

SUPREME COURT OF OKLAHOMA

Charlson v. State ex rel. Department of Public Safety

125 P.3d 672 (Okla. 2005) · No. No. 102,117 · Decided November 15, 2005

SUMMARY

The Oklahoma Supreme Court held that an obvious scrivener's error in the Oklahoma Register did not invalidate an administrative rule approving the Guth 2100 breath simulator. The court concluded that the rule had been properly promulgated and that the published error could be corrected judicially to reflect the agency-approved language. The district court's judgment sustaining a demurrer in a driver's license revocation proceeding was reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Winchester, V.C.J.; Lavender, J.; Hargrave, J.; Opala, J.; Kauger, J.; Edmondson, J.; Taylor, J.; Colbert, J.; Watt, C.J.
JURISDICTION	Oklahoma
DECIDED	November 15, 2005
DOCKET	No. 102,117
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Department of Public Safety appealed from a Grady County District Court judgment sustaining Charlson's demurrer to the Department's evidence in a driver's-license revocation proceeding under Oklahoma's Implied Consent Law.
STANDARD OF REVIEW	On review of a judgment sustaining a demurrer to the evidence, the appellate court accepts as true all evidence favorable to the plaintiff and all reasonable inferences, disregards conflicting evidence favorable to the defendant, and reviews the legal effect of that evidence.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential.
PARTIES	State of Oklahoma ex rel. Department of Public Safety v. Marland D. Charlson

TOPICS

administrative law

rulemaking

statutory interpretation

judicial review of agency action

appellate procedure

PRACTICE AREAS

administrative law

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driver's license revocation

implied consent law

evidence

QUESTIONS PRESENTED

1. Whether a scrivener's error in the Oklahoma Register invalidated an administrative rule that had been properly adopted by the agency, reviewed by the Legislature, and approved by the Governor.
2. Whether the Guth 2100 breath simulator was an approved device for purposes of validating the alcohol-concentration test and driver's-license revocation.

HOLDINGS

1. An obvious scrivener's error in the published Oklahoma Register did not invalidate the administrative rule as properly promulgated by the agency and approved through the required legislative and executive processes. The Court could correct the error by judicial pronouncement, and the rule retained the force of law as originally adopted.
2. The Guth 2100 was properly approved under the Board's rule and could be used to calibrate the Intoxilyzer for purposes of the Implied Consent Law, notwithstanding the erroneous model number appearing in the Oklahoma Register.

KEY QUOTATIONS

"We hold that the error may be corrected by this Court and the rule, as promulgated, be declared valid." (125 P.3d at 673)

"The rule was properly made and has the force of law. A scrivener's error cannot change the law." (125 P.3d at 675)

"To rule otherwise allows copyists employed by publishers to change the law." (125 P.3d at 675)

FACTUAL BACKGROUND

A police officer stopped Marland D. Charlson after observing him swerve within his lane and cross into oncoming traffic. The officer observed an open beer container, detected alcohol on Charlson's breath, and noted red watery eyes, slurred speech, and Charlson's admission that he had been drinking. An Intoxilyzer 5000D test using a Guth 2100 simulator showed an alcohol concentration of 0.08 grams per 210 liters of breath. Although the Board had properly approved the Guth 2100, a publisher's typographical error caused the Oklahoma Register to list model 210021 twice and omit the word "successors."

PROCEDURAL HISTORY

After Charlson was arrested for driving with an alcohol concentration of 0.08 and his license was seized, the Department presented evidence that the breath simulator used in testing had been properly approved by the

Board of Tests for Alcohol and Drug Influence. The published Oklahoma Register contained a typographical duplication of the simulator model number, omitting the approved Guth 2100. The district court found that the rule had been properly promulgated but concluded it lacked authority to correct the scrivener's error, sustained the demurrer, and entered judgment for Charlson. The Oklahoma Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court judgment was reversed and the matter remanded consistent with recognition that the Guth 2100 was properly approved and that the Administrative Code should be corrected to reflect the Court's order.

CASES CITED

- Beshara v. Southern National Bank, 1996 OK 90, 928 P.2d 280
- Scurto v. Le Blanc, 191 La. 136, 184 So. 567 (1938)
- Dolese Bros. v. State ex rel. Oklahoma Tax Commission, 2003 OK 4, 64 P.3d 1093
- George E. Failing Co. v. Watkins, 2000 OK 76, 14 P.3d 52
- Becknell v. State Industrial Court, 1973 OK 90, 512 P.2d 1180
- Lekan v. P & L Fire Protection Co., 1980 OK 56, 609 P.2d 1289
- Curtis v. Registered Dentists of Oklahoma, 1943 OK 366, 143 P.2d 427
- Independent Finance Institute v. Clark, 1999 OK 43, 990 P.2d 845
- Manning v. State ex rel. Department of Public Safety, 2003 OK CIV APP 57, 71 P.3d 527
- McCown v. State ex rel. Department of Public Safety, 2003 OK CIV APP 66, 74 P.3d 623