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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2328**

Franz Joseph Metzger, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed September 4, 2012
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CV1110629

Robert G. Davis, Jr., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Stephen D. Melchionne, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Stauber, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this implied-consent proceeding, appellant argues that the district court abused its discretion by denying appellant's motion to vacate the dismissal of his petition to reinstate his driver's license. Because the district court did not err by concluding that

appellant failed to present a meritorious defense to the revocation of his driver's license, we affirm.

FACTS

In 1983, appellant Franz Metzger's driving privileges were revoked after he was convicted of three alcohol-related driving incidents between 1978 and 1983. Appellant subsequently submitted proof of rehabilitation, and in October 1983, his driving privileges were reinstated. As part of the reinstatement of his driving privileges, appellant signed a statement acknowledging that he must totally abstain from the consumption of alcohol or his driving privileges would again be cancelled and denied.

In 1995, appellant's request to have the "alcohol restriction" removed from the face of his driver's license was granted. Subsequent licenses issued to appellant do not contain the alcohol restriction notation on the face of the license.

In January 2011, appellant was again arrested for driving while intoxicated (DWI), and he provided a urine sample that indicated an alcohol concentration of .12. Respondent Minnesota Commissioner of Public Safety (commissioner) canceled appellant's driving privileges on March 28, 2011. Shortly thereafter, appellant sought reinstatement of his driver's license. A reinstatement hearing was scheduled for August 30, 2011, at 9:30 a.m. Appellant failed to appear at the scheduled hearing, and the district court dismissed appellant's petition with prejudice.

Later in the afternoon on August 30, appellant appeared with his attorney, and they were advised that the petition had been dismissed. Appellant filed a motion requesting that the district court vacate the dismissal. By stipulation, appellant was

allowed to present a memorandum and exhibits in support of his motion to vacate. The district court found that appellant had a restriction on his driving record that any use of alcohol cancels his driving privileges. The court concluded that when the commissioner became aware that appellant consumed alcohol, the commissioner properly canceled appellant's driving privileges under Minn. R. 7503.1700, subp. 6 (2009), for violation of the no-alcohol provision. The district court also found that appellant now has four impaired-driving incidents on his record and, therefore, "[e]ven if [appellant] were not cancelled under the abstinence rule, he could be cancelled [under Minn. R. 7503.1300 (2009)] because of the 'four or more' alcohol incidents on his record." Consequently, the district court denied appellant's motion to vacate. This appeal followed.

D E C I S I O N

Appellant challenges the district court's denial of his motion to vacate the dismissal of his petition to reinstate his driver's license. "On review of a motion to vacate a default judgment, this court will not disturb the [district] court's decision absent a showing of an abuse of discretion." *Hovelson v. U.S. Swim & Fitness*, 450 N.W.2d 137, 140 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990).

A district court may vacate a final judgment for reasons of "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). A Minnesota court deciding whether to grant relief under rule 60.02(a) must apply the four-part test established in *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 53 N.W.2d 454 (1952). The *Hinz* factors require consideration of whether the party seeking relief has (1) a reasonable defense on the merits; (2) a reasonable excuse for the failure or neglect

to answer; (3) acted diligently after notice of entry of the judgment; and (4) demonstrated that no substantial prejudice will occur. *Id.* at 30, 53 N.W.2d at 456; *see also Northland Temporaries Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008) (reaffirming *Hinz* test), *review denied* (Minn. Apr. 29, 2008). “[T]he relative weakness of one of these factors should be balanced against the strong showing on the other three.” *Gelco Corp. v. Crystal Leasing, Inc.*, 396 N.W.2d 672, 674 (Minn. App. 1986).

“A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff’s claim.” *Turpin*, 744 N.W.2d at 403. Specific information that clearly demonstrates the existence of a “debatably meritorious” defense satisfies this factor. *Charson v. Temple Israel*, 419 N.W.2d 488, 492 (Minn. 1988).

