FILED
June 17, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-1279

Frances H Howard, petitioner,

Appellant,

vs.

State of Minnesota,
Commissioner of Public Safety,

Respondent.

ORDER OPINION

Hennepin County District Court
File No. 27-CV-23-7613

Considered and decided by Larkin, Presiding Judge; Frisch, Judge; and Larson, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Respondent Minnesota Commissioner of Public Safety revoked appellant Frances H Howard's license to drive based on her refusal to provide a sample of her blood for chemical analysis after she was arrested for driving while impaired and the arresting officer obtained a warrant for the sample under Minnesota's implied-consent law. *See* Minn. Stat. §§ 169A.51, subd. 1 (providing that a person may be required to submit to a blood, breath, or urine test to determine the presence of alcohol if a law-enforcement officer has probable cause to believe the person was driving while impaired and the person has been lawfully arrested for that offense), .52, subd. 3 (providing that if an officer certifies that there was probable cause to believe that a person was driving

while impaired and that the person refused to submit to chemical testing, the commissioner must revoke the person's license to drive), 171.177, subds. 3-4 (providing that if an officer obtains a search warrant for the collection of a person's blood for chemical analysis based on probable cause to believe the person had committed a driving-while-impaired offense and the subject refuses to provide a sample, the officer shall certify to the commissioner the person's refusal and the commissioner shall revoke the person's driver's license) (2022); *see also* Minn. Stat. § 169A.20 (2022) (defining driving while impaired).

2. Howard petitioned for judicial review of the revocation. *See* Minn. Stat. §§ 169A.53, subd. 2 ("Within 60 days following receipt of a notice and order of revocation or disqualification pursuant to section 169A.52 (revocation of license for test failure or refusal), a person may petition the court for review."), 171.177, subd. 11(a) (stating that "[w]ithin 60 days following receipt of a notice and order of revocation pursuant to this section," governing license revocation based on refusal to comply with a search warrant, "a person may petition the court for review") (2022).

3. The district court held an evidentiary hearing on Howard's petition and found:

> On May 14 or 15, 2023, [Howard] was coming home from a family get together and had car trouble. In her testimony both at the hearing and in her filings, [Howard] stated that she was not driving the car. [A state trooper], who also testified at the hearing, stated that he responded to the call of a stalled vehicle and found [Howard] and her husband. He testified that they both stated [Howard] was driving. He also testified that she appeared intoxicated, but [Howard] testified that she was having a medical emergency. [The

> trooper] arrested [Howard], and she was taken to the hospital. While there, [the trooper] obtained a search warrant to take [Howard's] blood. He testified that [Howard] refused. [Howard] testified that she did not refuse but did not remember everything because of the medical emergency.

4. The district court sustained the revocation of Howard's license to drive, rejecting her arguments that she was not driving and that her refusal to provide a sample was reasonable. Howard appeals.

5. On appeal, this court applies a clear-error standard of review to the district court's findings of fact and a de novo standard of review to the district court's resolution of questions of law. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002); *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). It is not the function of this court to reweigh the evidence or find facts, and we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

6. Although some accommodations may be made for self-represented litigants such as Howard, they are generally held to the same standards as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). An appellant has the burden of showing prejudicial error; we do not presume that the district court has erred. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944); *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011). An appellant also has the burden of providing an adequate record on appeal. *Mitterhauser v. Mitterhauser*, 399 N.W.2d 664, 667 (Minn. App. 1987). Howard has not provided a transcript for this

appeal.[1] When no transcript is provided, our review is limited to whether the district court's conclusions of law are supported by the findings. *Duluth Herald & News Trib. v. Plymouth Optical Co.*, 176 N.W.2d 552, 553, 555 (Minn. 1970); *see* Minn. R. Civ. App. P. 110.02, subd. 1 (stating that the appellant has the duty to provide the transcript).

7. As to the district court's rejection of Howard's argument that she was not driving, the district court reasoned:

> In her filings and testimony at the hearing, [Howard] argued that her driver's license should be reinstated because she was having a medical emergency and because her arrest was due to her race. To the extent this fits into the statutory issues [subject to judicial review], the [c]ourt interprets [Howard's] argument as challenging the stop and arrest. However, the [c]ourt finds that [the trooper] *credibly testified* that when he responded to the call, he found [Howard] and her husband on the side of the highway, they told him she had been driving, and she appeared intoxicated. He did not stop the car in the first place, and his observations and interactions were enough to reasonably conclude that [Howard] should be arrested and have her blood alcohol level tested.

(Emphasis added.)

8. Howard asserts that the district court made a mistake in "assuming" she was the driver. Howard argues:

> [She] did not admit she was the driver. In the confusion, the officer may have misunderstood [her] or [she] may have misunderstood the trooper's question. [She] holds a driver's license and is a "driver" but was not driving when the car ran out of gas. The trooper never saw [her] driving because the car was parked before the trooper came on the scene. [She]

[1] Howard moved this court to "waive the Transcript Requirement," indicating that district court administration informed her that no transcript is available for this case. We granted Howard's motion to proceed without transcripts.

> never admitted that she was driving that night. The state did not prove that [she] was in control of the vehicle.

9. Because Howard has not filed a transcript, we are unable to review the district court's finding that she was the driver. *See Duluth Herald & News Trib.*, 176 N.W.2d at 553, 555 (limiting review to whether the district court's conclusions of law are supported by the findings if appellant fails to provide a transcript); *see also* Minn. R. Civ. App. P. 110.02, subd. 1 (stating that the appellant has the duty to provide the transcript). Moreover, Howard's factual challenge is unavailing because the finding that she was driving was based on the trooper's testimony that she admitted that she had been driving. The district court explicitly found that testimony credible, and we defer to that credibility determination. *See Sefkow*, 427 N.W.2d at 210.

