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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1288**

Diane Phyllis Krekelberg, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed June 11, 2018
Affirmed
Bratvold, Judge**

Mower County District Court
File No. 50-CV-17-707

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Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's order dismissing as untimely her petition for judicial review of her driver's license revocation. Appellant argues that (1) she cannot be administratively punished for acting in a lawful manner, (2) her procedural due-process rights were violated because she did not receive adequate notice of judicial review and did

not receive meaningful post-revocation administrative review, and (3) her substantive due-process rights were violated because her license was revoked even though she offered evidence that she was taking medication as prescribed. Because appellant's petition was untimely and her procedural and substantive due-process rights were not violated, we affirm.

FACTS

On April 18, 2015, appellant Diane Phyllis Krekelberg was arrested on suspicion of driving while impaired; a subsequent analysis of her urine sample indicated the presence of amphetamine. The state charged Krekelberg with a fourth-degree DWI, but the charges were later dismissed. On June 10, 2016, the Minnesota Department of Public Safety, Driver and Vehicle Services (DVS) notified Krekelberg by letter that her driver's license would be revoked and cancelled effective June 20. Krekelberg's license was revoked and canceled on June 20, 2016.

Krekelberg requested an administrative review. On June 28, 2016, DVS informed her that the review had occurred and that the cancellation of her license was sustained. Krekelberg requested a second administrative review, and on July 25, 2016, DVS notified her that additional review had occurred and the cancellation of her license was sustained. The DVS letter also stated "there [was] no indication that the implied consent charges ha[d] been dismissed" and "only that the judicial side of the 04/18/16 incident ha[d] been removed." The letter also stated that Krekelberg had the right "to go back to court and request an[] Implied Consent hearing" or to "petition the Attorney General's Office" to have the charges dismissed.

In her brief to this court, Krekelberg asserts that she engaged in “lengthy phone conversations” with “her administrative reviewer,” and that the reviewer “provid[ed] legal advice . . . that by [Krekelberg] getting her criminal charges expunged, this would result in a favorable administrative review in which [Krekelberg] would get her license back.” Krekelberg asserts that because of this conversation she did not petition for judicial review of her license revocation.

In August 2016, Krekelberg filed a petition for expungement of the criminal charges arising from the April 18, 2015 incident. Krekelberg asserted that, while operating the vehicle, she was taking medication as prescribed; she submitted supporting documentation from her treating physicians. On November 17, 2016, the district court expunged Krekelberg’s charges from April 2015.

On March 20, 2017, Krekelberg filed a petition for judicial review of the revocation of her driving privileges, pursuant to Minn. Stat. § 171.19 (2016). On March 24, 2017, Krekelberg amended her petition for judicial review to seek reinstatement of her license, pursuant to Minn. Stat. § 169A.53, subd. 2(a) (2016). In her amended petition, Krekelberg argued that her license was “mistakenly revoked” because her “urine test came back with no use of illegal drugs” and “she had a valid prescription for the medications she was taking.” She asserted that “she did [] nothing illegal, yet her situation evades review,” “she is being punished for no reason whatsoever,” and she had been denied “Federal and State due process of law.”

The Commissioner of Public Safety filed a motion to dismiss Krekelberg’s petition, arguing that Krekelberg’s petition was untimely under Minn. Stat. § 171.19 and Minn. Stat.

§ 169A.53, subd. 2(a). The district court granted the commissioner’s motion. Krekelberg appeals.

D E C I S I O N

I. The district court did not err by granting the commissioner’s motion to dismiss because Krekelberg’s petition for judicial review was filed after the statutory deadline.

When the commissioner revokes a driver’s license, section 169A.53 allows the driver to seek administrative review under subdivision 1, judicial review under subdivisions 2 and 3, or both. Minn. Stat. § 169A.53, subds. 1-3. The availability of administrative review of a revocation order “has no effect” upon the availability of judicial review. Minn. Stat. § 169A.53, subd. 1(b). Judicial review requires a petition to be filed with the district court administrator “[w]ithin 30 days following receipt of a notice and order of revocation.” Minn. Stat. § 169A.53, subd. 2(a).¹ “A failure to file a petition for judicial review within the 30-day statutory period” results in an untimely petition, and the district court must dismiss. *See Thole v. Comm’r of Pub. Safety*, 831 N.W.2d 17, 19 (Minn. App. 2013), *review denied* (Minn. July 16, 2013). While Krekelberg timely pursued and received administrative review, her attempt at judicial review was dismissed as untimely.

