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IN THE COURT OF APPEALS OF IOWA

ROBERT JOSEPH SEKERA,

Appellant,

vs.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF IOWA,

Appellee.

Filed January 28, 1977

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2-57947

Appeal from Woodbury District Court - R. K. Branon, Judge

Appeal from order dismissing plaintiff's petition and upholding administrative revocation of plaintiff's driver's license.

APPEAL DISMISSED

Harry W. Smith and MacDonald Smith, of Sioux City, for appellant.

Richard C. Turner, Attorney General and Peter E. Voorhees, Assistant Attorney General, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

SNELL, J.

This is a driver's license revocation case pursuant to §321B.7, The Code. The Department of Public Safety revoked the license of Robert Joseph Sekera based on his arrest for operating a motor vehicle while intoxicated and his refusal to submit to a chemical test under Iowa's Implied Consent Statute. Sekera appealed the revocation to the District Court which, after hearing evidence, dismissed the appeal. We dismiss the case on the ground the question of validity of the revocation is moot.

Between 11:00 and 11:30 p.m., on the night of January 28, 1974, plaintiff Sekera was driving from a meeting in Sioux City to his home in Sergeant Bluff, a distance of approximately ten miles. Dennis Wahle, a Sergeant Bluff police officer, observed Sekera's car as it passed through the intersection of Industrial Road and Highway 75, south of Sergeant Bluff. Wahle began following the vehicle after he observed it go off the shoulder of the highway. While following, he observed the car travel left of center of Highway 75 and on the right shoulder of the highway once again.

Wahle called the Woodbury County Sheriff's Office and informed them he was going to attempt to stop a car. Officer Wahle first attempted to stop Sekera's vehicle by using the red light on his police car, then by using his siren. There was no response from Sekera. He then pulled out beside Sekera and used his P.A. system to tell him to pull over and stop. Wahle testified that Sekera just looked at him, turned his head, and drove on. Wahle then dropped back behind Sekera as two vehicles approached from the south. The two vehicles were forced onto the right shoulder of their portion of the highway to avoid being struck by plaintiff's vehicle which was again traveling left of center.

Officer Wahle made two attempts to stop plaintiff's vehicle.

First, Wahle passed Sekera's vehicle and pulled in front of him and applied his brakes, forcing Sekera to stop. Wahle then turned and pulled behind Sekera's vehicle in order to take down his license number. Just as Wahle stepped from his vehicle, Sekera drove off.

Officer Wahle again attempted to stop Sekera's vehicle two or three blocks farther south on Highway 75. He pulled in front of Sekera and stopped his vehicle at the intersection of 4th Street and Highway 75. This time, Wahle kept his vehicle in front of Sekera's, got out and started walking back towards his car. Sekera then backed out and drove around him proceeding south. Wahle testified that during this entire period he had both his red light and siren on.

Wahle again pursued Sekera's vehicle. After two blocks, Sekera made a right-hand turn, drove to the end of the block and turned into his driveway. Officer Wahle stated that the garage door was being raised and as he pulled into the driveway, Sekera drove into his garage. Officer Wahle got out of his vehicle and entered the garage by running under the door which was being closed by an automatic device.

Sekera was in the process of getting out of his car when Wahle confronted him and asked him for his driver's license. Sekera became abusive, told Wahle that he didn't belong in his garage, and ordered him out. Officer Wahle testified that at this time he could smell what he thought was alcohol on Sekera's breath. As Sekera stood up, Wahle placed his hand on Sekera's shoulder and informed him he was under arrest for O.M.V.U.I. A short struggle ensued. Sekera was handcuffed and taken to the police station.

At the police station, Wahle again informed Sekera that he was under arrest and asked if Sekera would submit to a blood test.

Sekera refused. He then asked if he would submit to a breath test. Again he refused.

Sekera testified he had only had two or three drinks at the meeting before he left for home. He further testified he never heard anything which sounded like a public address system or which resembled a siren. He never observed any vehicle or flashing red light on his way home. The first occasion that he saw Officer Wahle was in his garage after he got out of his car.

Sekera admitted that he knew Officer Wahle, that he recognized him that evening, and that Wahle did ask him for his driver's license. He said he refused because he believed that he had broken no law nor done anything wrong. He testified that Wahle did not advise him he was under arrest until he arrived at the police station. Although he stated that Wahle asked him to take a blood and a breath test, which he refused, he said Wahle did not advise him he would lose his license if he did not take the test; nor did he recall Officer Wahle reading a form to him. Further, Sekera did not recall signing any form.

