Ross (L. C. No. 2019CV108)

Before Stark, P.J., Hruz and Seidl, 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).

The sole issue presented for appeal is whether the circuit court properly granted the Wisconsin Department of Transportation's (DOT) motion to dismiss Pat Schottler's petition for judicial review as untimely. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21 (2019-20).¹

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On March 12, 2014, the DOT informed Schottler that it had received information “caus[ing] us to question your ability to safely operate a motor vehicle.” The information included correspondence from the St. Croix County sheriff that stated he was in receipt of a letter from Schottler in which Schottler talked about being deprived of sleep and, as a result, “unable to safely operate a vehicle on our roadways.” Schottler’s letter—a copy of which was attached to the sheriff’s correspondence to DOT—discussed “endangering others[’] lives” and circumstances where “someone could have gotten killed,” among other things. The sheriff responded to Schottler that “[a]s a result of your own admissions, I am obligated to report this matter to the Wisconsin Department of Transportation so that they may assess your ability to safely operate a vehicle on our roadways.”

The DOT ordered Schottler to submit to an examination in accordance with WIS. STAT. § 343.16(6)(a). The notice informed Schottler that he needed to have a medical provider complete certain medical forms within thirty days of the order to ensure he met the medical standards for licensing. The notice also stated: “Even if the form indicates that you meet the medical standards for licensing, you may still be required to complete a re-examination of your driving abilities. We will make that determination only after we receive the completed medical form.”

Schottler failed to provide the medical forms within the prescribed time frame, and on April 11, 2014, the DOT cancelled Schottler’s license to operate commercial motor vehicles. The cancellation informed Schottler that he had a right to judicial review of the decision, under WIS. STAT. § 343.40, subject to a thirty-day deadline.

Schottler filed a petition for judicial review in March 2019, nearly five years after the DOT canceled Schottler's license. The DOT filed a motion to dismiss the petition as untimely. The circuit court granted the motion, and Schottler now appeals.

The mechanisms for judicial review contained in WIS. STAT. ch. 227 apply to the administrative decision here. *See* WIS. STAT. § 343.40. WISCONSIN STAT. § 227.53(1)(a)2. sets forth a thirty-day deadline from the date of service of an administrative decision to serve and file a petition for judicial review of that decision. Once the thirty-day time limitation is triggered, strict compliance is required, and failure to comply with the mandatory time limitation results in the lack of circuit court competency to proceed, and the petition must be dismissed. *Wisconsin Power & Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423.

Here, the adverse agency decision is the April 11, 2014 decision cancelling Schottler's commercial driver's license for failure to supply medical documentation. His current petition falls far outside the thirty-day time limit for judicial review. The circuit court lacked competency to proceed, and it was required to dismiss the petition.

Nevertheless, Schottler argues in his reply brief that he is entitled to a hearing under WIS. STAT. § 227.42, to present evidence concerning his fitness to possess a driver's license. According to Schottler, his request for a hearing renders timely his March 11, 2019 petition for judicial review and the circuit court erred in concluding that there were no disputed material questions of fact providing a basis for a hearing.

Schottler's request for a hearing does nothing to resuscitate his time-barred challenge. Again, as a general matter, WIS. STAT. § 227.53(1)(a)2. affords a petitioner thirty days from the date of service of the original adverse agency decision to file a petition for judicial review. *See*

Currier v. DOR, 2006 WI App 12, ¶20, 288 Wis. 2d 693, 709 N.W.2d 520 (2005). As mentioned, the original adverse agency decision in this case was the 2014 cancellation decision.

To the extent Schottler is attempting to seek standalone review of his request for a hearing, that effort would at most entitle him to a hearing but, as the circuit court correctly concluded, no substantive relief. Even assuming *arguendo* that Schottler’s request for a hearing was timely, Schottler would not be entitled to relief under WIS. STAT. § 227.42(1)(d), as there is no dispute of material fact. Section 227.42(1)(d) provides that any person filing a written request with an agency for a hearing shall have the right to a hearing that shall be treated as a contested case hearing if “[t]here is a dispute of material fact.” Schottler’s denial did not turn on a factual determination. Rather, as the DOT itself told Schottler, his license was cancelled because he failed to properly and timely respond to the request for proof of a medical examination showing whether he was physically and mentally fit to drive. This failure left only unrebutted indications of his unfitness to operate a motor vehicle. No fitness determination was made, and Schottler does not demonstrate the existence of disputes of material fact.²

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

² Schottler’s remaining assertions are underdeveloped. For example, Schottler challenges who signed the decision to cancel his license; whether the DOT needs a “case number” to cancel a license; how to interpret the term “order”; whether a statute about involuntary commitment is relevant; and whether “jurisdiction” involves a dispute of material fact. We will not consider underdeveloped arguments. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Moreover, these issues have no bearing on the timeliness of Schottler’s judicial review petition and are therefore not material.

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

Sheila T. Reiff
Clerk of Court of Appeals