

SUPREME COURT OF MONTANA

Fitzgerald v. State

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

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.