

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STORM JOSEFSBERG,

Petitioner,

v.

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

Petition for Writ of Certiorari

Michael J. Snure, Esq. and William R. Ponall, Esq., on behalf of Petitioner.

Heather Rose Cramer, Esq., Assistant General Counsel
Florida Department of Highway Safety and Motor Vehicles, on behalf of Respondent.

Before EVANS, MACKINNON and J. KEST, J.J.

PER CURIAM

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Petitioner, Storm Josefsberg (hereinafter Petitioner), timely appeals her license suspension for driving while under the influence of alcohol, pursuant to section 322.2615, Florida Statutes (2006). This Petition for Writ of Certiorari comes to this Court from a Final Order of License Suspension pursuant to section 322.2615, Florida Statutes. This Court has appellate jurisdiction pursuant to section 322.2615(13), Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(1)(C). Oral argument is hereby dispensed with pursuant to Florida Rule of Appellate Procedure 9.320.

When reviewing a final order of license suspension, this Court's standard of review is limited to determining whether the petitioner was accorded due process, the essential

requirements of law were observed, and whether the findings of fact and judgment are supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In conducting this review, this Court is not “entitled to reweigh the evidence or substitute its judgment for that of the” administrative hearing officer. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *Dep’t of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989).

FACTS

On June 29, 2006, at approximately 1:10 a.m., Officer S.A. Adams (hereinafter “Officer Adams”) was dispatched to the intersection of Primrose and Anderson. Upon arriving on the scene, Officer Adams observed a woman asleep behind the wheel of her vehicle with her foot on the brake pedal and the vehicle’s shifter in drive. Upon waking the woman, she was identified as Storm Josefsberg, Petitioner. Officer Adams asked Petitioner to exit the vehicle and observed an odor of alcohol emitting from her breath. Petitioner also exhibited slow, slurred speech and unsteadiness on her feet. Consequently, Officer Adams requested and Petitioner consented to perform several field sobriety tests. Petitioner performed poorly on the exercises and was placed under arrest for driving while under the influence of alcohol and taken to the DUI Center. After being read the implied consent, Petitioner took two breath tests that registered .151 and .154, respectively. As a result, Petitioner’s license was suspended pursuant to section 322.2615(1)(a), Florida Statutes.

On August 2, 2006, a formal review hearing of Petitioner’s license suspension was held. At the hearing, the DUI Uniform Traffic Citation, charging affidavit, breath alcohol test affidavit, and two Intoxilyzer inspection reports were admitted into evidence. No testimony was taken. Based on the documentary evidence, Petitioner moved to invalidate her license

suspension on the basis that the initial stop and detention were unlawful. Petitioner also moved to invalidate the license suspension because the Breath Alcohol Test Affidavit (hereinafter “Affidavit.”) was not on the form prescribed by Florida Administrative Code Rule 15A-6.013(2) (2006) and that the videotape of the field sobriety exercises was not a part of the record. The hearing officer denied Petitioner’s motions and sustained her license suspension. This appeal followed.

DISCUSSION

Petitioner’s only argument on appeal is that her license suspension should be invalidated because Respondent failed to “place into the record the Affidavit required by Fla. Admin. Code Rule 15A-6.013.”¹ (Pet. Writ Cert. 4.) Specifically, Petitioner contends that the Affidavit, submitted on FDLE/ATP Form 38, was deficient because it was not on FDLE/ICP Form 14 (hereinafter “Form 14”). Petitioner argues that Respondent’s failure to strictly comply with Rule 15A-6.013 requires her license suspension be invalidated, citing *State, Department of Highway Safety & Motor Vehicles v. Garcia*, 935 So. 2d 542 (Fla. 3d DCA 2006).

Petitioner correctly points out that Florida Administrative Code Rule 15A-6.013(2)(i) requires the “Breath Test Result Affidavit, FDLE/ICP Form 14” be placed in the record for the hearing officer’s review at a formal review of a license suspension.² However, neither Rule 15A-6.013(2)(i) nor *State, Department of Highway Safety & Motor Vehicles v. Garcia*, 935 So.

¹ Accordingly, Petitioner has abandoned the other issues raised in front of the hearing officer. See *J.A.B. Enters. v. Gibson*, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992) (“an issue not raised in an initial brief is deemed abandoned . . .”).

² The Code also requires a number of other documents to be submitted. However, Petitioner does not dispute the validity or completeness of the record as concerns these other documents and thus, they will not be addressed.

2d 542, indicates that a Breath Test Result Affidavit not submitted on Form 14 requires the invalidation of a license suspension.

In *State, Department of Highway Safety & Motor Vehicles v. Garcia*, 935 So. 2d 542, the court invalidated a license suspension where the Department of Highway Safety and Vehicles failed to introduce the intoxilyzer print card confirming the results set forth in the Breath Test Result Affidavit as required by Rule 15A-6.013. This case does not hold nor even suggest that a Breath Test Result Affidavit that was not submitted on Form 14 requires a license suspension be invalidated. In fact, Petitioner's argument has previously been addressed and rejected.

In *Sutton v. Department of Highway Safety & Motor Vehicles*, 14 Fla. L. Weekly Supp. 595a (Fla. 4th Cir. Ct. April 13, 2007), the petitioner argued that his license suspension should be overturned because the breath test affidavit was submitted on Form 38 instead of Form 14 as required by Florida Administrative Code Rule 15A-6.013(2)(i). The court rejected this argument finding that Form 38 contained the same information as Form 14 and thus, satisfied the requirements of Rule 15A-6.013(2)(i), quoting *McLarnon v. State, Department of Highway Safety & Motor Vehicles*, Case No. 06-89-AP (Fla. 18th Cir. Ct., September 1, 2006). Also see *Strocchi v. Dep't of Highway Safety & Motor Vehicles*, Case No. 06-CA-4678 (Fla. 4th Cir. Ct., October 27, 2006) (same). Although not binding, these decisions are instructive on the issue before this Court. Petitioner has also not presented any argument or authority to suggest the reasoning or result of these decisions should not be adopted. Based on the foregoing, this Court

concludes that the hearing officer did not depart from the essential requirements of law in considering the Affidavit.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Petitioner's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this
20 day of July, 2007.

_____/S/_____
ROBERT M. EVANS
Circuit Judge

_____/S/_____
CYNTHIA Z. MACKINNON
Circuit Judge

_____/S/_____
JOHN M. KEST
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished via U.S. mail or hand delivery to: **Michael J. Snure, Esq.** and **William R. Ponall, Esq.**, KirkConnell, Lindsey, Snure and Yates, P.A., P.O. Box 2728, Winter Park, FL 32790; **Heather Rose Cramer, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 6801 Lake Worth Road, #230, Lake Worth, FL 33467 on this 20 day of July , 2007.

_____/S/_____
Judicial Assistant