

No. SC91777

*In the
Missouri Supreme Court*

ASHLEY E. MORSE,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

**Appeal from Crawford County Circuit Court
Forthy-Second Judicial Circuit
The Honorable William C. Seay, Judge**

APPELLANT'S SUBSTITUTE BRIEF

**CHRIS KOSTER
Attorney General**

**JOHN WINSTON GRANTHAM
Assistant Attorney General
Missouri Bar No. 60556**

**P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-5391
john.grantham@ago.mo.gov**

**ATTORNEYS FOR APPELLANT
DIRECTOR OF REVENUE**

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

JURISDICTIONAL STATEMENT 5

STATEMENT OF FACTS 6

POINT RELIED ON 8

ARGUMENT..... 9

 The trial court erred in ordering reinstatement of Respondent's driving privilege without the reinstatement requirements of § 302.304 because it erroneously declared and applied the law, in that § 302.525 requires imposition of both suspensions and only permits credit for the time of the suspension period, not the accompanying reinstatement requirements..... 9

 A. The standard of review 9

 B. The Director was required to impose two suspensions, each of which had separate reinstatement requirements..... 10

CONCLUSION 20

CERTIFICATE OF COMPLIANCE 21

APPENDIX 22

TABLE OF AUTHORITIES

Cases

<i>Brown v. Director of Revenue</i> , 772 S.W.2d 398 (Mo. App. W.D. 1989)	8, 10
<i>Chemical Mfrs. Assn v. NRDC</i> , 470 U.S. 116 (1985)	20
<i>Chevron USA v. Natural Res. Def. Council</i> , 467 U.S. 837 (1984).....	20
<i>Donaldson v. Crawford</i> , 230 S.W.3d 340 (Mo. banc 2007)	12
<i>Edwards v. Gerstein</i> , 237 S.W.3d 580 (Mo. banc 2007)	8, 20
<i>Edwards v. Hyundai Motor America</i> , 163 S.W.3d 494 (Mo. App. E.D. 2005)	16
<i>Hinnah v. Director of Revenue</i> , 77 S.W.3d 616 (Mo. banc 2002)	9
<i>Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood</i> , 107 S.W.3d 235 (Mo. banc 2003)	12
<i>Murphy v. Carron</i> , 536 S.W.2d 30 (Mo. banc 1976)	9
<i>Neske v. City of St. Louis</i> , 218 S.W.3d 417 (Mo. banc 2007)	15
<i>Pavlica v. Director of Revenue</i> , 71 S.W.3d 186 (Mo. App. W.D. 2002).....	10
<i>Penn v. Director of Revenue</i> , 937 S.W.2d 407 (Mo. App. E.D. 1997)	10
<i>Robbins v. Director of Revenue</i> , 893 S.W.2d 894 (Mo. App. W.D. 1995)	8, 11, 14, 15
<i>Ross v. Director of Revenue</i> , 311 S.W.3d 732 (Mo. banc 2010)	10, 16, 17
<i>State ex rel. Evans v. Brown Builders Elec. Co., Inc.</i> , 254 S.W.3d 31 (Mo. banc 2008)	13
<i>State ex rel. Sprint Missouri, Inc. v. Public Service Com'n of State</i> , 165 S.W.3d 160 (Mo. banc. 2005)	20, 21

State ex. rel. Webster v. Missouri Resource Recovery, Inc. 825 S.W.2d 916

(Mo. App. S.D. 1992)..... 20

United Pharmacol Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy, 208 S.W.3d 907 (Mo.

banc 2006) 16

White v. Director of Revenue, 321 S.W.3d 298 (Mo. banc 2010)..... 9

Statutes

Section 302.010, RSMo Cum. Supp. 2010..... 20

Section 302.302, RSMo Cum. Supp. 2010..... 11

Section 302.304, RSMo Cum. Supp. 2002..... 18

Section 302.304, RSMo Cum. Supp. 2010..... 5, 6, 8, 9, 10, 11, 12, 13, 15, 18, 19

Section 302.321, RSMo Cum. Supp. 2010..... 14

Section 302.525, RSMo Cum. Supp. 2002..... 18

Section 302.525, RSMo Cum. Supp. 2010..... 7, 8, 9, 11, 13, 14, 18, 19

Section 302.541, RSMo Cum. Supp. 2010..... 12, 18

Section 302.545, RSMo Cum. Supp. 2010..... 6

Section 304.525, RSMo Cum. Supp. 2010..... 15

Section 577.010, RSMo Cum. Supp. 2010..... 5

Sections 302.500-540, RSMo Cum. Supp. 2010..... 10, 11, 14, 19

JURISDICTIONAL STATEMENT

This is an appeal of a Crawford County Circuit Court judgment ordering the Director of Revenue to reinstate Ms. Morse's driving privileges, which the Director suspended pending the completion of reinstatement requirements as required by § 302.304.5, after Ms. Morse was convicted of driving while intoxicated in violation of § 577.010.¹ This Court transferred the appeal after opinion by the Court of Appeals, Southern District. This Court thus has jurisdiction under Article V, § 10 of the Missouri Constitution.

