IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

CHARLES MICHAEL,

Plaintiff/Appellant,

vs.

STATE OF OKLAHOMA ex rel.
Service Oklahoma,

Defendant/Appellee.

Case No. 122,725

APPEAL FROM THE DISTRICT COURT OF
TEXAS COUNTY, OKLAHOMA

HONORABLE CLARK JETT, ASSOCIATE DISTRICT JUDGE

AFFIRMED

Christopher J. Liebman
Guymon, Oklahoma — For Plaintiff/Appellant

Charles M. Thompson
SERVICE OKLAHOMA
Oklahoma City, Oklahoma — For Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE.

Plaintiff Charles Michael appeals the result of a district court proceeding finding that his driver's license should be revoked for driving while intoxicated. On review, we find no error in the court's decision.

BACKGROUND

Plaintiff was arrested on February 16, 2024, after testing showed he was driving with a blood alcohol content of 0.14 g/dL.[1] Plaintiff filed for court review of revocation pursuant to 47 O.S. § 754. On November 19, 2024, the court issued an order finding that Service Oklahoma (SOK) met its burden of proof, and the revocation was sustained. Plaintiff appeals, arguing that a statutory basis for revocation was not met or, alternatively, that he was denied due process and his right to a speedy trial.

STANDARD OF REVIEW

This appeal challenges the timeliness of notice of revocation and raises speedy trial questions. Plaintiff further argues that revocation in this case was improper because of a lack of notice sufficient to make revocation statutorily effective. The question of whether SOK denied Plaintiff procedural due process is a pure question of law reviewed *de novo*. *Pierce v. State ex rel. Dept. of Public Safety*, 2014 OK 37, ¶ 7, 327 P.3d 530. Legal questions involving statutory interpretation are also questions of law subject to *de novo* review. *Bailey v. State ex rel. Bd. of Tests for Alcohol & Drug Influence*, 2022 OK 50, ¶ 21, 510 P.3d 845, 852.

ANALYSIS

This case falls under 47 O.S. § 754, which provides in part:

> B. Upon receipt of a written blood or breath test report reflecting that the arrested person ... had ... a blood or breath alcohol concentration of eight-hundredths (0.08) or more, accompanied by

[1] "g/dL" means grams of alcohol per deciliter of blood.

> a sworn report from a law enforcement officer 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 as prohibited by law, Service Oklahoma shall revoke or deny the driving privilege of the arrested person .... Revocation or denial of the driving privilege of the arrested person shall become effective forty-five (45) days after the arrested person is given written notice thereof by the officer or by Service Oklahoma.

47 O.S. § 754.

As this fact will assist in later analysis, we initially note that there are now two different statutes involving a revocation by Service Oklahoma. The revocation provisions of § 754 state that, unless a petition for a "hearing before the district court" which "shall be conducted in accordance with Section 6-211 of this title" is filed with 30 days of notice of revocation, "revocation or denial of the driving privilege of the arrested person shall become effective forty-five (45) days after the arrested person is given written notice." In addition, there is 47 O.S. § 6-205, which requires Service Oklahoma to "immediately revoke the driving privilege of any person ... upon receiving a record of conviction" for "[d]riving or being in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance" when "such conviction has become final." Section 6-205 is not operative "if the driving privilege of the person has been revoked because of a test result or test refusal pursuant to Section 753 or 754." Hence, these procedures do not overlap, and, given that this case arose under § 754, it is clearly established that the procedure for requesting a hearing conducted in accordance with § 6-211 applies.

In this case, plaintiff did file a petition for a hearing and a hearing was held. On November 19, 2024, the court issued an order finding that Service Oklahoma met its burden of proof, and the revocation was sustained. Plaintiff argues that the decision was in error because a statutory requirement of revocation did not occur or was not shown at the hearing.

