[Cite as *State v. Barker*, 2009-Ohio-6907.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

STATE OF OHIO	C.A. No. 09CA0015
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
LAVONNA BARKER	WAYNE COUNTY MUNICIPAL COURT COUNTY OF WAYNE, OHIO
Appellee	CASE No. TRD-08-11-12309

DECISION AND JOURNAL ENTRY

Dated: December 30, 2009

BELFANCE, Judge.

{¶1} Appellant, the State of Ohio, appeals the judgment of the Wayne County Municipal Court that granted appellee, LaVonna Barker's motion to dismiss. For the reasons set forth below, we reverse.

I.

{¶2} Appellee, LaVonna Barker, is a licensed driver in the State of Ohio and has a vehicle registered in her name. Pursuant to the random selection provision of R.C. 4509.101(A)(3)(c), the registrar of motor vehicles sent a letter to Barker requesting that she submit proof of financial responsibility for her vehicle. Barker did not submit the requested proof and the registrar ordered her license to be suspended as of April 1, 2008.

{¶3} On November 15, 2008, Barker was operating a vehicle in Wayne County, Ohio. An officer with the Wooster Police Department noticed that the registration tags on Barker's vehicle had expired in May 2008. The officer stopped Barker and became aware that her license

had been suspended on April 1, 2008. The officer issued Barker a ticket for driving under suspension.

{¶4} Barker pled not guilty and moved to dismiss the charge. She argued that the registrar did not have statutory authority to suspend her license on April 1, 2008, therefore, she could not be charged with driving under suspension in November of 2008. Without a hearing, the Wayne County Municipal Court granted the motion. The trial court found that R.C. 4509.101(A)(3)(c) does not provide the registrar with authority to suspend drivers' licenses. The State of Ohio ("the State") has appealed the decision to dismiss the charge of driving under suspension.

II.

{¶5} Barker's motion to dismiss challenged the legal authority of the registrar to suspend her license. It raised an issue "capable of determination without the trial of the general issue" and, therefore, the trial court properly considered it as a pretrial motion to dismiss pursuant to Crim.R. 12(C). An appeal from a motion to dismiss presents a question of law, thus our review is de novo. *State v. Whalen*, 9th Dist. No. 08CA009317, 2008-Ohio-6739, at ¶7. Pursuant to the de novo standard, we review the matter anew, affording no deference to the findings of the trial court. *Akron v. Frazier* (2001), 142 Ohio App.3d 718, 721.

{¶6} Barker argued below, and has argued to this Court, that R.C. 4509.101(A)(3)(c) does not provide a penalty for a person's failure to respond to a request to provide proof of financial responsibility to the registrar. Therefore, according to Barker, the order suspending her license beginning on April 1, 2008 is void and may not provide the basis for her subsequent charge of driving under suspension arising on November 15, 2008. Thus, the charge must be dismissed.

{¶7} The State argues that she had the opportunity to challenge the financial responsibility suspension by filing a civil action against the registrar or requesting an administrative hearing. The State also asserts that although R.C. 4509.101(A)(3)(c) does not set forth the penalty for failure to adequately respond to a random verification request, the Ohio Administrative Code outlines the random verification process and penalty for noncompliance. The State has also argued that Barker has improperly attempted to collaterally attack the order of the registrar. However, we find that collateral attack principles are unnecessary for resolution of the question before us. See *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 115 Ohio St.3d 375, 2007-Ohio-5024 at ¶¶16-17 (defining a collateral attack as an attempt to defeat a prior judgment in a new proceeding that is not a direct appeal of the prior judgment); Black's Law Dictionary (8 Ed.Rev.2004) 858 (defining judgment as a determination by a court); *State ex rel. Wright v. Ohio Bur. of Motor Vehicles* (1999), 87 Ohio St.3d 184, 186 (an administrative license suspension is not an exercise of quasi-judicial authority); *State v. Gustafson* (1996), 76 Ohio St.3d 425, 436 (an administrative license suspension is "not the type of proceeding to which double jeopardy protection attaches").

