



# In the Missouri Court of Appeals Eastern District

## DIVISION FOUR

JUSTIN WAYNE AKINS,	)	No. ED92173
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	Jefferson County
v.	)	Cause No. 08JECC00782
	)	Honorable Shannon Renee Dougherty
DIRECTOR OF REVENUE,	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	Filed: June 2, 2009

### Introduction

This is an appeal from a judgment affirming the Director of Revenue's revocation of driving privileges for ten years pursuant to RSMo §302.060(9). Akins raises one point on appeal, claiming that the trial court erred as a matter of law in affirming the Director of Revenue's ten-year denial of Akins' driving privileges because Akins' convictions of vehicular assault arose out of one incident and should be considered one conviction instead of three. Our inquiry here involves the statutory interpretation of RSMo §302.060(9) and the current split of authority on this issue between the Eastern and Western Districts of the Missouri Court of Appeals. We adhere to the statutory interpretation of the Eastern District and affirm the judgment of the trial court. We transfer this cause to the Missouri Supreme Court pursuant to Rule 83.02. for the purpose of reexamining the existing law.

### **Factual and Procedural Background**

On 20 July 2006, Akins was operating his vehicle in an intoxicated condition. He collided with another vehicle and injured three people. He was charged with, and pleaded guilty to, three counts of second-degree vehicular assault. After Akins was convicted on the three separate charges of vehicular assault, the Director of Revenue denied Akins' privilege to drive a motor vehicle for ten years because Akins had been "convicted more than twice for offenses relating to driving while intoxicated" pursuant to RSMo. § 302.060(9) based on the 20 July 2006 accident.

Akins appealed the Director of Revenue's denial of his driving privileges to the Jefferson County Circuit Court. The circuit court affirmed the Director of Revenue's denial of Akins' driving privileges. Akins appeals to this Court, claiming the trial court erred as a matter of law in affirming the Director of Revenue's decision because Akins ostensibly has not been "convicted" more than twice of offenses related to driving while intoxicated. He argues that the three counts of vehicular assault arose out of one incident; therefore, there was only one case and one conviction.

### **Standard of Review**

When a driver appeals the circuit court's judgment in a license revocation case, we review the circuit court's judgment, rather than the Director's decision. *Pointer v. Director of Revenue*, 891 S.W.2d 876, 878 (Mo. App. E.D. 1995). We will affirm the circuit court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). The issue in this case necessitates an interpretation of RSMo § 302.060(9), which is primarily a question of law which we review de novo. *Boggs ex rel. Boggs v. Lay*, 164 S.W.3d 4, 23 (Mo. App. E.D. 2005).

## Discussion

Akins claims that the trial court erred as a matter of law in affirming the Director of Revenue's decision because Akins had only been convicted of an offense related to driving while intoxicated once, not three times, as found by the Director of Revenue. We disagree.

At issue here is the interpretation RSMo § 302.060(9), which states:

The director shall not issue any license and shall immediately deny any driving privilege:

(9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where the judge in such cases was an attorney and the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction.

The primary rule of statutory construction is to ascertain the intent of the legislature by giving words used in the statute their plain and ordinary meaning. *American Healthcare v. Director of Revenue*, 984 S.W.2d 496, 498 (Mo. banc 1999). If the language of the statute is clear, we must give effect to the language as written. *Knob Noster Educ., v. Knob Noster R-VIII Scho. Dist.*, 101 S.W.3d 356, 361 (Mo. App. W.D. 2003). But we will resort to rules of statutory construction where the terms of the statute "(1) are ambiguous; or (2) are unambiguous, but, when given their ordinary meaning, produce an illogical or absurd result in light of the statute's purpose." *Id.*

There is a direct split of authority between the Eastern and Western Districts regarding the interpretation of the RSMo 302.060(9).

