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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2224**

Anthony Joseph Byrne, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed February 5, 2008
Affirmed
Huspeni, Judge***

Ramsey County District Court
File No. IC C3-06-8204

Richard Kadrie, 1215 Hawthorne Avenue East, St. Paul, MN 55106 (for appellant)

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Considered and decided by Wright, Presiding Judge; Peterson, Judge; and
Huspeni, Judge.

UNPUBLISHED OPINION

HUSPENI, Judge

Appellant challenges the decision sustaining the cancellation and denial of his
driver's license for having violated a restriction that he totally abstain from the use of

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

alcohol. Because the record contains substantial evidence to support the determination that appellant consumed alcohol in violation of the total-abstinence restriction on his driver's license, we affirm.

FACTS

Captain Jay Swanson of the Minnesota State Patrol responded to reports of a vehicle traveling eastbound on Interstate 94 that was “weaving all over the road.” Swanson caught up to the vehicle and ultimately stopped it in Hudson, Wisconsin. As he walked up to the vehicle, Swanson observed a strong odor of alcohol coming from the car and also observed that both the driver and the passenger had bloodshot eyes and slurred speech. Swanson asked the passenger to get out of the vehicle and identified him as appellant Anthony Joseph Byrne. While speaking with Byrne outside of the vehicle, Swanson again observed numerous indicia that Byrne was intoxicated, including a strong odor of alcohol on Byrne's breath, bloodshot eyes, slurred speech, and an unsteady balance. Based on these observations, Swanson concluded that Byrne was “extremely intoxicated.”

Hudson police officers arrived and arrested the driver for driving while intoxicated, and Swanson left the scene without issuing a citation to Byrne. Later in the day, Swanson learned that Byrne had a restriction on his driver's license requiring that he totally abstain from the use of alcohol.¹ Swanson forwarded a copy of his police report,

¹ Swanson explained that the reason he did not learn about the restriction on Byrne's driver's license until after he cleared the scene was because the traffic stop occurred in the St. Croix River Valley, a location where the computer in his patrol car was unable to get a signal.

including his observation that Byrne was “extremely intoxicated,” to the Minnesota Department of Public Safety. Based on Swanson’s report, the Minnesota Department of Public Safety cancelled and denied Byrne’s driver’s license for having violated the restriction that he totally abstain from the use of alcohol.

Byrne filed a petition to have his driver’s license reinstated under Minn. Stat. § 171.19 (2006). At the hearing, Byrne testified that he had not consumed any alcohol on the day of the traffic stop, and had, in fact, consumed no alcohol in nine years. He explained that the indicia of intoxication that Swanson observed were caused by prescription painkillers that he had taken earlier that day. Two friends of Byrne and two of Byrne’s fellow participants in Alcoholics Anonymous testified in Byrne’s support. One of these witnesses testified that he saw Byrne at church a couple of hours before the traffic stop, did not smell any odor of alcohol on Byrne and that, in his opinion, Byrne was sober. Another witness testified that he saw Byrne several hours after the traffic stop and was “a little nervous that maybe [Byrne] started drinking because he . . . showed signs of somebody that maybe could have been drinking,” although the witness also testified that he did not smell any alcohol on Byrne and did not think Byrne “was in an intoxicated situation.” The other two witnesses did not see Byrne on the day of the traffic stop. All four of the witnesses testified that they had not seen Byrne consume any alcohol in the time that Byrne claims to have remained sober. And all the witnesses acknowledged that Byrne takes prescription painkillers that cause him to appear “groggy,” “tired,” or “lethargic.”

Swanson also testified at the hearing, stating that he observed several indicia of intoxication exhibited by Byrne, and that it was clear that Byrne was extremely intoxicated and under the influence of an alcoholic beverage. After hearing the evidence, the district court sustained the cancellation and denial of Byrne's license. Byrne appeals.

D E C I S I O N

"There is a presumption of regularity and correctness when license matters are reviewed." *Igo v. Comm'r of Pub. Safety*, 615 N.W.2d 358, 360 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). This court will not reverse a license determination unless it finds that the determination is unsupported by substantial evidence or is arbitrary and capricious. *Id.* The Commissioner of Public Safety "must present some evidence to show that sufficient cause existed to believe a violation of the total abstinence clause occurred." *Id.* To prevail, Byrne must show that the commissioner acted unreasonably. *See id.*

The commissioner has the authority to require total abstinence from alcohol as a continuing condition for retaining a driver's license. *Askildson v. Comm'r of Pub. Safety*, 403 N.W.2d 674, 676-77 (Minn. App. 1987), *review denied* (Minn. May 28, 1987). When the commissioner has sufficient cause to believe that an individual whose driver's license is subject to a total-abstinence restriction has consumed alcohol, "[t]he commissioner shall cancel and deny the driver's license." Minn. R. 7503.1700, subp. 6 (2005). A person whose driver's license has been canceled by the commissioner may file a petition for a court hearing on reinstatement and 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 . . . cancellation.” Minn. Stat. § 171.19 (2006). The burden is on the individual to prove that he did not consume alcohol and is entitled to a driver’s license. *Madison v. Comm’r of Pub. Safety*, 585 N.W.2d 77, 82 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998).

