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Daniel's title to the property flowed from a treasurer's tax deed issued in compliance with the statutory procedures, the district court did not err in sustaining Daniel's motion for summary judgment and quieting title to the property originally obtained by tax deed. We affirm the court's decree.

AFFIRMED.

INBODY, Chief Judge, participating on briefs.

RYAN KRIZ, APPELLANT, V. BEVERLY NETH, DIRECTOR, STATE OF NEBRASKA, DEPARTMENT OF MOTOR VEHICLES, AND THE NEBRASKA DEPARTMENT OF MOTOR VEHICLES, APPELLEES.

811 N.W.2d 739

Filed May 1, 2012. No. A-11-560.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record.
2. ____: ____: ____. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable.
3. **Due Process.** Due process claims are generally subjected to a two-part analysis: (1) Is the asserted interest protected by the Due Process Clause and (2) if so, what process is due?
4. **Administrative Law: Due Process.** Where procedural due process is required, the State must provide a forum for the determination of the question and a meaningful hearing appropriate to the nature of the case.
5. **Administrative Law: Due Process: Notice: Evidence.** An administrative hearing must include notice, identification of the accuser, factual basis for the accusation, reasonable time and opportunity to present evidence concerning the accusation, and a hearing before an impartial adjudicator.
6. **Administrative Law: Motor Vehicles.** Pursuant to 247 Neb. Admin. Code, ch. 1, §§ 003.05 and 003.05E (2006), an administrative hearing officer has the duty to take appropriate action to avoid unnecessary delay in the disposition of the proceeding and the power to regulate the course of the proceedings in the conduct of the parties and their representatives.
7. **Administrative Law: Due Process: Motor Vehicles.** Due process does not require administrative hearings at any length demanded by a motorist.

Appeal from the District Court for Box Butte County: LEO DOBROVOLNY, Judge. Affirmed.

Bell Island, of Island, Huff & Nichols, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Melissa R. Vincent for appellees.

IRWIN, SIEVERS, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

In this appeal from a district court judgment affirming an administrative license revocation of Ryan Kriz' motor vehicle operator's license, we focus on the due process requirement that an administrative hearing provide reasonable time and opportunity to present evidence. Because the record shows that Kriz refused to request a continuance or ask that the record be held open and failed to provide any showing that the additional evidence would have affected the outcome of the hearing, we find no error appearing on the record and we affirm the district court's judgment.

BACKGROUND

In October 2010, Officer Patrick Connelly and Sgt. Sean Busch of the Alliance Police Department arrested Kriz for driving under the influence (DUI) after he showed signs of impairment on standardized field sobriety maneuvers and registered a breath alcohol content of .118 on a preliminary breath test. The officers had originally approached Kriz because he was slumped over in the driver's seat of a parked, running vehicle at approximately 5:30 a.m. They initiated a potential DUI investigation after detecting "a strong, distinct odor of an alcoholic beverage coming from the interior of the vehicle and, again, coming from [Kriz'] person." After the arrest, a blood sample was taken from Kriz and tested for blood alcohol content. Upon receiving the blood test results, which indicated that Kriz had a blood alcohol content of .08 or more, Officer Connelly and Sgt. Busch issued a notice of revocation. Kriz objected to the revocation by filing a petition for an administrative hearing.

The requested administrative hearing was held on November 22, 2010, before a designated hearing officer of the Nebraska

Department of Motor Vehicles (the Department). The record shows that the hearing began at 3:35 p.m. Kriz was represented by an attorney. Sgt. Busch, Officer Connelly, and the technician who processed the blood test were present to testify, in that order. At the end of the first witness' testimony, the hearing officer advised Kriz, "The time is 3:56. I do have another hearing at 4:16 . . . . Just to let you know." The hearing officer then completed her examination of the second witness, but the allotted time for the hearing expired in the middle of Kriz' cross-examination. The hearing officer repeatedly gave Kriz the opportunity to request a continuance, but he repeatedly refused. Ultimately, the hearing officer closed the hearing before Kriz finished his cross-examination of the second witness. The third witness—the technician—never testified.

