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June 2015

Joyce Draper vs. Safety

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Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
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June 11, 2015

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Tennessee Department of Safety
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Nashville, TN 37249-1000

RE: In the Matter of: Joyce Draper (Q3263)

Docket No. 19.05-131557J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF SAFETY**

IN THE MATTER OF:

JOYCE DRAPER

DOCKET NO. 19.05-131557J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **June 26, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF
THE TENNESSEE DEPARTMENT OF SAFETY**

**IN THE MATTER OF:
DEPARTMENT OF SAFETY,**

vs.

**DOCKET # 19.05-131557J
D.O.S. # Q3263**

**One 2002 Ford F-150
VIN: 1FTRW07342KC24949
Seized From: James Draper
Seizure Date: 9/28/14
Claimant: Joyce Draper
Seizing Agency: Tennessee Highway
Patrol
Lien Holder: N/A**

INITIAL ORDER

This contested administrative case was heard in Nashville, Tennessee on May 27, 2015, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Karen Litwin, Staff Attorney for the Department of Safety, represented the Seizing Agency. The Claimant was present and proceeded on her own behalf.

The subject of this hearing was the proposed forfeiture of the Claimant's vehicle, based on the Seizing Agency's assertion that it was driven by a person whose license had been suspended or revoked for a prior DUI offense. Upon full consideration of the record in this case, it is determined that the vehicle should be forfeited to the Seizing Agency. This decision is based on the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 28, 2014, the vehicle in question was being driven by James Draper. The vehicle was pulled over after leaving the scene of a recent collision. The driver had a strong odor of alcohol and was arrested for DUI. A subsequent search of the vehicle revealed fifteen grams of marijuana, eighteen hydrocodone pills, and twelve diazepam pills. A subsequent license check revealed that Mr. Draper's license was currently revoked for a previous DUI. Mr.

Draper was arrested for driving on a revoked license and for DUI. The truck was registered to James Draper's mother, Joyce Draper.

2. Based on all the information he obtained during and after the arrest, the officer seized the vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. Joyce Draper ("the Claimant"), registered owner of the vehicle, filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.

3. The Claimant testified that she was aware that her son's license was revoked for previous DUIs.

CONCLUSIONS OF LAW and ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle at a time when his/her license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1).

2. The Tennessee Department of Safety bears the burden of proof in forfeiture proceedings, and must therefore prove, by a preponderance of the evidence, that the seized property was used in a manner making it subject to forfeiture, pursuant to law. [See, TENN. CODE ANN. § 40-33-210(a).] Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 40-33-210(b)(1); and, *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

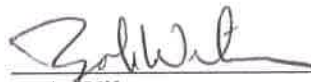
3. The law also provides that, when the owner of the vehicle is not present at the time of the seizure, his/her legal interest is not subject to forfeiture unless the owner knew that the vehicle "was being used in a manner making it subject to forfeiture and consented to its use." TCA § 40-33-210(c). In this case, the Claimant's car was being driven by a person whose operator's license was revoked for a prior DUI offense. The Claimant, Joyce Draper, argued that her son had not previously been arrested in this particular vehicle, and that she needed the truck for work. Despite her testimony, the facts support a conclusion that she allowed her son to drive her car with full knowledge of the status of his license, and by doing so allowed a habitual offender and

dangerous driver to endanger the lives of other people. It is therefore concluded that the Claimant cannot be considered an “innocent owner” in this case to exempt her from the operation of the driving on revoked forfeiture statutes.


4. The State’s proof established, by a preponderance of the evidence, that the vehicle was driven by the Claimant’s son while his vehicle operator's license was revoked for a prior DUI. When the vehicle was driven by a person whose license was revoked for a prior DUI, it was subject to forfeiture pursuant to TCA § 55-50-504(a)(1) and (h)(1). Under the facts of this case, the Claimant is not entitled to return of the car under a claim that she is an “innocent owner” of the vehicle.

Accordingly, it is hereby ORDERED that the subject 2002 Ford F-150 pickup truck shall be forfeited to the Seizing Agency, the Tennessee Highway Patrol, for disposition as provided by law.

Entered and effective this 11TH day of JUNE 2015.


Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 11TH day of JUNE 2015.


J. Richard Collier, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.