

IN THE COURT OF APPEALS OF IOWA

No. 1-330 / 10-1290
Filed July 13, 2011

ROGER FREDERICK MARCOUX JR.,
Petitioner-Appellee,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION, MOTOR
VEHICLE DIVISION,**
Respondent-Appellant.

Appeal from the Iowa District Court for Buena Vista County, John P. Duffy,
Judge.

The Iowa Department of Transportation appeals from the district court's
order reversing the suspension of Roger Marcoux's driving privileges.

REVERSED AND REMANDED.

Thomas J. Miller, Attorney General, David S. Gorham, Special Assistant
Attorney General, and B.J. Terrones, Assistant Attorney General, for appellant.

Larry A. Stoller of Stoller Law Firm, Spirit Lake, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

The Iowa Department of Transportation (DOT) appeals from the district court's order reversing the DOT's suspension of Roger Marcoux's driving privileges. The DOT asserts that the district court erred in finding the suspension of Marcoux's license was "arbitrary and unreasonable and an abuse of discretion" as substantial evidence supports the agency's decision that Marcoux's commission of "following too closely," "contributed to a fatal motor vehicle accident" and was therefore a "serious violation" warranting suspension under Iowa Code section 321.210 (2009).

I. Background Facts and Proceedings

According to the Iowa State Patrol technical collision investigation report, on April 28, 2007, a motor vehicle accident occurred involving Marcoux and three other vehicles. A vehicle heading north, driven by Gladys Wellmerling, crossed the highway and went onto the shoulder on the west side of the highway, apparently to stop and get mail from her mailbox. Marcoux was driving south on the highway, following behind a van. The van slowed as it approached Wellmerling. In response, Marcoux braked and turned his vehicle to the right, striking the rear passenger side of the van. The van was then swung into the northbound lane and struck by an oncoming truck. Three occupants of the van were killed.

Marcoux was charged with following too closely in violation of Iowa Code section 321.307. An October 2007 trial resulted in a mistrial because of the jury's inability to reach a unanimous verdict. In January 2009, Marcoux was found

guilty by a magistrate judge following an Alford plea.¹ The DOT suspended Marcoux's license for one year. Following a hearing before the Iowa Department of Inspections and Appeals (the agency), an administrative law judge (ALJ) upheld the license suspension, finding Marcoux committed a "serious violation," but reduced the length of suspension to 120 days. The reviewing officer of the DOT affirmed this decision. On judicial review, the district court "cancelled" the suspension of Marcoux's license, and reversed the decision of the ALJ. The DOT appeals.

II. Standard of Review

Our review is governed by the Iowa Administrative Procedure Act, Iowa Code chapter 17A. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007). The district court functions in an appellate capacity to correct errors of law on the part of the agency. See Iowa Code § 17A.19(10); *Hager v. Iowa Dep't of Transp.*, 687 N.W.2d 106, 108 (Iowa Ct. App. 2004). We ask only whether the district court has correctly applied the law. *Id.* We apply the standards of the Iowa Administrative Procedure Act to the actions of the agency to determine whether our legal conclusions are the same as those reached by the district court. *Id.* If our conclusions are the same, we affirm; if we disagree with the conclusions of the district court, we must reverse. *Id.*

¹ An Alford plea allows a defendant to voluntarily and intelligently plead guilty while not admitting participation in the acts constituting the crime. *North Carolina v. Alford*, 400 U.S. 25, 32, 91 S. Ct. 160, 164–65, 27 L. Ed. 2d 162, 171 (1970).

III. Serious Violation

The DOT asserts the district court erred in reversing the suspension of Marcoux's license because Marcoux committed a "serious violation," that is, a moving violation that contributed to a fatal motor vehicle accident.

Iowa Code section 321.210(1)(a)(6) states,

The department is authorized to establish rules providing for the suspension of the license of an operator upon thirty days' notice and without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee . . . has committed a serious violation of the motor vehicle laws of this state.

