

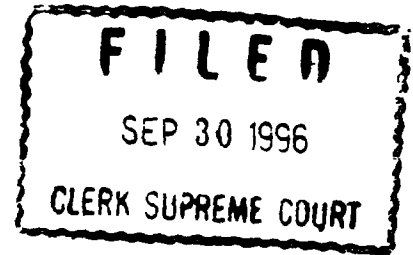
IN THE COURT OF APPEALS OF IOWA

No. 6-291 / 95-327

WAYNE W. SOLOMON, JR.,
Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge.

Wayne Solomon, Jr., appeals the district court's order denying his request to hear additional evidence and affirming the Iowa Department of Transportation's decision sustaining his license revocation. **AFFIRMED.**

Frank Robak, Sr., Council Bluffs, for appellant.

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

Considered by Sackett, C.J., and Cady and Vogel, JJ.

VOGEL, J.

Wayne Solomon, Jr., appeals the district court's order denying his request to hear additional evidence and affirming the Iowa Department of Transportation's decision sustaining his license revocation. We affirm.

On June 23, 1992, Council Bluffs police officer Robert Achenbach was dispatched to a hit and run accident. A short time later another officer was dispatched to another hit and run in the same area. Achenbach was told the car involved in the second accident was described as an older tan car. Upon investigation of the accident he had been dispatched to, Achenbach observed a fence that had apparently been struck by a car. Achenbach followed the debris from the fence to Wayne Solomon's residence where he found a tan colored car with front end damage and pieces of the fencing sticking out of the front end.

There was no one in or near the car so Achenbach knocked on Solomon's door. Solomon's wife answered and told Achenbach her husband had been home about ten minutes. Solomon and his friend, Jerry Appleman, came to the door. Achenbach noticed Solomon smelled of alcohol, had slurred speech, bloodshot eyes, and was unsteady on his feet. Solomon and Appleman said they had not been drinking since they had arrived at Solomon's house. Appleman told Achenbach he had followed Solomon home from a local bar and had observed his friend hit vehicles on the way. Appleman told Achenbach he had gone home and walked over to Solomon's house.

Solomon later told Achenbach and another officer that he was the driver of the vehicle involved in the accidents.

Solomon submitted to a breath test which indicated he had over a .10 alcohol concentration. He was arrested and subsequent testing revealed he had a .282 alcohol concentration. The Iowa Department of Transportation (IDOT) revoked Solomon's license pursuant to Iowa Code section 321J.12 (1991).

Solomon filed a petition for judicial review of the department's decision. On November 30, 1993, Solomon filed a motion to consider newly-discovered evidence and for extension of dates. On January 25, 1995, the district court filed an order denying Solomon's motion to hear additional evidence and sustained the license revocation.

Solomon appeals.

I. *Scope of Review.* Our judicial review of the IDOT's decision is for correction of errors at law. *Barker v. Iowa Dep't of Transp.*, 431 N.W.2d 348, 349 (Iowa 1988). We will not disturb the agency's findings of fact if substantial evidence supports them. Iowa Code § 17A.19(8) (1993); *Ginsberg v. Iowa Dep't of Transp.*, 508 N.W.2d 663, 664 (Iowa 1993). "Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings [as the agency]." *Freeland v. Employment Appeal Bd.*, 492 N.W.2d 193, 196 (Iowa 1992). We also review the district court's determinations for misapplication of the law. *Freeland*, 492 N.W.2d at 196; *Henry v. Iowa Dep't of Transp.*, 426 N.W.2d 383, 385 (Iowa 1988).

II. Application for Additional Evidence. Solomon contends the district court erred in denying his application to present additional evidence. In his motion, Solomon referred to new testimony “in support of Defendant’s innocence.” We find this issue was not preserved as no specific allegations were either attached to or incorporated in the motion. It cannot be raised for the first time on appeal.

III. Reinstatement of Driver’s License. Solomon also contends he is entitled to reinstatement of his license as a matter of law pursuant to Iowa Code section 321J.13(4) (1993). Solomon’s argument fails for two reasons.

First, there is the question of error preservation. Issues must ordinarily be presented and passed upon by the district court before they may be raised and decided on appeal. *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984); *Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 292 (Iowa App. 1995). Since Solomon did not raise this issue before the district court, we find he failed to preserve error. *See Jackson v. Farm Bureau Mut. Ins. Co.*, 528 N.W.2d 516, 517 (Iowa 1995).

Second, we also find that since Solomon has not exhausted all of his administrative remedies, we cannot consider his claim at this time. Iowa Code section 17A.19 requires that all adequate administrative remedies be exhausted before there is judicial review. *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995). Section 321J.13(4) provides an administrative mechanism for reopening a hearing when a court in a criminal proceeding arising out of the same circumstances holds

that a peace officer did not have reasonable grounds to believe the defendant was operating in violation of section 321J.2 or that the results of the chemical test are otherwise inadmissible or invalid. Solomon has not petitioned the IDOT to reopen the record. As he has failed to exhaust his administrative remedies, judicial review is not appropriate at this time.

IV. Oral Order. Solomon contends the district court orally ordered the newly-discovered evidence to be heard before the written order was issued which denied the application. "All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made." Iowa R. Civ. P. 227. In discussing the importance of written orders, our supreme court has stated:

We believe there are valid reasons for the requirement of a writing. A court speaks through its orders and rulings. The public is entitled to know what the court has proclaimed, and the parties and appellate court are entitled to an accurate record. These policy considerations dictate that the rules requiring orders to be written and recorded be enforced.

Lutz v. Iowa Swine Exports Corp., 300 N.W.2d 109, 112 (Iowa 1981). As there is no written record of the previous order, the oral order of the district court, if there was one, has no effect.

AFFIRMED.