The Eastern District first interpreted RSMo. § 302.060(9) in *Clare v. Director of Revenue*, 64 S.W.3d 877 (Mo. App. E.D. 2002). In *Clare*, Robert Clare was operating a motor vehicle while intoxicated and crashed into an oncoming vehicle with three occupants. Clare was

charged with and convicted of four counts of second degree assault. The Director of Revenue revoked Clare's driving privileges for 10 years pursuant to RSMo. §302.060(9) for being convicted more than twice for offenses relating to driving while intoxicated. *Id.* at 878. Clare filed a motion for a hearing, and the circuit court granted Clare's motion and reversed the Director of Revenue's denial of Clare's driving privileges. The Director of Revenue appealed to this Court, and we reversed. Resorting to the definition of "conviction" in Black's Law Dictionary<sup>1</sup>, the Eastern District determined that Clare's being convicted of four counts of second degree assault for his one-time accident established that he had been convicted more than twice of violations of state law relating to driving while intoxicated. This holding was upheld in another 2002 Eastern District case. *See Timko v Director of Revenue*, 86 S.W.3d 132 (Mo. App. E.D. 2002).

The next year, the Western District took a different stance, interpreting RSMo § 302.060(9) to apply only to those who had been convicted in more than two instances of driving while intoxicated, regardless of the number of counts in each occurrence. In *Harper v. Director of Revenue*, 118 S.W.3d 195 (Mo. App. W.D. 2003), Harper, while driving intoxicated, caused the injury of five people. He was charged with five counts of second-degree assault and he pleaded guilty and was convicted on all five counts. The Director of Revenue subsequently revoked Harper's driving privileges, and Harper appealed to the circuit court, who affirmed the Director's actions. Harper then appealed to the Supreme Court, who transferred the appeal to the Western District. The Western District agreed with the Eastern District in that the courts "should consult dictionary definitions in the absence of a statutory definition that resolves the issue." *Id.*

---

<sup>1</sup> "Conviction" is defined as "[t]he act or process of judicially finding someone guilty of a crime; the state of having been proved guilty." The verb "convict" is defined as "[t]o find (a person) guilty of a criminal offense either upon a criminal trial, a plea of guilty, or a plea of nolo contendere (no contest)." *Black's Law Dictionary*, 335 (7th ed., West 1999).

at 201. However, the Western District pointed out that "a word may have more than one meaning depending upon the context in which it is used . . . [and] . . . this is true of the word 'conviction.'" *Id.* The Western District then referenced a different definition<sup>2</sup> of the word "conviction" than the Eastern District and determined that in drafting RSMo. §302.060(9) the intent of the legislature was to protect the public from those who repeatedly drink and then drive. *Id.* at 202. The Western District interpreted RSMo. §302.060(9) to apply only to those who had been convicted in more than two instances or occurrences of driving while intoxicated, regardless of the number of counts in each occurrence.

We note the well-reasoned opinion of the Western District; nevertheless, we are neither persuaded nor bound by it. *Forsthove v. Hardware Dealers Mut. Fire Ins. Co.*, 416 S.W.2d 208, 213 (Mo. App. E.D. 1967). Instead, we will adhere to the doctrine of *stare decisis*<sup>3</sup>, and follow the statutory interpretation of RSMo § 302.060(9) as first set out by this Court in *Clare*. In a 1998 decision, the Missouri Supreme Court stressed that the Court should not lightly disturb its own precedent. *Crabtree v. Bugby*, 967 S.W.2d 66, 71-72 (Mo. 1998). Further, "mere disagreement by the current Court with the statutory analysis of a predecessor is not a satisfactory basis for violating the doctrine of *stare decisis*, at least in the absence of a recurring injustice or absurd results. *Id.* We do not disagree with the statutory interpretation of RSMo § 302.060(9) in *Clare*, nor do we feel it has resulted in recurring injustice or absurd results. Accordingly, we follow the interpretation of our predecessor Court.

### **Conclusion**

---

<sup>2</sup> "Conviction" is "In a general sense, the result of a criminal trial, which ends in a judgment or sentence that the accused is guilty as charged. The final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, but does not include a final judgment which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory. The final consummation of the prosecution including the judgment or sentence, or as is frequently the case, the judgment or sentence itself." *Black's Law Dictionary*, 333-34 (6th ed., West 1990).

<sup>3</sup> Under the doctrine of *stare decisis*, a court follows earlier judicial decisions when the same point arises again in litigation. *Black's Law Dictionary* 1414 (7th ed., West 1999).

We find no error as a matter of law on the part of the trial court and affirm the judgment below. We transfer this cause to the Missouri Supreme Court pursuant to Rule 83.02.

AFFIRMED.

---

Kenneth M. Romines, Judge

Kathianne Knaup Crane, P.J., and Mary K. Hoff, J. concur.