IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-581 / 94-1964

KENT LESLIE WALLIN,

Appellant.

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellee.

Appeal from the Iowa District Court for Dickinson County, Charles H. Barlow, Judge.

Petitioner appeals the district court ruling dismissing as untimely his petition for judicial review of the department's revocation of his driver's license. **AFFIRMED.**

M. W. Miller, Jr. of Miller, Miller, Miller, Green & Miller, Cherokee, for appellant.

Thomas J. Miller, Attorney General; David A. Feree, Special Assistant Attorney General; and John W. Baty, Assistant Attorney General, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

PER CURIAM

Petitioner appeals the decision of the district court denying his application for further review of the final decision of the Iowa Department of Transportation (DOT). The district court determined the petition was untimely. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On June 29, 1992, the DOT sent Kent Wallin notice his driver's license would be revoked for 180 days due to his failure of a breath test. Wallin challenged the revocation of his license. Final agency action on the matter occurred on September 22, 1993, when the DOT denied Wallin's request for relief.

On September 27, 1993, the district court granted a stay of the revocation while the case was pending on judicial review. However, no petition for judicial review was actually filed. The DOT sent Wallin notice on September 28, 1993, that his revocation had been rescinded and the case remained on a court-ordered stay.

On February 28, 1994, on the DOT's motion, the stay was dissolved. The DOT sent Wallin notice on March 9, 1994, that his 180-day license revocation would begin on March 30, 1994. He obtained a new stay.

Wallin filed a petition for judicial review on April 7, 1994. He claimed the order rescinding his revocation tolled the time for filing a petition for judicial review. The district court determined the time for seeking judicial review began to run on September 22, 1993, and expired thirty days later. The court concluded it did not

have jurisdiction to consider Wallin's petition because it was untimely. Wallin has appealed.

Our scope of review of agency action is well defined. *Purethane v. Iowa State Board of Tax Review*, 498 N.W.2d 706, 710 (Iowa 1993). Like the district court, we sit only to correct errors of law. *Id.*

A timely petition for judicial review to the district court is a jurisdictional prerequisite for review of final agency action. *Sioux City Brick & Tile Co. v. Employment Appeal Board*, 449 N.W.2d 634 (Iowa 1989). Under Iowa Code section 17A.19, a petition for judicial review must be filed in district court within thirty days after the agency's final decision. *Sharp v. Iowa Department of Job Service*, 492 N.W.2d 668, 669 (Iowa 1992).

Here, Wallin did not file a petition for judicial review within thirty days of the agency's final action on September 22, 1993. We find the time for filing a petition was not tolled by the notice rescinding his license revocation because the notice clearly stated the revocation was rescinded based on the court-ordered stay. Wallin obtained the stay by representing to the court that he planned to file a petition for judicial review, although no petition was filed at that time.

We affirm the district court's conclusion that it did not have jurisdiction to consider Wallin's petition for judicial review because it was not timely filed. Costs of this appeal are assessed to Wallin.

AFFIRMED.