

IN THE DISTRICT COURT OF BOYD COUNTY, NEBRASKA

JAMES A. WALNOFER,
Plaintiff-Appellant,

Case No. CI02-2

vs.

JUDGMENT ON APPEAL

**BEVERLY NETH, DIRECTOR, STATE OF
NEBRASKA, DEPARTMENT OF MOTOR
VEHICLES,**

Defendant-Appellee.

DATE OF HEARING: March 18, 2002.

DATE OF RENDITION: March 18, 2002.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

TYPE OF HEARING: In chambers at O’Neill, Holt County, Nebraska.

APPEARANCES:

For plaintiff-appellant: No appearance.

For defendant-appellee: No appearance.

SUBJECT OF ORDER: Plaintiff’s (1) petition for review, and, (2) showing.

PROCEEDINGS: At the hearing, these proceedings occurred:

The showing was considered, together with record of the agency. There was no resistance to the showing.

FINDINGS: The court finds and concludes that:

1. The plaintiff seeks judicial review under the Administrative Procedure Act of an order of the Director of the Department of Motor Vehicles revoking the plaintiff’s operator’s license.
2. In reviewing final administrative orders under the Administrative Procedure Act, the district court functions not as a trial court but as an intermediate court of appeals. *Chrysler Corp. v. Lee Janssen Motor Co.*, 9 Neb. App. 721, ___ N.W.2d ___ (2000).
3. An appellate court and the tribunal appealed from do not have jurisdiction over the same case at the same time. *Currie v. Chief School Bus Serv., Inc.*, 250 Neb. 872, 553 N.W.2d 469 (1996). This rule applies to appeals to the district court from an administrative tribunal. *County of*

Douglas v. Burts, 2 Neb. App. 90, 507 N.W.2d 310 (1993). As this court has jurisdiction over the case, the administrative agency cannot exercise jurisdiction over the same case until this appeal has been determined.

4. The showing demonstrates that after the order of revocation which is the subject of this appeal, the driving under the influence charge has been dismissed by the filing of an amended complaint charging only a different, reduced charge, thereby entitling the plaintiff to reinstatement without fee pursuant to NEB. REV. STAT. § 60-6,206(4) (Supp. 2001). This court should vacate the director's order revoking the plaintiff's operator's license and remand the case to the director for further proceedings.

5. Because the remand is occasioned by events occurring after the perfection of the appeal, each party should be required to bear such party's own costs and attorneys' fees.

JUDGMENT:

IT IS THEREFORE ADJUDGED that:

1. The order of the director dated December 26, 2001, revoking the plaintiff's driver's license and/or operating privileges for 90 days, is vacated and the cause remanded to the director for further proceedings.

2. Each party shall bear such party's own respective costs and attorneys' fees.

Signed in chambers at O'Neill, Nebraska, on March 18, 2002.

DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20__ by ____.
- If not already done, immediately transcribe trial docket entry dictated in chambers and transmitted by e-mail.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed "Judgment on Appeal" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge