

IN THE COURT OF APPEALS OF IOWA

No. 2-131 / 11-0599
Filed May 9, 2012

JUSTIN RICARDO FRANKLIN,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION,**
Respondent-Appellee.

Appeal from the Iowa District Court for Marion County, Darrell Goodhue,
Judge.

Justin Ricardo Franklin appeals from the district court judgment upholding
the Iowa Department of Transportation's revocation of his license. **AFFIRMED.**

Kenneth J. Weiland, Jr., of Weiland Law Firm, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, and Michelle R. Linkvis, Assistant
Attorney General, for appellee.

Heard by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, J.

Justin Ricardo Franklin was a passenger in a vehicle when he grabbed and turned the steering wheel, causing the vehicle to cross the center line. A traffic stop was initiated, which revealed Franklin was intoxicated at the time. As a result, the Iowa Department of Transportation (IDOT) revoked Franklin's license pursuant to Iowa Code section 321J.12(1) (2009).

Franklin appeals from the district court judgment upholding the IDOT's revocation of his license. He contends the department's ruling should be reversed because he was not operating a vehicle within the meaning of Iowa Code section 321.1(48). Because substantial evidence supports the department's finding that Franklin operated the vehicle, we affirm.

I. Background Facts and Proceedings.

In the early morning hours of July 31, 2010, Franklin was a passenger in a vehicle being driven by a friend. Both Franklin and his companion were intoxicated. When the vehicle began to go up on the curb, Franklin grabbed the wheel and jerked it to the left, causing the vehicle to cross the center line and enter into the oncoming lane of traffic. A peace officer witnessed the vehicle veering across the road and initiated a traffic stop.

Both Franklin and the driver of the vehicle were arrested for operating while intoxicated. Both had blood alcohol levels over the legal limit of .08. The OWI charge against Franklin was later dismissed, but the IDOT revoked Franklin's license for a period of 180 days for failing the chemical test. Franklin requested an administrative hearing to contest the revocation on August 3, 2010.

A hearing was held on September 15, 2010, before an administrative law judge. Franklin did not deny he was intoxicated or that he grabbed the wheel causing the car to cross the center line. The following day, in its proposed decision, the administrative law judge affirmed the revocation, finding Franklin's act of grabbing the wheel constituted operating the vehicle. Franklin appealed the decision and the reviewing officer affirmed on October 28, 2010.

On November 29, 2010, Franklin filed a petition for judicial review. In its March 25, 2011 ruling, the district court denied the petition. It found the question of whether Franklin was operating the vehicle was one of fact and that substantial evidence supported the agency's conclusion that Franklin was operating the vehicle within the meaning of section 321.1(48). Franklin filed his notice of appeal on April 19, 2011.

II. Scope and Standard of Review.

Judicial review of the IDOT's revocation of a driver's license is governed by the Iowa Administrative Procedure Act (Iowa Code chapter 17A). Iowa Code § 321J.14; *Welch v. Iowa Dep't of Transp.*, 801 N.W.2d 590, 594 (Iowa 2011). The district court reviews for the correction of errors at law. *Welch*, 801 N.W.2d at 594. On appeal, we apply the standards of chapter 17A to determine whether our conclusions are the same as those of the district court. *Id.* If they are, we affirm; otherwise, we may reverse. *Id.*

III. Analysis.

The facts before us are undisputed: Franklin was a passenger in a vehicle. He was intoxicated. When the vehicle began to travel on to the curb, he grabbed the steering wheel and pulled it left, which sent the vehicle across the center line of the road and into the path of oncoming traffic. The question before us is whether these facts give rise to a finding Franklin was operating a vehicle within the meaning of Iowa Code section 321J.12(1).

