

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

**CAROLYN MARIE LEANDRE,**

Petitioner,

v.

**CASE NO.: 2007-CA-09135-O**

**Writ No.: 07-43**

**STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY & MOTOR  
VEHICLES, DIVISION OF DRIVER  
LICENSES,**

Respondent.

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Petition for Writ of Certiorari.

Shon Joseph Douctre, Esquire,  
for Petitioner.

Jason Helfant, Esquire,  
for Respondent.

BEFORE GRINCEWICZ, DAWSON, M. SMITH, JJ.

PER CURIAM.

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

Carolyn Marie Leandre (“Petitioner”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the order sustained the six month suspension of her driver’s license for driving with an unlawful alcohol level. This Court has jurisdiction under sections 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

On February 10, 2007, the arresting officer was dispatched to a crash scene. Upon arrival at the scene, the arresting officer observed a one-car vehicle crash scene. The arresting officer learned that the driver of the vehicle had been transported to the hospital prior to his arrival at the scene. The arresting officer spoke with a witness who observed the crash and identified the driver of the vehicle as Petitioner. At the hospital, the arresting officer made contact with Petitioner. While speaking with Petitioner, the arresting officer observed her bloodshot, watery eyes, a strong odor of alcohol on her breath, heavily slurred speech, and confusion. After reading her Miranda rights, Petitioner stated that she was driving the vehicle home from a bar at the time of the crash. Petitioner then agreed to submit to a blood test. Petitioner's blood test results indicated that her blood alcohol level was .202 and .203 grams per 100 ML. Petitioner's driver's license was suspended for driving with an unlawful blood alcohol level of .08 or higher.

The Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, and a hearing was held on July 2, 2007. At the hearing, the Petitioner moved to set aside the suspension arguing that the crash dates on the Department's exhibits were inconsistent, that the timing of the events on the Department's exhibits were inconsistent, and that the Department's exhibits did not indicate what time the blood sample was drawn. On July 3, 2007, the hearing officer entered a Final Order of License Suspension denying the Petitioner's motions and sustaining the suspension of her driver's license.

"The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence." *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver's license was suspended for driving with an unlawful blood alcohol level, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in § 316.193.

§ 322.2615(7)(a), Fla. Stat. (2007).

The Petitioner argues that the evidence in the record is in conflict, that the Department's order departs from the essential requirements of the law, and that Petitioner was denied procedural due process. Specifically, Petitioner argues that the crash dates on the Department's exhibits were inconsistent, that the timing of the events on the Department's exhibits were inconsistent, and that the Department's exhibits did not indicate what time the blood sample was drawn. Conversely, the Department argues that the order sustaining Petitioner's suspension conforms to the essential requirements of the law and is supported by competent substantial evidence.

In the Petition, Petitioner makes several arguments regarding alleged inconsistencies in the documentary evidence presented at the hearing. Based on these evidentiary inconsistencies, Petitioner appears to argue that the hearing officer's order was not based on competent substantial evidence. Importantly, throughout the four arguments advanced in the Petition, Petitioner fails to cite a single case, statute, or other legal authority to support her arguments. In

fact, Petitioner is attempting to re-argue to the Court the exact evidentiary arguments presented to the hearing officer and ruled on in the order below.

It is neither the function nor the prerogative of the circuit court to reweigh evidence and make findings when it undertakes a review of a decision of an administrative forum. *State of Florida, Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989). The appeal provided in the statute specifically states that it “shall not be construed to provide de novo appeal.” § 322.2615(13), Florida Statutes (2007). In reviewing an administrative action, the circuit court is prohibited from weighing or reweighing the evidence presented to the hearing officer. *Dep't of Highway Safety & Motor Vehicles v. Smith*, 687 So. 2d 30 (Fla. 1st DCA 1997).

In this case, all of the findings were supported by competent substantial evidence in the record. The charging affidavit detailed the arresting officer's observations of Petitioner upon contact with her at the hospital. The arresting officer observed her bloodshot, watery eyes, a strong odor of alcohol on her breath, heavily slurred speech, and confusion. Furthermore, after being advised of her rights, Petitioner admitted that she was the driver of the vehicle at the scene of the accident. Petitioner's “most important” issue regarding the lack of a time that the blood test was administered fails to cite any authority detailing the proper procedure for collection of blood samples pursuant to a DUI investigation. In fact, the Certification of Blood Withdrawal found in the record reflects that all FDLE procedures were followed.

Based on these observations, the hearing officer had competent substantial evidence to support his findings that the arresting officer had probable cause to arrest the Petitioner for DUI. The Court cannot, on appeal, reweigh and resolve conflicts in evidence that were presented to, and resolved by the hearing officer below. Thus, the Court finds that the Department's order

sustaining Petitioner's suspension conforms to the essential requirements of the law and is supported by competent substantial evidence. To evaluate the evidence further would put the Court in the impermissible position of reweighing the evidence presented in the administrative action.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Leandre's Petition for Writ of Certiorari is **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this \_\_2nd\_\_ day of \_\_\_\_September\_\_\_\_\_, 2009.

\_\_\_\_\_/S/\_\_\_\_\_  
**DONALD E. GRINCEWICZ**  
Circuit Court Judge

\_\_\_\_\_/S/\_\_\_\_\_  
**DANIEL P. DAWSON**  
Circuit Court Judge

\_\_\_\_\_/S/\_\_\_\_\_  
**MAURA T. SMITH**  
Circuit Court Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **Shon Joseph Douctre, Esq.**, Private Counsel, L.L.C., 733 West Colonial Drive, Orlando, FL 32804; and to **Jason Helfant, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 2515 W. Flagler St., Miami, FL 33135, on this \_\_2nd\_\_ day of \_\_September\_\_\_\_\_, 2009.

\_\_\_\_\_/S/\_\_\_\_\_  
Judicial Assistant