



# OKLAHOMA STATE COURTS NETWORK

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## WHITE v. STATE OF OKLAHOMA *ex rel* SERVICE OKLAHOMA

2025 OK CIV APP 20

Case Number: 122149

Decided: 01/17/2025

Mandate Issued: 06/26/2025

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III



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Cite as: 2025 OK CIV APP 20, \_\_ P.3d \_\_

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RANDY WHITE, Plaintiff/Appellant

vs.

STATE OF OKLAHOMA, *ex rel.*, SERVICE OKLAHOMA, Defendant/Appellee

APPEAL FROM THE DISTRICT COURT OF  
TULSA COUNTY, OKLAHOMA

HONORABLE SHANNON TAYLOR, JUDGE

REVERSED AND REMANDED

Sabah Khalaf, THE KHALAF LAW FIRM, PLLC, Tulsa, Oklahoma, For Plaintiff/Appellant

Candice L. Milard, Charles Thompson, Oklahoma City, Oklahoma, For Defendant/Appellee

Bay Mitchell, Judge:

¶1 Plaintiff/Appellant Randy White (White) appeals from the trial court's order finding, as a matter of fact, that Defendant/Appellee Service Oklahoma (SOK) had *not* revoked White's driver's license frivolously or without a reasonable basis. We disagree with the trial court. Although SOK has a duty, as the trial court noted, to revoke a driver's license upon receipt of (1) a written test report reflecting that the quantity of alcohol in the blood or breath of the arrested person exceeded legal limits and (2) a sworn report from a law enforcement officer stating that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while under the influence of alcohol, SOK *also* has a duty to notify the arrested person *promptly and accurately* that his or her driving privilege will be or has been revoked. In this case, White's license was revoked before he was provided notice of the revocation. Under these circumstances, the record supports a finding that SOK revoked White's license frivolously or without a reasonable basis. Accordingly, we reverse and remand.

¶2 On December 17, 2022, White was stopped and arrested for suspicion of driving under the influence by the Jenks Police Department. White consented to a blood test. The officer provided White with a "Notice of Revocation" (Officer's Notice). The Officer's Notice stated that SOK must revoke or deny the license of a driver stopped for suspicion of driving under the influence when (1) the driver refuses to take a blood or breath test; (2) test results show the driver, if under twenty-one years of age, had an alcohol concentration of 0.02g/210L or more; or (3) test results show the driver, if twenty-one years of age or older, had an alcohol concentration of 0.08g/210L or more.

¶3 The Officer's Notice provided that, if the test results indicated the driver's alcohol concentration exceeded the legal limit, "you will receive a notice . . . informing you of the commencement date of the revocation." The Officer's Notice also noted that a driver's period of revocation will be longer if the driver's record shows one or more revocations within the last ten years. It stated:

Accordingly, notice is given that your driver's license is revoked or denied for a period of:

1. One hundred eighty (180) days, if you refused or failed the state's test, OR;
2. One (1) to three (3) years if you have one or more prior revocations stemming from the uses of intoxicants, test failures, or refusals to test.

Finally, it noted, "Since the length of time of the driver's license revocation/disqualification period is extended by the existence of a prior record on file (if any), [SOK] will automatically check your record and confirm the length of revocation/disqualification to you by mail at your last known address on file."

¶4 White heard nothing from SOK for over a year. On January 3, 2024, SOK mailed White a Notice and Order of Revocation (SOK's Notice and Order). SOK's Notice and Order, although mailed in January of 2024, was dated June 23, 2023 and stated, "Effective 08/02/2023 the Oklahoma driving privileges of the above-named person are hereby revoked for a period of no less than 180 days."

¶5 White filed an appeal in the district court pursuant to 47 O.S. §6-211 on January 10, 2024. After a hearing, the court held that SOK's Notice and Order was insufficient and set aside the revocation. White then asked the court to decide whether the revocation was frivolous or unreasonable. <sup>1</sup> The court ordered the parties to submit briefs on the issue, held a hearing, and filed its decision on March 13, 2024. The court noted 47 O.S. §753 provides that SOK *shall* revoke the license of an arrested person upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes, or other public places while under the influence of alcohol or any other intoxicating substance, or that the person had refused to submit to the test or tests. The court noted that SOK received the sworn report within 180 days from the Jenks police officer who stopped and arrested White, triggering SOK's duty to revoke. Accordingly, the court reasoned, the lack of notice did not constitute an unreasonable or frivolous revocation. The trial court also denied White's subsequent motion to reconsider the issue.

