IN THE COURT OF APPEALS OF IOWA

No. 4-437 / 93-1784

FILED
DEC 14 1994
CLERK SUPREME COURT

ANDREW WALTER CALDWELL,

Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellant.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

The Iowa Department of Transportation appeals from the district court's decision on judicial review reversing the Department's revocation of a driver's license based on an implied consent test failure pursuant to Iowa Code section 321J.12. **REVERSED.**

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, and John W. Baty, Assistant Attorney General, for appellant.

Louis Herrera of Herrera Law Office, P.C., Des Moines, for appellee.

Heard by Donielson, P.J., Cady, J., and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

On October 28, 1992, a Des Moines police officer stopped a van operated by Andrew Caldwell after he had received reports a white van was operating erratically. The officer claimed the Caldwell vehicle was white while Caldwell claims his vehicle is blue. After Caldwell failed field sobriety tests, the officer invoked the implied consent law, and the breath test indicated Caldwell had an alcohol concentration of .153.

The Iowa Department of Transportation subsequently revoked Caldwell's driver's license for the test failure pursuant to Iowa Code chapter 321J. The revocation was affirmed in administrative proceedings in which Caldwell challenged whether the officer had reasonable grounds to believe Caldwell was operating a motor vehicle in violation of the implied consent law.

Caldwell filed a petition for judicial review challenging the revocation. Caldwell continued to claim the officer did not have reasonable grounds for stopping the vehicle. On November 4, 1993, after a hearing on the petition, the trial court entered a decision reversing the revocation. The court determined the officer did not have reasonable grounds to believe Caldwell was operating his motor vehicle while intoxicated because the officer did not observe Caldwell driving in an erratic manner and the vehicle involved in the reports of erratic driving was a white vehicle while Caldwell was driving a blue van.

On November 29, 1993, the Department filed a notice of appeal. For the reasons set forth below, we reverse the decision of the trial court.

The scope of review in cases arising out of the Iowa Administrative Procedure Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but

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whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. Id.

This case is governed by Iowa Code section 321J.12 (1991) which provides:

> Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of 321J.2 [operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI)], that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, [implied consent to test] and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more, the department shall revoke the person's motor vehicle license . . . .

All three elements of section 321J.12 must exist before the Department is warranted in revoking a license. Westendorf v. Iowa Dep't of Transp., 400 N.W.2d 553, 555 (Iowa 1987). All three elements are met here.

First, the officer had reasonable grounds to believe Caldwell had been operating while intoxicated because the officer had received two reports of a person driving a van recklessly, detected the strong odor of alcohol on Caldwell's breath, and obtained a positive result from the preliminary breath test. See Westendorf, 400 N.W.2d at 555 (citing Saunders v. Comm'r of Pub. Safety, 226 N.W.2d 19, 22 (Iowa 1975); Shellady v. Sellers, 208 N.W.2d 12, 14

(Iowa 1973)). Second, the officer had implied consent to test Caldwell. Third, Caldwell's test result indicated an alcohol concentration of ten hundredths or more.

The trial court mistakenly believed Officer Negrete required "reasonable cause" to stop Caldwell. In its conclusions of law, the trial court states, "It appears that Officer Negrete pulled Mr. Caldwell over for no reason other than he was driving a van." Even if this conclusion were correct, it would not serve as a basis for invalidating a driver's license revocation proceeding. Our supreme court has held that it is immaterial whether reasonable cause exists for a stop of a vehicle in the context of license revocation hearings. Manders v. Iowa Dep't of Transp., 454 N.W.2d 364, 365 (Iowa 1990) ("it was immaterial whether reasonable cause existed because the evidence obtained following the stop would be admissible in the administrative proceeding notwithstanding a potential constitutional violation associated with the stop"); Westendorf v. Iowa Dep't of Transp., 400 N.W.2d 553, 556 (Iowa 1987) (same).

All that is required for the Department to revoke Caldwell's license are the three elements listed in Iowa Code section 321J.12 (1991). All three elements plainly exist here. Therefore, the trial court was in error, and Caldwell's license was correctly revoked by the Department.

Costs on appeal are to be taxed to Caldwell.

REVERSED.