Plaintiff's argument is based in the part of § 754 that states that revocation becomes "*effective* forty-five (45) days *after* the arrested person is given written *notice* ...." 12 O.S. § 754 (emphasis added). Plaintiff argues that the notice here was statutorily insufficient to trigger a revocation. He brings three arguments to that effect. First, that SOK is not an agency authorized to give this notice, hence it was legally ineffective. Second, that effective notice requires, at a minimum, a certificate of service made at the time of mailing. And third, that notice is a statutorily required element of a revocation, and hence SOK has the burden of proving complaint notice in any hearing pursuant to § 754. We will examine each in turn.[2]

Service Oklahoma's Authority

The argument that SOK has no authority to make effective service in the first instance arises as follows. Plaintiff argues that 47 O.S. § 2-116 provides the rules for notice in driver's license cases. The statute begins: "Whenever the Department of Public Safety or the Oklahoma Insurance Department is

[2] We note that plaintiff's argument is entirely statutory. At no time does he appear to dispute that he actually received the printed notice contained in Exhibit 3 of the record transcript. And indeed, it seems unlikely that plaintiff would have filed his district court appeal absent such notice.

authorized or required to give any notice under this act or other law regulating the operation of vehicles ...." SOK is not named in this statute, and hence, plaintiff argues that it has no authority to give statutory notice.

This type of inconsistency has arisen several times since SOK took over the license revocation functions of the Department of Public Safety (DPS). Until July 2023, § 754 required written notice by "the Department" to start the forty-five-day clock before revocation. DPS was "legislatively authorized to mail orders through the United States mail pursuant to 47 O.S. Supp.2007 § 2–116." *Hedrick v. Comm'r of Dep't of Pub. Safety*, 2013 OK 98, ¶ 19, 315 P.3d 989, 996. Hence, § 754 and § 2-116 were aligned. It is clear that the failure to specifically add "Service Oklahoma" to § 2-116 is another hangover from the awkward legislative process that created Service Oklahoma, as addressed in *Herrera-Chacon v. State ex rel. Serv. Oklahoma*, 2023 OK 52, ¶ 2, 553 P.3d 20. *Herrera-Chacon* found that the legislature "fully transferred *all* the powers, duties, and responsibilities previously exercised by the Driver License Services Division of the Department of Public Safety to Service Oklahoma," *id.* (emphasis supplied), which would include the power to execute notice under § 2-116. As such, we reject this proposition of error.

Statutorily Required Notice

Plaintiff next argues that, even if SOK can use § 2-116 to give notice, the notice requirements of § 2-116 were not met. The statute provides:

> [U]nless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the

> United States mail of such notice in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. The giving of notice by mail is complete upon the expiration of ten (10) days after such deposit of said notice.

47 O.S. § 2-116. Section 2-116 itself requires only "notice" by personal delivery or by U.S. mail. However, another statute—§ 6-211(D)—states that a "person whose driving privilege is subject to revocation pursuant to Section 753 or 754 of this title may appeal to the district court ...." Section 6-211(E) states that *this* appeal petition "shall be filed within thirty (30) days after the notice of revocation, pursuant to Section 753 or 754 of this title, has been **served** upon the person by Service Oklahoma." 47 O.S. § 6-211(E) (emphasis supplied). Plaintiff argues that § 2-116 therefore *also* requires service of process rather than mailed notice, and "service" would normally imply some type of process as provided for in 12 O.S § 2004, which requires more than simple deposit in the mail.

Plaintiff is correct that § 2-116 itself requires only "notice" by mail or personal delivery, but § 6-211(E) contemplates "service" of a notice of revocation. There is no inconsistency, however. As we previously noted, there are now two different statutes involving a revocation by SOK—the longstanding revocation provisions of § 754 (effective after a positive field test or refusal) and the provisions of § 6-205 (effective upon SOK receiving a record of criminal conviction for DUI, among other offenses). The § 6-211(E) "service" requirement applies only to revocations "under the provisions of § 6-205 of this title ...." 47 O.S. §6-211(A). This is not a § 6-205 proceeding, and the "notice" provisions of § 754 and § 2-116, not § 6-205 and § 6-211, control here.

SOK states that notice was sent by US mail. Plaintiff appeared pursuant to this notice. This is a compliant—and in this case effective, see *supra* note 2—method of notice under the appropriate statutory section, § 2-116.

