SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

889

CA 24-01660

PRESENT: WHALEN, P.J., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

IN THE MATTER OF JOSHUA BOUCK, PETITIONER-RESPONDENT,

V MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES,
RESPONDENT-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (RACHEL E. RAIMONDI OF COUNSEL), FOR RESPONDENT-APPELLANT.

LAW OFFICE OF KEITH D. MILLER, LIVERPOOL (KEITH D. MILLER OF COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Herkimer County (Mark R. Rose, J.), entered June 6, 2024, in a proceeding pursuant to CPLR article 78. The judgment granted the petition and vacated the determination of an Administrative Law Judge.

It is hereby ORDERED that the judgment so appealed from is unanimously vacated, the determination is confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, upon a Department of Motor Vehicles fatality hearing, suspending his driving privileges based on a finding that he violated Vehicle and Traffic Law § 1212 (reckless driving) (*see* Vehicle and Traffic Law § 510 [3]). Respondent appeals from a judgment that, inter alia, vacated the determination. The underlying accident occurred when petitioner parked a tow truck on the side of a highway, partially obstructing the driving lane, and a passenger vehicle struck the tow truck.

As a preliminary matter, we conclude that Supreme Court should have transferred the proceeding to this Court (*see Matter of Corbett v Schroeder*, 214 AD3d 1407, 1407-1408 [4th Dept 2023]). The petition raises a question of substantial evidence, and the remaining points made by petitioner are not objections that could have terminated the proceeding within the meaning of CPLR 7804 (g). We therefore vacate the judgment, and we treat the proceeding as if it had been properly transferred and review petitioner's contentions de novo (*see Corbett*, 214 AD3d at 1407-1408; *Matter of Elderwood at Cheektowaga v Zucker*, 188 AD3d 1578, 1579 [4th Dept 2020]; *Matter of Hope Day Care, LLC v New York State Off. of Children & Family Servs.*, 162 AD3d 1639, 1640

[4th Dept 2018], *lv denied* 32 NY3d 905 [2018]).

Contrary to petitioner's contention, the determination is supported by substantial evidence (*see Corbett*, 214 AD3d at 1408; *Matter of Thompson v New York State Dept. of Motor Vehs.*, 170 AD3d 1657, 1657-1658 [4th Dept 2019]; *see generally Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 [1974]). The New York State Police collision reconstruction findings report admitted into evidence during the administrative law hearing concluded that the primary contributing factor to the fatal accident was "improper lane usage on the part of [petitioner,]" inasmuch as his parked vehicle blocked more than five feet of the driving lane, combined with the fact that the "amber hazard lighting" on petitioner's vehicle was "obstructed to approaching vehicles." That provided a "reasonable and plausible" basis for the finding of recklessness (*Matter of Haug v State Univ. of N.Y. at Potsdam*, 32 NY3d 1044, 1046 [2018] [internal quotation marks omitted]). Petitioner's conflicting testimony presented a credibility issue that the Administrative Law Judge (ALJ) was entitled to resolve against petitioner (*see Matter of Berenhaus v Ward*, 70 NY2d 436, 445 [1987]).

We further reject petitioner's contention that it was an error of law for the ALJ to conclude that a person can be culpable of recklessness under Vehicle and Traffic Law § 1212 even though their vehicle was stationary and no other traffic infraction was established. When evaluating whether an ALJ's interpretation of a statute was affected by an error of law, "[i]t is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld" (*Matter of Howard v Wyman*, 28 NY2d 434, 438 [1971], *rearg denied* 29 NY2d 749 [1971]; *cf. Matter of Universal Metal & Ore, Inc. v Westchester County Solid Waste Commn.*, 145 AD3d 46, 56 [2d Dept 2016]). Section 1212 (a) defines reckless driving as "driving or using any motor vehicle . . . in a manner which unreasonably interferes with the free and proper use of the public highway or any parking lot, or unreasonably endangers users of the public highway or any parking lot." Addressing "the plain language of the statute[ ] as the best evidence of legislative intent" (*Matter of Synergy, LLC v Kibler*, 124 AD3d 1261, 1262 [4th Dept 2015], *lv denied* 25 NY3d 967 [2015] [internal quotation marks omitted]), we conclude that a reasonable reading of section 1212 is that a finding of culpability for recklessness does not require any other traffic violation to be established. Furthermore, the language "or using" in the statute implies that there are activities other than driving that can result in culpability, and it is a fundamental principal of construction that a statute "should [be] construe[d] . . . [so as] 'to avoid rendering any of its language superfluous' " (*Van Wie Chevrolet, Inc. v General Motors, LLC*, 145 AD3d 1, 9 [4th Dept 2016], *lv denied* 28 NY3d 913 [2017]). Petitioner's contention that his vehicle was engaged in a "hazardous operation" (Vehicle and Traffic Law § 117-b) and was legally parked pursuant to Vehicle and Traffic Law § 1144-a (b) was not raised during the administrative hearing and, therefore, is not preserved for our review (*see Matter of Cornell v*

Annucci, 173 AD3d 1760, 1761 [4th Dept 2019]; *Matter of Bernstein v Department of State, Div. of Licensing Servs.*, 96 AD3d 1183, 1184-1185 [3d Dept 2012]).

We have reviewed petitioner's remaining contention and conclude that it does not require a different result.

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court