

IN THE COURT OF APPEALS OF IOWA

No. 3-686 / 12-2295
Filed August 21, 2013

ELMER SCHECKEL,
Plaintiff-Appellant,

vs.

**STATE OF IOWA and
CITY OF OELWEIN,**
Defendant-Appellees.

Appeal from the Iowa District Court for Fayette County, Margaret L. Lingreen (State's motion to dismiss) and Richard D. Stochl (City's motion to dismiss), Judges.

An Iowa resident challenges the constitutionality of his various motor vehicle citations. **AFFIRMED.**

Elmer Scheckel, Oelwein, pro se.

Thomas J. Miller, Attorney General, and Meghan Gavin, Assistant Attorney General, for appellee State.

Ronald VanVeldhuizen, Oelwein, for appellee City of Oelwein.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

EISENHAUER, C.J.

An Iowa resident challenges the constitutionality of his various motor vehicle citations. He contends he has a constitutional right to drive without obeying the traffic laws. Because no such constitutional right exists, we affirm the district court's dismissals of his claim.

I. Background Facts and Proceedings

Elmer Scheckel is a resident of Oelwein, Iowa. On several occasions, Scheckel received citations for failing to register his vehicle and produce proof of insurance in Linn, Buchanan, and Fayette counties. Following one citation, Scheckel filed suit in Fayette County against the State of Iowa and the City of Oelwein.¹ He claimed the tickets impinged on his constitutional right to drive. For relief he stated:

REMEIDE SOUGHT

I am not out to change the laws of Iowa, but merely want to left alone to conduct my business in a peaceful and quite manner and the state to respect my constitutional rights. I must ask for recovery of all damages times 3 and fees collected over last 10 years, pursuant to Iowa code 602.10113 or the highest dollar amount allowed by law, and the stop payment for all other charges in Linn county because in all cases the state actors ether knew or should have know that the charges are on the plaintiff rights and not under their jurisdiction. The court costs and all other expenses relating to this case should also be paid by the defendants.

The district court granted both the State's and City of Oelwein's motions to dismiss, each citing Scheckel's failure to state a claim upon which relief could be granted. The district court also imposed a \$500 sanction for Scheckel's frivolous

¹ In his petition Scheckel also named a magistrate judge and police officer as "indispensable parties."

petition because his claims were “not grounded in fact nor warranted by existing law or a good faith argument.”²

II. Scope and Standard of Review

A district court’s grant of a motion to dismiss is reviewed for corrections of errors at law. *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 585 (Iowa 2004). We affirm a motion to dismiss where “the petition shows no right of recovery under any state of facts.” *Reiff v Evans*, 630 N.W.2d 278, 284 (Iowa 2001); see also *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994); Iowa R. Civ. P. 1.421(1)(f). A motion to dismiss is directed at deficiencies in the pleading. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 310 (Iowa 1982).

Constitutional issues are reviewed de novo. *Formaro v. Polk Cnty.*, 774 N.W.2d 834, 838 (Iowa 2009). A party challenging a statute as unconstitutional carries a heavy burden of rebutting the strong presumption that the statute is constitutional. *Spurbeck v. Statton*, 106 N.W.2d 660, 663 (Iowa 1960) (denying a motorist due process challenge to suspension of his license); see also *In re Adoption of S.J.D.* 641 N.W.2d 794, 797 (Iowa 2002) (denying a free speech challenge to sealed adoption records); *In re Marrow*, 616 N.W.2d 544, 547 (Iowa 2000) (denying a convicted sex offender’s equal protection challenge to his mandatory treatment).

² The court imposed the sanction under Iowa Rule of Civil Procedure 1.413: If a [pleading] is signed in violation of this rule, the court, upon motion or its own initiative, shall impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay the other [parties] the amount of the reasonable expenses incurred because of the filing of the [pleading], including a reasonable attorney fee.

III. Analysis

On appeal, Schreckel asserts the district court improperly granted the motions to dismiss because the tickets violated his constitutional right to travel.³

As the district court recognized in its orders granting the defendant's motions to dismiss, there is no constitutional right to drive, but rather driving is a privilege. 16A C.J.S. *Constitutional Law* § 697, at 490-91 (2005); see generally *United States v. Guest*, 382 U.S. 745, 758 (1966). There is a difference between the right to travel and the right to drive. *Id.* A right to travel is an inherent component of a free society. *Id.* (recognizing, however, the right to travel is based in no single constitutional provision); see also *Formaro v. Polk Cnty.*, 773 N.W.2d 834, 838–39 (Iowa 2009); *Doyle v. Kahl*, 46 N.W.2d 52 (Iowa 1951). However, the right to travel does not give an individual the right to travel at their discretion with disregard to the traffic laws. *United States v. Hare*, 308 F. Supp. 2d 955, 1001 (D. Neb. 2004); *State v. Hartog*, 440 N.W.2d 852, 856 (Iowa 1989) (holding mandatory seat belt law did not infringe upon any fundamental right); *Veach v. Iowa Dep't of Transp.*, 374 N.W.2d 248, 249 (Iowa 1985); *State v. Hitchens*, 234 N.W.2d 686, 687 (Iowa 1980); *Spurbeck*, 106 N.W.2d at 666.

Traffic laws are “essential to the preservation of the health, safety, and comfort of citizens.” *Hendrick v. State of Md.*, 235 U.S. 610, 622 (1915); accord *Gravert v. Nebergall*, 539 N.W.2d 184, 186 (Iowa 1995) (stating the police power

³ Pro se litigants receive no preferential treatment. See *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000). “The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.” *Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991); see *State v. Piper*, 663 N.W.2d 894, 913–14 (Iowa 2003), overruled on other grounds by *State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010).

is the authority “to pass laws that promote the public health, safety, and welfare”); see generally U.S. Const. amend. X; Iowa Code title VIII (2011) (relating to transportation). A law is not rendered unconstitutional even though a law inflicts hardship, such as a financial cost or deprivation of privileges. *Spurbeck*, 106 N.W.2d at 663. As such, the privilege of driving a car may be restricted by traffic laws because such laws promote public safety, while still operating within the confines of the constitution. *Id.*; see also *State v. Holt*, 156 N.W.2d 884, 887 (Iowa 1968) (recognizing “no absolute right to drive on the highway under any and all conditions”); *Farmington City v. Lake*, ___ P.3d ___, 2013 WL2443604, *1 (Utah Ct. App. 2013); *West v. Duncan*, 179 F. Supp. 2d 794, 803 n.5 (N.D. Ohio 2001); *United States ex rel. Verdone v. Cir. Ct. for Taylor Cnty.*, 851 F. Supp. 345, 350 (W.D. Wis. 1993) (“[I]t is well established that the Constitution permits a state to regulate the operation of motor vehicles on its roads”).

We affirm the district court’s dismissals of Scheckel’s claim.

AFFIRMED.