On February 19, 1974, defendant, Department of Public Safety, notified Sekera of the revocation of his driver's license effective March 4, 1974. Section 321B.7, The Code. Sekera then requested a hearing on the revocation before the Department as provided in §321B.8. The hearing was held on March 5, 1974, at which time Sekera resisted revocation of his license on the ground that his arrest violated Iowa law and the United States Constitution. The hearing officer upheld the revocation.

On the same day, Sekera filed this action in Woodbury County District Court for review of the Department's action under §321B9. Sekera alleged the revocation was invalid on the ground that his arrest resulted from Officer Wahle's illegal entry into his garage. Hearing was held June 4, 1974, and on December 17, 1974,

the court dismissed Sekera's petition and ordered the Department to implement its revocation of Sekera's license. Sekera appealed that order.

The present Administrative Procedures Act has no bearing on this case since its passage antedates Sekera's arrest. Section 17A.23, The Code.

In perfecting his appeal from the District Court order, Sekera sought a stay order on filing a supersedeas bond. The Clerk of the Woodbury County District Court thereupon issued a stay order prohibiting the enforcement of the judgment pending disposition of the appeal. The Department of Public Safety moved to vacate the stay of revocation of Sekera's license in the Supreme Court. The motion was sustained by the Supreme Court and the stay order held for naught. We are informed by Sekera's counsel the revocation of Sekera's driver's license for 120 days was effected. We are also advised by counsel for Sekera that since instituting this appeal "the effectiveness of any remedy for Sekera has become moot".

The rule on moot questions is stated in Nitta v. Kuda, 249 Iowa 853, 857, 858, 89 N.W.2d 149 (1958).

> "We have often said that we will not decide moot questions. More than once this court has been faced with a situation in which the passage of time made any remedy impossible. If we should consider this cause on its merits and disagree with the holding of the trial court, it is apparent no benefit to the plaintiff-appellant could result. Under such circumstances we have refused to entertain appeals. . . .Nor is it material that no motion to dismiss has been made by the appellee. The record shows affirmatively that only a moot question is presented, and in such cases we decline to act. . . .
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> It was also suggested that a decision on the merits here might affect other litigation. This would amount to an advisory opinion, which is beyond the scope of our duties or authority. Nor do we render decisions merely for the purpose of determining liability for costs. . . .

> Courts favor trials and decisions upon the merits of causes rather than upon technicalities. It is regrettable that we may not analyze and determine the questions argued by the parties here; but such a determination could avail nothing. The lapse of time, for all practical purposes, ended this litigation long before it reached us."

The Supreme Court recently dismissed a case as moot where the Attorney General dismissed, without prejudice, the foundational district court action. State ex rel Turner v. Midwest Development Corp., 210 N.W.2d 525 (Iowa 1973).

Compare St. Joseph Hospital v. Peterson, 196 N.W.2d 418 (Iowa 1972), where the court dismissed the appeal because the trial court had not taken final action on a petition for permanent injunction and no permission to appeal from the temporary injunction was sought or granted.

In Humble v. Carter, 210 Iowa 551, 231 N.W. 341 (1930), the appeal was dismissed as presenting a moot question when the injunction had automatically dissolved by lapse of time.

The court in Manning v. Heath, 206 Iowa 952, 221 N.W.2d 560 (1928) dismissed the appeal of a forceable entry and detainer action where the lease had expired under which appellant claims and he had no further interest in the premises.

The defendant in State v. Wilson, 234 N.W.2d 140 (Iowa 1975) had been released from the county jail having served his sentnece. His appeal seeking release or work release privileges presented a moot question. The appeal was dismissed.

Sekera's appeal now presents a moot question. There is no way this court can restore the 120 day revocation of his license or grant any other effective relief.

There are exceptions to the rule on moot questions. Where a question of public interest is involved it lies in the discretion of the court to pass on the question. Berleen v. Iowa Department of Public Safety, 260 Iowa 699, 150 N.W.2d 593 (1967).

Here the court determined a revocation under §321.209 The Code is mandatory without hearing. See also Maquire v. Fulton, 179 N.W.2d 508 (Iowa 1970) (determining when a conviction becomes final) and State ex rel Bruner v. Sanders, 256 Iowa 999, 129 N.W. 2d 602 (1964) (further custody hearings to be held).

In Darner v. Hass, 257 Iowa 654, 134 N.W.2d 534 (1965) the court decided the issue even though the period of suspension of appellant's driver's license had run. The issue involved the constitutionality of the statute under which the Public Safety Department suspended a license when the licensee had committed a "serious violation". The court found this was an issue of concern to the public generally.

We do not find any question of public interest in the instant case sufficient to bring it within the exception to the rule on moot questions.

Appeal dismissed.