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STATE OF NEBRASKA, APPELLANT, V. OSCAR HERNANDEZ, APPELLEE.

809 N.W.2d 279

Filed March 2, 2012. No. S-11-414.

1. **Judgments: Statutes: Appeal and Error.** Statutory interpretation presents a question of law upon which an appellate court reaches a conclusion independent of the trial court.
2. **Statutes: Legislature: Intent: Appeal and Error.** In construing a statute, an appellate court's objective is to determine and give effect to the legislative intent of the enactment.
3. **Statutes: Appeal and Error.** When construing a statute, an appellate court looks to the statute's purpose and gives to the statute a reasonable construction that best achieves that purpose, rather than a construction that would defeat it.
4. ____: ____. Absent a statutory indication to the contrary, an appellate court gives words in a statute their ordinary meaning.
5. **Statutes.** To the extent there is a conflict between two statutes, the specific statute controls over the general statute.
6. **Statutes: Legislature: Intent.** Components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.

Appeal from the District Court for Lancaster County: ROBERT R. OTTE, Judge. Exception overruled.

Joe Kelly, Lancaster County Attorney, and Daniel Packard for appellant.

Heidi M. Hayes, of Morrow, Poppe, Watermeier & Lonowski, P.C., L.L.O., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

The district court for Lancaster County acquitted Oscar Hernandez of driving during revocation under Neb. Rev. Stat. § 60-6,197.06 (Reissue 2010), concluding that the statute did not apply to Hernandez' conduct. The State concedes that double jeopardy would bar a subsequent trial. Nevertheless, the State appeals under Neb. Rev. Stat. § 29-2315.01 (Reissue 2008) and asks this court to provide an exposition of the law for future cases. Because we agree with the district court and

conclude that § 60-6,197.06 does not apply to the facts of this case, we overrule the State's exception.

BACKGROUND

Because of Hernandez' third conviction for driving under the influence, the Nebraska Department of Motor Vehicles revoked his license. The revocation began on December 16, 2009, and was to last for 2 years. Hernandez, however, received an ignition interlock permit from the Nebraska Department of Motor Vehicles. An ignition interlock permit allows a person to operate a motor vehicle that is equipped with an ignition interlock device in limited circumstances.[1] To receive the permit, Hernandez had to show that an ignition interlock device had been installed in his vehicle. Hernandez showed proof that the device had been installed in a 2002 Dodge Ram.

On May 5, 2010, Hernandez was involved in a car accident. He was driving a 1992 Dodge Ram Wagon van that did not have an ignition interlock device. Hernandez admitted to the responding officer that he could drive only vehicles with interlock devices.

The State charged Hernandez with driving during revocation under § 60-6,197.06. The court found Hernandez not guilty. The court concluded that another statute, Neb. Rev. Stat. § 60-6,211.05(5) (Supp. 2009), applied and that § 60-6,197.06 did not. We set out these statutes and the district court's reasoning in detail below.

ASSIGNMENT OF ERROR

The State takes exception under § 29-2315.01 and argues that the district court erred in concluding that § 60-6,197.06 did not apply to Hernandez' conduct.

STANDARD OF REVIEW

[1] Statutory interpretation presents a question of law upon which an appellate court reaches a conclusion independent of the trial court.[2]

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[1] See Neb. Rev. Stat. §§ 60-480(12) (Reissue 2010) and 60-4,118.06 (Supp. 2009) and § 60-6,211.05.

[2] See *State v. Mena-Rivera*, 280 Neb. 948, 791 N.W.2d 613 (2010).

ANALYSIS

The statute under which the State charged Hernandez, § 60-6,197.06, provides in part:

> (1) Unless otherwise provided by law pursuant to an ignition interlock permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01.

The court concluded that instead of § 60-6,197.06, § 60-6,211.05(5) applied to Hernandez' conduct. Section 60-6,211.05(5) provides:

> A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect, *who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order made pursuant to this section*, or who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order under which the device was installed shall be guilty of a Class II misdemeanor.

