



## **[U]03/25/97 JANET ELIZABETH WORDEN v. COMMISSIONER**

1997 | Cited 0 times | Court of Appeals of Minnesota | March 25, 1997

HARTEN, Judge

The Commissioner of Public Safety revoked appellant Janet Worden's driver's license pursuant to the implied consent law. The district court sustained the revocation and Worden appeals. We affirm.

### **FACTS**

In the early morning hours of April 26, 1996, appellant and her husband left a bar and went to their minivan located in the parking lot. Appellant's husband started the vehicle as appellant, who was intoxicated, sat in the front passenger seat. Appellant's husband then left to use the bar's restroom. Immediately thereafter, the minivan moved forward, jumped the parking lot curb, and struck a parking meter. It then lurched backwards and struck a parked vehicle. When the police arrived, appellant was distraught, and accepted responsibility for her intoxication and the accident.

At the implied consent hearing, appellant testified that her feet were sore from her high-heeled shoes. After she had placed her feet in the area between the front seats in order to remove her shoes, she sensed that the minivan was moving forward. Appellant quickly surmised that her leather coat had caught in the gear shift as she bent forward to unbuckle her shoes. From her position in the passenger seat, she then attempted to put her foot on the brake to stop the vehicle. Instead, her foot reached the accelerator and the minivan lunged forward, hitting the parking meter. Appellant then attempted to put the minivan in park but instead inadvertently put it into reverse, causing it to lurch backwards into another vehicle.

The police officer arrested appellant for driving while under the influence of alcohol. Her driver's license was revoked pursuant to the implied consent law, and she petitioned for judicial review.

The district court sustained the revocation. This appeal resulted.

### **DECISION**

An appellate court may reverse district court conclusions of law if it determines that the district court erroneously construed the law in relation to the facts of the case. *Dehn v. Commissioner of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

The implied consent law applies to any person who drives, operates, or is in physical control of a



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motor vehicle. Minn. Stat. § 169.123, subd. 2(a) (1996). The issue before us is whether the district court correctly applied the law in concluding that appellant was in physical control of the minivan.

By prohibiting intoxicated individuals from being in "physical control of a motor vehicle the Minnesota Legislature intended to include the broadest possible range of conduct." State, Dep't of Pub. Safety v. Junczewski , 308 N.W.2d 316, 319 (Minn. 1981). The legislative intent is "to deter inebriated persons from getting into vehicles except as passengers." State v. Starfield , 481 N.W.2d 834, 836 (Minn. 1992). It is meant to cover situations in which an inebriated person might be able to start a car and become a source of danger. Id. at 837. While a passenger is presumed not to be in physical control, that presumption may be rebutted under certain circumstances. Hansen v. Commissioner of Pub. Safety , 478 N.W.2d 229, 231-32 (Minn. App. 1991).

The district court found:

Although the initial placement of the minivan into gear was inadvertent, the subsequent shifting of gears and stepping on the gas and brake pedals constitutes physical control within the meaning of the statute.

Appellant argues that the district court misapplied the law in finding physical control. While acknowledging that she literally may have been in control of the minivan, she asserts that she advanced the purpose of the law when, as an intoxicated person, she entered the vehicle only as a passenger and had a designated driver. See Hansen , 478 N.W.2d at 232 (presumption that bona fide passengers not in physical control, but doing as law encourages in finding another to drive). She argues that she only inadvertently caused the minivan to move. Cf. Ives v. Commissioner of Pub. Safety , 375 N.W.2d 565, 567 (Minn. App. 1985) (physical control found where drunk passenger stepped on accelerator). Moreover, she contends that once the vehicle accidentally began moving, she was compelled to undertake emergency action to stop it. And she asserts that because her action was consistent with the purposes of the implied consent law her license revocation should be rescinded under the unique circumstances presented.

We agree with the district court determination that "the subsequent shifting of gears and stepping on the gas [pedal]" constitutes physical control. <sup>1</sup> The fact that appellant was a passenger does not absolve her where, as here, she affirmatively took steps to control the vehicle. Appellant's defense is that she was responding to an emergency. But her own acts caused the emergency. The physical control prohibition is meant to deter intoxicated individuals from positioning themselves where, in their intoxicated state, they could place the vehicle in motion and be a source of danger. Starfield , 481 N.W.2d at 837. Under the remedial purpose of the implied consent statute, the law is liberally construed in favor of the public interest and against the private interest of the person involved. Junczewski , 308 N.W.2d at 319. We conclude as a matter of law that appellant had physical control of the minivan when, after inadvertently setting it in motion, she shifted gears and stepped on the gas pedal. We therefore affirm the district court order sustaining the revocation of appellant's driver's



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license.

Affirmed.

1. At oral argument, the Commissioner chose not to advocate that the act of braking in this situation constituted physical control under the implied consent law. We therefore express no opinion on the legal consequences of that act.