Although Byrne identifies the wrong standard of review, claiming that the commissioner has not shown that “it is more likely than not” that Byrne consumed alcohol, his arguments essentially challenge whether the evidence was sufficient to support the determination that he violated the total-abstinence restriction. In support of his argument, he points to the following: (1) a witness testified that Byrne was at church and sober two hours before the traffic stop; (2) multiple witnesses testified that Byrne has remained sober and not consumed any alcohol since 1997; and (3) evidence that the indicia of intoxication that Swanson observed were actually caused by prescription painkillers and not alcohol.

The district court’s order sustaining the commissioner’s decision to cancel Byrne’s license included no findings of fact. But as the commissioner notes, this court has, on numerous occasions, affirmed a district court’s decision to sustain the revocation of a driver’s license, even though the district court did not make specific findings, on the ground that the findings were implicit in the district court’s conclusion. *See Modaff v. Comm’r of Pub. Safety*, 664 N.W.2d 400, 402 (Minn. App. 2003) (holding that implicit in the district court’s decision was the finding that the officer’s account of the event was credible and the testimony of the driver and his passengers was not); *Umphlett v. Comm’r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (holding that implicit findings

may be derived from the district court's final resolution of the matter), *review denied* (Minn. Aug. 30, 1995); *Daley v. Comm'r of Pub. Safety*, 384 N.W.2d 536, 538 (Minn. App. 1986) (holding that it was implicit in the district court's determination that the district court found the alcohol-concentration test to be valid). As in those cases, it is clear that the district court in this case made an implicit finding—namely, that Byrne consumed alcohol in violation of the total-abstinence restriction.

There was ample evidence before the district court to support the decision to sustain the cancellation of Byrne's driver's license. Swanson testified that he observed that Byrne's eyes were bloodshot, his speech was slurred, he had an unsteady balance, and there was a "very strong odor of an alcoholic beverage on [Byrne's] breath." He testified further that, based on these observations, "it was very clear . . . that [Byrne] was extremely intoxicated and under the influence of an alcoholic beverage." Responding to questions as to whether Byrne's appearance and behavior could have been caused by prescription painkillers, Swanson testified that "[i]t was very apparent to me that [Byrne] was under the influence of an alcoholic beverage[;] that's not to say that he may not have also consumed some type of prescription drug or something like that, but it was clear that his major problem was alcohol intoxication." Swanson explained that he was able to determine this based on 27 years of experience as a state trooper in which he observed thousands of people under the influence of alcohol and hundreds under the influence of prescription medications, and that, although both types of people exhibit many of the same symptoms, "this was a case where [Byrne's] intoxication level was so great it would have been obvious to even a lay person without that experience." Finally, in

response to the district court's question as to whether it was possible that Swanson was mistaken in his conclusion that Byrne was showing signs of intoxication from alcohol rather than a reaction to prescription painkillers, Swanson replied: "No, sir. I don't believe that to be possible at all." In addition, one of Byrne's own witnesses, who saw Byrne only several hours after the traffic stop, testified that he was concerned over whether Byrne had started drinking again because he "showed signs of somebody that maybe could have been drinking."

Though Byrne presented conflicting evidence that offered a different explanation for the indicia of intoxication that Swanson observed, the district court implicitly found that Swanson's testimony was more credible than the testimony of Byrne and the witnesses that testified in his favor. The fact that the district court did not explicitly make this credibility determination does not require remand. *See Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996) (stating that when a reviewing court is able to infer findings from the district court's conclusions, it is not necessary to remand the case for additional findings of fact); *Umphlett*, 533 N.W.2d at 639 (affirming district court's decision based on an implicit credibility determination). And because the district court is in the best position to judge the credibility of witnesses, this court generally defers to the district court's credibility determinations. *Conrady v. Comm'r of Pub. Safety*, 396 N.W.2d 914, 916 (Minn. App. 1986).

The record shows that there was substantial evidence—namely, Swanson's testimony—to support the determination that Byrne consumed alcohol in violation of the total-abstinence restriction on his driver's license and that the decision was neither

arbitrary nor capricious. Therefore, the cancellation and denial of Byrne's license was proper. *See Igo*, 615 N.W.2d at 360 (stating that this court will not reverse a license determination unless the determination is unsupported by substantial evidence or is arbitrary and capricious).

Affirmed.