¹ All statutory references are to the Revised Statutes of Missouri, Cumulative Supplement 2010, unless otherwise specified.

STATEMENT OF FACTS

In August 2003, when Respondent, Ashley Morse, was 19 years old, she was arrested for driving while intoxicated. (L.F. 11, 12; Tr 6, 9). As a result, the Director of Revenue administratively suspended Respondent's driving privileges and, after a 90-day period of suspension, Respondent fulfilled the requirements for reinstatement of her license, including payment of a reinstatement fee, completion of a substance abuse traffic offender program (SATOP), and showing proof of financial responsibility. (Tr. 7). The Director later expunged the record of this administrative suspension when Respondent turned 21.² (Tr. 4-5).

Respondent was also prosecuted criminally for the incident, resulting in a suspended imposition of sentence. (L.F. 12, 14; Tr. 3, 7-8). Due to a subsequent probation violation, she was convicted on April 30, 2008, of DWI for the August 2003 incident. (L.F. 12, 14; Tr. 3-4, 8). Upon receipt of the notice of conviction, the Director assessed eight points on Respondent's licence and notified Respondent that her license would be suspended under § 302.304, RSMo. (L.F. 6, 14). Though initially not given due to the earlier expungement, the Director credited the first suspension period against the second suspension period resulting in Respondent's immediate eligibility for reinstatement. (L.F. 6, 11).

The trial court found that (1) the Director's imposition of both of the suspensions and the resulting reinstatement requirements violated the mandate in § 302.525 to give credit for the earlier suspension period; (2) that Respondent's license should not be suspended; and (3)

² See § 302.545.

that the reinstatement requirements could not be imposed a second time. (L.F. 16). The trial court then ordered the Director to reinstate Morse's license without imposition of the reinstatement requirements. (L.F. 16).

The Director timely appealed the trial court's order reinstating Morse's license. (L.F. 17).

POINT RELIED ON

The trial court erred in ordering reinstatement of Respondent's driving privilege without the reinstatement requirements of § 302.304 because it erroneously declared and applied the law, in that § 302.525 requires imposition of both suspensions and only permits credit for the time of the suspension period, not the accompanying reinstatement requirements.

Robbins v. Director of Revenue, 893 S.W.2d 894 (Mo. App. W.D. 1995).

Brown v. Director of Revenue, 772 S.W.2d 398 (Mo. App. W.D. 1989).

Edwards v. Gerstein, 237 S.W.3d 580 (Mo. banc 2007).

Section 302.525.4, RSMo Cum. Supp. 2010.

ARGUMENT

The trial court erred in ordering reinstatement of Respondent's driving privilege without the reinstatement requirements of § 302.304 because it erroneously declared and applied the law, in that § 302.525 requires imposition of both suspensions and only permits credit for the time of the suspension period, not the accompanying reinstatement requirements.

The Director does not dispute the facts as found by the trial court. The Director contests only the trial court's erroneous interpretation of § 302.525. The trial court found that the Director violated § 302.525, but action taken by the Director in this case was required by the statute.

A. The standard of review

This Court will uphold the decision of the trial court unless there is no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court has erroneously declared or applied the law. *Hinnah v. Director of Revenue*, 77 S.W.3d 616, 620 (Mo. banc 2002); *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). Where the facts are uncontested in a court-tried case, the only question is whether the trial court drew the proper legal conclusions from the facts. *White v. Director of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010). Questions of law are reviewed *de novo*. *Id.*; *Pavlica v. Director of Revenue*, 71 S.W.3d 186, 189 (Mo. App. W.D. 2002). This includes the construction of statutes. *Ross v. Director of Revenue*, 311 S.W.3d 732, 735 (Mo. banc 2010).

B. The Director was required to impose two suspensions, each of which had separate reinstatement requirements.

1. The statutory scheme.

Sections 302.304 and 302.500-540 each define circumstances where the Director must impose a driver's license suspension. In each circumstance, the Director is without discretion to do anything other than impose the suspension mandated by the statute. *Brown v. Director of Revenue*, 772 S.W.2d 398, 400 (Mo. App. W.D. 1989); *Penn v. Director of Revenue*, 937 S.W.2d 407, 408 (Mo. App. E.D. 1997).

