THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2021-0014

DIANNA RUDDER
v.
DIRECTOR, NEW HAMPSHIRE DIVISION OF MOTOR VEHICLES

APPELLANT'S REPLY

NOW COMES Dianna Rudder, through her attorneys DesMeules Olmstead & Ostler, and pursuant to New Hampshire Supreme Court Rule 16(5) provides the following reply to the State's Memorandum of Law:

The State's Memorandum argues that the Court should effectively, by judicial decision, insert the phrase "and R.S.A. 265-A:30" into the first sentence of the definition of "Way" under R.S.A. 259:125, II. According to the State, the legislative intent and sound public policy support such a change. These arguments are unpersuasive for several reasons.

A. The Statute is Clear and Resort to Legislative Intent is Inappropriate

In interpreting a statute, the Court looks only to legislative intent if the statutory language is ambiguous. *See, e.g.*, Forster v. Town of Henniker, 167 N.H. 745, 750, 118 A.3d 1016, 1020 (2015) ("[W]e will not examine legislative history" unless the statute is ambiguous). The issue

in this case is which statutory definition of "Way" applies to Administrative License Suspension proceedings. The statute is clear that R.S.A. 259:125, II only applies to four statutes - not including ALS proceedings. Thus, the definition of "Way" under R.S.A. 259:125, I applies. Because the statute is unambiguous, the Court does not consider the legislative intent, and no further inquiry is appropriate.

B. There is no Legislative History Indicating that R.S.A. 259:125, II is Intended to Apply to ALS Proceedings

Even if considered, the legislative history does not support the claim that the legislature specifically intended ALS statutes to be subject to the broader definition of "way." Rather, the history shows that the legislature was specific and deliberate in deciding which statutes to apply R.S.A. 259:125, II to, and did not include the ALS statutes.

The legislative history from 1981 indicates an effort to "stiffen" the DWI laws, however, these statutory changes occurred over a decade before the first ALS statute was even created. *See* 1992 HB 689 (establishing the first version of the ALS statute under R.S.A. 265:91-a) (also available at http://www.gencourt.state.nh.us/legislation/1992/hb0689.html) (*last accessed* May 11, 2021). The issue in Ms. Rudder's case is which version of "Way" applies to ALS proceedings - the 1981 legislature could not have intended to change what did not yet exist.

Subsequent legislative amendments to R.S.A. 259:125, II actually contradict - rather than support - the State's arguments. 2005 HB 298 - referenced by the State at SA 73-83 - was "merely a consolidation of all the DWI statutes, putting them in one place, which makes it easier for the police, the public and attorneys to find them." SA 76. During this statutory tune-up, the legislature specifically changed the definition of "way" under R.S.A. 259:125, II to swap out the old criminal DWI statutes (R.S.A. 265:82 and 265:82-a) for the new ones (R.S.A. 265-A:2, I and 265-A:3, respectively). In doing so, the legislature left in place the only other statute (R.S.A. 265:79) which was subject to the broader definition of "way." Notably, the legislature did not include the new ALS statute R.S.A. 265-A:30 in subsection II, nor is there any indication that they considered doing so.

Later, in 2007 HB 1206, the legislature added *another* statute, RSA 265:71, to subsection II. Again, the legislature could have added ALS proceedings to subsection II, but they did not. The only other amendments to R.S.A. 259:125 predate the ALS statute. The legislature has thus been very deliberate in limiting which statutes to apply subsection II to, and has not included ALS proceedings.

There is simply no legislative history to suggest that the goal of the general assembly was for R.S.A. 259:125, II to apply to ALS proceedings. If it is true, as the State argues, that this was in fact the legislature's intent, then the legislature has failed spectacularly in making its intent known.

C. It is the Province of the Legislature to Determine the Statutory Definitions Applicable to ALS Proceedings

To the extent that the State argues that ALS and DWI cases are so similar that it just makes sense that the same definition of "Way" should apply to both proceedings, this is an argument properly addressed to the legislature - not the judiciary. "[R]ewriting statutes is a task reserved for the legislature." State v. Dor, 165 N.H. 198, 203 (2013). "Should the legislature find the result in this case [unfortunate], it should ... revisit the [statute]." State v. Lamy, 158 N.H. 511, 521, 969 A.2d 451, 460 (2009).

There are two possible reasons why ALS proceedings are not included under R.S.A. 259:125, II: either the legislature does not *want* them included, or the legislature simply has not considered the issue. Under either circumstance, it is an issue for the legislature to address - it is not for the courts to rewrite the statutes or to "add language that the legislature did not see fit to include." Evans v. J Four Realty, 164 N.H. 570, 572 (2013).

WHEREFORE, for the reasons stated herein, Ms. Rudder respectfully requests that the Administrative License Suspension in this matter be **VACATED.**

Respectfully submitted on May 11, 2021

/s/ Cabot Teachout
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