IN THE COURT OF APPEALS OF IOWA

No. 0-754 / 00-0634
Filed February 7, 2001

MICHELLE RIGGAN-FERCH,
Petitioner - Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Respondent - Appellee.

FILED
FEB 07 2001
CLERK SUPREME COURT

Appeal from the Iowa District for Cerro Gordo County, John S. Mackey, Judge.

Petitioner-Appellant appeals the trial court's decision on judicial review dismissing her petition for judicial review. **AFFIRMED.**

DeDra Schroeder, Schroeder Law Office, Charles City, for appellant.

Thomas J. Miller, Attorney General, and John Baty, Assistant Attorney General, for appellee.

Considered by Sackett, C.J. and Vogel, J., and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (2000).

HONSELL, S.J.

Petitioner-appellant Michelle Riggan-Ferch appeals from the district court's decision on judicial review dismissing her petition for judicial review. She asserts that the court was wrong in determining that the doctrine of res judicata prevented her from bringing the current action, which sought to relitigate the issue of whether a prior deferred judgment should be counted in determining her status as an habitual offender under Iowa Code section 321.555 (1997).

I. Background Facts and Proceedings.

Michelle had her driving privileges suspended by the Iowa Department of Transportation (IDOT) for four years. The suspension was premised on the determination that she was a habitual offender pursuant to Iowa Code sections 321.555(1) and 321.560.[1]

Michelle was convicted of operating while intoxicated during 1992, driving while suspended during 1993, and operating while intoxicated in 1998. Michelle was informed by the IDOT that her motor vehicle license would be revoked for four years as of December 17, 1998.

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[1] 1 The application portions section 321.555 provide:

> As used in this division, *"habitual offender"* means any person who has accumulated convictions for separate and distinct offenses described in subsection 1, 2, or 3, committed after July 1, 1974, for which final convictions have been rendered, as follows:
>
> 1. Three or more of the following offenses, either singularly or in combination, within a six-year period:
>
> * * *
>
> *b.* Operating a motor vehicle in violation of section 321J.or its predecessor statute.
>
> *c.* Driving a motor vehicle while the person's driver's license is suspended, denied, revoked, or barred.

She appealed the revocation. At the hearing she offered evidence that she had received a deferred judgment for the 1992 operating while intoxicated case. She also testified that she had completed her terms of probation, however, she did not offer evidence of the 1994 court order granting her final discharge from the probation imposed at time of receiving the deferred judgment. The Administrative Law Judge (ALJ) ruled that she had been convicted of three offenses alluded to in Iowa Code section 321.555(1), therefore, she was a habitual offender. Michelle appealed the decision of the ALJ. The Reviewing Officer affirmed the decision of the ALJ and indicated that Michelle had failed to meet her burden of proof to show that she had successfully completed her probation and, therefore, the IDOT's reliance on the 1992 operating while intoxicated conviction for which she was granted a deferred judgment was wrong. She appealed the agency decision to the district court. The appeal was docketed January 29, 1998, four days beyond the statutory deadline for perfecting the appeal. The district court subsequently dismissed the case for lack of subject matter jurisdiction, e.g. not having timely filed the appeal.

Michelle then presented the 1994 court order acknowledging that she had successfully completed her probation and that she was released without entry of judgment to the IDOT, and requested that the IDOT remove the habitual offender status from her record. The IDOT maintains that a deferred judgment stands as a conviction for the purpose of declaring a person to be a habitual offender pursuant to Iowa Code section 321.355(1). Michelle's request was denied.

Michelle then formally requested that the IDOT reopen the proceedings. The IDOT refused indicating that since no statute or administrative rule existed allowing it to reopen the case, it was without jurisdiction to do so. Michelle appealed the decision to the district court, which dismissed her appeal on the basis of res judicata explaining that the issue of whether a deferred judgment is a conviction under Iowa Code section 321.555 was litigated in the administrative proceeding.

II. Scope of review.

Our review of a DOT revocation decision is governed by Iowa Code section 17A, Iowa's Administrative Procedure Act. *See Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997); *see generally* Iowa Code § 17A. "[W]e ask only whether the district court has correctly applied the law." *Bromeland*, 562 N.W.2d at 625. Applying the standards for review of agency action found in Iowa Code section 17A.19(8), we determine whether our conclusions are the same as those made by the district court. *See Scott v. Iowa Dep't of Transp.*, 604 N.W.2d 617, 619 (Iowa 2000). 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.*

III. The Merits

Res judicata is a generic term that includes claim preclusion and issue preclusion. When used in the sense of claim preclusion, res judicata means that further litigation on the claim is barred. When used in the sense of issue

preclusion, res judicata means that further litigation on a specific issue is barred. *Bennett vs. MC No. 619*, 586 N.W.2d 512, 516 (Iowa 1998).

According to the doctrine of res judicata, a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. *Id.* at 516.

The policy of the law underlying claim preclusion is that a claim cannot be split or tried piecemeal. Thus, a party must try all issues growing out of the claim at one time and not in separate actions. An adjudication in a prior action between the same parties on the same claim is final as to all issues that could have been presented to the court for determination. Simply put, a party is not entitled to a "second bite" simply by alleging a new theory of recovery for the same wrong. *Id.* at 516-517.

The doctrine of res judicata was properly applied by the trial court to the facts submitted to it.

The issue of whether Michelle's 1992 OWI deferred judgment should have been counted when determining that she was a habitual offender was tried at the administrative hearing level. Also, the original judicial review case was dismissed by the district court for want of subject matter jurisdiction. We affirm the ruling of the trial court.

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AFFIRMED. Sackett, C.J. concurs specially without opinion.