Sections 302.500-540 provide the administrative suspension procedures that apply when a person is arrested upon probable cause to believe the person was driving a motor vehicle while under the influence of alcohol. Section 302.505.1. The Director is required to make a determination of the facts “independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence,” and “[t]he disposition of those criminal charges shall not affect any suspension... under this section.” Section 302.505.2--3. If the circumstances warrant, the Director imposes the suspension and notifies the person accordingly. Section 302.520-525.

Reinstatement is not automatic upon completion of the suspension period. *Robbins v. Dir. of Revenue*, 893 S.W.2d 894, 898 (Mo. App. W.D. 1995). Even when the suspension period is complete, a person must comply with the requirements of the statute in order to have his license reinstated. *Id.*; *see also, e.g.* § 302.540.1 (“No person who has had a license to operate a motor vehicle suspended or revoked under the provisions of sections 302.500 to 302.540 shall have that license reinstated *until* such person has . . .”) (emphasis supplied).

Reinstatement from an administrative suspension requires completion of a substance abuse traffic offender program (SATOP) (§ 302.540.1), the filing of proof of financial responsibility with the Director (§ 302.525), and payment of reinstatement fees (§§ 302.304.12 and 302.541).

Under section 302.302, the Director is required to assess points against a driver after a conviction for certain offenses. Specifically, eight points are to be assessed for a first conviction of driving while intoxicated. Section 302.302.1(8). Upon accumulation of eight points in an 18-month period, the Director is required to impose a suspension. Section 302.304.3.

Reinstatement of driving privileges after a points suspension, like reinstatement after an administrative suspension, is not automatic upon completion of the suspension period, but is contingent upon the person's compliance with the reinstatement requirements. Section 302.304.5. Reinstatement from a points suspension requires completion of a SATOP (§ 302.304.14)³, proof of financial responsibility (§ 302.304.5-.7), and payment of reinstatement fees (§§ 302.304.12 and 302.541.1).

³ The legislature has expressly provided for a SATOP credit upon reinstatement from a second suspension arising from the same incident. Section 302.540.4. The Director acknowledged this exception in its motion for rehearing and verified that the Director's computer system automatically credits the driver for a previously completed SATOP that was completed after the date of the offense. (Appellant's Mtn. for Rehearing at 2).

2. The plain language of the statutes requires a points suspension to be imposed, and reinstatement requirements to be fulfilled.

The goal of statutory construction is to ascertain the intent of the legislature from the language used and to give effect to that intent, if possible. *Donaldson v. Crawford*, 230 S.W.3d 340, 342 (Mo. banc 2007). In ascertaining the intent of the legislature, the Court is to consider the language used in its plain and ordinary meaning. *Id.* Where a statute's language is clear, courts must give effect to its plain meaning and refrain from applying rules of construction unless there is some ambiguity. *Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood*, 107 S.W.3d 235, 239 (Mo. banc 2003). Moreover, in determining the intent and meaning of statutory language, the words must be considered in context, and sections of the statutes *in pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words. *State ex rel. Evans v. Brown Builders Elec. Co., Inc.*, 254 S.W.3d 31, 35 (Mo. banc 2008). By the plain language of the statutes, Respondent was required to provide proof of financial responsibility and pay reinstatement fees each time her license was revoked.

The Director has no authority to do anything but impose the points suspension under § 302.304, and the resulting reinstatement requirements. Section 302.525.4 expressly states that “*both* the suspension or revocation arising under this section and any other suspension or revocation arising from such convictions *shall be imposed*” although it provides that an earlier administrative suspension period may be credited against a later points suspension period when both suspensions arise from the same occurrence. Section 302.525.4 (emphasis supplied). By its terms, the credit applies only to the “*period of suspension,*” and does

nothing to limit the reinstatement requirements when a second suspension is imposed. Section 302.525.4 (emphasis supplied).

The Missouri Court of Appeals, Western District, has interpreted the phrase “period of suspension” to refer only to the period set forth in the statutes during which the driver cannot have her license reinstated. *Robbins v. Director of Revenue*, 893 S.W.2d 894, 896-99 (Mo. App. W.D. 1995). In *Robbins*, the Court was asked to interpret the phrase more broadly to include any time that passes before the driver fulfills the reinstatement requirements. *Id.* The *Robbins* court relied on several statutes to reject this interpretation. First, in defining “**suspension,**” section 302.500(7) provides that “the period of suspension shall be for a period specifically designated by the department pursuant to the provisions of sections 302.500 to 302.540.” Second, section 302.525.2(1) sets the duration of an administrative suspension by providing that “the period of suspension shall be thirty days after the effective date of suspension.” Third, the court noted that section 302.321, which proscribes driving while a license is canceled, suspended, or revoked, takes care to define the time during which a person may not drive as not only the period during which the license is canceled, suspended, or revoked, but also the period “before an official reinstatement notice . . . is issued by the director.” Section 302.321. The *Robbins* court the phrase “period of suspension” to refer narrowly to the period of time in which a driver may not get her license back, and it rejected the invitation to apply that phrase more broadly.