¶6 In an appeal from a driver's license revocation, this Court will not disturb the factual findings of the trial court "if there is any evidence in the record to support them and they are free of legal error." *Polk v. State ex rel. Dep't. of Pub. Safety*, 1996 OK CIV APP 100, ¶4, 927 P.2d 55, 56. A "motion to reconsider" is not recognized in Oklahoma procedural statutes. *McMillian v. Holcomb*, 1995 OK 117, ¶7, n.3, 907 P.2d 1034, 1036. A trial court may regard a motion to reconsider as a motion for new trial under 12 O.S. 2021 §651 or a motion to vacate under 12 O.S. 2021 §1031.1. *Id.* Absent some pure error of law, we will not disturb a trial court's ruling on a post-trial motion unless it is arbitrary, clearly against the evidence, or manifestly unreasonable, and thus an abuse of discretion. *Robinson v. Oklahoma Nephrology Assocs., Inc.*, 2007 OK 2, ¶6, 154 P.3d 1250, 1253.

¶7 White alleges the trial court failed to consider 47 O.S. §§753 and 754 in their entirety when determining SOK's obligations to White. He contends *all* parts of the statutes must be complied with before SOK may revoke a license, and he claims SOK's failure to provide him with notice before revocation is a failure to comply with the statutes. He also contends SOK's failure to provide notice before revoking his license deprived him of his due process rights to notice and an opportunity to present a defense. He alleges, in conclusion, that the court should have found SOK's actions to be frivolous or unreasonable.

¶8 SOK, on the other hand, argues it complied with all of its statutory duties. It claims there could be no due process violation because entitlement to a driver's license is a privilege, not a right, and it contends the notice given by the Jenks police officer at the time of arrest was sufficient. SOK reiterates that, pursuant to §§753 and

754, SOK "shall revoke or deny the driving privilege of the arrested person" upon receipt of an officer's sworn affidavit (plus the written results of the breath or blood test, if the driver consented to be tested). See *id.* Therefore, according to SOK, the revocation cannot be considered frivolous or without reasonable basis because SOK was *required* to revoke upon its receipt of the timely-submitted report and blood test results.

¶9 We do not agree that White's due process rights were violated by SOK's delayed notice. Prior to 2019, a person whose driving privileges were revoked or denied had the right to request an administrative hearing before the Commissioner of Public Safety, with the option to subsequently appeal the Commissioner's findings to the district court. See 47 O.S. 2011 §754(D). In 2019, the Legislature removed the provision for an administrative hearing and authorized a driver to appeal directly to the district court. See 47 O.S. Supp. 2019 §§754(D) and 6-211(D). Under the new §6-211, not only those drivers whose privileges have actually been canceled, denied, suspended or revoked may appeal, but persons whose driving privileges are merely "subject to revocation" under §§753 or 754 are also authorized to file an appeal. *Id.*, §6-211 (A)-(D) (emphasis added). Upon its receipt of a petition challenging a revocation or potential revocation, SOK must "withhold taking the action . . . or stay the order which is the subject of the appeal" and "shall grant or restore driving privileges to the person if the person is otherwise eligible." 47 O.S. Supp. 2022 §6-211(J) (effective November 1, 2022).

¶10 The Officer's Notice informed White that he had the right to appeal by filing a petition in the district court of the county in which he was arrested. White, accordingly, had notice of his opportunity to be heard before SOK revoked his driving privileges. Further, a person can file an appeal petition up to "thirty (30) days after the notice of revocation . . . has been served upon the person by [SOK]." *Id.*, §6-211(E). White was therefore still able to challenge the revocation and, ultimately, to receive relief. We find no due process violation here.

¶11 We agree with White, however, that SOK's failure to notify White of the revocation resulted in a revocation that was frivolous or without reasonable basis. Notice by SOK must be given either by personal delivery or by deposit in the United States mail in an envelope with first class postage prepaid and addressed to the person at the address reflected in DPS records. 47 O.S. Supp. 2022 §2-116. The giving of notice by mail is deemed "complete" ten days after SOK deposits the notice in the mail. *Id.* The revocation period "shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer as provided in this section or by [SOK]." See 47 O.S. Supp. 2022 §754(B). In other words, the period of revocation is set in motion by the driver's receipt of written notice that his license will be revoked.