Appellant argues that under the standard set forth in *Charson*, he need not establish that he would win on the merits, but only that he presented a “debatably meritorious” defense. Appellant also contends that he presented a meritorious defense to both grounds on which the district court concluded that the commissioner properly canceled appellant’s driving privileges. Thus, appellant argues that the district court abused its discretion by denying his motion to vacate.

I. Four or more impaired-driving incidents

Minnesota law provides that the commissioner may cancel the driving privileges of any person who is not entitled to a driver’s license under Minn. Stat. § 171.04 (2010). Minn. Stat. § 171.14(a)(4) (2010). Section 171.04, subdivision 1(10) provides that the commissioner “shall not issue a driver’s license . . . to any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the

person would be inimical to public safety or welfare.” Minn. Stat. § 171.04, subd. 1(10).

The commissioner has “the discretion to decide what conduct would render a driver ‘inimical to public safety’” and to promulgate rules pertaining to such conduct. *Askildson v. Comm’r of Pub. Safety*, 403 N.W.2d 674, 677 (Minn. App. 1987), *review denied* (Minn. May 28, 1987). Pursuant to this authority, the commissioner promulgated Minn. R. 7503.1300, subp. 2C (2009), which provides: “The commissioner shall cancel and deny the driver’s license or the driving privilege of a person who . . . has four or more [alcohol-related incidents] on record.”

Appellant argues that the cancellation of his driver’s license under Minn. R. 7503.1300 for four or more alcohol-related incidents on his driving record was improper because the rule does not comport with the version of Minn. Stat. § 169A.54 that was in effect at the time of appellant’s fourth alcohol-related driving incident. The relevant portion of this statute provides that

the commissioner shall revoke the driver’s license of a person convicted of violating section 169A.20 (driving while impaired) or an ordinance in conformity with it, as follows:

. . . .

(4) for an offense occurring within ten years of the first of two qualified prior impaired driving incidents: not less than one year, together with denial under section 171.04, subdivision 1, clause (10), until rehabilitation is established in accordance with standards established by the commissioner; or

(5) for an offense occurring within ten years of the first of three or more qualified prior impaired driving incidents: not less than two years, together with denial under section 171.04, subdivision 1, clause (10), until rehabilitation is established in accordance with standards established by the commissioner.

Minn. Stat. § 169A.54, subd. 1 (Supp. 2009).

Appellant argues that Minn. Stat. § 169A.54 does not dictate how an offender with four qualified driving incidents on his record should be treated if three of the offenses are more than ten years old. According to appellant, this omission reflects the legislature's intent to provide individuals with a "fresh start" if the individual has had no alcohol-related driving incidents over a ten-year period. Appellant contends that by promulgating rule 7503.1300, subpart 2C, requiring revocation after four or more qualified alcohol-related driving incidents on record, the commissioner engaged in "administrative over-reach" by imposing penalties that were not intended by the legislature. Therefore, appellant argues that rule 7503.1300, subpart 2C is invalid, and the district court erred by concluding that appellant failed to present a meritorious defense to the commissioner's revocation of appellant's driver's license under that rule.

We disagree. This court in *Vang v. Comm'r of Pub. Safety* recognized that the "legislature has delegated responsibility and enforcement of the driver's license laws to the Commissioner of Public Safety." 432 N.W.2d 203, 207 (Minn. App. 1988), *review denied* (Minn. Dec. 30, 1988). This delegation includes the mandate that the commissioner "not issue a driver's license . . . to any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare." Minn. Stat. § 171.04(10). And the commissioner has "the discretion to decide what conduct would render a driver 'inimical to public safety'" and to promulgate rules pertaining to such conduct. *Askildson*, 403 N.W.2d at 677. The commissioner has decided that conduct resulting in four or more

alcohol-related incidents on record is “inimical to public safety.” *See* Minn. R. 7503.1300, subp. 2C. Because Minnesota law provides the commissioner with the authority to determine what conduct renders a driver inimical to public safety, rule 7503.1300, subpart 2C is valid.¹ Accordingly, the district court did not err by concluding that appellant failed to present a meritorious defense to the commissioner’s revocation of appellant’s driver’s license under Minn. R. 7503.1300, subp. 2C.