In Respondent’s case, the trial court erroneously concluded that credit for the “period of suspension” must also include credit for the reinstatement requirements. This was erroneous because the reinstatement requirements are not part of the suspension period.

Robbins, 893 S.W.2d at 896-99. Section 302.304.5 states that “upon completion of the period,” and “compliance with other requirements of law... the license and driving privilege shall be reinstated.” The plain language of the statute separates the suspension period and the reinstatement requirements into separate categories that must be independently completed before reinstatement may be granted.

Implicit in the trial court’s ruling is the faulty reasoning that, because after giving Respondent credit for the first period of suspension, there was no time remaining in the second period of suspension, and the Director could not suspend Respondent’s license again. But there are three problems with this reasoning. First, it ignores the plain language of section 304.525, which provides that all suspensions arising out of the same traffic offense shall be imposed. § 304.525. Second, in situations like Respondent’s where the first suspension period is equal to or greater than the second suspension period in duration, the trial court’s reasoning that there is no second suspension renders the language requiring that both suspensions be imposed meaningless and assumes that the legislature meant nothing by it. But in interpreting a statute, a court is to give meaning and effect to each word, clause, sentence, and section. *Neske v. City of St. Louis*, 218 S.W.3d 417, 426 (Mo. banc 2007). Moreover, it must be presumed that the legislature did not enact meaningless provisions or insert idle words or superfluous language into a statute. *Edwards v. Hyundai Motor America*, 163 S.W.3d 494, 497 (Mo. App. E.D. 2005). Third, the trial court provided no reason why the “period of suspension” should be conflated with the reinstatement requirements, and therefore, there is nothing to distinguish the factual scenario in this case from those where the second period of suspension is longer.

2. Other aids to construction support the conclusion that the Director is required to impose a second suspension with separate reinstatement requirements.

Even if the statutes were somehow ambiguous, other aids and canons of construction support the conclusion that the Director is required to suspend a driver's driving privileges again after an accumulation of points that are imposed because of the same traffic offense that resulted in an earlier administrative suspension. First, in determining legislative intent, courts are to examine the whole act to discern its evident purpose, or consider the problem that the statute was enacted to remedy. *United Pharmacol Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy*, 208 S.W.3d 907, 911-12 (Mo. banc 2006). More specifically, statutes that are remedial, because they are intended to protect the public, are construed in a manner consistent with the public protection intended by the legislature. *Ross v. Director of Revenue*, 311 S.W.3d 732, 735 (Mo. banc. 2010). This Court has found that the legislature's intent in formulating provisions requiring the Director to suspend or revoke the driving privileges of those arrested for alcohol related traffic offenses was to enable the Director to protect the public. *Id.* The reinstatement requirements have a similar purpose, to provide continued protection to the public when someone who has been found driving under the influence of alcohol is permitted to drive on the roads again.

The purpose of requiring a driver to file proof of financial responsibility before her license is reinstated is to ensure that members of the public can be compensated in the event that they are damaged due to the driver's negligence, a risk that is increased when the driver has a history of driving under the influence of alcohol. Respondent's case illustrates why the proof of financial responsibility cannot be credited because there was a significant lapse of

time between the first and second suspensions, during which a driver could allow her insurance to lapse. In fact, Respondent did so; eight months after her August 2003 arrest for DWI, respondent drove without insurance, for which she was convicted and had her driving privileges suspended. (L.F. 12-13). Moreover, her conviction for the DWI occurred because Respondent failed to comply with the terms of her probation. There is a legitimate basis to be concerned about Respondent's ability to compensate innocent victims in the event that she causes a collision.

There is also a legitimate rationale supporting Respondent's duty to pay reinstatement fees for each suspension accrued. The Director bears certain costs associated with reinstatement every time a license is suspended and reinstated, and those costs are passed on to the offending driver, rather than the tax payers, by statute. Sections 302.304.12, 302.541.1. Simply because a driver pays the reinstatement fees associated with an initial suspension does not mean that the Director does not incur additional costs to reinstate a license following a second suspension. Because of the Director's additional costs, the driver is required to pay addition feels. Here, because the Director issued two suspensions, following Respondent's compliance with the requirements, the Director would also issue two reinstatements, incurring costs for both. The fact that Respondent paid the fees associated with the initial reinstatement does not eliminate the Director's costs with a second reinstatement. Thus, the fees cannot be credited.

