

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-209

DECEMBER TERM, 2001

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	
Alan H. Ligourie	}	Unit No. 3, Washington
	}	Circuit
	}	
	}	DOCKET NO. 12-1-01 Wncs
	}	
	}	Trial Judge: David Suntag

In the above-entitled cause, the Clerk will enter:

Defendant appeals the suspension of his driver's license, arguing that the district court erred by not dismissing the civil suspension proceedings based on its failure to hold a final hearing within the forty-two-day statutory time limit. We affirm.

The facts are undisputed. On August 15, 1999, defendant was arrested for driving while intoxicated. The district court held a preliminary civil suspension hearing on August 31 and scheduled a final hearing for September 21. On September 15, the court issued an order stating that it was continuing the final hearing beyond the statutory time limit for good cause, namely, that the scheduled time was needed for a bail hearing in a felony case. See 23 V.S.A. 1205(h) (final civil suspension hearing must be held within forty-two days of alleged offense unless defendant consents to hearing outside that time period or good cause is shown). That same day, the hearing was rescheduled for October 1, the forty-seventh day after the alleged offense took place.

At the start of the October 1 hearing, defense counsel stated that the statutory time period for holding a final civil suspension hearing had passed. When the court indicated that it had continued the hearing for good cause, defense counsel argued that 1205(h) did not authorize the court to continue a final hearing beyond the statutory time limit for good cause based on its own motion. The court disagreed and refused to dismiss the civil suspension proceedings. In a later written decision, the court explained that it was statutorily obligated to hold bail hearings promptly, and that 1205(h) did not preclude it from balancing competing statutory obligations. Judgment was eventually entered against defendant following transfer of the case to a different venue, and this Court granted defendant's motion for a stay pending appeal. On appeal, defendant argues that (1) the forty-two-day statutory time limit established in 1205(h) for holding a final civil suspension hearing is mandatory; (2) the district court lacked the authority to continue the hearing for good cause on its own motion; and (3) even if the court had such authority, it could do so only after holding a hearing to allow him an opportunity to argue against finding good cause for a delay beyond the statutory time limit.

Defendant's first argument has already been resolved in his favor by this Court's recent case law:

[T]he language of 23 V.S.A. 1205(h) is mandatory: if a final hearing is not held within forty-two days of the date of the alleged offense, the civil license suspension proceeding must be dismissed unless the State demonstrates either that it had the defendant's consent or good cause for the delay.

State v. Singer, 170 Vt. 346, 351-52, 749 A.2d 614, 618 (2000); accord State v. Tongue, 170 Vt. 409, 412-13, 753 A.2d 356, 358 (2000).

Citing the quoted language regarding the State's obligation to demonstrate good cause, defendant next argues that only the State, and not the district court on its own motion, is statutorily authorized to show good cause. We disagree. We discussed what the State needed to demonstrate in Singer and Tongue simply because in those cases the State happened to be the entity seeking a continuance based on good cause; we did not mean to imply that the district court was foreclosed from continuing a hearing on its own motion based on a finding of good cause. Section 1205(h) provides, in relevant part, that a final hearing may not "occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown." This language does not suggest that good cause may be shown only by the State; indeed, the sentence is written in the passive voice, without any restriction as to who may show good cause. Defendant argues that the Legislature could have added a phrase that empowered the court to act "on its own motion," similar to what it has done in other contexts. That may be so, but the Legislature could have also used language making it clear that only the State could show good cause. The statutory language is not so restricted, however, and we will not read such a restriction into it without a clear indication that that is what the Legislature intended. See State v. O'Neill, 165 Vt. 270, 275, 682 A.2d 943, 946 (1996) ("It is inappropriate to read into a statute something which is not there unless it is necessary in order to make the statute effective.").

Next, defendant argues that the district court was required to provide notice and an opportunity for him to be heard prior to its decision to continue the final hearing based on good cause. Again, we disagree. Six days before the scheduled final hearing, the district court issued an entry order stating that the hearing would be continued for good cause. Defendant did not respond to the entry order until the continued hearing was held on October 1, at which time he argued that only the State, and not the court, could seek a good-cause determination. Thus, defendant was notified of the district court's decision to continue the final hearing for good cause. Further, he had an opportunity to contest the court's determination at the final hearing, but did not do so, arguing only that the court lacked the authority to find good cause on its own motion. Nor does he contend on appeal that there was no good cause for the continuance beyond the statutory time limit. In short, defendant had notice and an opportunity to contest the court's ruling, but failed to do so. He has also failed to demonstrate either that he was entitled to contest the court's ruling before it was made, or that he was prejudiced by the lack of an opportunity to do so.

Given the state of the record due to defendant's failure to challenge the district court's good-cause determination, we decline to consider whether good cause for a continuance existed in this case. We have reservations, however, as to whether good cause to extend a final suspension hearing beyond the statutory deadline could ordinarily be based on court scheduling conflicts. Continuances of final suspension hearings beyond the statutory deadline based on mere scheduling conflicts could well wind up eviscerating 1205(h).

Affirmed; the stay of the license suspension pending appeal is vacated.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice