

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

HAROLD ALFRED DUTRA, JR.,

Plaintiff and Appellant,

v.

DEPARTMENT OF MOTOR VEHICLES,

Defendant and Respondent.

A145755

(San Mateo County
Super. Ct. No. CIV-525413)

Harold Alfred Dutra, Jr. appeals from the denial of his petition for writ of mandate seeking to compel the Department of Motor Vehicles (DMV) to reissue his Class B commercial driver’s license. We affirm.

I. BACKGROUND

Dutra received a restricted¹ Class B commercial license on February 7, 1992, which expired on August 9, 1994. Although there is no record of this particular license being renewed, Dutra continued to drive commercial trucks and vehicles in California for approximately twenty years. Despite his ostensible commercial driver’s license, in May 2009, Dutra sought and obtained a California identification card, which was subject to renewal by mail.

While on vacation in 2013, Dutra lost the physical copy of his license when he was boating in Lake Tahoe. When he contacted the DMV to get a replacement license,

¹ Vehicle Code section 15263, subdivision (a) “restricts the licenseholder from operating a commercial motor vehicle . . . equipped with a manual transmission.”

he was advised that his license had expired in 1994 and there were no DMV records indicating that he had a current, valid license. Due to routine DMV purging in 1999, most of Dutra's records were destroyed. A summary of Dutra's driving record and licensing status is set forth in a somewhat cryptic DMV printout. According to the DMV printout, Dutra was cited for violations in 1998 (Veh. Code,² § 22348, subd. (c) [lane violation]), 2006 (Harb. & Nav. Code § 655, subd. (c) [boating while intoxicated]), 2008 (§ 23222, subd. (a) [open container]), and 2010 (§ 27315, subd. (e) [failure to wear seatbelt as passenger]).

The DMV printout indicates that Dutra's driving privilege was suspended in 2007, following the boating while intoxicated offense that occurred in 2006. The 2007 suspension was thereafter lifted by operation of law pursuant to *Cinquegrani v. Department of Motor Vehicles* (2008) 163 Cal.App.4th 741, 744, which upheld a trial court's decision enjoining the state from proceeding with unauthorized license suspensions on the ground that the DMV does not have authority to automatically suspend the drivers' licenses of individuals convicted of boating while intoxicated. Dutra's driving privilege was apparently suspended again in 2011, after failing to appear in connection with the citation he received as a passenger in 2010 for not wearing a seatbelt. The 2011 suspension was later set aside.

On November 13, 2014, Dutra filed a written application for a renewal of his commercial license. He already had on file a valid medical certificate that would not expire until August 15, 2015. Dutra, however, did not complete the renewal process, which involved various tests and fees, and instead sought a writ of administrative mandamus. In his supporting declaration, Dutra averred that he needed the court to "order the DMV to re-issue my commercial class 'B' license as a permanent license, which it had been until the DMV 'lost' all record of my license"

In an amended petition for writ of administrative mandate filed in August 2014, Dutra alleged that he had "been . . . licensed to operate commercial vehicles and trucks in

² All further undesignated code references are to the Vehicle Code.

the State of California, holding a ‘Class B’ commercial license . . . for about twenty years.” Dutra claimed the DMV was acting in an “arbitrary and capricious” manner “in that it refuses to correct its records or otherwise re-issue . . . his Class B license.” He further alleged that he “received no notice from the DMV that it was suspending, revoking, or otherwise cancelling” his license. Dutra sought to compel the DMV “to set aside its decision” and to re-issue his commercial license.

In opposition, the DMV asserted that in the more than two decades that had passed since Dutra’s license expired on August 9, 1994, he had never successfully completed the required application process to renew his license. The DMV maintained that it had no legal duty to renew a license of a driver who had not successfully completed the renewal application. The DMV further asserted that Dutra was not entitled to a “perpetual” or “permanent” license.

At the May 18, 2015 hearing on the amended petition, Dutra’s counsel attempted to introduce additional evidence not in the administrative record before the court. The trial court admonished counsel that it would not entertain the extra-record evidence or argument on this evidence, and further advised counsel that the appropriate method for introducing such evidence would be in a motion to augment the record prior to the hearing, which had not been done.

On May 22, 2015, the trial court issued its statement of decision, denying Dutra’s amended petition. That same day, Dutra filed a motion to augment the record.³ Judgment was entered in favor of the DMV on June 24, 2015 and the instant appeal followed.

II. DISCUSSION

A. *Standards of Review*

In ruling on an application for a writ of mandate, the trial court independently determines whether the weight of the evidence supports the administrative decision. (*Lake v. Reed* (1997) 16 Cal.4th 448, 456-457.) However, “a trial court must afford a

³ It is unclear from the record if the trial court ever ruled on the motion to augment.

strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

On appeal, we review the record to determine whether the trial court’s findings are supported by substantial evidence. We resolve all evidentiary conflicts and draw all reasonable inferences in favor of the trial court’s decision, and may overturn the trial court’s factual findings only if the evidence is insufficient as a matter of law to sustain them. (*Lake v. Reed, supra*, 16 Cal.4th at p. 457.) However, where the determinative issue is legal rather than factual we exercise our independent judgment. (*Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1233.)

B. Analysis

1. Due Process

Dutra argues that his due process rights were violated when the DMV suspended/revoked his commercial license without notice and an opportunity to be heard. He also claims his concomitant right to discovery was violated because he was never notified by the DMV of his right to review the department’s records. (See § 14104 [“The notice of hearing shall also include a statement of the discovery rights of the applicant or licensee to review the department’s records prior to the hearing.”].)

Dutra’s argument rests on the mistaken assumption that his license had been suspended or revoked. Giving deference to the trial court’s factual findings as we must, we conclude there is substantial evidence in the record to support a finding that Dutra’s license simply expired. Dutra presented no evidence that he had renewed or had attempted to renew the commercial license that expired in 1994. Rather, he claimed that he was entitled to a “permanent” license. This contention is utterly without merit.

The state’s regulatory power includes the power to determine when driver’s licenses expire and what individuals have to do to renew them. (See *Serenko v. Bright* (1968) 263 Cal.App.2d 682, 691.) Currently, in California, driver’s licenses, whether standard Class C or commercial Class B, expire every five years on the individual’s

birthday. (See § 12816.) In 1992, licenses were valid for a period of four years. (See Stats.1992, ch. 1240 (A.B. 862), § 3.) Dutra's original Class B license, however, was only valid for two years. Although there is no explanation in the record as to why Dutra's original license expired in two years instead of four years, subdivision (e) of section 12816 authorizes the DMV to "adjust the *expiration date* for any driver's license." (Italics added.) By referencing an "expiration date," the statute clearly contemplates that driver's licenses are for a fixed period and that they do not, as Dutra contends, continue in perpetuity.

Dutra points to various anomalies in his driving record, which suggest that he had a valid license at least until 2011. He further posits that it was simply incongruous for the DMV to twice suspend his driving privilege under an allegedly expired license. Although these inconsistencies tend to support Dutra's position that he had a valid license, in exercising substantial evidence review, the court does not reweigh the evidence, but will uphold a judgment that is supported by substantial evidence, even if substantial evidence to the contrary also exists. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631). Here, despite Dutra's claim that he had a valid license and that the DMV wrongly revoked it or refused to renew it, there was substantial evidence in support of the trial court finding that he let his license expire.

In sum, Dutra's lack of a valid driver's license was not due to any conduct by the DMV. Rather, his unlicensed status resulted from the expiration of his license, which he made no attempt in two decades to renew. Failure to renew one's license does not trigger right to notice and hearing. Accordingly, there is no due process violation.

2. *Evidentiary Claim*

Dutra next complains that the trial court erred when it disregarded relevant evidence. We review any ruling by the trial court as to the admissibility of evidence for an abuse of discretion. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1079.) In order for the trial court to abuse its discretion, its decision must exceed the bounds of reason by being arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Moreover, even where a trial court improperly

excludes evidence, the error does not require reversal of the judgment unless the error resulted in a miscarriage of justice, meaning it is reasonably probable a more favorable result would have been reached absent the error. (Cal. Const., art. VI, § 13; Evid.Code, § 353; *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431-1432.) “ ‘The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Here, even assuming for the sake of argument that Dutra’s belated motion to augment the record was properly before the trial court, it is not reasonably probable that a more favorable result would have been reached absent the error. The challenged evidence consists of paystubs, insurance certificates, and insurance policy provisions. These documents do not establish that Dutra possessed a valid license or suggest that the DMV improperly revoked/suspended or failed to renew his license.

III. DISPOSITION

The judgment is affirmed. The DMV is entitled to recover costs on appeal.

Reardon, Acting P.J.

We concur:

Rivera, J.

Streeter, J.