IN THE COURT OF APPEALS OF IOWA

No. 0-189 / 99-1448
Filed July 26, 2000

RYAN JON VOSS,
Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, Motor Vehicle Division,
Respondent-Appellant.

FILED
JUL 26 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, R.J. Curnan, Judge.

The respondent appeals from the district court's ruling on judicial review reversing the revocation of the petitioner's driver's license for a chemical test failure pursuant to Iowa Code section 321J.12 (1997). The respondent claims that the district court erred in determining that implied consent procedures for the revocation were not properly invoked because the peace officer failed to reread the implied consent advisory required by Iowa Code section 321J.8 when a chemical test for marijuana was requested after Voss took a test for alcohol. **AFFIRMED.**

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

Jeffrey L. Walters and Todd N. Klapatauskas of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J, and Habhab, S.J*.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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SACKETT, C.J.

Respondent-Appellant, the Iowa Department of Transportation appeals from a district court ruling reversing the revocation of Petitioner-Appellee Ryan Jon Voss's drivers license. Appellant had revoked the license because Voss failed a urine test given under the directive of Iowa Code section 321J.12 (1997). Appellant contends that the district court erred in ruling a peace officer is required to read the implied consent advisory each time a separate test is requested for a separate substance. We affirm.

Voss was stopped on suspicion he was driving under the influence. When stopped he smelled of liquor and a preliminary breath test was given indicating an alcohol content over .10. Voss was arrested and an officer requested he take another breath test[1] to determine the alcohol in his body and he did. Prior to taking the second breath test an officer read Voss the advisory required by Iowa Code section 321J.8 (1997).[2] The second breath test showed an alcohol content of .101, below the margin of error of the testing device. Officers then discovered marijuana in Voss' car and on his person. A trooper then requested Voss give a

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1. Iowa Code § 321J.6(2) provides, "[T]he peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested . . ."

2. Relevant portions of Iowa Code § 321J.8 provide, "[A] person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:
   1. If the person refuses to submit to the test, the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.9.
   2. If the person submits to the test and the results indicate an alcohol concentration as defined in section 321J.1 of .10 or more . . . the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

urine test[3] for drugs and he did. The advisory required by Iowa Code section 321J.8 was not given before the second test although the trooper testified he answered Voss' question telling him he would be revoked if he did not take the test, if he consented to it he would not be revoked, and if he submitted to a urine test, it would be tested and based on those results it would be determined whether he would be revoked or not. The trooper did not advise Voss of the lengths of each revocation. The result of the urine test was positive and indicated 111 ng/ml THC Carboxylic Acid. Voss was served a notice his driver's license would be revoked for one year.

Voss contested the revocation. After an evidentiary hearing an administrative law judge rescinded it finding the trooper was required to reread the entire implied consent advisory when he made the request for urine.

The appellant appealed the administrative law judge's decision and the Iowa Department of Transportation Reviewing Officer reinstated the license revocation. Voss appealed to the district court. The district court reversed the revocation. The district court found, as did the administrative law judge that the trooper was required to read the entire implied consent advisory at the time he made the written request for urine. The district court reasoned that the two tests were totally different tests and were administered to determine the presence of different substances and that it was reasonable to assume a lay man would not know the periods of revocation were the same for a urine and a breath tests unless he or she was again advised of the revocation periods by an officer. The

3. Iowa Code § 321J.6(3) provides, "[N]otwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug, *a urine test may be required even after a blood or breath test has been administered. . . .*" . (emphasis added)

court went on to find that without such knowledge Voss did not have all the information the legislature intended he have before deciding whether to take the test.

Iowa Administrative Procedure Act, chapter 17A.19(8), governs our review. *Ramsey v. Iowa Dept. of Transp.*, 576 N.W.2d 103, 105 (Iowa 1998). We ask only whether the district court has correctly applied the law. *Scott v. Iowa Dept. of Transp.*, 604 N.W.2d 617, 619 (Iowa 2000). Applying the standards for review of agency action found in section 17A, we determine whether our conclusions are the same as those made by the district court. *Bromeland v. Iowa Dept. of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997). If they are, we affirm. *Id.* If our conclusions are not the same, and we decide the district court has incorrectly applied the law, we must reverse. *Id.*

Appellant contends the advisory only needed to be read once. This issue appears not to have been addressed in Iowa. The appellant contends that two Minnesota cases *Hansen v. Commissioner of Public Safety,* 393 N.W. 2d 702 (Minn. App. 1986) and *State v. Fortman*, 493 N.W. 2d 599 (Minn. App. 1992) support its position. In *Hanson* the Minnesota Court of Appeals addressing a statute similar to Iowa Code section 321J.8 rejected the argument that a driver who was asked for a breath sample but was unable to give and was then asked for either blood or urine testing was entitled to a second advisory. Voss argues this case is distinguishable in that here a test was successfully completed and the second request was for different substance. In *Fortman* a malfunction of testing equipment required a second test. Voss contends the case of a

malfunction of a testing device is distinguishable. We agree with Voss that neither case addresses the issue before us.

Both sides argue that the language of section 321J.8 that "A person who has been requested to submit to a chemical test shall be advised by a peace officer . . ." is plain and clear on its face. The appellant advancing it clearly provides for only one advisory for two separate tests for two separate substances and Voss contending that it provides for a separate advisory for each of the tests.

The language of 321J.6(3) says, "a urine test may be required even after *a* breath test has been administered." (emphasis supplied). A basic tenet of statutory construction is that we look at what the legislature said within a statute, not what it might have said. *See Branson v. Municipal Fire & Police Retirement System of Iowa,* 591 N.W. 2d 193, (Iowa 1999). It is reasonable to assume from the quoted language that the legislature considered each a test and a separate test. Also the district court's reasoning that a person may not understand that the time frames for suspension for different tests for different substances is the same, is reasonable. We affirm.

AFFIRMED.