

IN THE COURT OF APPEALS OF IOWA

No. 6-527 / 05-0789
Filed September 7, 2006

DORRANCE BREZINA,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Dorrance Brezina appeals from a district court ruling affirming the Iowa Department of Transportation's revocation of Brezina's driver's license for driving while his license was suspended. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED TO THE AGENCY.**

Robert A. Wright, Jr. of Wright and Wright, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek, Assistant Attorney General, Ames, for appellee.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

Dorrance Brezina appeals from a district court ruling affirming the Iowa Department of Transportation's revocation of Brezina's driver's license for driving while his license was suspended. We affirm in part, reverse in part, and remand to the agency.

I. Factual Background.

Brezina has an extensive history of driving violations and a record of failure to pay child support. As a consequence of these violations and child support delinquencies, the Iowa Department of Transportation (IDOT) 1) revoked Brezina's license for O.W.I., third offense, 2) suspended Brezina's license for failure to pay child support, 3) suspended Brezina's license for status as a "habitual offender," and 4) revoked Brezina's license for driving while his license was suspended.

A) Revocation for O.W.I., Third Offense

Brezina was arrested and charged with O.W.I., third offense, on January 30, 1998. On July 14, 1998, he was convicted of this offense. As a result, pursuant to Iowa Code section 321J.4 (2003), the IDOT revoked Brezina's driver's license for six years: from July 15, 1998 to July 15, 2004.

B) Suspension for Failure to Pay Child Support

During the period of revocation, on April 12, 2002, the Department of Human Services (DHS) Child Support Recovery Unit notified the IDOT that Brezina was not in compliance with a child support order. Pursuant to Iowa Code section 252J.8, the IDOT issued a notice informing Brezina that his license to

operate a motor vehicle was suspended until the IDOT received a withdrawal of the DHS's certificate of noncompliance. This suspension ended on July 10, 2002, when DHS withdrew the certificate.

C) Suspension for Status as a Habitual Offender

During the duration of the revocation mentioned above, Brezina was also cited for three moving violations within a twelve-month period. The IDOT consequently classified Brezina as a "habitual offender" under Iowa's motor vehicle laws and notified him that his license to operate a motor vehicle would be suspended from July 4, 2002 until October 2, 2002 (90 days). The statutory basis for this suspension was Iowa Code section 321.210(1)(b).

D) Revocation for Driving While License Was Suspended

On July 5, 2002, a police officer observed Brezina operating a motor vehicle. The police officer issued Brezina a citation for driving "while his license was revoked for being a habitual offender," in violation of Iowa Code section 321.218. The citation did not reference the suspension for failure to pay child support or the revocation for O.W.I., third offense, although Brezina's license to operate a motor vehicle was undisputedly still subject to these additional sanctions.

On January 8, 2003, Brezina pled guilty to violating Iowa Code section 321.218. On January 21, 2003, the IDOT sent Brezina a notice stating that the revocation of his license was extended for six years beyond July 15, 2004, the date when the prior revocation for O.W.I., third offense, was set to expire. The notice also stated the agency had imposed a civil penalty of \$200 and notified

Brezina that he was not entitled to appeal either the fine or revocation.¹ The notice disclosed that these actions were taken pursuant to Iowa Code section 321J.21 and section 321A.17. On July 19, 2004, the agency issued a second notice that repeated the contents of the earlier notice, but disclosed that Iowa Code section 321.218 and section 321A.17 were the statutory bases for the extension of the revocation of Brezina's driver's license.

II. Procedural Background.

Brezina pursued administrative remedies challenging the extension of his revocation for a period of six years. On August 20, 2004, Brezina petitioned the IDOT for an order declaring that the six-year extension of his revocation was unlawful for two reasons: 1) the IDOT failed to provide Brezina an evidentiary hearing under the Iowa Administrative Procedure Act (IAPA), and 2) there is no statutory basis for a six-year extension of the license revocation under the circumstances of this case. On September 3, 2004, the IDOT notified Brezina of the denial of his petition.

Brezina filed a timely petition for judicial review of the final agency action. In its ruling dated February 3, 2005, the district court concluded: 1) Brezina was not entitled to an administrative hearing under the circumstances of this case, and 2) Iowa Code section 321J.21(2) required the IDOT to extend for six years the revocation of Brezina's license to operate a motor vehicle as a consequence of his conviction of driving while his license was suspended.

On February 14, 2005, Brezina filed a motion to amend or enlarge the court's findings of fact and conclusions of law. On February 22, 2005, the district

¹ Brezina does not challenge the legality of the fine in this appeal.

court filed an amended and enlarged ruling that is identical to its original ruling, with the exception of three footnotes. In the third footnote of the amended and enlarged ruling, the district court concluded Brezina's guilty plea to a violation of Iowa Code section 321.218 (driving while his license was suspended for being a habitual offender) did not preclude the IDOT from extending the revocation for a period of six years based on Brezina's violation of Iowa Code section 321J.21 (driving while his license was revoked for O.W.I., third offense), given the legislature's "clear intent to protect the public from demonstrably dangerous drivers." The district court summarily denied on March 9, 2005 Brezina's motion to amend or enlarge the amended and enlarged ruling.

