

**FILED:** November 6, 2002

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JENNIFER YOUNG,

Appellant,

v.

MULTNOMAH COUNTY  
SHERIFF DAN NOELLE,

Respondent.

0010-10901; A113123

Appeal from Circuit Court, Multnomah County.

William C. Snouffer, Judge.

Argued and submitted July 2, 2002.

James E. Leuenberger argued the cause and filed the briefs for appellant.

Susan M. Dunaway, Assistant County Attorney, argued the cause for respondent.  
With her on the brief was Thomas Sponsler, County Attorney for  
Multnomah County, Oregon.

Before Landau, Presiding Judge, and Brewer and Schuman, Judges.

SCHUMAN, J.

Reversed and remanded.

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Appellant

- No costs allowed.  
 Costs allowed, payable by: Respondent  
 Costs allowed, to abide the outcome on remand, payable by:
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1 SCHUMAN, J.

2 The Sheriff of Multnomah County revoked petitioner's concealed handgun  
3 license (CHL). She petitioned for review in the circuit court, but the court dismissed her  
4 petition because it was not timely filed within the 30-day limit established by ORS  
5 166.293(5). Petitioner appeals. The dispositive issue is whether the 30-day period began  
6 to run when the sheriff sent petitioner notice of the revocation, as the sheriff contends  
7 and the trial court concluded, or when she actually received it, as petitioner contends.  
8 We agree with petitioner and reverse.

9 The following facts come from the parties' briefs and the trial court's  
10 undisputed findings. In 1997, the sheriff granted petitioner's application for a CHL.  
11 However, as a result of two incidents in which she allegedly threatened women in her  
12 neighborhood whom she believed to be prostitutes, the sheriff sent her notice on January  
13 27, 1999, that he was revoking her CHL because she was "a danger to others." ORS  
14 166.293(2). As required by statute, the sheriff sent that notice by certified mail, restricted  
15 delivery. ORS 166.293(3)(b). Petitioner was aware that the post office was attempting  
16 to deliver a certified letter to her, and she was aware that it came from the sheriff, but she  
17 never signed for it, picked it up, or knew its contents. After three unsuccessful attempts  
18 at delivery, the post office returned the letter to the sheriff marked "unclaimed."  
19 Petitioner remained in physical possession of her CHL.

20 Around a year and a half later, on June 6, 2000, petitioner was once again  
21 detained for allegedly threatening women she believed to be prostitutes. A police officer

1 seized her CHL and turned it over to the sheriff, as authorized by ORS 166.293(4). On  
2 August 4, 2000, after the state decided not to prosecute her, petitioner wrote the sheriff  
3 demanding the return of her CHL. The sheriff refused, explaining that he was not  
4 returning it because it had been revoked since January 27, 1999. In a follow-up letter on  
5 September 25, 2000, the sheriff enclosed a copy of the January 1999 CHL revocation  
6 letter. That was the first time petitioner saw or took actual possession of any notice of  
7 revocation. Twenty-nine days later, she petitioned the circuit court for review of the  
8 revocation, but the court dismissed the petition on the ground that the 30-day limit had  
9 begun when the sheriff sent the original revocation notice in January 1999. Petitioner  
10 appeals.

11 Two statutes determine the outcome of this case. ORS 166.293(3)(b)  
12 provides:

13 "A sheriff may revoke a [concealed handgun] license by serving  
14 upon the licensee a notice of revocation. The notice must contain the  
15 grounds for the revocation and must be served either personally or by  
16 certified mail, restricted delivery. The notice and return of service shall be  
17 included in the file of the licensee. The revocation is effective upon the  
18 licensee's receipt of the notice."

19 ORS 166.293(5) provides:

20 "A person denied a concealed handgun license or whose license is  
21 revoked or not renewed \* \* \* may petition the circuit court \* \* \* to review  
22 the denial, nonrenewal or revocation. The petition must be filed within 30  
23 days after the receipt of the notice of denial or revocation."

24 Petitioner makes a simple and straightforward argument. Under *PGE v. Bureau of Labor*  
25 *and Industries*, 317 Or 606, 611-12, 859 P2d 1143 (1993), if the meaning of a statute is

1 clear from the text and context, no further inquiry as to its meaning is necessary. Here,  
2 petitioner contends, the text of the statute plainly states that the 30-day period begins  
3 with "the receipt of the notice"; the notice it refers to is the notice of revocation and not  
4 the notice that a certified letter of unknown contents from the issuing authority is  
5 available at the post office. The statute does not say "constructive" receipt, petitioner  
6 argues, and we are powerless to insert that qualification. ORS 174.010. Further,  
7 petitioner maintains, the context includes ORS 166.293(3)(b), which requires forms of  
8 service that, by definition, entail actual notice to the licensee. No further inquiry is  
9 necessary. Petitioner did not "receive" the notice of revocation until September 25, 2000,  
10 so her petition for review to the circuit court was timely.

11           The sheriff bases his response entirely on one case, *State v. DeMello*, 300  
12 Or 590, 716 P2d 732 (1986), which, he asserts, holds on facts nearly identical to those in  
13 this case that, under a statute nearly identical to the one in this case, notice of revocation  
14 of a driver's license is effective when sent by certified mail, and the licensee cannot avoid  
15 its consequences by refusing to accept or sign for it. We conclude that *DeMello* does not  
16 support the sheriff's position.