{¶8} R.C. 4509.101(A)(1) mandates that "[n]o person shall operate * * * a motor vehicle in this state, unless proof of financial responsibility is maintained continuously throughout the registration period * * *." R.C. 4509.101(A)(3)(c) vests the registrar with authority to randomly send written requests for financial responsibility verification to a person (1) who has a vehicle registered in Ohio; (2) who has an Ohio driver's license; (3) who has operated a vehicle; or, (4) who owns a vehicle that the person has allowed another to drive in Ohio. Although Barker is correct that the statute itself does not provide a penalty for a person's failure to verify financial responsibility when requested by the registrar, the statute does mandate

that "[t]he registrar shall adopt rules * * * that are necessary to administer and enforce this section." R.C. 4509.101(M). To that end, section 4501:1-2-08 of the Ohio Administrative Code was promulgated, which states in pertinent part, "[i]f the owner of a vehicle randomly selected * * * fails to respond to the notice, fails to give acceptable evidence that the vehicle is exempt, or fails to give acceptable proof of financial responsibility, the registrar shall order the suspension of the license of the person * * *." Ohio Adm.Code 4501:1-2-08(C).

{¶9} "[T]he statutes and administrative regulations of Ohio must be harmonized, reconciled, and construed together. They must be read as an interrelated body of law." *State ex rel. Cuyahoga Cty. Hosp. v. Ohio Bur. of Workers' Comp.* (1986), 27 Ohio St.3d 25, 27. Furthermore, "[a]n administrative rule, '* * * issued pursuant to statutory authority, has the force and effect of law unless it is unreasonable or is in clear conflict with statutory enactment governing the same subject matter.'" *Youngstown Sheet & Tube Co. v. Lindley* (1988), 38 Ohio St.3d 232, 234, quoting *Kroger Grocery & Bakery Co. v. Glander* (1948), 149 Ohio St. 120, 125.

{¶10} R.C. 4509.101 grants the registrar authority to randomly select drivers and/or owners of automobiles and require them to submit proof of financial responsibility for the vehicle identified in the request and further requires the registrar to adopt rules for the random selection process and its enforcement. R.C. 4509.101(A)(3)(c), (M). The Administrative Code outlines, inter alia, the method of selection and notice to the person selected, the exemptions to compliance, and the penalty for noncompliance. A reading of the Revised Code and the Administrative Code in tandem provides the full breadth of the financial responsibility random selection scheme. Ohio Adm.Code 4501:1-2-07, -08. Thus, Barker's contention that the registrar lacked jurisdiction to suspend her license because R.C. 4509.101 does not provide a penalty for noncompliance is not well taken.

{¶11} The trial court committed reversible error in granting Barker's motion to dismiss the charge of driving under suspension on the ground that the registrar lacked the authority to suspend her license. Although the statute granting the registrar authority to request proof of financial responsibility does not itself contain the penalty for noncompliance, Ohio Adm.Code 4501:1-2-08(C), promulgated "pursuant to statutory authority," provides the penalty. *Youngstown Sheet & Tube Co.*, 38 Ohio St.3d at 234. See, also, R.C. 4509.101(M). Construing the statute with the Administrative Code demonstrates that the registrar is indeed authorized to issue financial responsibility noncompliance suspensions.

{¶12} The sole question on appeal concerned the authority of the registrar to suspend Barker's license pursuant to the financial responsibility statutes. Because we have concluded that the trial court erred when it granted Barker's pretrial motion to dismiss, and the Double Jeopardy Clause does not bar further prosecution under the circumstances presented in this case, we remand this matter to the trial court for further proceedings. Given the limited nature of the issue raised on appeal, we express no opinion as to whether, on remand, Barker may have other grounds on which to challenge her suspension.

III.

{¶13} The State's sole assignment of error is sustained. The judgment of the Wayne County Municipal Court is reversed and the matter is remanded for further proceedings.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶14} I respectfully concur in judgment only as I would find that Barker could not collaterally attack her administrative suspension in this case. Barker has not alleged that she did not receive notice. By finding that this matter was before the court, the majority has implicitly found that Barker may collaterally attack her prior suspension.

APPEARANCES:

MARTIN FRANTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellant.

COREY E. SPITLER, Attorney at Law, for Appellee.