Iowa law provides that where a peace officer certifies there existed reasonable grounds to believe a person has been operating a motor vehicle while under the influence of alcoholic beverage and chemical testing revealed an alcohol concentration equal to or in excess of .08, the IDOT shall revoke the person's driver's license. Iowa Code §§ 321J.2; 321J.12(1). Iowa motor vehicle law defines an "operator" as a "person who is in actual physical control of a motor vehicle upon a highway." Iowa Code § 321.1(48). The facts before us are unlike those in cases where the courts have had to decide whether the vehicle was in operation. See, e.g., *State v. Murray*, 539 N.W.2d 368, 369 (Iowa 1995) (holding "operating" encompasses an intoxicated person sleeping behind the wheel of a disabled car that has its engine running); *State v. Weaver*, 405 N.W.2d 852, 855 (Iowa 1987) (holding substantial evidence supported a finding that a person seated behind the steering wheel of a truck in the middle of the roadway with the engine running and lights on was in actual physical control of a motor vehicle). There is no dispute that the vehicle was being driven on a roadway at the time Franklin jerked the steering wheel. Instead, we must determine whether Franklin had "actual physical control" over the vehicle.

Franklin relies on our supreme court's decision in *Le v. Vaknin*, 722 N.W.2d 412 (Iowa 2006), in support of finding he was not operating the vehicle. In *Vaknin*, the passenger in a vehicle grabbed the steering wheel when the driver lost control of the vehicle, unsuccessfully attempting to prevent the car from leaving the road and crashing into a tree. *Vaknin*, 722 N.W.2d at 414. The plaintiffs argued that if actual physical control was the determining factor in deciding whether Vaknin was an operator of the motor vehicle, his act of seizing the wheel was sufficient to exercise that degree of control. *Id.* at 416. They cited to a Washington court case, which held that

“[w]hen Chase suddenly grabbed the steering wheel, he became the operator of the vehicle in which he had been a passenger. Although Christensen was sitting in the driver's seat, he became powerless to control the car. Chase assumed control of the steering mechanism long enough to cause a collision and resulting injuries.”

Id. at 416–17 (quoting *North Pacific Ins. Co. v. Christensen*, 17 P.3d 596, 599 (Wash. 2001)).

Franklin relies on the following statement by our supreme court in *Vaknin* to show he was not operating the vehicle:

Assuming without deciding that one who seizes the steering wheel of a motor vehicle and thereby causes an injury-producing accident may be considered to be an operator for uninsured-motorist purposes, we are satisfied that this is not the case if the seizing of the wheel is an effort to prevent an accident caused by faulty operation of the vehicle by the person who has been exercising the driving function.

Id. at 417. The court went on to note that the issue of whether Vaknin was operating the vehicle at the time of the crash was a question of fact submitted to the jury and that, in order to overturn the jury's verdict, the plaintiffs “would have

to show that Vaknin was the operator as a matter of law, and that clearly was not the case.” *Id.*

On judicial review of the IDOT’s license revocation proceedings, the district court found “*Vaknin* stands for the proposition that whether or not one who jerks a steering wheel from the passenger side of a vehicle is operating a vehicle is a factual issue.” The court then noted that under the Iowa Administrative Procedures Act, it did not have license to reconsider the facts and the conclusions drawn therefrom, but could only consider “whether or not those conclusions are supported by substantial evidence.” See Iowa Code § 17A.19(10)(f) (stating the court shall reverse agency action if it is based upon a fact determination that is unsupported by substantial evidence in the record). The district court found substantial evidence supported the IDOT’s conclusion that Franklin was operating the vehicle within in the meaning of Iowa Code section 321.1(48).

We agree with the district court that the question of whether Franklin was operating the vehicle within the meaning of section 321.1(48) was a fact question, which was in the discretion of the agency to decide. In this case, our task is not to determine whether the evidence supports a different finding; “rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.” See *Cedar Rapids Comty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). We agree that substantial evidence supports that fact finding; Franklin took control of the vehicle when he grabbed the wheel and pulled it to the left, causing the car to change course and

cross the center line. To find otherwise would be contrary to the plain meaning of operating under the statute and contrary to Iowa law. Because our conclusions are the same as the district court, we affirm its ruling denying Franklin's request to overturn the IDOT's decision on judicial review.

AFFIRMED.