On May 6, 2005, Brezina filed a notice of appeal. This appeal was untimely. However, on May 22, 2005, the Iowa Supreme Court granted Brezina's motion to extend the time for filing an appeal and ordered that the permissible time for filing run from the date of its order.

On appeal, Brezina contends the district court erred in affirming the IDOT's six-year extension of his revocation for operating a motor vehicle while his license was suspended. He asserts that he was entitled to an evidentiary hearing under IAPA section 17A.18(3) on the question of whether the period of his license revocation should be extended for six years and that, in any event, no statute authorizes an extension of six years as a consequence of his conviction under section 321.218.

III. Scope of Review.

We review agency action for errors at law. *Locate.Plus.Com, Inc. v. Iowa Dep't of Transp.*, 650 N.W.2d 609, 612 (Iowa 2002). We apply the standards of the Iowa Administrative Procedure Act (IAPA) to the actions of the agency to determine whether our legal conclusions are the same as those reached by the district court. *Willet v. Iowa Dep't of Transp., Motor Vehicle Div.*, 572 N.W.2d 172, 174 (Iowa Ct. App. 1997). If our conclusions are the same, we affirm; if we disagree with the conclusions of the district court, we must reverse. *Id.*

IV. Timely Appeal and Preservation of Error.

Before reaching the merits, we must address the State's procedural arguments. The State first contends we should affirm the district court's ruling because Brezina's appeal is untimely. We believe this argument is foreclosed by our supreme court's grant of Brezina's motion to extend the time for this appeal. Accordingly, we reject the State's timeliness argument.

The State further contends Brezina failed to preserve error on his argument that no statute authorizes the IDOT's imposition of a six-year extension of the license suspension under the circumstances of this case. In particular, the State contends Brezina's petition for judicial review was insufficiently detailed to preserve error. The pleading requirements under Iowa Code chapter 17A are more stringent than those applicable to judicial review of non-agency action. *Second Injury Fund of Iowa v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995). Iowa Code chapter 17A requires a separate and distinct statement of each claimed

error. *Id.* The pleading standard is met if an “opponent is sufficiently apprised of the alleged error so as to allow for adequate preparation and response.” *Id.*

Brezina’s petition separately and distinctly states: “the decision of the DOT, in suspending Petitioner’s license for an additional six years is unreasonable, arbitrary, capricious, an abuse of discretion and not supported by statute.” This statement clearly indicates to the State and to the court Brezina’s position that no statute authorizes imposition of the six-year extension of Brezina’s license revocation. We therefore conclude Brezina’s petition for judicial review preserved error under the relevant standard.

V. Evidentiary Hearing.

We now turn to the merits of Brezina’s claim that he was entitled to a hearing prior to the IDOT’s six-year extension of his license revocation.

Brezina argues that Iowa Code section 17A.18(3) entitled him to an evidentiary hearing under the circumstances of this case. Although we acknowledge that Iowa Code section 17A.18(3) generally entitles a licensee to an evidentiary hearing prior to the revocation of a license, that statute does not control under the circumstances of this case. Iowa Code section 321.218(3) requires (except in instances not relevant here) the agency to extend the revocation of a license for “an additional like period” upon receipt of a record of conviction under the section. We conclude the legislature did not intend to require the agency to provide an evidentiary hearing before imposing an extension of a revocation under the circumstances of this case because Brezina’s guilt on the predicate criminal charge (operating a motor vehicle while

his license was revoked as an habitual offender) had already been established beyond a reasonable doubt in the predicate criminal case. Consequently, there was no factual dispute to be presented in an evidentiary hearing. Where the controversy presented only a legal question for the agency, an evidentiary hearing would be “a wholly useless act.” *Allegre v. Bd. of Regents*, 349 N.W.2d 112, 116 (Iowa 1984).

Furthermore, Brezina suffered no prejudice as a consequence of the agency’s failure to conduct a hearing prior to the extension of his revocation for violation of Iowa Code section 321.218. Under Iowa Code section 321.218, the IDOT has no discretion regarding the length of an extension of suspension or revocation. If the IDOT receives a record of conviction for violation of Iowa Code section 321.218, the IDOT “**shall** . . . extend the period of suspension or revocation for an additional like period.” Iowa Code § 321.218(3) (emphasis added). A hearing, therefore, would not provide Brezina any realistic opportunity to persuade the IDOT to shorten the duration of the extension of his license revocation.