Krekelberg concedes that she received the commissioner’s order and notice of revocation from DVS on June 10, 2016. Under the applicable statute, Krekelberg’s petition

¹ Recently, Minn. Stat. § 169A.53, subd. 2(a), was amended to allow for 60 days to file a petition for judicial review. These statutory changes became effective July 1, 2017 and only apply to “acts committed on or after that date.” 2017 Minn. Laws ch. 83, art. 2, § 6 at 5-6. Therefore, the 30-day filing deadline applies to Krekelberg.

for judicial review was due in July 2016. Minn. Stat. § 169A.53, subd. 2(a). But Krekelberg filed her petitions in March 2017, over eight months after the statutory deadline.² We conclude that Krekelberg’s petition was untimely. *See Thole*, 831 N.W.2d at 19.

In the commissioner’s brief to this court, he argues that the district court properly dismissed Krekelberg’s petition for lack of “subject matter jurisdiction.” We disagree that subject-matter jurisdiction is implicated. The filing deadline for a petition seeking judicial review of a license revocation is not a jurisdictional restriction.³ Therefore, the correct focus is on whether Krekelberg’s petition was timely.

Krekelberg contends that the 30-day deadline was extended or renewed when the DVS notified her on July 25, 2016, regarding administrative review. Specifically, Krekelberg argues that the commissioner “waived the time period for statute of limitations for which she could seek judicial review.” Krekelberg points to the following language in

² The district court found that the amended petition, filed on March 24, 2017, under Minn. Stat. § 169A.53, subd. 2(a), was the controlling petition in this case. We agree. Krekelberg’s original petition was filed on March 20, 2017, and requested relief under Minn. Stat. § 171.19, which recognizes a right to seek a hearing in district court after revocation and to petition for reinstatement of driving privileges. Review under Minn. Stat. § 171.19 does not apply here because Krekelberg’s driver’s license was revoked for failing a urine test under Minn. Stat. § 169A.52, and thus she had to obtain judicial review under Minn. Stat. § 169A.53. Minn. Stat. § 169A.53, subds. 1, 2. Section 171.19 explicitly states that it applies, “except where the license is revoked or disqualified under section 169A.52.”

³ Recently, the supreme court has clarified that there is “a critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule.” *Reed v. State*, 793 N.W.2d 725, 731 (Minn. 2010) (quotation omitted); *see also In re Civil Commitment of Giem*, 742 N.W.2d 422, 427 (Minn. 2007) (“[T]here is a fundamental difference between finding that a deadline is mandatory and concluding that it operates to take away the district court’s authority to act.”); *Johnson v. City of Duluth*, 903 N.W.2d 1, 3 (Minn. App. 2017) (stating that timeliness requirements are “procedural tools” that do not divest a district court of jurisdiction), *review denied* (Minn. Dec. 19, 2017).

the July 25 letter: “You have the right to either go back to court and request an[] Implied Consent hearing or petition the Attorney General’s Office to have the Implied Consent charges dismissed.” We are not persuaded. First, nothing in the DVS’s letter expressly or impliedly waived the 30-day deadline to file for judicial review. Second, DVS has no authority to alter or extend filing deadlines established by statute. *Langer v. Comm’r of Revenue*, 773 N.W.2d 77, 81 (Minn. 2009) (“Appeal periods in statutory proceedings are peculiarly within the legislative domain, and the courts and administrative agencies have no power to extend or modify the periods of limitation prescribed by statute.”).

The district court correctly determined that Krekelberg’s petition was filed after the statutory deadline had expired, and, therefore, properly granted the motion to dismiss.

II. Krekelberg’s due-process rights were not violated.

A. Procedural due process

Krekelberg asserts that the revocation of her driver’s license violated her procedural due-process rights. Krekelberg challenges the adequacy of the notice she received regarding the availability of judicial review and alleges that her procedural due-process rights were denied “by misleading oral and written statements by [an] agent of Department of Public Safety.” Krekelberg also argues that she was not given prompt, meaningful administrative review. We review procedural due-process challenges de novo. *Bendorf v. Comm’r of Pub. Safety*, 727 N.W.2d 410, 413 (Minn. 2007).

The United States and Minnesota Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. To determine whether a government action violates procedural

due process, this court must “identify whether the government has deprived the individual of a protected life, liberty, or property interest.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Krekelberg has satisfied this step, since a driver’s license is a protected property interest, subject to due-process protection. *McShane v. Comm’r of Pub. Safety*, 377 N.W.2d 479, 482 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986). If the government has deprived a person of a protected interest, the court must determine if the “procedures followed by the [government] were constitutionally sufficient.” *Sawh*, 823 N.W.2d at 632 (quoting *Swarthout v. Cooke*, 562 U.S. 216, 219, 131 S. Ct. 859, 861 (2011)).

Adequate notice of judicial review

“[S]tate action affecting an interest in life, liberty or property requires the state to provide the burdened party with notice and an opportunity to be heard.” *McShane*, 377 N.W.2d at 482. To satisfy the due-process notice requirement, a burdened party must receive “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at 483 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950)).