II. Violation of abstinence-from-alcohol provision

Appellant also argues that he presented a meritorious claim that the commissioner did not have a valid basis to revoke his driver’s license in violation of the no-alcohol restriction. Specifically, appellant argues that he presented specific information establishing that he had the alcohol restriction removed from his driver’s license in 1995, and that his driving record after 1995 shows no evidence that the no-alcohol restriction remained on his driving record. Thus, appellant argues that the district court abused its discretion by denying his motion to vacate.

We acknowledge that appellant presents a compelling argument. But the commissioner has been given significant power in licensing issues. Pursuant to this power, the commissioner may reinstate a license that has been cancelled because a driver has had three or more alcohol-related violations within ten years, provided that the driver has completed “rehabilitation” and the reinstatement is conditioned on the “continued abstinence from the use of alcohol.” Minn. R. 7503.1600 (2009); *see also Askildson*, 403

¹ One can certainly argue that the legislature should be circumspect in delegating authority to define “inimical to public safety” to a non-elected official, but, for whatever reason, the legislature has chosen to so delegate its authority.

N.W.2d at 677 (recognizing the commissioner’s authority to require total abstinence from alcohol as a condition of reinstatement). As a requirement of rehabilitation, the driver must sign a statement acknowledging that he is aware that abstinence from the use of alcohol is a condition of licensure. Minn. R. 7503.1700, subp. 4 (2009). The statement includes the date on which the driver last consumed alcohol, as well as an advisory that the license will be cancelled if the commissioner has sufficient cause to believe that the driver has consumed alcohol after the documented date of abstinence. *Id.*, subps. 4, 6; *see also* Minn. Stat. § 171.04, subd. 1(10) (stating that a driver’s license shall not be issued to an individual who the commissioner has good cause to believe would be inimical to public safety).

Here, a review of appellant’s driving record reveals that it contains a notation from 2005 stating: “NO ALCOHOL/DRUG USE ALLOWED NOTIFY DRIVER EVALUATION DPS.” This notation on appellant’s driving record indicates that despite having the no-alcohol restriction removed from the face of his driver’s license in 1995, the no-alcohol restriction was still in effect and present on appellant’s driving record. The notation is also consistent with the Minnesota Rules in effect at the time appellant sought the removal of the no-alcohol restriction from his driver’s license. Specifically, the applicable rule provides:

Removing restriction following rehabilitation. A person who is licensed after the successful completion of a first rehabilitation may request that the restriction be removed from the driver’s license and from the computer records that are disclosed to persons or agencies outside the driver and vehicle services division, Department of Public Safety, after [certain] requirements are met[.]

....

The removal of the restriction does not in any way affect the abstinence requirement of the license reinstatement.

Minn. R. 7503.1700, subp. 4a (1993) (emphasis added). And, there is no evidence in the record indicating that appellant took additional action after 1995 requesting that the no-alcohol restriction be deleted from his driving record.

We further note that the “Proof of Rehabilitation” form appellant signed in 1983 provided that appellant had not used alcohol since February 22, 1983, and that he did “not intend to do so in the future.” The form also provided that:

I understand that all future driving privileges in the State of Minnesota depend on my continued total abstinence from alcohol . . . , and that any use of alcohol . . . coming to the attention of the Department of Public Safety will subject me to the immediate . . . denial of all driving privileges, until such time as I . . . satisfy the Commissioner’s requirements for establishing “rehabilitation.” I understand that if I fail to maintain total abstinence all driving privileges will be cancelled and denied indefinitely.

The rehabilitation form demonstrates that appellant understood the consequences of failing to abstain from alcohol, and there is no evidence in the record that, at the time appellant signed the form, he believed the total abstinence from alcohol restriction would be removed in the future. Therefore, based on the evidence presented and the applicable law in effect at the time appellant sought to have the no-alcohol restriction removed from the face of his driver’s license, we conclude that the district court did not err by

determining that appellant did not have a meritorious defense to the commissioner's cancellation of appellant's driving privileges under Minn. R. 7503.1700, subp. 6.

Affirmed.