

SUPREME COURT OF MONTANA

Fitzgerald v. State

228 P.3d 451 (Mont. 2010) · No. DA 09-0274 · Decided February 25, 2010

SUMMARY

The Montana Supreme Court affirmed the denial of Mary Fitzgerald’s petition to reinstate her driver’s license following its suspension for refusing field sobriety and breath alcohol testing after a DUI arrest. The court held that the appeal was without merit because sufficient evidence supported the district court’s findings and the district court correctly applied settled Montana law.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Chief Justice Brian Morris; Justice Michael E. Wheat; Justice James C. Nelson; Justice Patricia O. Cotter
JURISDICTION	Montana
DECIDED	February 25, 2010
DOCKET	DA 09-0274
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a petition to reinstate a driver's license following an implied-consent suspension.
STANDARD OF REVIEW	The court reviews the district court's findings of fact for clear error and its conclusions of law for correctness. Because a driver's-license suspension is presumed correct, the petitioner bears the burden of proving that the State's actions were improper.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Mary Fitzgerald v. State of Montana Department of Justice Motor Vehicle Division

TOPICS

- appellate procedure
- administrative law
- judicial review of agency action
- criminal procedure

PRACTICE AREAS

- administrative law
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court properly denied Fitzgerald's petition to reinstate her driver's license under § 61-8-403, MCA (2007).
2. Whether the record supported the lawfulness of the stop and arrest and the officer's handling of Fitzgerald's request to read the implied-consent advisory.

HOLDINGS

1. The District Court correctly denied Fitzgerald's petition because the record contained sufficient evidence to support its findings and the court correctly applied settled Montana law.

KEY QUOTATIONS

“It is manifest on the face of the briefs and the record before us that the appeal is without merit because there is clearly sufficient evidence to support the District Court's findings of fact and that the District Court correctly applied settled Montana law.” (¶ 4)

FACTUAL BACKGROUND

Red Lodge police arrested Fitzgerald for driving under the influence of alcohol on November 15, 2008. She refused standardized field sobriety tests and breath testing, resulting in suspension of her driver's license. In seeking reinstatement, she challenged the basis for the traffic stop, probable cause for her arrest, and the officer's handling of her request to read the Montana Implied Consent Advisory.

PROCEDURAL HISTORY

After Fitzgerald was arrested for driving under the influence and refused field sobriety and breath tests, the State suspended her driver's license. The District Court denied her petition for reinstatement under § 61-8-403, MCA (2007). The Montana Supreme Court affirmed in a noncitable memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Hulse v. State, Dept. of Justice, 1998 MT 108, 289 Mont. 1, 961 P.2d 75
- Brown v. State, 2009 MT 64, ¶ 8, 349 Mont. 408, 203 P.3d 842
- Clark v. State, ex rel., Driver Imp. Bureau, 2005 MT 65, ¶ 6, 326 Mont. 278, 109 P.3d 244
- Brewer v. State, 2004 MT 193, ¶ 5, 322 Mont. 225, 95 P.3d 163

OPINION

PER CURIAM.

2010 MT 40N MARY FITZGERALD, Plaintiff and Appellant, v. STATE OF MONTANA DEPARTMENT OF JUSTICE MOTOR VEHICLE DIVISION, Defendant and Appellee. No. DA 09-0274. Supreme Court of Montana. Submitted on Briefs: February 10, 2010. Decided: February 25, 2010.

For Appellant: Mary Fitzgerald, (self-represented litigant); Red Lodge, Montana. For Appellee: Hon. Steve Bullock, Montana Attorney General; C. Mark Fowler, Assistant Attorney General; Helena, Montana. Kent E. Young; City of Red Lodge Attorney; Red Lodge, Montana. Justice Jim Rice delivered the Opinion of the Court. ¶ 1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2006, the following memorandum decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court, and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶ 2 On November 15, 2008, Red Lodge Police Department officers arrested Fitzgerald for driving under the influence of alcohol.

Fitzgerald refused to submit to standardized field sobriety tests, and refused to submit to breath alcohol testing, and the State accordingly suspended her driver's license. Fitzgerald thereafter filed a petition to reinstate her driver's license, raising numerous arguments related to her detention and arrest, as well as her understanding of the Montana Implied Consent Advisory.

Following a hearing, the District Court denied Fitzgerald's petition, finding that she failed to meet her burden of proof pursuant to § 61-8-403, MCA (2007). See *Hulse v. State*, Dept. of Justice, 1998 MT 108, 289 Mont. 1, 961 P.2d 75.

On appeal, Fitzgerald raises the same arguments regarding the bases for law enforcement's particularized suspicion to initiate the stop and probable cause to arrest her, as well as the officer's denial of her request to read the implied consent advisory form. ¶ 3 We review the district court's denial of a petition to reinstate a driver's license to determine whether the court's findings of fact are clearly erroneous and whether its conclusions of law are correct.

Brown v. State, 2009 MT 64, ¶ 8, 349 Mont. 408, 203 P.3d 842 (citing *Clark v. State*, ex rel., Driver Imp. Bureau, 2005 MT 65, ¶ 6, 326 Mont. 278, 109 P.3d 244). Because the suspension of a driver's license is presumed correct, the petitioner bears the burden of proving that the State's actions were improper. *Brown*, ¶ 8 (citing *Brewer v. State*, 2004 MT 193, ¶ 5, 322 Mont.

225, 95 P.3d 163). ¶ 4 We have determined it is appropriate to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2006, which provides for memorandum opinions. It is manifest on the face of the briefs and the record before us that the

appeal is without merit because there is clearly sufficient evidence to support the District Court's findings of fact and that the District Court correctly applied settled Montana law. ¶ 5 Affirmed.

JUSTICES BRIAN MORRIS, MICHAEL E. WHEAT, JAMES C. NELSON, and PATRICIA O. COTTER, concur.