IN THE COURT OF APPEALS OF IOWA

No. 0-338 / 99-1293
Filed February 28, 2001

FILED
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CLERK SUPREME COURT

IOWA DEPARTMENT OF TRANSPORTATION,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY,
Defendant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, Judge.

The plaintiff filed a petition for writ of certiorari challenging the district court's authority to order restoration under 1999 Iowa Acts chapter 153, section 25 of a driver's license subject to a six-year revocation pursuant to Iowa Code section 321J.4(3)(a)(Supp 1995) for a third or subsequent operating while intoxicated conviction. The plaintiff claims the district court lacked authority to order the restoration of driving privileges under the legislation when the licensee had another pending six-year revocation based on a prior operating while intoxicated conviction. **WRIT SUSTAINED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Carolyn J. Olson, Assistant Attorney General, for plaintiff.

Mark J. Rater, Council Bluffs, for defendant.

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

SACKETT, C.J.

The plaintiff-appellant, Iowa Department of Transportation, filed a petition for writ of certiorari challenging the district court's authority under 1999 Iowa Acts chapter 153, section 25 to order restoration of a driver's license subject to a six-year revocation under Iowa Code section 321J.4(3)(a)(Supp. 1995) for a third or subsequent operating while intoxicated conviction. The IDOT claims the district court lacked authority to order the restoration of driving privileges under the legislation when the licensee had not met all elements of the statute. We sustain the writ.

On January 4, 1996, David Shetterly was convicted of a third or subsequent charge of operating while intoxicated in violation of Iowa Code section 321J.2 (1995). The court ordered Shetterly's driver's license revoked for six years under Iowa Code section 321J.4(3)(a)(Supp. 1995).[1] On May 7, 1996, Shetterly was again convicted in a second case of operating while intoxicated offense. On November 20, 1997 Shetterly made a motion for a temporary restricted license in the second case. The motion was granted.

On July 12, 1999, the district court restored Shetterly's eligibility for a motor vehicle license in the second case based on his application under 1999 Iowa Acts, chapter 153, section 25. There legislation permitted a restoration of

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[1] 3. a. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation.

Iowa Code § 321J.4(3)(a)(Supp. 1995).

driving privileges where a driver's license had been revoked for a third or subsequent violation of section 321J.2 and one or more of the violations occurred prior to June 30, 1991 and four conditions were met. 1999 Iowa Acts, chap. 153, § 25(2)(a)(4). One of Shetterly's convictions occurred prior to June 30, 1991.

The Department claims it did not receive notice of the application for a hearing on the restoration of Shetterly's driving privileges. Receiving a copy of the restoration order, the Department notified the district court Shetterly was not eligible to have his driver's license restored because he was subject to revocation for his January 1996 conviction of operating while intoxicated. The district court did not vacate its order. The Department petitioned for a writ of certiorari challenging the district court's authority to restore Shetterly's driving privileges. On October 25, 1999, the supreme court granted the petition.

Certiorari is a procedure utilized to test whether a district court exceeded its proper jurisdiction or otherwise acted illegally. Iowa R. Civ. P. 306. We review the district court's action for correction of errors at law. Iowa R. App. P. 4; *State v. Iowa Dist. Ct.*, 419 N.W.2d 398, 399 (Iowa 1988). We will sustain the writ if we find the district court acted illegally, or without authority or jurisdiction. *Wyciskalla v. Iowa Dist. Court for Johnson County*, 588 N.W.2d 403, 405 (Iowa 1998).

In the case before us, Shetterly had his license revoked for the January 1996 conviction. He was convicted of OWI again in May 1996. In order to be eligible to have his driving privileges restored, Shetterly had to meet all four statutory requirements. 1999 Iowa Acts, chapter 153, section 25(2)(a)(2) requires that:

> The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of section 321J.2 or 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under this chapter that indicated an alcohol concentration as defined in section 321J.1 of .10 or more, or refused to submit to chemical testing under this chapter.

Id. We conclude the second conviction made Shetterly ineligible to have his driving privileges restored from the January revocation because he could not satisfy this statutory requirement. Accordingly, the district court erred in restoring Shetterly's driving privileges.

WRIT SUSTAINED.