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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1126**

Ismail Mohamed, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 9, 2011
Affirmed
Johnson, Chief Judge**

Hennepin County District Court
File No. 27-CV-08-19935

Richard S. Virnig, Virnig & Gunther, PLLC, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Sara P. Boeshans, Joan M. Eichhorst, Assistant
Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Johnson, Chief Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

The commissioner of public safety revoked Ismail Mohamed's driver's license after he was arrested for and charged with driving while impaired because he refused to submit to testing under the implied-consent statute. Mohamed challenged the revocation on the ground that police officers did not have reasonable suspicion to stop him prior to arresting him. The district court rejected Mohamed's challenge and sustained the revocation. On appeal, Mohamed argues that the doctrine of collateral estoppel should have precluded the district court from finding reasonable suspicion because of a prior determination in Mohamed's criminal case that police officers did *not* have reasonable suspicion to stop him. We conclude that Mohamed failed to preserve his collateral-estoppel argument for appeal because he did not raise it in the district court. Therefore, we affirm.

FACTS

In August 2008, Mohamed was arrested in the city of Minneapolis on suspicion of driving while impaired and refused to submit to testing under the implied-consent statute. *See* Minn. Stat. § 169A.51 (2008). The state subsequently charged him with third-degree driving while impaired for refusing to submit to a chemical test, a violation of Minn. Stat. §§ 169A.20, subd. 2, .26, subd. 1(b) (2008), and fourth-degree driving while impaired, a violation of Minn. Stat. § 169A.20, subd. 1(1) (2008). In addition, the commissioner of public safety revoked his driver's license pursuant to the implied-consent statute. *See* Minn. Stat. § 169A.52, subd. 3(a) (2008).

In the criminal case, Mohamed moved to suppress the state's evidence on the ground that police officers did not have reasonable suspicion that he had committed a crime before they stopped his vehicle. In 2009, a district court judge concluded that the state had failed to establish that the police officers had reasonable suspicion to stop Mohamed's vehicle. Accordingly, the district court judge granted his motion to suppress. The district court thereafter dismissed the criminal charges.

Meanwhile, Mohamed timely commenced this action to challenge the commissioner's revocation of his driver's license. The action was stayed pending a final judgment in Mohamed's criminal case. In 2010, a different district court judge presided over Mohamed's implied-consent hearing. The sole issue raised by Mohamed at the hearing was whether the police officers had reasonable suspicion to stop him prior to arresting him. The second district court judge concluded that, based on evidence presented at the implied-consent hearing, the officers *had* reasonable suspicion to stop Mohamed's car. Therefore, the second district court judge sustained the revocation of his driver's license. Mohamed appeals.

D E C I S I O N

Mohamed argues that the district court erred because its conclusion that police officers had reasonable suspicion to stop his vehicle is precluded by the doctrine of collateral estoppel. Specifically, Mohamed contends that the second district court judge was precluded from making a determination in this action that is contrary to the determination made by the first district court judge in his criminal case.

The commissioner argues in response that Mohamed forfeited his collateral-estoppel argument because he did not raise the issue in the district court. It is well established that an appellate court will consider an issue only if the issue was presented to a district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Likewise, a party may not obtain appellate review of an issue by presenting it to the appellate court under a different theory than was presented to the district court. *Id.* Accordingly, when a party does not present an argument to the district court, the argument is forfeited for purposes of appeal. *See id.*

The commissioner correctly states that Mohamed did not present the issue of collateral estoppel to the district court. Mohamed did not do so even though a petitioner in an implied-consent proceeding is expressly required to “state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation.” Minn. Stat. § 169A.53, subd. 2(b)(3) (2010). As stated above, the only issue Mohamed raised at the implied-consent hearing was whether police officers had reasonable suspicion to stop him prior to arresting him. At oral argument in this court, Mohamed’s appellate counsel conceded that Mohamed did not raise the collateral-estoppel issue in the district court. Thus, Mohamed has forfeited his collateral-estoppel argument by failing to preserve it in the district court.

Nonetheless, we briefly note that Mohamed’s collateral-estoppel argument is without merit. The doctrine of collateral estoppel may preclude a district court from determining an issue contrary to a prior determination if

(1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

State v. Lemmer, 736 N.W.2d 650, 659 (Minn. 2007). Mohamed could not have established the third requirement of this test because the supreme court has held that, for these purposes, the state and the commissioner of public safety are not the same party and are not in privity. *Id.* at 660, 663. There is no basis for distinguishing *Lemmer* on the ground that Mohamed's criminal case was decided before his implied-consent hearing, which is the opposite of the situation in *Lemmer*, in which the criminal case was decided after the implied-consent case. *Id.* at 654. The *Lemmer* court did not decide that appeal based on the relative order of the criminal and implied-consent cases. *See id.* at 663. Thus, even if Mohamed had preserved his collateral-estoppel argument, we would reject it based on *Lemmer*.

Affirmed.