17           The defendant in *DeMello* was tried for driving with a suspended license.  
18 As an affirmative defense, he maintained that he had never received notice of the  
19 suspension. *Id.* at 592. He did, however, acknowledge that he had received "a pink slip  
20 notifying him of certified mail." *Id.* at 594. The Supreme Court rejected his "nonreceipt  
21 defense," concluding that the defendant could not

1 "defeat the charge \* \* \* simply by not claiming certified mail. The statute  
2 requires sending the notice, not that a person actually receive the letter.  
3 The proper notice was sent. Defendant received the notice of the certified  
4 mail. He failed to claim it. His defense fails."

5 *Id.* at 600. The sheriff contends that this conclusion disposes of petitioner's arguments in  
6 the present case as well. We disagree.

7 The statutory scheme in effect at the time of *DeMello* required the Motor  
8 Vehicles Division to "give notice" to the driver as follows:

9 "Service of the notice is accomplished either by mailing the notice by  
10 certified mail restricted delivery, return receipt requested, to the person's  
11 address as shown by division records, or, by personal service \* \* \*."

12 ORS 482.570 (1981).<sup>1</sup> Another statute provided that, in a prosecution for driving while  
13 suspended, "it is an affirmative defense that \* \* \* [t]he defendant had not received notice  
14 of the defendant's suspension or revocation as required by ORS 487.570 \* \* \*." ORS  
15 487.560(2)(b). However, yet another statute provided that the defense was not  
16 "available" if defendant "refused to sign a receipt for the certified mail containing the  
17 notice." ORS 487.560(3)(a). Based on those statutes and on their legislative history,  
18 which demonstrated that "the legislature was concerned with a massive social problem"  
19 consisting of "[s]uspended drivers \* \* \* causing carnage on the highways[,]" *DeMello*,  
20 300 Or at 596 (quoting *State v. Buttrey*, 293 Or 575, 584, 651 P2d 1075 (1982)), the  
21 court concluded that driving while suspended was a "strict liability" offense and that  
22 "[t]he legislature did not intend to create a loophole for suspended drivers by allowing

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<sup>1</sup> In 1983, the vehicle code was renumbered. Or Laws 1983, ch 338. Further, the statutes at issue in *DeMello* have since been amended or repealed. None of those changes affects the present case, so references here are to the pre-1983 statutes.

1 them to avoid receipt of notice simply by refusing or failing to claim certified mail." *Id.*  
2 at 600. The court wrote:

3 "As the legislative history of this statute demonstrates, the legislature did  
4 not intend that the defendant need actually receive the suspension letter,  
5 open it and read it before notice was deemed satisfied. \* \* \* Defendant  
6 received the notice that the statute provides."

7 *Id.* at 596.

8 The sheriff would have us apply that last sentence to the present case. We  
9 decline that invitation. The sentence, in context, means only that the statutory scheme  
10 governing revocation of drivers' licenses--a scheme that included an affirmative defense  
11 of nonreceipt and a "refusal to accept" exception to that defense--demonstrated that the  
12 legislature intended that a defendant's actual receipt of the notice was not a necessary  
13 prerequisite to a valid revocation. The statutes governing revocation of a CHL, in  
14 contrast, contain neither a nonreceipt affirmative defense nor a "refusal to accept"  
15 exception, and they do not state, as the driver's license revocation statutes stated, that  
16 "[s]ervice of the notice is accomplished by \* \* \* mailing the notice by certified mail  
17 restricted delivery, return receipt requested \* \* \*." ORS 482.570. Rather, the CHL  
18 statute states only that "revocation is effective upon the licensee's receipt of the notice[,]"  
19 and that the notice "must contain the grounds for the revocation \* \* \*," *i.e.*, the notice is  
20 *not* the "pink slip." ORS 166.293(3)(b).

21 Without *DeMello*, the sheriff has no support for the contention that ORS  
22 166.293(3)(b) and ORS 166.293(5) do not mean what they plainly say: "revocation is  
23 effective upon the licensee's receipt of the notice," and a licensee has 30 days from that

1 receipt to petition for review of the revocation. "To receive" means, primarily and as  
2 relevant here, "to take possession or delivery of \* \* \* <~a letter> \* \* \* to knowingly  
3 accept \* \* \*." *Webster's Third New Int'l Dictionary* 1894 (unabridged ed 1993). The  
4 word "notice" in those statutes could not refer to anything other than the "notice of  
5 revocation" specified in ORS 166.293(3)(b). That notice consists of the fact of  
6 revocation and also of "the grounds for the revocation." *Id.* Thus, the event that triggers  
7 the 30-day appeal period is taking delivery of, or knowingly accepting, a communication  
8 from the sheriff that states the existence of and grounds for the revocation. In January  
9 1999, petitioner received, at most, notice that a certified letter of unknown contents had  
10 been sent from the sheriff. Petitioner did not receive notice of revocation until  
11 September 25, 2000. Her petition for review, filed within 30 days thereafter, was timely.

12                   Reversed and remanded.