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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1107**

Ray Danielson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 3, 2021
Affirmed
Jesson, Judge**

Kandiyohi County District Court
File No. 34-CV-20-203

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota
(for appellant)

Keith Ellison, Attorney General, Ryan Pesch, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After failing an ignition-interlock test allegedly due to mouthwash, and failing a retest due to blowing into the device off-camera, respondent commissioner of public safety suspended appellant Ray Danielson's driver's license. At a reinstatement hearing, the district court rejected Danielson's claims that the device was defective. Danielson

challenges that ruling, arguing that the district court did not use the proper standard of review when evaluating the license revocation. Because the district court allowed for Danielson's testimony and weighed evidence to review the commissioner's decision to revoke Danielson's driver's license, we affirm.

FACTS

Appellant Ray Danielson has a history of driving while impaired (DWI). His driver's license was canceled as inimical to public safety four times due to numerous DWI offenses. While he claimed to become sober in 2013 after developing severe cirrhosis, Danielson still was required to enroll in the ignition-interlock-device program (the program) in early 2014. An ignition-interlock device measures a driver's alcohol-concentration level and includes a camera that takes a picture of the user during a breath test. Should the device detect alcohol, the vehicle will not start. If any alcohol is detected during a breath sample, the incident is recorded and sent to the Minnesota Department of Vehicle Services (the DVS). To enroll in the program, Danielson had to agree to the program's guidelines. The guidelines warn that any alcohol detected by the device will be considered use of alcohol.

After six years in the program without a violation, Danielson provided a failed breath test that registered an alcohol concentration of 0.044. Approximately seven minutes later during a retest, the device registered an alcohol concentration of 0.012, but the person using the device was out of frame of the camera. DVS then sent a letter notifying Danielson that his driving privileges were revoked due to the failed test. Danielson petitioned the

court for reinstatement, arguing that the device was defective and asking that he at least not have to sign a new last-use statement.¹

At the hearing, Danielson testified that on the night of the violation he was sick with pneumonia and impetigo, causing multiple painful sores in his mouth. Danielson said that he frequently used mouthwash to relieve his impetigo, and did so that night after eating dinner. He was unaware that mouthwash had alcohol in it. Nor, he explained, had mouthwash use set off the ignition-interlock device before. Danielson also testified that since the beginning of the COVID-19 pandemic he has frequently used hand sanitizer, which had caused the ignition-interlock device to not start on the first try multiple times. He acknowledged that the device detects hand sanitizer.

The district court was not persuaded that the device was defective, and reasoned that because Danielson could not show that the commissioner of public safety (commissioner) acted unreasonably or arbitrarily, he was not entitled to reinstatement. As a result, the court sustained the cancellation of Danielson's driver's license and denied the request to strike the commissioner's requirement that Danielson submit a last-use statement as a condition of a new ignition-interlock participation agreement.

Danielson appeals.

¹ To enroll in the program, participants must sign a last-use statement, which states the last date in which they consumed alcohol. In order to rejoin the program and get his license reinstated, Danielson would have to admit that he consumed alcohol that night, and restart the program from day one.

DECISION

Danielson argues that this matter should be remanded because the district court did not use the proper standard of review when evaluating the license revocation.² Rather than conduct a de novo review of the commissioner's decision to cancel the license, Danielson contends that the district court applied an "arbitrary and capricious" standard. We review this issue involving application of the law in a license-revocation proceeding de novo. *Igo v. Comm'r of Pub. Safety*, 615 N.W.2d 358, 361 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000).

To answer this question of what constitutes "de novo review" of the decision to cancel a license, we turn first to the governing statute and then to caselaw. A person challenging the cancellation of a driver's license may bring a petition in district court pursuant to Minnesota Statutes section 171.19 (2020). The district court shall "take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to revocation." Minn. Stat. § 171.19. There is a presumption of regularity and correctness when license matters are reviewed. *Thorson v. Comm'r of Pub. Safety*, 519 N.W.2d 490, 493 (Minn. App. 1994). To overturn a license revocation, the petitioner must show that the commissioner acted unreasonably. *Id.* The petitioner has the burden of proving that he or she is entitled to reinstatement. *Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163, 166 (Minn. App. 2010).

² At oral argument Danielson waived his challenge that the guidelines were inconsistent.

In cases of license-revocation decisions, the district court conducts a de novo review of the commissioner's decision. *Igo*, 615 N.W.2d at 361. In that "independent" review, the court weighs evidence, judges credibility, and determines whether a cancellation is justified. *Madison v. Comm'r of Pub. Safety*, 585 N.W.2d 77, 82-83 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998). But, instead of reviewing the decision as to whether the district court would have revoked the license, the court is ultimately reviewing whether the commissioner acted unreasonably. *Plaster v. Comm'r of Pub. Safety*, 490 N.W.2d 904, 906 (Minn. App. 1992). Because this review by the district court is still conducted in light of the presumption of regularity and correctness of the commissioner's decision to revoke a license, this is an arbitrary and capricious or substantial-evidence standard. *Thorson*, 519 N.W.2d at 493.

Here, the district court weighed the evidence and testimony brought by Danielson suggesting that the device had malfunctioned. This included Danielson's statements on his consumption of mouthwash the night of the failed test, as well as his custom of using mouthwash to relieve his impetigo and applying hand sanitizer throughout the COVID-19 pandemic. But the district court reasoned that the device registering alcohol, whether it be household items like hand sanitizer or mouthwash instead of liquor, is evidence that the device was working. The district court also reviewed the ignition-interlock participation agreement, the program guidelines, and the program statutes and found that the commissioner's actions were consistent with the expectations that Danielson expressly agreed to. Minn. Stat. § 171.306 (2020). After evaluating the arguments brought by Danielson, the court concluded that the commissioner acted reasonably and not arbitrarily,

as Danielson did not meet his burden of proving otherwise. This de novo review of the evidence and Danielson's credibility—which established the commissioner's actions were not unreasonable—satisfies the review required of the district court.

Danielson suggests that the district court did not conduct a de novo review because the court showed deference to the DVS by concluding that the commissioner did not act in an arbitrary or capricious manner. He argues that based on *Madison*, it is unambiguous that de novo review is required for petitions under section 171.19, meaning the commissioner receives no deference. 585 N.W.2d at 79-80. But this is a misreading of *Madison*, which involved a case where the district court relied *solely* on the commissioner's discretion, and did not make *any* credibility determination on testimony as required by section 171.19. *Id.* This did not happen here.

The ultimate decision that the district court must make after conducting a de novo review of the evidence and testimony at the hearing is whether the commissioner acted arbitrarily or capriciously by cancelling the license and whether there was substantial evidence to support the commissioner's decision. There is no indication in the record that the district court limited Danielson's testimony, nor does Danielson point to where the district court acted improperly.

Therefore, because the district court applied the proper standard of review as required by section 171.19, we affirm.

Affirmed.