(Emphasis supplied.)

The court reasoned that the first clause of § 60-6,197.06(1)—"Unless otherwise provided by law pursuant to an ignition interlock permit"—removed from the statute's coverage those persons who had valid ignition interlock permits. The court concluded that § 60-6,211.05(5) applied to persons who had violated the terms of an ignition interlock permit. Because Hernandez had an ignition interlock permit but had violated its terms by operating a vehicle not equipped with such a device,

the court ruled that § 60-6,211.05 was the only statute under which the State could charge him.

This appeal presents an issue of statutory interpretation. The question is whether a person who is required to have an ignition interlock device but drives a vehicle without one may be charged under § 60-6,197.06.

The State rests its argument on the introductory clause of § 60-6,197.06(1). The State contends that this clause, which reads "Unless otherwise provided by law pursuant to an ignition interlock permit," means that if a person complies with the terms of the ignition interlock permit, a person cannot be charged with driving during revocation under § 60-6,197.06. But if he or she violates the permit's terms—for instance, by driving a vehicle that is not equipped with an ignition interlock device—the permitholder is driving during a period of revocation and can be charged under § 60-6,197.06(1) for committing a Class IV felony.

Hernandez sees it differently. He argues that the court correctly determined that the introductory clause of § 60-6,197.06(1) precludes permitholders, even those who violate the terms of the permit, from being prosecuted under this statute for driving during revocation. Hernandez contends that other statutes provide the appropriate crime and punishment for those who violate the terms of their ignition interlock permits. We agree.

[2-4] In construing a statute, our objective is to determine and give effect to the legislative intent of the enactment.[3] We look to the statute's purpose and give to the statute a reasonable construction that best achieves that purpose, rather than a construction that would defeat it.[4] Absent a statutory indication to the contrary, we give words in a statute their ordinary meaning.[5]

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[3] *Mena-Rivera, supra* note 2.

[4] *Id.*

[5] *Id.*

[5,6] Further, to the extent there is a conflict between two statutes, the specific statute controls over the general statute.[6] Finally, components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.[7]

Section 60-6,211.05(5), which deals specifically with ignition interlock permits, clearly and unambiguously states that one "who operates a motor vehicle [that] is not equipped with an ignition interlock device in violation of a court order" is guilty of a Class II misdemeanor. The Legislature was clear in expressing its intent that an ignition interlock permitholder who operates a vehicle without an ignition interlock device be punished only as a misdemeanant. The State asks us to read an ambiguous clause to authorize a more severe punishment for the same act. We reject the State's request because doing so would be inconsistent with the Legislature's clear and unambiguous intent in § 60-6,211.05(5). Such a reading would render the statutory scheme inconsistent and disharmonious.

As mentioned, the State bases its argument on the introductory clause of § 60-6,197.06(1). As the State reads it, the clause means that permitholders who comply with the terms of their permits are not driving during revocation. But once they do violate the terms, they are not acting "pursuant to an ignition interlock permit"[8] and are in effect driving during revocation. We read the introductory clause differently. We read it to say that other statutes provide the appropriate crimes with which to charge a person who violates the terms of his or her ignition interlock permit. In other words, we read "Unless otherwise provided by law pursuant to an ignition interlock permit"[9] to mean simply "unless a person has an interlock permit." This

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[6] See *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

[7] *Id.*

[8] § 60-6,197.06(1).

[9] *Id.*

clause excludes ignition interlock permitholders from the coverage of § 60-6,197.06.

CONCLUSION

We agree with the district court's interpretation of the statute. Section 60-6,197.06 does not provide the penalty for a driver who has a valid ignition interlock permit but operates a vehicle not equipped with such a device. That conduct is a Class II misdemeanor under § 60-6,211.05(5). We overrule the State's exception.

EXCEPTION OVERRULED.

GERRARD, J., not participating in the decision.

WRIGHT, J., not participating.