

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Defendant,

v.

John M. Hilgefort,
Appellee-Plaintiff

October 29, 2021

Court of Appeals Case No.
21A-CR-1187

Appeal from the Dubois Superior
Court

The Honorable Mark R.
McConnell

Trial Court Cause No.
19D01-2001-F6-94

Bailey, Judge.

Case Summary

[1] John Hilgefert (“Hilgefert”) pled guilty to Resisting Law Enforcement, as a Class A misdemeanor,¹ and Leaving the Scene of an Accident, as a Class B misdemeanor.² At his sentencing hearing, Hilgefert obtained an order directed to non-party Indiana Bureau of Motor Vehicles (“the BMV”) mandating reinstatement of Hilgefert’s commercial driver’s license endorsement (“CDL”). The BMV entered a post-sentencing appearance of counsel and filed a motion to correct error, which was denied. The BMV now appeals, presenting the issue of whether the trial court abused its discretion in denying the motion to correct error. We vacate the order, which was entered absent the trial court having personal jurisdiction over the BMV.

Facts and Procedural History

[2] On January 27, 2020, in Cause Number 19D01-2001-F6-94 (“Cause F6-94”), the State of Indiana charged Hilgefert with several offenses related to his operation of a vehicle on January 25, 2020. On October 8, 2020, the trial court accepted Hilgefert’s pleas of guilty to misdemeanor offenses of Resisting Law Enforcement and Leaving the Scene of an Accident, entered judgment accordingly, and set the matter for a sentencing hearing.

¹ Ind. Code § 35-44.1-3-1.

² I.C. § 9-26-1-1.1.

- [3] Also on October 8, 2020, the trial court notified the BMV of the judgment of conviction. The BMV disqualified Hilgefort from using his CDL for one year, due to the conviction for Leaving the Scene of an Accident, effective October 18, 2020 to October 18, 2021. Hilgefort received notice of the suspension on October 15, 2020, and he filed his written request for a BMV material error review of his driver's record, which was received by the BMV on November 18, 2020. Hilgefort alleged material error "in that the Petitioner was never convicted of Leaving the Scene of an Accident Non-CMV under Cause No 19D01-2001-F6-000094." (App. Vol. II, pg. 26.)
- [4] On December 15, 2020, the BMV notified Hilgefort in writing that the review had resulted in no finding of material error, in pertinent part as follows:

On or about 10/09/2020, the BMV received a Certification of Court Abstract ("Abstract") from the Dubois Superior Court relating to Cause No. 19D01-2001-F6-94. The Abstract identified you by name, date of birth, and Indiana Driver's License Number and detailed a judgment for: Leaving the Scene of an Accident Causing Damage. Federal law (49 CFR 383.51) requires your CDL privileges be disqualified for one (1) year for this type of conviction. As such, your CDL privileges were disqualified effective 10/18/2020 to 10/18/2021.

If you believe the Abstract described above is in error, you must contact the Court. This review is limited to material error on the part of the BMV. Under Ind. Code § 9-33-2-3, you may seek judicial review of this decision by applying to the proper court no more than fifteen (15) days after the date on which you receive this notice or forty-five (45) days from the date BMV received your request for review, whichever is earlier.

(*Id.* at 31.)

[5] Three months later, on March 18, 2021, Hilgefert filed a Petition for Judicial Review and Motion for an order to the BMV to reinstate his CDL, referencing Cause No. 19D01-1902-CM-168 (“Cause CM-168”). Six days after filing his petition, Hilgefert appeared at his sentencing hearing in Cause F6-94 and argued the merits of his petition for an order to the BMV to reinstate his CDL. The BMV did not appear, apparently not having been summoned to appear in the criminal matter. Although she expressed doubt that the trial court had authority to order the BMV to grant Hilgefert’s request for CDL reinstatement, the deputy prosecutor declined to object, “as long as [Hilgefert]’s going to be sentenced in accordance with the plea agreement.” (Sentencing Tr. at 6.)