Prior to the enactment of the Iowa Administrative Procedure Act, effective July 1, 1975, Iowa Code section 321.210 granted the DOT the authority to suspend the license of a driver when the DOT found a driver had committed a serious violation. *Crow v. Shaeffer*, 199 N.W.2d 45 (Iowa 1972) ("The [DOT] is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee . . . has committed a serious violation of the motor vehicle laws of this state."). The DOT had not yet established a definition for "serious violation" under Iowa Administrative Code rule 761-615.17, and the suspension of a license was therefore challenged on the grounds that the term "serious violation" did not provide a definite standard to guide the DOT on whether the violation was serious, and the DOT was given too much discretion in making this determination. See *Richard v. Holliday*, 261 Iowa 181, 191, 153 N.W.2d 473, 479 (1967) ("[P]laintiff argues there must be definite standards as to what is a serious violation to the end that arbitrary action may not be permitted."), *overruled in part on other grounds by Needles v. Kelley*, 156 N.W.2d 276 (1968);

Danner v. Hass, 257 Iowa 654, 661, 134 N.W.2d 534, 539 (1965) (“It is the contention that the words ‘serious violation’ do not set up a sufficient or intelligible standard; and that to permit the department to place its own interpretation upon them is to permit it to legislate; that is, there is an unconstitutional delegation of legislative power to the department.”), *overruled in part on other grounds by Needles*, 156 N.W.2d 276.

Ultimately, our supreme court rejected these arguments, and found the statutory “serious violation” language was a sufficient standard to permit the DOT to use its discretion and judgment for the purpose of promoting the public safety. *Richard*, 261 Iowa at 191, 153 N.W.2d at 479; *Danner*, 257 Iowa at 661, 134 N.W.2d at 539. The court recognized that the legislature has historically vested the DOT with significant discretion to determine what constitutes a “serious violation.” See *Crow*, 199 N.W.2d at 47 (“The court must, if possible, give effect to the intention or purpose of the legislature as expressed in the statute.”).

To more clearly define “serious violation,” the DOT promulgated rules which are now found at Iowa Administrative Code rule 761-615.17(2), as a part of the Iowa Administrative Procedure Act. These rules provide that “[t]he department may suspend a person’s license when the person has committed a serious violation of the motor vehicle laws.” Iowa Admin. Code r. 761-615.17(1). The term “serious violation” is defined by the Iowa Administrative Code as: “The person was convicted of a moving violation which contributed to a fatal motor vehicle accident. ‘Contributed’ is defined in paragraph 615.12(1)“b.” The suspension period shall be at least 120 days.” Iowa Admin. Code r. 761-615.17(2)(b). “Contributed” means that “there is evidence in departmental

records that the driver performed an act which resulted in or contributed to an accident, or failed to perform an act which would have avoided or contributed to the avoidance of an accident.” Iowa Admin. Code r. 761-615.12(1)(b).

IV. Substantial Evidence to Support the Suspension

Marcoux asserted below that the ALJ “misinterprets the [DOT’s] discretion to not suspend a person’s license as a serious violator by interpreting that the [DOT] must suspend for a minimum of 120 days.” He argued he did not contribute to the accident but “was presented with a sudden emergency that was not of his making and actively tried to steer himself out of harm’s way.” The district court agreed, finding that the ALJ “failed to address the critical factual issues. He failed to consider Wellmerling’s activities and her involvement in this accident; he failed to determine whether Marcoux acted reasonably in attempting to avoid the accident.” While the court acknowledged there was substantial evidence to support the agency’s findings, it concluded Marcoux met his burden of proof to establish the ALJ failed to consider all the facts, and hence it’s decision was “arbitrary and unreasonable and an abuse of discretion.”

The court may reverse an agency action if it determines that the substantial rights of the person seeking judicial relief have been prejudiced because the agency’s action is “unreasonable, arbitrary, capricious, or an abuse of discretion.” Iowa Code § 17A.19(10)(n). An agency’s action is arbitrary or capricious when “it is taken without regard to the law or facts of the case” and unreasonable when “it is clearly against reason and evidence.” *Dawson v. Iowa Bd. of Med. Exam’rs*, 654 N.W.2d 514, 518–19 (Iowa 2002). Unreasonableness is defined as action in the face of evidence that leaves no room for difference of

opinion among reasonable minds, or not based on substantial evidence. *Doe v. Iowa Bd. of Med. Exam'rs*, 733 N.W.2d 705, 707 (Iowa 2007). "Abuse of discretion is synonymous with unreasonableness." *Dawson*, 654 N.W.2d at 519.