Because Kriz now alleges that his due process rights were violated by the hearing officer's decision to end the hearing, we include the relevant exchange between the hearing officer and Kriz' attorney in full:

> THE HEARING OFFICER: . . . And it's 4:29 p.m. Do you want a continuance . . . ?
>
> [Kriz' attorney]: No. I don't want a continuance. I'm ready to go forward. I — I'm still ready to — ready and able to continue with my examination.
>
> THE HEARING OFFICER: Okay. Well, if you don't want a continuance, this has pretty much been your hearing today. You do have another witness, evidently.
>
> [Kriz' attorney]: I do have a witness, but I — I'm not asking for a continuance.
>
> THE HEARING OFFICER: Okay. Well, how are you going to provide your other evidence, sir? Do you want me to hold the record open for something?
>
> [Kriz' attorney]: (Indiscernible) finish examining this witness, and then I'm going to ask to call my next witness.
>
> THE HEARING OFFICER: Well, unfortunately, we're out of time for the hearing. So, you can ask for a continuance. If you ask for a continuance, the officer might have a chance to bring in his report (indiscernible) time.

[Kriz' attorney]: (Indiscernible) —

THE HEARING OFFICER: It's up to you, sir. Do you want a continuance (indiscernible) —

[Kriz' attorney]: I've already made that clear. I'm not asking for a continuance.

THE HEARING OFFICER: You do not want a continuance.

[Kriz' attorney]: I will not request one. If the Department wants a —

THE HEARING OFFICER: All right. So —

[Kriz' attorney]: — continuance, they're —

THE HEARING OFFICER: — that's it for today. Do you want to make an argument? Do you want (indiscernible) argument —

[Kriz' attorney]: I'm not done with my (indiscernible) make any argument.

THE HEARING OFFICER: You don't want to make an argument?

[Kriz' attorney]: No. I'm not done with my case yet.

THE HEARING OFFICER: Well, you're not asking for a continuance and today's the hearing. So, I guess —

[Kriz' attorney]: (Indiscernible) —

THE HEARING OFFICER: — it's up to you, sir, whether you want some additional time to present your case.

[Kriz' attorney]: Well, I'm not asking for a continuance.

THE HEARING OFFICER: Okay. And it's my understanding that you don't want a continuance, so I'm asking, sir, do you have any argument you want to make?

[Kriz' attorney]: No. I'm not done with my case, so I'm not making any argument.

THE HEARING OFFICER: Okay. So —

[Kriz' attorney]: I'm ready to go forward.

THE HEARING OFFICER: I understand that . . . . But if you want to go forward, you're not asking for a continuance, so the hearing is going to be closed. And I'll be making a recommendation to the Director of the Department. There will be a recommendation made. A

> copy of an order is going to be sent to you. A copy will be sent by certified mail to the appellant.
>
> . . . [D]id you want to hold the record open for any additional information, Title 177, or anything else?
>
> [Kriz' attorney]: No. I don't need to hold it open for that. I didn't get a chance to examine the witness regarding that. So —
>
> THE HEARING OFFICER: Well, you could have requested a continuance, sir. That's up to you.
>
> So, the record, let's see, will not be held open. And the hearing is over at 4:31 p.m.

Following the hearing, the hearing officer issued proposed findings of fact and proposed conclusions of law and recommended that Kriz' license be revoked for 90 days. Beverly Neth, director of the Department, adopted the hearing officer's order and revoked Kriz' license on November 29, 2010.

Immediately following the revocation of his license, Kriz appealed the decision to the district court for Box Butte County, Nebraska, alleging that his due process rights were violated and that Neth and the Department improperly revoked his license, prevented him from presenting evidence and from cross-examining witnesses, and limited the time for hearing. After a short hearing, the district court affirmed the decision to revoke Kriz' license. It found that "Kriz' due process rights do not include a right to have an indefinite period of stay" and that "[b]y opting not to request a continuance, Kriz waived presenting further evidence."

Kriz timely appeals.

ASSIGNMENT OF ERROR

Kriz alleges that the district court erred in failing to reverse the order of revocation when Neth and the Department violated his due process rights by terminating the hearing prior to the submission of all the evidence.

