IN THE COURT OF APPEALS OF IOWA

No. 0-221 / 99-423
Filed July 26, 2000

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JOSEPH BENTON HORNADAY,
Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Scott Rosenberg, Judge.

The respondent appeals from the district court's ruling on judicial review reversing the revocation of the petitioner's driver's license for a chemical test failure pursuant to Iowa Code section 321J.12 (1997). **REVERSED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, Kerry Anderson, Assistant Attorney General, for appellant.

Rick L. Olson, Des Moines, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

The Iowa Department of Transportation appeals the district court's reversal of Joseph Hornaday's driver's license revocation. It claims a scrivener's error on the implied consent written request form does not nullify the revocation because the procedural prescriptions of Iowa Code section 232J.12 are not mandatory but directory. The State claims Hornaday failed to show he suffered any prejudice when the administrative law judge permitted the department to establish the necessary elements for revocation by testimony rather than by certification. We agree the procedural requirement of certification is directory and Hornaday failed to show the requisite prejudice. Accordingly, we reverse the district court.

I. Background Facts & Proceedings.

In July of 1998 an officer with the DeSoto Police Department stopped Joseph Hornaday for speeding. The officer smelled alcohol emanating from the vehicle and requested a preliminary breath test. The preliminary breath test indicated Hornaday's blood alcohol concentration (BAC) was above the legal limit. Hornaday was arrested for operating a motor vehicle while intoxicated. Iowa Code § 321J.2 (1997). At the Dallas County Jail, the officer read the implied consent advisory form to Hornaday. Section B of the written request form listed the seven independent situations where an officer may request chemical testing. The instructions regarding that subsection directed the officer to check all the grounds that apply. The only ground checked by the officer was the following: "[the person] submitted to a preliminary breath screening test (PBT) which indicated an alcohol concentration of ten hundredths (0.10) or more." The

officer did not check the box stating, "[the person] was placed under arrest for violation of Iowa Code section 321J.2." Hornaday signed the form and submitted to testing. The results indicated his BAC was above the legal limit.

Based on the written form and the test results, the department of transportation (DOT) revoked Hornaday's driver's license. Hornaday requested a stay of the revocation and sought an administrative hearing. The evidence adduced at the hearing revealed the preliminary breath test could not be relied upon for requesting chemical testing because the device had not been calibrated as required. The officer testified, however, that he had placed Hornaday under arrest on the day of the arrest and he simply overlooked memorializing the arrest on the written request form. The administrative law judged concluded the oversight was harmless and affirmed the revocation. Upon judicial review, the district court overturned the revocation finding the term "certification" in Iowa Code section 321J.12 (1997) required the officer to cite on the written request form the proper grounds for requesting the test. It found the officer's failure to specifically perform this procedural requirement demanded reversal of the revocation.

The DOT appeals, claiming Iowa Code section 321J.12 does not require the certification to be in writing when the officer is merely correcting a harmless oversight.

II. Standard of Review.

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code section 17A.19. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996). The agency's decision is final if it is

supported by substantial evidence and is correct in its conclusions of law. *Id.* The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the agency's decision from being supported by substantial evidence. *Id.* Evidence is substantial when a reasonable person could accept it as adequate in reaching a similar finding. *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625 (Iowa 1996).

III. The Merits.

The DOT may revoke a person's driver's license if an officer *certifies*, under the penalty of perjury: (1) there were reasonable grounds to believe the person had been operating a motor vehicle while intoxicated, (2) at least one of the conditions for testing outlined in Iowa Code section 321J.6 was present, and (3) the person submitted to testing and the results indicated an alcohol concentration above the legal limit. Iowa Code § 321J.12.

The term "certification" generally means a testimonial writing. *See State v. Boner*, 186 N.W.2d 161, 164 (Iowa 1974); *State ex rel. Andrson v. Paulus*, 583 P.2d 531, 532-33 (Or. 1978); *State ex rel. Beckstedt v. Eyrich*, 195 N.E.2d 371, 376 (Ohio Ct. App. 1963); Black's Law Dictionary 227 (6th ed. 1990). As such, it would seem to naturally follow that an officer's certification must be in writing. However, in *Tyler v. Iowa Department of Transportation*, our supreme court found certain procedural requirements embodied in the implied-consent law to be directory rather than mandatory. *Tyler v. Iowa Dep't of Transp.* 420 N.W.2d 442, 443 (Iowa 1988).

> Mandatory and directory statutes each impose duties. The difference between them lies in the consequence for failure to perform the duty. . . . If the prescribed duty is essential to the main

> objective of the statute, the statute ordinarily is mandatory and a violation will invalidate subsequent proceedings under it. If the duty is not essential to accomplishing the principal purpose of the statute but is designed to assure order and promptness in the proceeding, the statute ordinarily is directory and a violation will not invalidate subsequent proceedings unless prejudice is shown.

Taylor v. Iowa Dep't of Transp., 260 N.W.2d 521, 522-23 (Iowa 1977). Therefore, we must first determine if the process of certification is mandatory or directory.

The principal purpose of Iowa Code section 232J.12 is to remove those drivers who drink to excess and then attempt to negotiate the highways and thoroughfares of this state. To effectuate that goal, extremely specific factual elements must be substantiated. These include: (1) reasonable grounds to believe the person had been operating a motor vehicle while intoxicated, (2) the presence of at least one of the conditions for testing outlined in Iowa Code section 321J.6 were present, and (3) the person submitted to testing and the results indicated an alcohol concentration above the legal limit. Iowa Code § 321J.12. What is not mandatory about this statute is the manner in which that information is relayed to the DOT. We would be hard pressed to elevate the certification directive to the lofty status of the statute's primary purpose. Therefore, we find the portion of the statute which demands the officer certify the events to be directory in nature. That being the case, a strict adherence to the commonly-accepted definition of certification could be relaxed as long as the driver subject to the revocation suffered no prejudice. *See Tyler v. Iowa Dep't of Transp.*, 420 N.W.2d at 443.

In reviewing the record before us, there is simply no evidence Hornaday suffered any prejudice as a result of the officer's oversight. In his brief, Hornaday claims there is a very real danger that an oversight such as this could not only mislead a driver but render his consent to chemical testing involuntary. We agree that an officer's mistake in stating the reasons for seeking chemical testing could prove prejudicial to a driver, but Hornaday failed to introduce any evidence that he actually befell such prejudice. As such, we cannot find Hornaday suffered any prejudice as a result of the certification oversight. The district court is reversed.

REVERSED.