

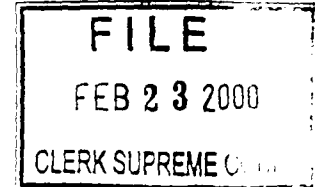
IN THE COURT OF APPEALS OF IOWA

No. 0-054 / 99-0862
Filed February 23, 2000

NICHOLAS C. BUTTOLPH,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION, OFFICE
OF DRIVER SERVICES,**
Respondent-Appellee.



Appeal from the Iowa District Court for Howard County, James L. Beeghly,
Judge.

The petitioner appeals from the district court's ruling on judicial review
affirming the respondent's revocation of the petitioner's driver's license under
Iowa Code chapter 321J. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Assistant Attorney
General, and Kerry Anderson, Assistant Attorney General, for appellee.

Heard by Sackett, C.J., and Hecht, J., and Schlegel, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.92
(1999).

HECHT, J.

Nicholas C. Buttolph ("Buttolph") appeals from the district court's ruling on judicial review affirming the Iowa Department of Transportation's ("DOT") revocation of his driver's license under Iowa Code chapter 321J. We affirm.

I. Factual Background and Proceedings. On September 6, 1998, Deputy Jeffrey Carolan observed Buttolph drive from the street into the lawn or parking area near Buttolph's home. Deputy Carolan believed Buttolph was under a prior driver's license revocation. Carolan entered Buttolph's home without knocking and observed Buttolph's eyes were bloodshot and his speech was slurred. Carolan administered field sobriety tests and, when Buttolph failed all of them, the deputy arrested him for operating while intoxicated ("OWI.") Buttolph's blood alcohol level was measured at 0.112. The State subsequently charged him with OWI and the DOT issued notice of revocation of his driving privilege for one year.

The civil license revocation proceedings and the criminal (OWI) proceedings went forward contemporaneously. A hearing on the driver's license revocation was held before an administrative law judge ("ALJ") on October 21, 1998. Buttolph filed a suppression motion in the OWI case on October 26, 1998, contending Deputy Carolan had no reasonable cause for the stop. On November 9, 1998, the ALJ in the civil revocation proceeding sustained the revocation, and Buttolph commenced an intra-agency appeal on November 19, 1998. On November 30, 1998, the district court sustained Buttolph's motion to suppress because the State did not resist the motion and dismissed the OWI charge. On

December 9, 1998, Buttolph filed a "Notice of Ruling" informing the Department of Inspection and Appeals of the district court's suppression and dismissal order. On December 18, 1998, the DOT reviewing officer affirmed the decision of the ALJ.

Buttolph filed a petition for judicial review of the final agency action on January 14, 1999. On May 3, 1999, the district court entered an order denying the petition. On appeal, Buttolph claims the agency erred when it ignored the suppression order entered by the district court in the criminal case and revoked his license to operate a motor vehicle.

II. Standard of Review. In reviewing an agency decision, we apply the standards of Iowa Code section 17A.19(8) to assess whether our conclusions coincide with those reached by the district court. *Board of Supervisors v. Iowa Civil Rights Comm'n*, 584 N.W.2d 252, 254 (Iowa 1998). Ordinarily, our review is confined to whether the district court correctly applied the law. *Bennett v. Iowa Dep't of Natural Resources*, 573 N.W.2d 25, 27 (Iowa 1997).

III. Merits. Ordinarily, an arrest for OWI starts two separate proceedings: a criminal proceeding regarding the criminal charge and a civil proceeding for revocation of the defendant's driver's license. In 1987, the Iowa Supreme Court determined the exclusionary rule formulated under the Fourth and Fourteenth Amendments did not apply in civil revocation proceedings. The DOT was permitted to consider evidence even if it had been excluded from the record in criminal proceedings because it was gathered illegally. *Westendorf v. Iowa Dep't of Transp.*, 400 N.W.2d 553, 557 (Iowa 1987).