While none of the facts recited by the district court are in dispute, the one fact remains that Marcoux was following too closely to the van, such that he struck the rear passenger portion, sending the van into the direct path of the oncoming truck, and killing three people. The ALJ stated: "[Marcoux's] act contributed to an accident. Three people died in the accident. There was a serious violation as defined at 761 Iowa Administrative Code 615.17(2)(b)." In the agency appeal decision, the reviewing officer upheld the 120 day suspension, stating,

To maintain the appellant had no share in the accident is to deny elementary physics The respondent was within its authority suspending the appellant because of his conviction for a moving violation which contributed to a fatal motor vehicle accident.

Because the DOT has been vested with considerable discretion to establish rules providing for the suspension of a license and determine whether a person committed a "serious violation" of the motor vehicle laws of this state, we give deference to the agency's findings of fact. See *Drake Univ. v. Davis*, 769 N.W.2d 176, 183 (Iowa 2009). The district court rejected the agency's findings and relied on the principles embodied in the *Needles* case, that (1) although every moving traffic violation is a serious violation, every such violation does not necessarily result in suspension of the driver's license, and (2) the question of whether a violation is "serious" within section 321.210 is a judicial question to be determined under all the facts in a case. *Needles*, 156 N.W.2d at 281. The

district court then faulted the ALJ's decision as having been based on the "seriousness of the result rather than the seriousness of the offense."²

Marcoux was convicted of a traffic violation stemming from his involvement in an accident that resulted in three fatalities. Iowa Admin. Code r. 761-615.17(2) states that a person convicted of a moving violation which contributed to a fatal motor vehicle accident shall have a suspension period of at least 120 days. While other factors also contributed to this multi-vehicle accident, we find the agency sufficiently examined Marcoux's involvement, and found he had committed a "serious violation" which "contributed" to the fatal accident. The agency's decision was therefore neither arbitrary nor unreasonable, as it was supported by substantial evidence. See Iowa Code § 17A.19(10)(n) and (f) (explaining the court may reverse an agency decision if it determines the agency's action is "unreasonable, arbitrary, capricious, or an abuse of discretion," or concludes a "determination of fact clearly vested by a provision of law in the discretion of the agency" is not supported by substantial evidence); See also *Arndt*, 728 N.W.2d at 393 (providing that the court is not given the discretion to reweigh the evidence in an agency action, even if it would

² While *Needles* has not been overruled or disavowed, the State points out that *Needles* was decided before the enactment of the Iowa Administrative Procedure Act and section 17A.19(10). See Iowa Code § 17A.23 (stating that the Iowa Administrative Procedure Act was enacted July 1, 1975). The Iowa Administrative Procedure Act set forth the standards for appellate review from agency decisions that are applicable today. These standards require the appellate courts to give deference to the agency findings, if supported by substantial evidence. *Id.* § 17A.19(10)(f)(1); compare *Willett v. Iowa Dep't of Transp., Motor Vehicle Div.*, 572 N.W.2d 172, 174 (Iowa Ct. App. 1997) ("We give deference to the expertise of the agency."), with *Needles*, 261 Iowa at 822, 156 N.W.2d at 280 (stating that the district court, not the DOT has discretion to decide whether a serious injury occurred). The appeal process in *Needles* allowed a person to appeal a license suspension directly to the district court, which then determined "the matter as an original proceeding," meaning it determined it anew and was not bound by the action of the commissioner. *Needles*, 261 Iowa at 822, 156 N.W.2d at 280.

have come to a different conclusion had it been the finder of fact in the first instance).

We therefore reverse the decision of the district court and remand the case for the district court to enter a judgment affirming the decision of the DOT.

REVERSED AND REMANDED.