10. As to the district court's rejection of Howard's claim that her refusal was based on a medical emergency and therefore reasonable, the district explained:

> The [c]ourt does not doubt that there was a medical emergency; it does not appear that [the trooper] doubted it as [Howard] was taken to the hospital. But [Howard] and the [t]rooper had back-and-forth interactions over an extended period of time, according to both of their testimony, so it is not as if [Howard] was incapable of being tested because of her medical situation. Therefore, the [c]ourt finds that [Howard] has failed to show through the issues outlined above, that her license should be reinstated.

11. Howard argues that "[t]his case is an appeal from a district court decision holding that [she] refused to provide a *breath sample* in violation of Minnesota's implied consent statute" and that because she "did not refuse to provide a *breath sample* but was instead incapable of providing a *breath sample*, this case should be reversed." (Emphasis

added.) *See* Minn. Stat. § 169A.53, subd. 3(c) (2022) ("It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds."). Specifically, Howard argues:

> The district court was unreasonable and abused its discretion when it concluded that [she] *refused to take the breathalyzer test*, when in fact [she] could not breathe due to an acute asthma attack. There is a documentation of the medical issues [she] was having that night that was provided to the district court, but this evidence was not considered when it reached its decision. [Howard] has attached a copy of this medical record. [She] never refused to take the test; [she] tried to give the test on several attempts but just could not breathe. [Her] condition was documented by the hospital. It was unreasonable, clearly erroneous, and an abuse of discretion for the district court to ignore the medical records [she] provided from the night of the arrest and conclude *without evidence* that [she] was capable of providing a sample on the basis that [she] was able to talk to the trooper. . . . It was clearly erroneous for the district court to base its decision on the time [Howard] interacted with the trooper rather than consider the medical record.

(First emphasis added.)

12. Howard's argument is fundamentally flawed because it is based on the erroneous assertion that her license was revoked for failing to provide a *breath* sample. The record is clear: her license was revoked for failing to provide a blood sample, and not for failing to provide a breath sample. The record does not suggest, in any way, that Howard was offered and refused to provide a breath sample for chemical analysis. Howard's brief states that at the arrest scene, she "was given multiple breathalyzer tests" and that she "did not refuse these tests but could not provide a sample because [she] was gasping for air to breathe." Howard undoubtedly refers to a preliminary breath test,

which is "used for the purpose of deciding whether an arrest should be made and whether to require the tests authorized in section 169A.51 (chemical tests for intoxication)." Minn. Stat. § 169A.41, subd. 2 (2022). Howard's performance on the on-scene preliminary breath tests was *not* the basis for her license revocation.

13. Howard's brief does not acknowledge that the district court sustained the revocation of her license to drive based on her refusal to provide a *blood sample* pursuant to a search warrant. Nor does it provide any argument on that issue. Issues that are not briefed on appeal are waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that an issue not argued in the briefs "must be deemed waived"). We nonetheless note that we discern no error in the district court's determinations that Howard's documented medical emergency, which stemmed from her inability to breathe, did not prevent her from agreeing to provide a blood sample at the hospital and that her refusal was not reasonable. Once again, because Howard did not provide a transcript of the hearing, we cannot review any findings underlying that conclusion, such as the finding that "[Howard] and the [t]rooper had back-and-forth interactions over an extended period of time, according to both of their testimony, so it is not as if [Howard] was incapable of being tested because of her medical situation."

14. Finally, the commissioner argues that although the district court analyzed the case under Minn. Stat. § 169A.53 (2022), the court's review was actually governed by Minn. Stat. § 171.177 (2022), because "Howard's license was revoked for refusing to submit to a fluid test request that was directed pursuant to a search warrant." *See* Minn. Stat. § 171.177, subd. 11(a) (stating that "[w]ithin 60 days following receipt of a notice

and order of revocation pursuant to this section," governing license revocation based on refusal to comply with a search warrant, "a person may petition the court for review"). The commissioner argues that although reasonable refusal is an affirmative defense at a judicial review hearing of a revocation under Minn. Stat. § 169A.52 (2022), that defense is not available if a person has refused to comply with a warrant for the collection of a blood sample. *Compare* Minn. Stat. § 169A.53, subd. 3(c) (expressly authorizing a reasonable-refusal defense at a judicial review hearing pursuant to section 169A.52), *with* Minn. Stat. § 171.177, subd. 12(b) (not mentioning reasonable-refusal defense as being within the scope of judicial review hearing under Minn. Stat. § 171.177, subd. 11). The commissioner further argues that "[b]ecause there is no available defense for reasonable refusal under section 171.177, [Howard's] argument that her refusal was reasonable should not be permitted."

15. We do not consider the commissioner's argument for two reasons. First, it is unnecessary to do so given our conclusion that the district court did not err in rejecting Howard's reasonable-refusal defense on its merits. Second, in district court, the commissioner did not file a response to Howard's petition, we have no transcript, and the district court's order does not mention the commissioner's argument. We therefore conclude that the issue is not properly before us on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating appellate court generally may consider only issues raised to and considered by the district court).

IT IS HEREBY ORDERED:

1. The district court's order sustaining the commissioner's revocation of Howard's license to drive is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 6/17/24

BY THE COURT

Judge Michelle A. Larkin