

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN THE STATE OF DELAWARE

JAMES T. KING, JR., GEORGE)
LEAGER, MARK A. KING, JOHN) C.A. No. 09A-07-002 (JTV)
WAGNER, and PAMELA WAGNER,))
)
Appellants,)
)
v.)
)
DELAWARE HARNESS RACING)
COMMISSION,)
)
Appellee.)

Submitted: October 23, 2010

Decided: January 29, 2010

Noel E. Primos, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Appellants.

Andrew G. Kerber, Esq., Department of Justice, Wilmington, Delaware. Attorney for Appellee.

Upon Consideration of Appellee's
Motion To Dismiss
DENIED

VAUGHN, President Judge

King v. DHRC

C.A. No. 09A-07-002 (JTV)

January 29, 2010

OPINION

This is an appeal from a decision of the Delaware Harness Racing Commission.¹ The Commission moves to dismiss the appeal for lack of subject matter jurisdiction.

FACTS

The Dover Downs Raceway scheduled a Delaware Standardbred Breeders Fund 3 Year Old Filly Trot Final race for April 8, 2009.² The closing time for entry into the race was 12:00 noon on Thursday, April 2, 2009. Mark Waterman and Ollie Ervin, two horsemen, missed the deadline. They appealed to the Commission for a redraw, arguing that the deadline was not properly posted. The appellants objected to a redraw.³ They argued that Waterman and Ervin had missed the deadline and should not be allowed to enter their horses in the Stakes Race under DSBF Rules.

The Commission concluded that Waterman and Ervin were correct and that a redraw of the race was appropriate under United States Trotting Association Rule 14(n).⁴ The race was redrawn and went forward with the appellants', Waterman's,

¹ The appeal was initiated by filing a notice of appeal with a praecipe directing the Prothonotary to issue a citation on appeal. Delaware Harness Racing Commission is hereinafter referred to as the "Commission."

² Delaware Standardbred Breeders Fund is hereinafter referred to as "DSBF."

³ The appellants include James T. King, Jr., George Leager, Mark A. King, John Wagner, and Pamela Wagner.

⁴ United States Trotting Association Rule 14(n), which is entitled "Horses Omitted Through Error," provides:

King v. DHRC

C.A. No. 09A-07-002 (JTV)

January 29, 2010

and Ervin's entries all included. The appeal arises from the Commission's decision to allow Waterman's and Ervin's horses to participate.

PARTIES' CONTENTIONS

The Commission contends that this Court lacks subject matter jurisdiction over the appeal. It contends that appeals from its decisions are governed by 3 *Del. C.* § 10026, which reads as follows:

Any license issued by the Commission shall be subject to suspension or revocation by the Commission for any cause whatsoever which the Commission deems sufficient. . . . The propriety of such action shall be subject to review, upon questions of law only, by the Superior Court of the county within which the license was granted.

The Commission contends that this statute limits appeals to those cases where it suspends or revokes a license, and since no suspension or revocation of license is involved here, the appeal should be dismissed.

The appellants contend that the Commission is ignoring its own rule, which provides:

Within fifteen (15) days after service of a final adjudication

Such drawings shall be final unless there is conclusive evidence that a horse properly declared was omitted from the race through the error of a track or its agent or employee in which event the horse shall be added to the race but given the last post position, provided the error is discovered prior to scratch time or the printing of the program, whichever is sooner. However, in the case of early closers of more than \$10,000.00 and stake and futurity races, the race shall be re-drawn. This shall not apply at extended pari-mutuel meetings in overnight events.

King v. DHRC

C.A. No. 09A-07-002 (JTV)

January 29, 2010

or order of the Commission . . . any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.⁵

The appellants claim that this rule provides a right of appeal from any final adjudication or order of the Commission and has the force and effect of the law pursuant to 3 *Del. C.* § 10005. Section 10005 defines the Commission's purpose, powers and duties, and reads, in pertinent part:

The Commission shall possess all necessary powers and duties to regulate the conduct of all grooms, drivers and owners and their employees, of all harness racing horses entered or to be entered in any harness racing meet authorized by the Commission under this chapter. For this purpose, the said Commission may promulgate and prescribe such rules and regulations as it may deem proper and necessary.

DISCUSSION

The jurisdiction of the Superior Court is defined by the Constitution and the laws of the State of Delaware.⁶ To the extent that this Court has appellate jurisdiction from certain boards and commissions, that jurisdiction is specifically conferred by

⁵ Del. Harness Comm'n R. 10.3.15.

⁶ 10 *Del. C.* § 541; *Sinha v. Bd. of Trustees of Del. Tech. & Comm. College*, 585 A.2d 1310, 1312 (Del. Super. 1990).

King v. DHRC

C.A. No. 09A-07-002 (JTV)

January 29, 2010

statute⁷ or by the Administrative Procedures Act.⁸ Because the Administrative Procedures Act does not apply to decisions of the Commission,⁹ this Court's jurisdiction over the present controversy must arise from a statutory or constitutional source.

The plain language of § 10026 creates a statutory right of appeal to the Superior Court only where a license is suspended or revoked.¹⁰

The right of appeal contained in the Commission's rules is located in a section dealing with disciplinary actions. I am not persuaded that it applies to a decision regarding entries into a race where no disciplinary action is involved. In any event, the Commission's power to make rules and regulations under § 10005 enables the Commission to effectuate its purpose, powers, and duties. The section makes no mention at all of appeals. I conclude that the power given to the Commission by § 10005 does not give the Commission a statutory basis to create a rule which would broaden the right of appeal under § 10026.

Since the decision which is being appealed is not one suspending or revoking a license, there is no right of appeal.

However, prior authorities of this Court have recognized that the decisions of

⁷ *Sinha*, 585 A.2d at 1313.

⁸ 29 *Del. C.* Ch. 101.

⁹ 29 *Del. C.* § 10161.

¹⁰ It is noted that imposition of a fine suspends a license until the fine is paid. *Hochstetler v. Delaware Harness Racing Comm'n*, 2003 WL 549181, at *3 (Del. Super.).

King v. DHRC

C.A. No. 09A-07-002 (JTV)

January 29, 2010

the Commission may be reviewed by a grant of certiorari.¹¹ Therefore, while there is no right of appeal, it is not correct to say that this Court lacks subject matter jurisdiction. The court has subject matter jurisdiction to hear this matter as a petition for a writ of certiorari, applying the standard of review applicable to such petitions.¹²

Therefore, the motion to dismiss for lack of subject matter jurisdiction is ***denied.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

¹¹ *Hochstetler*, 2003 WL 549181, at *3 (citing *Lineweaver v. Delaware Harness Racing Comm'n*, 1998 WL 731564 (Del. Super.)).

¹² *Id.*