[6] The trial court imposed upon Hilgefert an aggregate sentence of 365 days, with 359 days suspended to probation. Hilgefert was ordered to refrain from contact with Ryan Lambert and to pay \$66.98 in restitution for a damaged mailbox. Additionally, the trial court instructed defense counsel to “prepare an order granting your request to override the [BMV]’s suspension of your CDL license.” (*Id.* at 7.) On April 1, 2021, the trial court issued a written order granting the motion for CDL reinstatement, stating that the “accident” involved a mailbox with damages under \$100.00 and thus Hilgefert’s conviction did not involve an “accident” within the definition of 49 CFR 390.5T. (Appealed Order at 1.) Alternatively, the trial court found that the “CDL suspension should have started January 27, 2020 and has been served, regardless of whether the applicable suspension was for 180 days or for 1 year.” (*Id.*)

[7] On May 4, 2021, counsel for the BMV entered an appearance in Cause F6-94 and filed a motion to correct error. The motion to correct error averred that the BMV had not been served with a petition for judicial review in either Cause F6-94 or Cause CM-168. The BMV argued that Hilgefert's petition for review was untimely and failed to meet other statutory requirements of Indiana Code Section 9-33-2-3 pertinent to a material error review, including verification. The BMV requested dismissal of the petition. Hilgefert filed a response to the motion to correct error, arguing that the CDL suspension was "void ab initio because it violates Indiana statute specifically Defendant's actions were not an accident falling within the Suspension Law." (App. Vol. II, pg. 40.) On May 18, 2021, the trial court summarily denied the motion to correct error. The BMV now appeals.

Discussion and Decision

[8] We generally review a trial court's ruling on a motion to correct error for an abuse of discretion, which occurs when the decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Ind. Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). However, where the issues raised in the motion are questions of law, the standard of review is de novo. *Id.*

[9] We observe that Hilgefert has not filed an appellee's brief, and therefore we will not undertake the burden of developing arguments for him. *Mullett v. Baker*, 120 N.E.3d 630, 632 (Ind. Ct. App. 2019). Instead, our standard of review is less

stringent, and we will reverse only upon a showing of “prima facie error, which is error at first sight, on first appearance, or on the face of it.” *Id.* Nevertheless, to determine whether reversal is required, we are still obligated to correctly apply the law to the facts in the record. *Id.*

[10] Pursuant to Indiana Code Section 9-33-2-3(a), a person aggrieved by an action of the BMV related to a material error review may file a petition in the circuit or superior court of the county in which the person resides, or Marion County for non-residents. Subsection (b) provides that the petition is to be filed not more than fifteen days after the earlier of: the date on which the person receives written BMV notice of its action or the expiration of the thirty-day period in which the BMV may conduct its material review. Subsection (c) prescribes the requirements for a petition filed under subsection (a): the petition must be verified by the petitioner; state the petitioner’s age, date of birth, place of residence, and driver’s license identification number; state the action from which the person seeks relief; include a copy of any written order or determination made by the BMV with respect to the action; state the grounds for relief, including all facts showing that the BMV action is wrongful or unlawful; and state the relief sought. Finally, subsection (e) provides, in relevant part:

Not more than six (6) months after the petition is filed, the court shall hear the petition, take testimony, and examine the facts of the case. In disposing of the petition, the court may modify, affirm, or reverse the action of the bureau in whole or in part and shall issue an appropriate order. If the court fails to hear the

petition in a timely manner, the original action of the bureau is reinstated in full force and effect.

[11] Indiana Code Section 9-33-2-4 governs service of summons in such matters, providing in relevant part that the summons is to be issued and served “in the manner provided for civil actions.” If review is sought of an action under the habitual traffic violator provisions, the summons and a copy of the petition shall be served upon the BMV and the prosecuting attorney of the county where the petition has been filed. *See id.* In a proceeding to review any other action taken by the BMV, the summons and a copy of the petition shall be served upon the BMV and the Attorney General of Indiana. *See id.*; *see also* Indiana Trial Rule 4.6(A)(3) (requiring that the Attorney General be served when a state governmental organization is a defendant). In general, ineffective service of process prohibits a trial court from having personal jurisdiction over a defendant. *Evans v. State*, 908 N.E.2d 1254, 1258 (Ind. Ct. App. 2009). A judgment rendered by a court without personal jurisdiction is void. *Parkview Hosp., Inc. v. American Fam. Ins. Co.*, 151 N.E.3d 1218, 1225 (Ind. Ct. App. 2020), *trans. denied*.