Krekelberg does not dispute that DVS initially notified her of her impending license revocation on June 10, 2016. Also, Krekelberg does not challenge the adequacy of this notice. The June 10 notice stated that, to challenge revocation, a “petition [for judicial review] must be filed with the court within 33 days after the mailing date of this notice and order of revocation as indicated on this notice.” We conclude that the June 10 letter

informed Krekelberg about the “pendency of the action” and afforded her the opportunity to present her objections. *See McShane*, 377 N.W.2d at 483.

Krekelberg asserts that the review notice sent on July 25, 2016, denied her due process because it was “misleading and prevented her from timely seeking judicial review.” Krekelberg points to the following language: “You have the right to either go back to court and request an[] Implied Consent hearing or petition the Attorney General’s Office to have the Implied Consent charges dismissed.” We are not persuaded. The July 25 letter generally described Krekelberg’s “right to challenge the cancellation and revocation, both through an administrative appeal process and through a petition for judicial review.”

Krekelberg claims her case is similar to *Plocher v. Comm’r of Pub. Safety*, in which this court found that Plocher was deprived of procedural due process. 681 N.W.2d 698, 705 (Minn. App. 2004). Plocher received a notice and order of revocation that stated that he must file a petition for judicial review within 30 days of receiving the notice. *Id.* at 700. Because Minn. Stat. § 169A.52, subd. 6 (2004), provided that a mailed notice and order of revocation is deemed received three days after mailing, we held the DVS letter to Plocher mislead him about the filing deadline and, therefore, denied due process. *Id.* at 704-05.

Here, the June 10 notice informed Krekelberg that she had 33 days to petition for review, so the DVS notice satisfied the standard identified in *Plocher*. Krekelberg asserts that the July 25 letter was “actively misleading” because it indicated she could petition for judicial review, even though the time for doing so had expired. While the July 25 letter could have been more clearly written, it was not misleading, particularly when read

together with the June 10 notice. We conclude that Krekelberg was provided with adequate notice of the opportunity to seek judicial review of her license revocation.

Meaningful administrative review

Next, Krekelberg asserts that she was denied meaningful administrative review of her license revocation.⁴ To determine whether an individual's procedural due-process rights have been abridged by the license revocation procedures, we apply the three-factor balancing test the United States Supreme Court announced in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976). *Williams v. Comm'r of Pub. Safety*, 830 N.W.2d 442, 446 (Minn. App. 2013), *review denied* (Minn. July 16, 2013).

The first *Mathews* factor analyzes “the private interest that will be affected by the official action.” *Bendorf*, 727 N.W.2d at 416. In weighing a private interest, this court considers (1) the duration of the deprivation; i.e., the license revocation, (2) the availability of hardship relief, and (3) the availability of prompt, meaningful review. *Williams*, 830 N.W.2d at 446. Krekelberg appears to challenge only the availability of prompt, meaningful review. Krekelberg argues that DVS's advice to “continue down an administrative review path” resulted in a “ cursory review, with no explanation for its denial, no cross-examination or right to present witnesses”; therefore, administrative review was “meaningless.” Krekelberg relies on *Fedziuck v. Comm'r of Pub. Safety*, where the supreme court held that administrative review “although prompt, d[id] not provide a

⁴ Krekelberg suggests that the denial of a prompt, meaningful administrative review was a denial of her substantive due process rights. But whether a petitioner is provided with a prompt, meaningful review is a procedural due process issue. See *McShane*, 377 N.W.2d at 482.

sufficiently meaningful review.” 696 N.W.2d 340, 347 (Minn. 2005). Krekelberg was provided an explanation for the commissioner’s denial in both the June 28 and July 25 letters. Due-process analysis is flexible and “calls for such procedural protections as the particular situation demands.” See *Bendorf*, 727 N.W.2d at 415. We conclude that the administrative review provided to Krekelberg was meaningful.

The second *Mathews* factor considers the likelihood of an erroneous deprivation of the private interest involved. *Id.* at 416. The Minnesota Supreme Court has held that the procedural protections in the driver’s license revocation statute adequately protect against the risk of erroneous deprivation. *Hamilton v. Comm’r of Pub. Safety*, d, 724 (Minn. 1999) (“We have, in the past, held that the risk of an erroneous revocation under Minnesota’s driver’s license revocation system is within constitutional limits.”). We see no basis for distinguishing *Hamilton*.

Finally, we consider the government’s interest under the third *Mathews* factor. *Bendorf*, 727 N.W.2d at 416. The supreme court has held that impaired “drivers pose a severe threat to the health and safety of the citizens of Minnesota.” *Id.* at 416-17 (quotation omitted). The state, therefore, has a compelling interest in protecting the safety of citizens on the highway, which justifies the commissioner’s efforts to keep impaired drivers off the road. *Id.* In addition, the state has an interest in avoiding the increased costs and administrative burdens that additional procedures would entail. *Sawh*, 823 N.W.2d at 635.