Proof of Notice

The next issue is how SOK is to prove notice, when such proof is required.[3] Section 2-116 states:

> Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Department or affidavit of any person over eighteen (18) years of age, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.

47 O.S. § 2-116. SOK made proof of notice at the hearing by a "business records affidavit" signed by one Renita Anderson. The affidavit, written almost two months after the revocation letter was purportedly written, claims personal knowledge that the letter was mailed on the date "indicated on the letter." Ms. Anderson is presumably over eighteen, and SOK argues that her writing constitutes an affidavit "specifying the time, place and manner" of the giving of notice.

Plaintiff argues that an affidavit naming the person to whom notice was given and specifying the time, place, and manner of notice is traditionally associated with personal delivery of notice, while a certificate of service is associated with service by mail. SOK argues that it may use either method. We

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[3] We note that SOK argues that it is not required to provide any proof that it gave notice because "notice" is not listed among the issues that a revocation hearing "covers" pursuant to 47 O.S. § 754(C). Without deciding that issue, we assume for purposes of this appeal that proof of notice was required in this case, and address whether the proof provided is sufficient under the statute.

agree with SOK. The legislature did not specifically link one particular method of proof to one particular method of notice. As such, we find that an affidavit was sufficient proof of notice in this case.

Speedy Trial

Plaintiff finally argues that his right to a speedy trial was violated because his arrest occurred on February 16, but notice was not sent until April 30. He cites *Nichols v. State ex. rel. Dep't of Pub. Safety*, 2017 OK 20, 392 P.3d 692, as requiring notice be sent "within ten (10) days after receipt of blood tests when the arresting officer will be available to testify." *Id.* ¶ 29. *Nichols* states:

> There was a delay of sixteen (16) months between the driver's first request for a hearing and the date of the hearing. From the time the Department possessed Nichols' lab results, four months elapsed before the State issued its notice of revocation to Nichols. It then delayed yet another eight (8) months before the revocation proceeding was held. A total of twelve months elapsed from the date the Department had the necessary lab results and an actual hearing.

Id. ¶ 20.

This paragraph shows the degree of delay that the Supreme Court found violated Nichols's constitutional rights. *Nichols* further stated: "guidance to the Department to assist it in determining a time frame in which it can avoid being subject to claims of violating the constitutional right to a speedy jury trial." *Id.* ¶ 28. As part of this guidance, the Court suggested that "[t]he Department should give notice of revocation in a timely manner. Notice should be given within ten (10) days after receipt of blood tests when the arresting officer will be available to testify." Plaintiff argues that, to conform with speedy trial rights, this ten-day

guideline constitutes the maximum amount of time that can pass between the receipt of blood tests and notice. We disagree.

First, *Nichols* is clear that this constitutes only "guidance" as to time. Second, we are unable to find any case in which a delay of eleven, twelve, or, as in this case, sixty-nine days constituted a denial of a speedy trial. The actual delay in trial in *Nichols* was in the region of two years. In criminal cases, the inquiry as to speedy trial generally arises because of a delay beyond one year. *Cornelius v. State,* 2023 OK CR 14, ¶ 6, 534 P.3d 715, 71 (citing *Ellis v. State,* 2003 OK CR 18, ¶ 30, 76 P.3d 1131, 1136). In *Pierce v. State ex rel. Department of Public Safety,* 2014 OK 37, ¶ 8, 327 P.3d 530, 532, the Court found that a delay of approximately twenty months in scheduling a revocation hearing was a violation of the constitutional right to a speedy trial. *Fernandez v. State,* 2016 OK CIV APP 82, ¶ 7, 389 P.3d 393, 394, found a speedy trial violation when Fernandez was forced to wait nearly fourteen months from the time he first requested an administrative hearing until one was finally conducted. We find no indication, however, that a delay of sixty-nine days constitutes a violation of any speedy trial right and decline to interpret the guidance of *Nichols* as establishing such a limit.

AFFIRMED.

WISEMAN, PJ., and FISCHER, J., concur.

July 23, 2025