

2010 WL 3997177

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of New Mexico.

Melvin Vince MOFFITT, Petitioner-Appellant,

v.

MOTOR VEHICLE DIVISION, DEPARTMENT
OF TAXATION AND REVENUE, State of New
Mexico, Ken Ortiz, Director, Respondent-Appellee.

No. 29,936. | Feb. 15, 2010.

West KeySummary

1 Automobiles

 [Administrative Procedure in General](#)

Driver received adequate notice of his license revocation hearing, even though he did not actually receive notice of the hearing. Actual notice was not required in administrative license hearings, and the Motor Vehicle Division took actions that were reasonably calculated to provide notice of the hearing by sending notice by certified mail to the driver's counsel. The fact that it was never picked up did not mean that the Division failed to give reasonable notice of the hearing.

Appeal From The District Court Of San Juan County Thomas J. Hynes, District Judge.

Attorneys and Law Firms

Titus & Murphy Law Firm, [Victor A. Titus](#), Farmington, NM, for Appellant.

Taxation and Revenue Department, [Julia Belles](#), Special Assistant Attorney General, Santa Fe, NM, for Appellee.

Opinion

MEMORANDUM OPINION

[BUSTAMANTE](#), Judge.

*1 Moffitt appeals from the decision of the district court on appeal from a driver's license revocation. His sole issue in the district court and on appeal is that he did not get proper notice of the license revocation hearing. We proposed to affirm the district court's determination that he had been given notice of the hearing. Moffitt has timely responded. We have considered his arguments and affirm.

In our notice, we proposed to conclude that even though Moffitt did not actually receive the notice of the hearing, he had been given adequate notice. In so doing, we relied on [Maso v. Taxation & Revenue Dep't](#), 2004-NMSC-028, ¶ 10, 136 N.M. 161, 96 P.3d 286. Moffitt contends that this Court is ignoring established New Mexico authority stating that certified mail can only show good notice if it is picked up. [Moya v. United States](#), 35 F.3d 501 (10th Cir.1994). We have no intent to overrule *Moya*, but find that it has no relevance in this case. The issue is not whether Moffitt received actual notice of the hearing, but whether the administrative agency took reasonable measures with regard to notice such as would, under all the circumstances, reasonably apprise interested parties of the pendency of an action. The fact that the certified mail was never picked up is relevant only if Moffitt must receive actual notice. Moffitt ignores our cases stating that actual notice is not required in administrative license revocation hearings.

We are required to consider whether the actions taken by the Motor Vehicle Division were reasonably calculated to provide notice of the revocation hearing. As we pointed out in our calendar notice, notice of the hearing was sent by certified mail to Moffitt's counsel. Counsel received the notice and requested a continuance, which was granted. The hearing was reset and once again, the Division sent notice of the hearing by certified mail to Moffitt's counsel. This time, however, it was never picked up. That fact does not mean that the Division failed to give reasonable notice of the hearing.

Moffitt contends that the “hysteria” surrounding driving while intoxicated is depriving people of basic due process. We reject Moffitt's broad assertion. We have recognized that due process does apply in such hearings. However, “[I]n administrative proceedings due process is flexible in nature

and may adhere to such requisite procedural protections as the particular situation demands.” *State ex rel. Battershell v. City of Albuquerque*, 108 N.M. 658, 662, 777 P.2d 386, 390 (Ct.App.1989). We conclude that the Division did what was needed under the circumstances to notify Moffitt of the hearing.

Therefore, for the reasons stated herein and in the notice of proposed disposition, we affirm.

IT IS SO ORDERED.

WE CONCUR: **JAMES J. WECHSLER** and **MICHAEL E. VIGIL**, Judges.

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