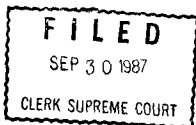


IN THE COURT OF APPEALS OF IOWA



GARY WALTER FRANCK,)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF)
TRANSPORTATION, MOTOR VEHICLE)
DIVISION,)

Respondent-Appellant.)

Filed September 30, 1987

7-369
87-434

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Appeal from the Iowa District Court for Buchanan County (No. CE 2050-0886), William G. Klotzbach, Judge.

The respondent appeals from the district court's reversal of its decision to revoke the petitioner's license for an alleged failure of a chemical test.

AFFIRMED.

Thomas J. Miller, Attorney General, and David A. Ferree, Assistant Attorney General, for respondent-appellant.

Steven K. Ristvedt, Independence, for petitioner-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

PER CURIAM

The respondent appeals from the district court's reversal of its decision to revoke the petitioner's license for an alleged failure of a chemical test. The respondent contends that the district court erred in ruling that its revocation decision was unsupported by substantial evidence, arbitrary, unreasonable, and characterized by an abuse of discretion. We affirm.

The petitioner, Gary Walter Franck, was a passenger in a pickup truck allegedly driven by Diane Smith on the evening of December 12, 1985. Smith drove into a ditch while turning a corner and the truck became stuck. Smith left to seek help. After Smith left, a deputy sheriff came upon the stranded pickup truck. As the deputy approached the vehicle, he saw the headlights shut off and noticed Franck behind the wheel. He did not observe any exhaust from the vehicle, although Smith testified she left the engine running due to sub-zero temperatures.

When questioned by the deputy, Franck stated that he had been driving to Smith's house and that his license was suspended. The deputy knew Smith's reputation for giving rides to intoxicated persons and thought it "questionable" that Franck was driving. The deputy testified on cross-examination he thought Franck was "quite confused." He did not observe keys in the ignition. After Franck failed several field sobriety tests, the officer arrested him for operating while intoxicated and took him to the law enforcement center. At the law center, Franck claimed that Smith had been driving. He then consented to a breath test. His intoxilyzer test resulted in a blood alcohol concentration above the legal limit, but the intoxilyzer malfunctioned and failed to register the final printout on the card.

After Smith was notified of Franck's arrest, she eventually appeared at the law center to retrieve her keys. Smith then informed the officers that it was she who was driving when the vehicle entered the ditch.

Franck received notice from the Iowa Department of Transportation that his license was revoked for failing a chemical test. Franck appealed the revocation, but the hearing officer's decision was upheld on administrative appeal. Franck petitioned for judicial review of the final agency decision. The district court reversed the agency's ruling. The court determined that even though the arresting officer had reasonable grounds to believe that Franck had been operating the vehicle while intoxicated, the unusual circumstances of the case militated a finding that the agency's revocation decision was arbitrary, unreasonable, characterized by an abuse of discretion, and unsupported by substantial evidence. The agency's subsequent Iowa Rule of Civil Procedure 179(b) motion was overruled. This appeal followed.

It is well settled our scope of review is limited to a determination of whether the district court made errors of law when it exercised its power to review the department's decision. Mary v. Iowa Dept. of Transportation, 382 N.W.2d 128, 131 (Iowa 1986). In connection with this inquiry, it is incumbent upon us to ascertain whether the agency's decision is supported by substantial evidence in the record as a whole. Fernandez v. Iowa Dept. of Human Services, 375 N.W.2d 701, 705 (Iowa 1985). Evidence is substantial to support an agency's decision if a reasonable person would find it adequate to reach the given conclusion, even though a reviewing court may draw a contrary inference. Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811-12 (Iowa 1985).

We agree with the trial court that there was not substantial evidence to support the agency action of revoking Franck's driver's license, reiterating

the trial court's rationale that due to the unusual facts of this case, the agency's action was unreasonable and arbitrary.

The unusual facts which we find to be of particular concern include the following: (1) the arresting officer knew that Smith habitually took home intoxicated persons and would not allow intoxicated persons to drive; (2) the arresting officer stated he felt Franck was quite confused at the time Franck admitted to driving the vehicle; (3) the arresting officer observed no keys in the ignition, nor did he observe any exhaust fumes; (4) Smith testified that she was driving the vehicle, not Franck; (5) Franck denied at the law center, after having additional time to become more coherent, that he was driving; and (6) the intoxilyzer failed to register a final printout on the card.

Based on the foregoing discussion, we believe, upon examining the record as a whole, that there was not substantial evidence in the record to support the agency's actions. We therefore affirm the district court.

AFFIRMED.