STANDARD OF REVIEW

[1,2] A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate

court for errors appearing on the record. *Liddell-Toney v. Department of Health & Human Servs.*, 281 Neb. 532, 797 N.W.2d 28 (2011). When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. *Id.*

ANALYSIS

[3-5] Due process claims are generally subjected to a two-part analysis: (1) Is the asserted interest protected by the Due Process Clause and (2) if so, what process is due? *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001). When it comes to the suspension of motor vehicle operators' licenses, both of these questions have previously been addressed by Nebraska courts. In response to the first question, the Nebraska Supreme Court has held that the "[s]uspension of issued motor vehicle operators' licenses involves state action that adjudicates important property interests of the licensees." *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 824, 743 N.W.2d 758, 762 (2008). Consequently, licenses are not to be taken away without that procedural due process required by the 14th Amendment. See *Stenger v. Department of Motor Vehicles, supra*. As for the specific procedures required in this situation, our due process jurisprudence mandates that the State "provide a forum for the determination of the question and a meaningful hearing appropriate to the nature of the case." *Murray v. Neth*, 279 Neb. 947, 955, 783 N.W.2d 424, 432 (2010). The Nebraska Supreme Court has alternatively described due process in the context of administrative proceedings as requiring "an opportunity for a full and fair hearing at some stage of the agency proceedings." *Troshynski v. Nebraska State Bd. of Pub. Accountancy*, 270 Neb. 347, 355, 701 N.W.2d 379, 386 (2005). Whether defined as "meaningful" or "full and fair," this hearing must include "notice, identification of the accuser, factual basis for the accusation, reasonable time and opportunity to present evidence concerning the accusation, and a hearing before an impartial adjudicator." *Murray v. Neth*, 279 Neb. at 955, 783 N.W.2d at 432.

The specific question before the district court in the instant case was whether Kriz was given reasonable time and opportunity to present evidence when the hearing was closed before all evidence had been introduced. Because (1) the record shows that reasonable time was provided, (2) Kriz refused to request a continuance or to ask that the record be held open, and (3) he failed to provide any showing as to how the additional evidence he wished to introduce would have affected the outcome of the hearing, we find no error appearing on the record in the district court's conclusion that Kriz was given both reasonable time and an opportunity to present evidence.

The record does not support Kriz' contention that the hearing officer deprived him of a reasonable opportunity to present evidence. The hearing was originally scheduled to last 45 minutes, but it was extended to almost an hour. The issues at the hearing were limited by statute and by regulation to two narrowly defined questions: (1) whether the police officer had probable cause to believe Kriz was operating or in actual physical control of a motor vehicle in violation of Neb. Rev. Stat. § 60-6,196 (Reissue 2010) and (2) whether Kriz was operating or in actual physical control of a motor vehicle while having an alcohol concentration in violation of § 60-6,196(1). See, Neb. Rev. Stat. § 60-498.01(6)(c)(ii) (Reissue 2010); 247 Neb. Admin. Code, ch. 1, § 018.02 (2006). Kriz was notified in writing of these specific issues to be discussed when he received the notice of revocation and again orally at the start of the hearing. When he requested an administrative hearing, he was again directed to the regulations governing the hearing, including § 018.02.

Nevertheless, the record shows that despite the limited issues, Kriz spent a large portion of the hearing cross-examining Officer Connelly about repetitive and irrelevant matters and arguing with the hearing officer about her ruling regarding the police report. Even after Officer Connelly testified that he did not have access to the police report, Kriz continued to ask questions about the availability of the report. The hearing officer advised Kriz to return to a relevant line of questioning over 10 different times, reminded him that he could have acquired the police report through discovery prior

to the hearing, and ultimately ruled that "[e]ither you have other questions and you're going to ask them, or we're going to conclude this portion of the hearing." Kriz briefly moved on to other questions, but soon returned to the availability of the police report yet again. Shortly after that, the hearing officer closed the hearing.