[12] The BMV contends that it was not served with a summons and a copy of the petition for judicial review and thus the trial court lacked personal jurisdiction over the BMV when it issued the reinstatement order. Additionally, the BMV argues that its suspension decision was warranted under federal law and Hilgefert’s judicial challenge to the decision was untimely. The chronological case summary does not show service upon the BMV; Hilgefert has put forth no

argument of error in this regard. Concluding that the trial court lacked personal jurisdiction over the BMV, and thus it could not enter the subject order, we need not address the merits of the CDL suspension.

[13] In the context of petitions challenging BMV action, this Court has identified a lack of personal jurisdiction where the petitioner failed to effect proper service. In *Guy v. Com'r, Bureau of Motor Vehicles*, 937 N.E.2d 822 (Ind. Ct. App. 2010), a panel of this Court reviewed a trial court's denial of a petition for an order to renew an Indiana driver's license. The petitioner had served the Commissioner of the BMV but did not also serve the Indiana Attorney General. We observed:

Because the Attorney General was not served as required by both the [Administrative Orders and Procedures Act] and Trial Rule 4.6(A)(3), it comes as no surprise that no one appeared on the Commissioner's behalf at the December 29 expedited hearing. The volume of paperwork and mail that is processed through the Commissioner's office in Indianapolis (as well as through any state agency's office) underscores the importance of requiring service on the Attorney General when a state agency is involved.

Id. at 825-26. We held that “the trial court did not have personal jurisdiction over the Commissioner and therefore could not enter any order in [the] case.”

Id. at 826. We therefore vacated the trial court order. *See id.*

[14] Subsequently, a panel of this Court vacated a similar order in *Watson, supra*. There, petitioner Watson had sought to renew his chauffeur's license, the BMV had denied the renewal, and Watson had administratively appealed. 70 N.E.3d at 383. After the BMV issued its determination that the denial of license

renewal was proper due to an Illinois suspension, Watson filed a petition seeking an order for special driving privileges. *See id.* The trial court granted the request for special privileges, following a hearing at which a Lake County deputy prosecutor appeared on behalf of the BMV; however, the BMV sent a letter to the trial court stating it could not issue Watson special driving privileges because he still possessed a valid Indiana license and they could not issue specialized driving privileges on a suspended Illinois license. Watson responded by filing a Motion to Compel Issuance of Specialized Driving Privileges or to Issue a Valid Driver's License Credential. He served the motion on the Commissioner of the BMV and the Lake County Prosecuting Attorney's Office. *Id.* Following a hearing, the trial court ordered the BMV to issue Watson a valid chauffeur's license. *See id.*

[15] The Attorney General of Indiana filed a motion to intervene on behalf of the BMV and a motion to correct error alleging the trial court lacked personal jurisdiction to order the BMV to issue a chauffeur's license. On appeal from the denial of the motion to correct error, we observed: “[t]he prosecuting attorney is not charged with defending judicial review of agency action, and once Watson decided to petition the trial court for judicial review, the Attorney General was required to be served.” *Id.* at 387. We held that because Watson did not serve the Attorney General, his service of process was ineffective and the trial court lacked jurisdiction to order the BMV to issue a chauffeur's license. *Id.*

[16] Here, the record does not indicate that a summons was served upon either the Commissioner of the BMV or the Attorney General. The trial court lacked personal jurisdiction over the BMV and thus the order issued to the BMV contemporaneous with Hilgefert's criminal sentence must be vacated.

Conclusion

[17] The BMV is entitled to relief upon its motion to correct error. The order that the BMV reinstate Hilgefert's CDL is vacated.

[18] Reversed.

Crone, J., and Pyle, J., concur.