IN THE COURT OF APPEALS OF IOWA

No. 7-623 / 07-0274
Filed October 12, 2007

DARRY LEE KLATT,
Petitioner-Appellee,

vs.

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

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

The Iowa Department of Transportation appeals the district court's order reversing its administrative revocation of Darry Lee Klatt's driver's license for chemical test failure under Iowa Code section 321J.12 (2005). **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, and Carolyn J. Olson, Assistant Attorney General, Ames, for appellant.

Michael R. Bovee, Montgomery, Barry & Bovee, Spencer, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

The Iowa Department of Transportation (DOT) appeals the district court's order reversing the agency's administrative revocation of Darry Lee Klatt's driver's license for chemical test failure under Iowa Code section 321J.12 (2005). The DOT contends the district court erred in concluding that the agency's finding the police officer had reasonable grounds to believe Klatt had been operating a motor vehicle while intoxicated and thus invoke implied consent is not supported by substantial evidence. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

On the evening of December 24, 2005, Tanya Nagel and Crystal Helmers went to Klatt's residence in rural Dickinson County. After they had been there for approximately half an hour Helmers suggested Klatt give each of the women a snowmobile ride. Nagel went first while Helmers remained at Klatt's house. At approximately 11:15 Klatt had an accident with the snowmobile resulting, in part, in an injury to his leg. Nagel returned to Klatt's house and informed Helmers there had been an accident and Klatt was unconscious. Helmers drove out to the field where the accident had occurred, located Klatt, and brought him back to his house. Helmers estimated they arrived back at Klatt's house about midnight.

Klatt initially refused to seek professional medical treatment. Helmers and Klatt testified at the administrative hearing that Klatt instead decided to "self medicate" and take care of his pain by drinking shots of schnapps and having several cans of beer. Eventually, it was agreed Klatt needed medical attention and an ambulance was called. The dispatch report shows the ambulance was

sent to Klatt's house at approximately 1:25 a.m. Dickinson County Deputy Sheriff Scott Peterson was also dispatched to Klatt's residence and was present when Klatt was placed in the ambulance. Deputy Peterson determined Klatt had been involved in an accident with his snowmobile. In his report, Peterson also noted that Klatt smelled strongly of alcoholic beverage, his eyes were bloodshot and watery, and his speech was slurred. Peterson also noted that Klatt attempted to take a drink from a beer can while he was speaking with him but he took the can before Klatt could drink out of it. Peterson also talked to Nagel while at the residence. She told Peterson she had been the passenger on the snowmobile when Klatt lost control and hit a hay bale and that Klatt had not consumed any alcoholic beverages since the accident.

Deputy Peterson contacted Ed Lock at the Okoboji Police Department and asked him to go to the hospital to interview Klatt and determine whether he could invoke the implied consent statute in order to get a specimen from Klatt for chemical testing. Lock testified that during his interview with Klatt at the hospital Klatt admitted he was the operator of the snowmobile at the time of the accident and stated that he had not had anything to drink after the accident. He testified that he also spoke with Nagel at the hospital and she was "adamant" Klatt did not drink any alcoholic beverages after the accident and stated she was "with him at all times until he got into the ambulance." Based upon Lock's knowledge that Klatt had been in a motor vehicle accident and sustained a resulting personal injury, and his observations of Klatt's physical condition, he requested a blood specimen from Klatt pursuant to the implied consent law. Klatt consented and

signed the implied consent form. A blood alcohol test was performed shortly after 3:00 a.m. with the result showing an alcohol concentration of 0.201.

On February 14, 2006, the DOT revoked Klatt's driver's license for 180 days pursuant to Iowa Code sections 321J.6 and 321J.12. Klatt contested the revocation, contending in relevant part that Officer Lock did not have reasonable grounds to believe Klatt was operating a motor vehicle under the influence of alcohol or drugs in violation of section 321J.2.

A contested hearing was held before an administrative law judge (ALJ). Klatt presented Helmers as a witness at the hearing. She testified that Klatt had a shot of schnapps and part of a beer before he and Nagel went on the snowmobile ride and that Klatt had consumed a large quantity of alcohol in the hour and a one-half between his return to his house after the accident and the ambulance's arrival. She also testified that Nagel was not around Klatt during the time period when he was drinking after the accident because Nagel does not like blood, Helmers was afraid Nagel might faint, and Helmers had told Nagel to stay in an adjoining room.

Klatt also testified at the hearing, giving basically the same version of events as Helmers had given. He testified he had only a few alcoholic beverages prior to the snowmobile ride and was not feeling the effects of the alcohol when he and Nagel left for the ride. He testified he then drank a significant amount of alcohol prior to the ambulance arriving, in order to help with the pain. He also testified Helmers told Nagel to leave the room when they got back to his house

after the accident because Nagel had a weak stomach. He denied telling any officer that he had not consumed alcoholic beverages after the accident.

Klatt did not call Nagel as a witness at the hearing.

The ALJ sustained the revocation in a written ruling filed June 13, 2006. In affirming the revocation, the ALJ concluded Klatt failed to meet his burden to prove that the peace officer did not satisfy the procedural requirements of the implied consent law. The ALJ found that the testimony of Officer Lock was more credible than that of Klatt and Helmers. The ALJ also found that Klatt had admitted to Officer Lock he had been drinking alcoholic beverages before the accident and had stated that he did not drink any after the accident.

Klatt filed an intra-agency appeal and the reviewing officer issued the final agency decision, affirming the decision of the ALJ. The reviewing officer found, in part:

> [Klatt] did not consume alcoholic beverages after the accident occurred. This fact is supported by [Officer Lock's] testimony. The testimony of [Officer Lock], [Klatt] and [Helmers] was in conflict on this fact. Taking into consideration [Klatt's] direct interest in the outcome of these proceedings and the direct contradiction between the statements made by [Klatt] and [Nagel] on the night of the accident and [Klatt's] testimony during the administrative hearing, the testimony of the peace officer was found to be more reliable and credible than that of [Klatt] and [Helmers].