[6,7] Pursuant to 247 Neb. Admin. Code, ch. 1, §§ 003.05 and 003.05E (2006), the administrative hearing officer has the duty "to take appropriate action to avoid unnecessary delay in the disposition of the proceeding" and the power to "regulate the course of the proceedings in the conduct of the parties and their representatives." Given Kriz' repeated refusal to move on to the merits of his defense and his insistence that he "make clear" the matter of the police report, the hearing officer did not misuse her powers by limiting the length of the hearing. Due process does not require administrative hearings at any length demanded by a motorist. See *Jensen v. County of Sonoma*, No. C-08-3440, 2010 WL 2330384 at *16 (N.D. Cal. June 4, 2010) ("Due Process Clause does not dictate the length of the hearing").

We agree with the district court's conclusion that Kriz was given reasonable opportunity to present evidence, given the fact that the hearing officer was willing to grant him a continuance or to hold the record open for the submission of further evidence. She emphasized that these were the only options available to Kriz if he wished to submit further evidence, because she was already late for another hearing, but also seemed quite willing to grant either request. Kriz adamantly refused to ask for a continuance or to request that the record be held open so that he could submit the remainder of his evidence. There was no error in the district court's finding that "[b]y opting not to request a continuance, Kriz waived presenting further evidence."

Kriz argues on appeal that the "hearing officer's demand that [he] request a continuance or forgo a full and fair hearing [was] improper" because it effectively required him to forfeit his license pending the conclusion of the hearing if he wanted to present further evidence. Brief for appellant at 13. Under the original notice of revocation, Kriz' license was scheduled

to be automatically revoked on November 28, 2010, barring reversal by the Department after the hearing or the issuance of a stay of revocation. A stay of revocation would be issued only if the Department requested a continuance of the hearing. See, § 60-498.01(6)(b); 247 Neb. Admin. Code, ch. 1, § 010.06 (2006). Therefore, if Kriz had requested a continuance, he would not have had the benefit of a stay of revocation and it was likely that the hearing officer would not have concluded the hearing until after November 28, leaving Kriz without a license for at least some period of time.

According to Kriz, the solution to this dilemma was that the Department should have requested a continuance itself. Along those lines, he argues that "[i]t was the [D]epartment who needed a continuance," brief for appellant at 13, and that "the [D]epartment [was] the one who [was] not prepared to go forward," *id.* at 14. This argument, however, ignores the fact that the Department had already met its burden in the hearing by entering into evidence the arresting officer's sworn report, at which time the order of revocation acquired prima facie validity. See § 60-498.01(7). From that point forward, the Department's order of revocation would be upheld unless Kriz proved by a preponderance of the evidence that his license should not be revoked. See *id.* Therefore, the Department had no need to request a continuance for its own purposes. In fact, the Department would have needed to request a continuance only if due process demanded that it obtain a stay of revocation on Kriz' behalf. On this issue, the district court ruled that "Kriz' due process rights do not include a right to have an indefinite period of stay." For the reasons that follow, we find no error in this holding and agree that it was not a violation of Kriz' due process rights for the hearing officer not to ask for a continuance on her own motion.

When determining whether a specific administrative procedure of the Department satisfies due process, the Nebraska Supreme Court has regularly applied the due process analysis set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). See, e.g., *Kenley v. Neth*, 271 Neb. 402, 712 N.W.2d 251 (2006); *Chase v. Neth*, 269 Neb. 882, 697 N.W.2d 675 (2005); *Hass v. Neth*, 265 Neb. 321,

657 N.W.2d 11 (2003). This analysis considers the following factors:

> [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Chase v. Neth, 269 Neb. at 893-94, 697 N.W.2d at 685.

In the instant case, the private interest at stake is the continued possession of an operator's license, which we have already recognized as being significant. See *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 743 N.W.2d 758 (2008). The Department's interest, as in the other revocation cases cited above, is "to protect the public from the health and safety hazards of drunk driving by quickly getting DUI offenders off the road." *Kenley v. Neth*, 271 Neb. at 409, 712 N.W.2d at 259. This interest is also substantial. See *Hass v. Neth*, 265 Neb. at 329, 657 N.W.2d at 21 (recognizing that "[t]here is no doubt of the substantial governmental interest in protecting public health and safety by removing drunken drivers from the highways"). Therefore, the due process analysis in the instant case turns on the second factor—the risk of an erroneous deprivation through the procedures used by the Department.

