IN THE COURT OF APPEALS OF IOWA

FILED
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No. 7-678 / 97-0019
Filed January 28, 1998

ERNEST CHRIS KELLENBERGER,
Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Appellee.

Appeal from the Iowa District Court for Kossuth County, Frank B. Nelson, Judge.

Petitioner appeals the district court order affirming the Department of Transportation's suspension of his driving privileges. **AFFIRMED.**

David C. Skilling, Algona, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Kerry Anderson, Assistant Attorney General for appellee.

Considered by Huitink, P.J., and Streit and Mahan, JJ. Sackett, J., takes no part.

PER CURIAM.

Defendant, Ernest Kellenberger, received a traffic citation in Minnesota for speeding. He filed a written plea of not guilty and a request for a jury trial. A hearing on the citation was held in August 1995 and a fine assessed. Mr. Kellenberger did not appear and states he did not receive notice of the hearing. On October 12, 1995, the Iowa Department of Transportation sent the defendant a notice that, effective thirty days from his receipt of the notice, his driving privileges would be suspended until he satisfied the Minnesota citation. Defendant appealed the agency decision. An administrative law judge (ALJ) sustained the suspension on February 14, 1996. Defendant appealed that decision. A reviewing officer affirmed the ALJ's decision. Defendant sought judicial review of the agency action. On October 31, 1996, the district court affirmed the agency's decision. Defendant then filed a 179(b) motion. On December 6, 1996, the court overruled the defendant's motion.

On appeal, defendant asserts the district court erred in not finding the agency decision was arbitrary and capricious. He argues the ALJ did not exercise discretion and that failure to exercise discretion is reversible error. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

In support of his appeal, defendant cites Iowa Administrative Code section 761-615.18(1) which states in pertinent part:

> The department *may* suspend a person's license when a report is received from another state under the nonresident violator compact

> that an Iowa licensee has failed to comply with the terms of a traffic citation.

Id. (implementing Iowa Code sections 321.210 and 321.513).

Iowa Code section 321.513 is Iowa's nonresident violator compact. It provides for mandatory notice and suspension proceedings upon receipt of a report from another jurisdiction an Iowa licensee has failed to comply with the terms of a citation:

> Upon receipt of a report of a failure to comply, the licensing authority of the home jurisdiction *shall* notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards shall be accorded.

Iowa Code § 321.513(1)(c).

The district court, when exercising the power of judicial review conferred by Iowa Code section 17A.19, is itself functioning in an appellate capacity to correct errors of law. Iowa Code § 17A.19(8); *Iowa Public Service Co. v. Iowa State Commerce Commission*, 263 N.W.2d 766, 768 (Iowa 1978). "Thus, when this court reviews a decision of a district court rendered pursuant to section 17A.19, the sole question is whether the district court correctly applied the law. In order to make that determination, this court applies the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court." *Jackson County Public Hospital v. Public Employment Relations Board*, 280 N.W.2d 426, 429-30 (Iowa 1979). "An administrative agency decision

constitutes an abuse of discretion only if it is clearly unreasonable, lacks rationality, and is clearly against reason and evidence." *McMahon v. Iowa Dept. of Transportation*, 522 N.W.2d 51, 56 (Iowa 1994).

In our analysis of this case, we do not consider whether Minnesota properly assessed a fine for the citation. Defendant raises procedural arguments concerning Minnesota's handling of the citation proceedings. Any such issues must be resolved in Minnesota, which defendant states he is unwilling to do. Rather, he attacks Iowa's suspension of his driving privileges under the statute.

Our review of the record leads us to the same conclusions reached by the district court in its review of the agency action. The ALJ recognized he had discretion not to suspend defendant's driving privileges and told defendant the kinds of circumstances in which he would not choose suspension. The ALJ also informed defendant no such circumstances existed in this case. The decision of the agency to suspend defendant's driving privileges was neither clearly unreasonable, lacking rationality, nor clearly against reason and evidence. We conclude the district court correctly applied the law in its judicial review of the agency action.

AFFIRMED.