¶12 SOK received White's test results and the arresting officer's report on June 1, 2023. It issued its Notice and Order of Revocation on June 23, 2023. If SOK had mailed its Notice and Order on that day, the revocation commencement date reflected therein would have been accurate (June 23 + 10 days after deposit in the U.S. Mail for notice to be complete + thirty days after written notice for revocation to be effective = August 2, 2023). However, SOK's Notice and Order was not deposited in the mail until January 3, 2024. Based on that date, the revocation period should have been effective February 12, 2024. But according to the motor vehicle report purchased by White's attorney, White's license was indeed revoked beginning August 2, 2023.

¶13 We do not construe the Officer's Notice as a notice of revocation that triggered White's period of revocation. The Officer's Notice provided that White would receive a notice informing him of the commencement date of the revocation *if* the test results indicated his alcohol concentration exceeded the legal limit. And if we *did* consider the Officer's Notice a notice of revocation, White's period of revocation should have been effective January 16, 2023. In either case, the period during which White's driving privileges were actually revoked failed to comply with Title 47.

¶14 As SOK notes, §754 provides that SOK "shall revoke" when it receives an officer's report and test results within 180 days. However, it is also SOK's duty to promptly notify an arrested person that his driving privileges are going to be revoked and to accurately inform him of his period of revocation. SOK's failure to do so here meant White continued to drive with a license that was, unbeknownst to him, under revocation. And, because a person's

revocation period is triggered by the notice of revocation, SOK's failure to notify White *prior* to the revocation taking place resulted in a revocation that failed to conform with statutory time provisions. Under these circumstances, the record supports a finding that SOK revoked White's license without a reasonable basis. <sup>2</sup>

¶15 REVERSED AND REMANDED.

BELL, C.J., concurs and DOWNING, P.J., dissents.

FOOTNOTES

Bay Mitchell, Judge:

<sup>1</sup> The parties suggest White wanted this factual finding to support a motion for attorney fees under 12 O.S. 2021 §941(B), which authorizes the respondent in an administrative proceeding to recover costs, witness fees, and reasonable attorney fees "if the tribunal or a court of proper jurisdiction determines that the proceeding was brought without reasonable basis or is frivolous." See *id.*

<sup>2</sup> To be clear, we do *not* hold that White is entitled to costs or fees. White did not file a motion for attorney fees pursuant to 12 O.S. 2021 §941, so the question of whether White would qualify for an award under that provision is not properly before us. White requested a *factual finding* that SOK's revocation was frivolous or without reasonable basis, and trial court found the revocation was not frivolous or unreasonable. We reverse the court's factual finding because its reasoning is not free from legal error.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name	Level
Oklahoma Court of Civil Appeals Cases	
Cite	Name Level
<u>1996 OK CIV APP 100, 927 P.2d 55,</u>	<u>Polk v. State ex rel. Dept. of Public Safety,</u> Discussed
<u>67 OBJ 3450,</u>	
Oklahoma Supreme Court Cases	
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<u>1995 OK 117, 907 P.2d 1034, 66 OBJ</u>	<u>McMillian v. Holcomb</u> Discussed
<u>3471,</u>	
<u>2007 OK 2, 154 P.3d 1250,</u>	<u>ROBINSON v. OKLAHOMA NEPHROLOGY ASSOCIATES, INC.</u> Discussed
Title 12. Civil Procedure	
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<u>12 O.S. 651,</u>	<u>New Trial - Definition - Causes for</u> Cited
<u>12 O.S. 941,</u>	<u>Actions by State Agencies - Attorney Fees</u> Discussed
<u>12 O.S. 1031.1,</u>	<u>Authorization to Correct, Open, Modify or Vacate Judgments - Time - Notice</u> Cited
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Title 47. Motor Vehicles	
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<u>47 O.S. 6-211,</u>	<u>Right of Appeal to Court - Driving Priviledges</u> Discussed
<u>47 O.S. 754,</u>	<u>Filed Report - Revocation or Denial of Driving Privilege - Appeal Hearing</u> Discussed at Length
<u>47 O.S. 2-116,</u>	<u>Giving of Notice</u> Cited
<u>47 O.S. 753,</u>	<u>Refusal to Submit to Test - Revocation of License - Reinstatement of License</u> Discussed