Klatt then filed a petition for judicial review challenging the revocation order. After briefing and arguments, the district court filed a ruling on January 31, 2007, reversing the DOT's license revocation order. The district court concluded there was not substantial evidence to support the agency's finding that Officer

Lock had reasonable grounds to believe Klatt had been operating while intoxicated at the time of the accident, and thus invoke implied consent.

The DOT appeals the district court's reversal of its revocation of Klatt's license, contending the district court erred in concluding the agency's finding of reasonable grounds is not supported by substantial evidence.

II. SCOPE AND STANDARDS OF REVIEW.

Our administrative procedure act (Iowa Code chapter 17A) governs a court's review of a DOT revocation. *Hafits v. Iowa Dep't of Transp*., 605 N.W.2d 1, 2 (Iowa 2000); *Bromeland v. Iowa Dep't of Transp*., 562 N.W.2d 624, 625 (Iowa 1997). In reviewing the district court's decision this court applies the standards of chapter 17A to determine whether our conclusions are the same as those of the district court. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). If they are the same, we affirm; otherwise we reverse or grant other appropriate relief. Iowa Code § 17A.19(10). A court may reverse the agency action in a contested case if it is "not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f) (2005); *Pointer v. Iowa Dep't of Transp.,* 546 N.W.2d 623, 625 (Iowa 1996). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Reed v. Iowa Dep't of Transp.,* 478 N.W.2d 844, 846 (Iowa 1991). The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made. *Id.* "It is well-established the licensee bears the burden of proof in a license revocation proceeding to show compliance with the implied consent

law and the peace officer's failure to satisfy the procedural requirements." *Gaskey v. Iowa Dep't of Transp.,* 537 N.W.2d 695, 697 (Iowa 1995).

III. MERITS.

Iowa Code section 321J.2 provides that a person commits the offense of operating while intoxicated if the person operates a motor vehicle while under the influence of an alcoholic beverage or drug or a combination of both, or while having an alcohol concentration of .10 or more. *See* Iowa Code § 321J.2(1)(a), (b). Iowa Code section 321J.6, the implied consent provision, sets forth conditions under which a peace officer may request a specimen of blood, breath, or urine for chemical testing to determine alcohol concentration:

> A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 . . . is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration. . . . The withdrawal of the body substances and the tests or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 . . . , and if any of the following conditions exists:
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> . . . .
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> b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

Thus, an officer may invoke implied consent when (1) the officer has reasonable grounds to believe the driver was operating a motor vehicle while intoxicated, and (2) the person has been involved in a motor vehicle accident resulting in personal injury.

There was no dispute that Klatt was involved in a motor vehicle accident resulting in personal injury, thus satisfying the second of the two requirements for invocation of implied consent. The only issue was whether Officer Lock had reasonable grounds to believe Klatt was operating the snowmobile in violation of section 321J.2. The "reasonable grounds" test is met when the facts and circumstances known to the officer at the time the implied consent statute is invoked would have warranted a prudent person's belief that the petitioner was operating a motor vehicle while intoxicated. *Ramsey v. Dep't of Transp.,* 576 N.W.2d 103, 107 (Iowa 1998). Both direct and circumstantial evidence may be considered in determining whether reasonable grounds exist. *Pointer,* 546 N.W.2d at 626.

Here, Officer Lock knew Klatt had been drinking alcoholic beverages prior to driving the snowmobile and that he exhibited physical indicia of intoxication at the hospital. He also knew Klatt was involved in an accident while driving his snowmobile. *See State v. Dominguez*, 482 N.W.2d 390, 392 (Iowa 1992) (noting the court may consider a person's manner of driving, including loss of control of a vehicle, in determining if the person was under the influence of alcohol). Furthermore, both Nagel and Klatt had told Lock that Klatt had not consumed any alcoholic beverages after the accident. Thus, it was reasonable for Lock to believe the signs of intoxication Klatt exhibited were not from post-driving alcohol consumption.

Although Klatt and Helmers both later testified Klatt had been drinking after the accident, the agency could reasonable find, as it did, that because of

Klatt's direct interest in the outcome of the proceedings Lock's testimony was more credible than that of Klatt and his friend Helmers. *See State v. Frake,* 450 N.W.2d 817, 819 (Iowa 1990) (holding that when determining the credibility of testimony of witnesses the trier of fact may consider the witness's interest in the proceeding). The agency as the trier of fact was free to make such a credibility determination.[1]

Accordingly, we conclude substantial evidence supports the agency's finding that the facts and circumstances known to Officer Lock at the time he invoked the implied consent statute were sufficient to warrant a reasonably prudent person to believe Klatt was operating a motor vehicle while intoxicated. The agency therefore did not err in finding that the first of the two requirements for invoking implied consent was satisfied. The district court erred in concluding there is not substantial evidence in the record to support the agency's finding that Officer Lock had reasonable grounds to believe Klatt was operating his snowmobile while intoxicated and in reversing the DOT's administrative revocation of Klatt's driver's license.

The judgment of the district court is reversed and the case is remanded for entry of judgment affirming the decision of the DOT.

REVERSED AND REMANDED.

[1] Although we believe Officer Lock had sufficient personal knowledge to reasonably believe Klatt had been operating his snowmobile while intoxicated, we acknowledge that whatever information was known by Deputy Peterson is presumed to have also been known by Lock under the shared knowledge doctrine. *See State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994) (finding when police officers are acting in concert the knowledge of one is presumed shared by all).