After *Westendorf* was decided, the legislature adopted Iowa Code section 321J.13(4) (1989). This statute bound the DOT in revocation proceedings to certain actions taken by the district court in separate criminal proceedings arising out of the same circumstances. *Brownsberger v. Iowa Dep't of Transp.*, 460 N.W.2d 449, 451 (Iowa 1990). Moreover, the legislation required the DOT to rescind any license revocation stemming from police action that was subsequently found by the district court to be without reasonable grounds for belief the OWI law had been violated. See Iowa Code § 321J.13(4) (1989).

Proving the law is not a static institution, however, the legislature rescinded 321J.13(4). See section 31 of House File 704, effective July 1, 1997. By this action, the legislature evidenced its intention to affirm the rule of *Westendorf* establishing orders in criminal OWI proceedings are not binding on the DOT in corresponding civil revocation proceedings. Thus, the law prevailing at the time of final agency action on Buttolph's license revocation permitted the DOT to consider evidence even if it had been excluded from the criminal case as a product of an illegal stop.

Buttolph contends, however, legislation adopted after final agency action on his license revocation should apply retroactively and should compel the DOT to rescind his license revocation. He points out the provisions formerly found in section 321J.13(4) were recently adopted in substantially similar language in an amendment to section 321J.13(6). See Iowa Code § 321J.13 (Supp. 1999); *Wieslander v. Iowa Dept. of Transp.*, 596 N.W.2d 516, 521 (Iowa 1999). Section 321J.13(6) became effective upon enactment on April 7, 1999. See 1999 Iowa

~~Acts ch. 13, § 29.~~ Buttolph argues the new statute should apply retroactively in his case ~~and~~ should compel the DOT to rescind his license revocation because the district court granted his suppression motion and dismissed the criminal charge. His argument can prevail only if section 321J.13(6) has retroactive application.

We presume statutes apply prospectively unless the legislature expressly indicates they are to apply retroactively. See Iowa Code § 4.5. Thus, statutes apply only to actions that arise after the effective date of the statute, unless the legislature expressly indicates they are to apply retroactively. *Frideres v. Schiltz*, 540 N.W.2d 261, 264 (Iowa 1995); *First Nat'l Bank v. Diers*, 430 N.W.2d 412, 414 (Iowa 1988); *City of Waverly v. Iowa Dep't of Job Serv.*, 383 N.W.2d 513, 514 (Iowa 1986). When applying the statutory directive of Iowa Code section 4.5 to determine whether a statute shall apply only prospectively, or both prospectively and retrospectively, we look to the intent of the legislature. *Frideres*, 540 N.W.2d at 265. We must presume the statute should be applied prospectively unless there is "clear" legislative intent to the contrary. *Sisco v. Iowa-Illinois Gas & Elec. Co.*, 368 N.W.2d 853, 861 (Iowa App. 1985).

This case arose on September 6, 1998, seven months before the legislature enacted section 321J.13(6). There is no express indication the legislature wanted the section to apply retroactively. Of particular significance to our analysis are two proposed amendments offered during debate on the

legislation.¹ Both amendments would have incorporated retrospective application in the enactment, but they were defeated. The rejection of these amendments clearly indicates the legislature did not intend to make section 321J.13(6) retroactive. Final agency action on Buttolph's license revocation was taken on December 18, 1998, more than three months before the effective date of section 321J.13(6). Accordingly, we are constrained to conclude section 321J.13(6) cannot be applicable to Buttolph's case, and the revocation of Buttolph's license must stand. We affirm the decision of the district court.

IV. Other Claims. We have considered Buttolph's other claims in this matter and consider them to be without merit.

AFFIRMED.

¹ House amendment 1139 reads, in relevant part: "Section 22 of this Act is applicable to a revocation of a person's motor vehicle license or operating privilege under section 321J.9 or 321J.12 based upon an act or acts which occurred on or after July 1, 1998." House amendment 1140 reads, in relevant part: "Section 22 of this Act is applicable to a revocation of a person's motor vehicle license or operating privilege under section 321J.9 or 321J.12 based upon an act or acts which occurred on or after July 1, 1997."