The “procedural due process test of *Mathews* leaves us then to weigh the impact on [Krekelberg’s] private interests against the state’s interests.” *Bendorf*, 727 N.W.2d at 417. Krekelberg asserts that she has been deprived of her driving privileges “unless she

undergoes treatment.” On balance, the government’s interest in keeping impaired drivers off the road outweighs the risk of temporary erroneous deprivation of Krekelberg’s driving privileges. After balancing the *Mathews* factors, we conclude that Krekelberg’s right to a meaningful post-revocation review was not violated.

B. Substantive due process

The Due Process Clauses of the United States and Minnesota Constitutions “prohibit certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them.” *State v. Bernard*, 859 N.W.2d 762, 773 (Minn. 2015) (quotation omitted). A person challenging the “constitutionality of a statute must overcome every presumption in favor of its constitutionality.” *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803, 805 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). “When analyzing whether legislation violates substantive due process rights, [Minnesota courts] apply the rational basis test unless a fundamental right is involved.” *In re Individual 35W Bridge Litigation*, 806 N.W.2d at 830. Under this test, “legislation is examined to determine whether it is rationally related to a legitimate government interest.” *Id.* A law “will fail rational basis review only when it rests on grounds irrelevant to the achievement of a plausible governmental objective.” *Lukkason*, 590 N.W.2d at 806. The law cannot be “unreasonable, arbitrary, or capricious.” *Id.*

Minnesota law permits administrative review of a driver’s license revocation, and requires that the commissioner must “report in writing the results of the review” within 15 days. Minn. Stat. § 169A.53, subd. 1(a) (2016). The commissioner must “review the order, the evidence upon which the order was based, and any other material information brought

to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order.” *Id.* Krekelberg argues that it is “undisputed that she should have prevailed” in the administrative review because the current version of the statute, Minn. Stat. § 169A.53, subd. 3(b)(12), requires the commissioner to consider whether a person can “prove the defense of controlled substance use in accordance with a prescription.” We disagree.

The implied consent statute in effect at the time of Krekelberg’s arrest did not explicitly provide that prescription drug use is a defense to revocation. Krekelberg was arrested for a DWI in April 2015. At that time, the applicable statute, Minn. Stat. § 169A.53, subd. 3(b) (2015), provided that the scope of the administrative hearing is limited to the issues in clauses (1) through (10), which did not include defenses for prescription drug use or necessity. *See, e.g., Axelberg v. Comm’r of Pub. Safety*, 848 N.W.2d 206, 208 (Minn. 2014) (“Specifically, under Minn. Stat. § 169A.53, subd. 3(b), [t]he scope of the hearing is limited to the issues in clauses (1) to (10). None of the 10 issues listed involve the necessity defense.” (alteration in original) (quotation omitted)). When section 169A.53 was amended to include a necessity defense, the legislature specifically stated that this change would be effective “August 1, 2015, and applies to crimes committed on or after that date.” 2015 Minn. Laws ch. 65, art. 6, § 10 at 50. Section 169A.53 also has been amended to explicitly allow for prescription drug use as a defense, but that change in the statute became effective “July 1, 2017, and applies to acts committed on or after that date.” 2017 Minn. Laws ch. 83, art. 2, § 8 at 7. Krekelberg’s arrest for

impaired driving occurred more than two years before the legislature enacted the prescription drug use defense.

Krekelberg's appeal requires us to consider whether the lack of a prescription drug use defense to license revocation was rationally related to a legitimate government interest. *See In re Individual 35W Bridge Litigation*, 806 N.W.2d at 830. The commissioner argues that, "[p]ermitting the prescription drug defense in criminal cases, but not permit[ing] such a defense in implied consent cases serves to further the compelling governmental interest of protecting the traveling public from impaired drivers." We agree that the state protected the "traveling public" by revoking the licenses of impaired drivers, and therefore conclude that the implied consent statute effective in April 2015 passes rational basis review.

Finally, Krekelberg asserts that "it is undisputed that she should have prevailed" in her administrative review because she was taking medicine as prescribed. We disagree. There is no record evidence that Krekelberg was not impaired while taking prescribed medication in the recommended dose. The analysis of her urine sample indicated the presence of amphetamine. Also, Krekelberg's doctor stated that her prescribed medication included "various side effects," including "physical movements" that she "does not have control over." In fact, the current statute provides that a court may determine, by a preponderance of the evidence, "that the use of the [prescription] controlled substance impaired the person's ability to operate a motor vehicle." Minn. Stat. § 169A.53, subd. 3(i) (2017). Thus, even if the prescription drug use defense had been available to Krekelberg,

it is far from certain that the administrative review would have resulted in a reversal of her revocation. Accordingly, Krekelberg's substantive due-process claim fails.

Affirmed.