THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0454, Suzanna Bly v. Director, Division of Motor Vehicles New Hampshire Department of Safety, the court on February 9, 2010, issued the following order:

The respondent, the Director, Division of Motor Vehicles New Hampshire Department of Safety (State), appeals an order of the trial court. The State argues that the trial court erred in determining that it had subject matter jurisdiction of an appeal filed by the petitioner, Suzanna Bly, because the appeal was filed more than six months after the thirty-day appeal periods set forth in RSA 262:25 and RSA 263:76. We reverse.

We restate the procedural history of this case as set forth in the record before us. In January 2003, Bly's license privileges were suspended for two years under the implied consent law. See RSA 265:91-a (2004) (repealed). Later in 2003, she was certified as a habitual offender; the certification order advised her that her operating privileges were revoked for three years. The order further noted that she had served three months and five days of the implied consent suspension and advised that the remainder of the suspension would be imposed following completion of the habitual offender revocation.

After a 2008 hearing, Bly was decertified as a habitual offender. Among the findings set forth in the May 2008 decertification order was that Bly had two years of implied consent suspension time remaining. In January 2009, Bly filed a "petition to review final order" in the superior court arguing that she had waited until 2008 to apply for decertification based upon erroneous advice that she received when she contacted the department of safety and that, because she was actually eligible earlier for decertification, she should be given "credit for time spent suspended when she could have applied for habitual offender decertification." The State filed a motion to dismiss for lack of subject matter jurisdiction due to untimeliness as well as an objection on the merits. After a hearing, the trial court denied the motion to dismiss and ordered the State to find Bly "immediately eligible for reinstatement of her license privileges."

The sole issue before us on appeal is whether the trial court erred in determining whether it had subject matter jurisdiction over the petition. Because subject matter jurisdiction is a question of law, our review in this case is de novo. See, e.g., Mansur v. Muskopf, 159 N.H. 216 (2009). In this case, to determine whether the trial court had subject matter jurisdiction, we must first determine the statute or legal theory that supported Bly's request for relief filed in the superior court.

At oral argument, the State contended that because Bly is appealing the decertification order and the decertification order is a final decision, her appeal was governed by RSA 262:25. RSA 262:25 provides:

> An appeal to the superior court of Merrimack county may be had from any final action or order of the director pursuant to this chapter within 30 days of the date of the final action or order. All findings of the director upon all questions of fact properly before him shall be deemed prima facie lawful and reasonable and shall not be disturbed on appeal, unless the court finds that they could not reasonably have been made.

Bly argues that because she received the relief she requested in the decertification order; that is, she was decertified as a habitual offender, she is not appealing that order and therefore RSA 262:25 does not apply. She argues that the trial court correctly determined that RSA 263:76 was applicable and that the facts of this case "mandated the permissive construction given by the court which correctly determined it had subject matter jurisdiction over the appeal."

RSA 263:76 provides in relevant part:

> Any person whose license has been suspended or revoked, except where such suspension or revocation is mandatory, or any person who has been denied a license, may petition, within 30 days thereafter, the superior court in the county where such person resides.

Bly argues that her suspension was mandatory and that she therefore could not appeal within the 30 day period. She argues that "the 30 day limitation period should apply except for suspensions or revocations that are mandatory. It is agreed then that the "may" language is not meaningless, indeed having particular meaning in this case." We are unpersuaded by this argument.

A review of Bly's petition to review final order reveals that it in fact sought review of the May 2008 order, which as Bly conceded, contained a finding that "[Bly] has two years of implied consent remaining." To the extent that Bly sought to challenge that finding, she was required to seek review under RSA 262:25. We note that both RSA 262:25 and RSA 263:76 contain permissive language; that is, the word "may." The permissive language, however, refers to the discretion of the party who, having received a final order, may then decide whether or not to appeal it. See Mt. Valley Mall Assocs. v. Municipality of Conway, 144 N.H. 642, 652 (2000) (the last antecedent rule of statutory construction generally requires that qualifying phrases are to be applied to the words or phrases immediately preceding and are not to be construed as extending to others more remote). If a party decides to appeal, the appeal must

be taken within thirty days. This conclusion is consistent with our decision in Appeal of Carreau, 157 N.H. 122 (2008). In Carreau, we considered RSA 541:6, which contains language similar to that presently before us; RSA 541:6 provides: "Within thirty days after the application for a rehearing is denied, or if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court." We concluded that the appellant's failure to comply with a statutory deadline deprived the court of jurisdiction to hear his appeal. Carreau, 157 N.H. at 123-24. The same analysis applies in this case. Absent specific language enacted by the legislature, the superior court has no authority to waive the appeal period set forth in RSA 262:25 or 263:76.

Reversed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

Eileen Fox,
Clerk