Furthermore, the reinstatement requirements should not be conflated with the "period of suspension" in § 302.525.4, because the legislature changes the requirements for reinstatement from time to time in an effort to provide greater protection for the public. For

instance, at the time of Respondent's first suspension, there was no requirement that after a second or subsequent arrest (or conviction) for an alcohol-related traffic offense, the driver must equip his vehicles with an ignition interlock device before being reinstated after an administrative (or points) suspension. Section 302.525, RSMo Cum. Supp. 2002 (Section 302.304, RSMo Cum. Supp. 2002). However, since Respondent's arrest, the legislature has created a requirement that such driver install an ignition interlock devices on any vehicle he drives before reinstatement is permitted after both administrative and points suspensions.⁴ §§ 302.525.5, 302.304.17. This requirement is designed to prevent persons with a history of driving under the influence of alcohol from doing so again and provides greater protection to the public. For public safety, drivers should have to comply with the most current requirements for reinstatement.

The fact that section 302.540.4 requires the Director to credit the driver's prior completion of a SATOP supports the fact that the Director is *not* required to credit the Driver with other reinstatement requirements. If the driver were allowed credit for the reinstatement requirements each time her license was suspended, the legislature's express provision for a SATOP would be pointless. Interpreting the statutes to mean that the reinstatement requirements need not be completed each time a the license is suspended would render

⁴In its motion for transfer, Appellant asserted that Respondent would be required to install an ignition interlock device pursuant to § 302.304.17, but that subsection applies only to the points assessed because of a second or subsequent conviction for an alcohol-related traffic offense.

subsection 4 of section 302.540 meaningless. But this Court is compelled to assume that the legislature did not enact meaningless provisions. *Edwards v. Gerstein*, 237 S.W.3d 580, 581 (Mo. banc 2007).⁵

Lastly, Missouri courts typically give “great weight” to the statutory interpretation of an administrative agency charged with implementing a statute where the agency’s interpretation is reasonable and consistent with the language of the statute. *State ex rel. Sprint Missouri, Inc. v. Public Service Com'n of State*, 165 S.W.3d 160, 164 (Mo. banc. 2005); *State ex. rel. Webster v. Missouri Resource Recovery, Inc.* 825 S.W.2d 916, 931 (Mo. App. S.D. 1992) (citing *Chemical Mfrs. Assn v. NRDC*, 470 U.S. 116, 125 (1985); *Chevron USA v. Natural Res. Def. Council*, 467 U.S. 837, 842–45 (1984)). The statutes in question in Respondent’s case were enacted almost 30 years ago, and the Department of Revenue’s procedures implementing the statutes have consistently applied them as described in this brief. In that time, the legislature has not amended the statutes so as to change the manner in which the Director has applied them. The Director’s interpretation of the statute is a correct and reasonable interpretation of the statutes that provide for a suspension or revocation of driving privileges and the requirements that a driver must fulfill before his privileges are

⁵ It should be noted that that there is no compelling rationale to make a driver complete SATOP twice for the same traffic offense. The purpose of SATOP is to help maintain highway and roadway safety by teaching drivers about the problems related to the interplay of substance abuse and driving. Section 302.010(23). A driver would not be expected to learn more about safety by repeating the same program.

reinstated. Such a long-standing interpretation and application of the statute by the agency charged with its implementation is entitled to great deference by this Court. *Sprint Missouri, Inc.*, 165 S.W.3d at 164. Accordingly, the trial court's conclusion that the points suspension should not be imposed and that the reinstatement requirements should not be required is contrary to law and should be reversed.

CONCLUSION

The trial court's judgment should be reversed.

Respectfully submitted,

CHRIS KOSTER
Attorney General

JOHN WINSTON GRANTHAM
Assistant Attorney General
Missouri Bar No. 60556

P. O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-5391
john.grantham@ago.mo.gov

ATTORNEYS FOR APPELLANT
DIRECTOR OF REVENUE

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 3,356 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2007 software; and
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 16th day of August, 2011, to:

Ashley E. Morse
800 Fleenor Road, Apt. D8
Cuba, Missouri 65453-2031

JOHN WINSTON GRANTHAM
Assistant Attorney General
Missouri Bar No. 60556
P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-3321
Fax (573) 751-5391

ATTORNEYS FOR APPELLANT
DIRECTOR OF REVENUE

APPENDIX

Judgment..... A1