

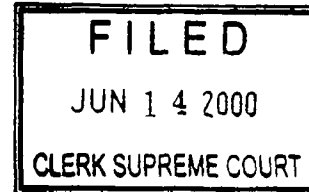
IN THE COURT OF APPEALS OF IOWA

No. 9-784 / 97-2254
Filed June 14, 2000

IOWA DEPARTMENT OF TRANSPORTATION,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR SIOUX COUNTY,
Defendant.



Appeal from the Iowa District Court for Sioux County, Bradley K. DeJong,
District Associate Judge.

The department of transportation (DOT) challenges a portion of a district court ruling that orders it to change a previously imposed driver's license revocation for chemical test refusal. The DOT contends the associate district court had no jurisdiction to issue an order requiring it to alter a license revocation decision. **WRIT SUSTAINED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for plaintiff.

James H. Pickner, Hawarden, for Janet Meyer, defendant below.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

000086

PER CURIAM.

On March 28, 1997, Janet Meyer was cited for operating while intoxicated second offense in violation of Iowa Code section 321J.2 (1995). When she refused to submit to chemical testing, the department of transportation (DOT) revoked her driver's license under Iowa Code section 321J.9 (1995). Under section 321J.9, the DOT shall revoke a person's motor vehicle license if a peace officer had reasonable grounds to believe that person to have been operating a motor vehicle in violation of section 321J.2 and that person refuses to submit to chemical testing. Pursuant to this section, the person's license shall be revoked for 240 days for a first offense and 540 days if the person has one or more previous revocations within the previous six years under this chapter. The date of revocation is effective twenty days after the person receives such notice. Because this is a second offense, the DOT revoked Meyer's license until September 30, 1998. Meyer did not seek judicial review of the DOT decision. Indeed, Meyer did not even contest the administrative revocation before the agency by simply requesting a contested case hearing. She, therefore, acquiesced in the revocation of her license.

On November 21, 1997, Meyer withdrew her plea of not guilty and pled guilty to operating a motor vehicle while under the influence-second offense in violation of Iowa Code section 321J.2. The district court accepted the plea and, pursuant to a plea agreement, found Meyer to have consented to the chemical testing and ordered her license to be revoked under Iowa Code section 321J.4 rather than 321J.9. Under section 321J.4, Meyer's license would only be

revoked for a period of one year. The DOT was ordered to make the necessary changes to Meyer's driver's license revocation status.

The DOT applied for writ of certiorari claiming the district court had no jurisdiction to issue an order requiring it to alter a license revocation decision, it was not a party to the criminal action, and the county attorney does not represent the DOT and has no authority as part of a plea bargain to waive statutorily mandated license revocation provisions. Meyer contends the passage of time has made this issue moot because she has already served the longer period of revocation originally imposed by the DOT. She argues any ruling on this issue will not have any practical effect upon the existing controversy.

We do not ordinarily consider cases that are moot. *Polk County Sheriff v. Iowa Dist. Court for Polk County*, 594 N.W.2d 421, 425 (Iowa 1999). A case is moot if it no longer presents a justiciable controversy because the issues are academic or nonexistent. *Sear v. Clayton County Zoning Bd. Of Adjustment*, 590 N.W.2d 512, 514 (Iowa 1999). Our supreme court has stated it will generally dismiss an appeal when judgment, if rendered, will have no practical legal effect upon the existing controversy. *Christensen v. Iowa Dist. Court for Polk County*, 578 N.W.2d 675, 679 (Iowa 1998).

In some cases, we may decide to consider moot cases on public policy grounds. *Shannon v. Hansen*, 469 N.W.2d 412, 414 (Iowa 1991). Claims should not be dismissed on mootness grounds where matters of public importance are presented and the problem is likely to recur. *T & K Roofing Co., v. Iowa Dep't. of Educ.* (Iowa 1999). We conclude this is a matter of public importance and the

problem is likely to recur. Therefore, we will consider the appeal and decline to dismiss the matter as moot.

The district court clearly acted contrary to its jurisdiction and authority. *Iowa Dep't of Transp. v. Iowa Dist. Ct. for Bremer County*, 534 N.W.2d 457, 460-61 (Iowa 1995). Meyer acquiesced to her license revocation by the DOT. She did not contest it within the agency or seek judicial review. The fact the district court order was entered pursuant to a plea agreement does not change the outcome. *Id.* The DOT did not receive notice and was not represented at the plea taking procedure. The county attorney is without authority to waive license revocation provisions mandated by statute. *Id.*

WRIT SUSTAINED.