VI. Statutory Basis for a Six-Year Extension of Brezina’s License Revocation.

The analysis of this case is complicated by the fact that Brezina was disqualified simultaneously for three discrete reasons: (1) a revocation for conviction of O.W.I., third offense; (2) a suspension for failure to pay child support; and (3) a suspension for being an habitual offender after accumulating three moving violations in twelve months. The extension of the disqualification challenged by Brezina in this case was provoked by a citation and conviction

under Iowa Code section 321.218 for driving while his license was suspended for ninety days because he was an habitual violator. Simply put, Brezina contends the extension of the disqualification for a violation of section 321.218 cannot exceed “an additional like period” of ninety days. See Iowa Code § 321.218(3). The State contends instead that the agency had authority to extend the disqualification for a full six years because, at the time of the July 5, 2002 violation, Brezina was operating a motor vehicle while under a six-year revocation for his third O.W.I. conviction.

As we have noted, the agency’s notices to Brezina indicated reliance on Iowa Code sections 321J.21 (1/3/03 notice) and 321.218 (7/19/04 notice) for authorization of the six-year extension. Brezina claims that neither statute authorized the agency to extend his disqualification for six years under the circumstances of this case. We agree. First, the citation and conviction that provoked the extension of his revocation made no reference to a violation of any provision within chapter 321J. The extension of the revocation was instead provoked by a conviction for a violation of section 321.218—driving while under suspension as an habitual violator.

Section 321.218 provides that when a person whose license has been suspended or revoked “**as provided in [chapter 321] or as provided in section 252J.8 or section 901.5, subsection 10**” is convicted of violating Iowa Code section 321.218 (operating a motor vehicle without a driver’s license or when disqualified), the IDOT must extend the period of revocation “for an additional like period” when it receives a record of conviction. Iowa Code § 321.218(1), (3)

(emphasis added). The clear meaning of this language dictates that when the IDOT extends a license revocation or suspension for “an additional like period” under section 321.218(3) as a consequence of a violation of Iowa Code section 321.218, the duration of the extension is limited to the duration of the original revocation or suspension under Iowa Code chapter 321, section 252J.8, or section 905.5(10).

As we have noted, the citation and conviction that provoked the extension of Brezina’s disqualification was for a violation of section 321.218. Of the three overlapping disqualifications extant when that violation occurred, only the suspension for driving while suspended as a habitual violator was imposed pursuant to chapter 321. Accordingly, we conclude that the maximum duration of the extension of Brezina’s disqualification as a consequence of his conviction for the violation of section 321.218 was ninety days.

The State contends we should affirm because this case is essentially identical to *White v. Iowa Department of Transportation*, 407 N.W.2d 606 (Iowa 1987), in which the Iowa Supreme Court addressed whether to construe Iowa Code section 321.218 to authorize an extension of a revocation originally imposed for an O.W.I. conviction. In *White*, Linda Lee White was arrested and charged with, but never convicted of, O.W.I. *Id.* at 608. Because White was charged with O.W.I., the IDOT revoked White’s license for 180 days under what was then Iowa Code section 321B.16.² *Id.* White operated a motor vehicle during this period of revocation and was subsequently convicted of violation of

² What was chapter 321B at the time of *White* is now chapter 321J.

Iowa Code section 321.218. *Id.* The court held that the IDOT could revoke White's license under section 321.218 for an additional 180 days. *Id.* at 609.

Because the legislature amended Iowa Code section 321.218 after *White* was decided, the State's reliance on that case is misplaced. The amended section 321.218 under which Brezina was charged and convicted applies only to those drivers who operate a motor vehicle while their license is suspended or revoked pursuant to Iowa Code chapter 321, section 252J.8, or section 901.5(10). Section 321.218 as amended no longer authorizes extensions of revocations originally imposed under chapter 321J. Accordingly, we conclude the agency had no authority under section 321.218 to extend Brezina's revocation for an additional six years.

Having determined that Iowa Code section 321.218 is not a statutory basis for the IDOT's six-year extension of Brezina's revocation, we now turn to the question of whether Iowa Code section 321J.21 is a statutory basis for the sanction imposed by the agency in this case. The district court concluded the extension imposed by the agency in this case was authorized under chapter 321J. We disagree. Iowa Code section 321J.21(2) provides that the IDOT must extend a suspension or revocation when it receives a record of conviction under section 321J.21. Brezina was never charged with, let alone convicted of, operating a motor vehicle while his license was revoked for O.W.I., third offense, under that section. Accordingly, we reverse, and remand this matter to the agency for further proceedings consistent with this opinion.

VII. Conclusion.

We affirm the district court's ruling that Brezina was not entitled to an evidentiary hearing. We reverse the agency action that imposed an extension of Brezina's disqualification as a licensed operator of motor vehicles for a period of six years. We remand this matter to the agency for further proceedings consistent with this opinion. Half of the costs of this appeal shall be assessed to the IDOT; the other half shall be assessed to Brezina.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED TO THE AGENCY.