

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

WADE V. HASTINGS,

CASE NO.: 2014-CV-000061-A-O
Lower Case No.: 2014-TR-005609-A-A

Appellant,

v.

STATE OF FLORIDA,

Appellees.

Appeal from the County Court
for Orange County, Florida
Wilfredo Martinez, County Judge.

Jason T. Foreman, Esquire
for Appellant.

No Appearance for Appellee.

Before UNDERWOOD, MYERS, JR., and TURNER, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Wade V. Hastings (“Hastings”), timely appeals the Trial Court’s “Determination of Infraction,” entered on July 3, 2014. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

On April 5, 2014, Hastings was riding his motorcycle through unincorporated Orange County, and a trooper visually estimated him traveling at 54 mph in a posted 35 mph zone. This speed was confirmed by the trooper’s radar. Hastings was not cited for any accident, and there is nothing in the record to indicate that Hastings was involved in an accident.

On July 3, 2014, the trial court adjudicated Hastings guilty of speeding 54 mph in a 35 mph zone while he was operating his motorcycle following a traffic infraction hearing where the trial court heard evidence related to Hastings' infraction. The trial court suspended his driver's license for 120-days, followed by a six-month restriction limited to a business purposes only license. Hastings was also ordered to pay a fine and court costs totaling \$230. Hastings filed a motion for rehearing and motion for arrest of judgment, arguing that the trial court imposed an illegal penalty when it suspended Hastings' driver's license. Those motions were denied on August 22, 2014. This appeal follows.

Hastings raises a single argument on appeal: whether the trial court erred when it suspended Hastings' driver's license for a speeding violation.¹ The State did not file an answer brief to refute this argument. Because the Court must examine the issue of statutory interpretation, review of this appeal is *de novo*. *Fla. Dept. of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1074 (Fla. 2011); *see also Fla. Dept. of Children & Family Svs. v. P.E.*, 14 So. 3d 228, 234 (Fla. 2009) (“Legislative intent guides statutory analysis, and to discern that intent we must look first to the language of the statute and its plain meaning.”).

The trial court determined that Hastings violated section 316.189(2), Florida Statutes (2014), by speeding 54 mph in a 35 mph zone. Section 316.189(4) provides that “[v]iolation of the speed limits established under this section must be cited as a moving violation, punishable as provided in chapter 318.” Only two sections in Chapter 318 address the penalties for a moving violation: section 318.14 and section 318.18. Section 318.14, Florida Statutes (2014), dictates the manner in which the person may be assessed penalties, none of which include a driver's license

¹ In his brief, Hastings bases his argument on section 316.655(2), Florida Statutes (2014), which only allows the court to suspend a driver's license if the violation resulted in an accident. However, section 316.189(4) indicates that speeding violations under the statute are punishable as provided in Chapter 318. Accordingly, the Court reviews the relevant sections in Chapter 318 in rendering its decision.

suspension for violating section 316.189(2). Section 318.18, Florida Statutes (2014), dictates what fines are to be assessed against the person who violated the statutes; again, this section is silent as to suspending a driver's license for violating section 316.189(2).

When a statute is silent, the court may "fill inevitable statutory gaps by relying on the common law." *Dove v. McCormick*, 698 So. 2d 585, 589 (Fla. 5th DCA 1997). Furthermore, a statute that imposes "a penalty must be strictly construed in favor of the one against whom the penalty is imposed and is never extended by construction." *Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 223 (Fla. 2003). Here, the relevant statutes in Chapter 318 are silent as to whether the trial court may suspend a person's driver's license for violating section 316.189(2). However, those sections do indicate what the permissible penalties are, and suspension of a driver's license is not among them. It was, therefore, error for the trial court to suspend Hastings' driver's license, thus warranting reversal.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Determination of Infraction," entered on July 3, 2014, is **REVERSED and REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 11th day of September, 2015.

/S/
CHRISTI L. UNDERWOOD
Presiding Circuit Judge

MYERS, JR. and TURNER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Wilfredo Martinez**, 425 North Orange Avenue, Orlando, Florida 32801; **Jason T. Forman**, Law Offices of Jason T. Forman, P.A., 633 Southeast Third Avenue, Suite 4F, Fort Lauderdale, Florida 33301; **Ted L. Hollander**, Gold & Associates, P.A., D/B/A The Ticket Clinic, 1580 South Federal Highway, Fort Lauderdale, Florida 33316; **Ann-Marie Delahunty**, Attorney for the Orange County Sheriff's Office, 2500 West Colonial Drive, Orlando, Florida 32804, on the 11th day of September, 2015.

/S/

Judicial Assistant