The hearing officer's requirement that Kriz ask for a continuance in order to present more evidence theoretically could have resulted in an erroneous deprivation of his license under two circumstances. He would have been wrongly deprived of his license if he had asked for a continuance without the benefit of a stay—if the revocation took place on November 28, 2010, as originally planned—and if the hearing officer later overturned the revocation based upon additional evidence adduced by Kriz at the second hearing. Under this scenario, Kriz would have been unnecessarily deprived of his license for the period between his first and second hearings. On the other hand, if Kriz' refusal to request a continuance had prevented him from adducing evidence that would have proved that his

license should not have been revoked, he would have been erroneously deprived of his license for the full 90-day revocation period. Given these two scenarios, it is obvious that the risk of an erroneous revocation existed *only if* Kriz possessed sufficient evidence to meet his burden of proof in the administrative hearing, which evidence would have to have been provided by the one witness who did not testify in the original hearing—the technician.

Significantly, when discussing a continuance, Kriz provided no information to the hearing officer to indicate that the technician's testimony would bring into question the validity of the blood test. We also note that he did not provide any explanation of why he believed the revocation of his license was improper on either the petition for an administrative hearing, which specifically asked him to "explain why the Department should not revoke your license," or his request to subpoena the technician. Furthermore, Kriz refused to give any argument during the hearing, leaving us without any indication as to how exactly he planned to meet his burden of proof. It may be that Kriz hoped the technician's testimony would reveal some flaw in the blood test, but the complete absence of any showing as to how he hoped to discredit the blood test leads us to conclude that he had no concrete evidence in advance of the hearing. In that case, Kriz would not have been able to prove that the revocation was improper even if he had been granted a continuance, his license would have been revoked anyway, and there was no risk that the hearing officer's decision caused an erroneous deprivation of his license.

Had Kriz provided any indication of the content of the testimony he was planning to present in the time gained through a continuance or how that testimony would prove the revocation was improper, our weighing of the three factors from *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), could differ and we might well have found error in the district court's conclusion. But given the Department's strong interest in removing DUI offenders from the road, we agree with the district court that the hearing officer was not required by due process to grant a continuance on her own motion when Kriz made no showing in support of the need for

a continuance and refused to request one himself. Although it was not designated for permanent publication, we reached the same conclusion in *Sanderson v. Department of Motor Vehicles*, No. A-05-043, 2006 WL 1596468 at *6 (Neb. App. June 13, 2006) (not designated for permanent publication) (holding that "some showing needs to be made to support having the hearing officer continue the hearing on his own motion . . . before one can conclude that a failure by the hearing officer to continue the matter on his own motion is a denial of due process"). And other courts have also found that an individual must make some showing of prejudice by pointing to the specific evidence he or she was prevented from adducing and explaining how the length of the hearing affected the outcome before a court will be required by due process to extend the length of an administrative hearing. See, *Chavez-Vasquez v. Mukasey*, 548 F.3d 1115 (7th Cir. 2008); *Jensen v. County of Sonoma*, No. C-08-3440, 2010 WL 2330384 (N.D. Cal. June 4, 2010); *Hobgood v. Hollie*, No. 2010-CA-000958-ME, 2011 WL 4633103 (Ky. App. Oct. 7, 2011) (unpublished opinion); *D.Z. v. Bethlehem Area School Dist.*, 2 A.3d 712 (Pa. Commw. 2010). Due process demands a reasonable opportunity to present evidence; it does not require a hearing officer to facilitate "fishing expeditions."

CONCLUSION

Because the record shows that an adequate amount of time was provided for the hearing and that Kriz could have requested a continuance or asked that the record be held open, the district court did not err in finding that Kriz was given reasonable time and opportunity to present evidence despite the hearing officer's termination of the administrative hearing prior to the submission of all the evidence. Additionally, because he made no showing as to what evidence he would have presented had the hearing been continued and how that evidence would have affected the outcome of the hearing, the hearing officer was not required by due process to grant a continuance on her own motion. Accordingly, we affirm.

AFFIRMED.