

FLORIDA'S FIRST DISTRICT COURT OF APPEAL

PHOEBE FLANAGAN,

Appellant-Defendant,

Case No.: **1D17-5290**

v.

STATE OF FLORIDA,

Appellee-Prosecutor.

Lower Court Case
Nos. 2012 CF 4090 & 2013 CF 4071
(Fla. 1st Cir. Escambia Cty.)

/

**INITIAL BRIEF
OF APPELLANT FLANAGAN**

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INTRODUCTION

The government may suspend a driver's license when she fails to pay criminal court costs and fines (legal financial obligations or "LFOs"). § 322.245(5)(a), Fla. Stat. However, two legal safeguards help ensure that an otherwise safe driver will not arbitrarily lose her license solely by reason of her indigency. *See Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). First, if the driver cannot immediately afford to pay entirely the LFOs, Florida law commands that the "clerk shall enter into a payment plan" with the driver to pay the LFOs in affordable monthly installments, as defined by the legislature. § 28.246(4), Fla. Stat. Second, the law permits the trial court to review the reasonableness of the payment plan. *Id.* In this process the state court would necessarily "determine if the [driver] has the ability to pay" before permitting the driver's license to be conditioned on the monthly payments. *See State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991). These safeguards should apply to Phoebe Flanagan.

STATEMENT OF THE CASE AND FACTS

In three felony cases, the trial court adjudicated Appellant Phoebe Flanagan ("Flanagan") guilty. *See* R. 38, 229. It ordered her to pay court costs and fines (legal financial obligations or "LFOs"). *See* R.42-43, 88, 231-32, 245. As a result, she currently owes over \$2,500 in LFOs. Payment Plan Agreement, R. 110.

Florida law directs the Clerk of the Circuit Court for Escambia County, Florida (“Clerk”) to collect these LFOs. § 938.30(9) & 938.29(3), Fla. Stat. To that end, when Flanagan failed to pay the LFOs from prison, in December 2013, the Clerk had Flanagan’s driver’s license suspended. The Clerk simply notified¹ the Florida Department of Highway Safety and Motor Vehicles (“DMV”), which automatically implemented the suspension of Flanagan’s driver’s license. Tr. (Oct. 24, 2017), R. 123; *see also* § 322.245(5)(a), Fla. Stat. (directing the DMV to suspend a driver’s license when notified by the clerk that the driver has failed to pay LFOs).

In July 2016, Flanagan was released from prison. Tr., R. 128. Her health was poor and she used a wheelchair. *Id.* She was also indigent and initially lived in a homeless shelter. Tr., R. 127-28, 142, 150. As a result, she was eligible for Supplemental Security Income (SSI) disability benefits, which provide a safety net

¹ The Clerk previously addressed a letter to Flanagan stating that the Clerk intended to suspend Flanagan’s license. Notice, R. 89; *see also* Tr., R. 152 (trial court took judicial notice of Clerk’s notice in other cases). Although Flanagan had just been sentenced to over three years in prison in November 2013, Judgment, R. 63-64, the following month the Clerk oddly notified Flanagan at her *home* address, not her known prison address, Notice, R. 89. Although the Clerk explained in the letter that Flanagan may avoid the suspension of her driver’s license by “enter[ing] into a partial payment plan,” *id.*, the Clerk failed to assure that as required by § 28.246(4), Fla. Stat., the monthly installments would be affordable.

for low-income persons with a disability. U.S. Social Security Administration, *Supplemental Security Income (SSI)* (Pub. 05-11000), available at <https://www.ssa.gov/pubs/EN-05-11000.pdf>.

In late summer of 2016, Flanagan applied for SSI disability benefits. Tr., R. 128. Six months later, the Social Security recognized her disability and approved SSI disability benefits. *Id.* It paid her a lump-sum of the retroactive benefits from her application date. Tr., R. 150. SSI disability benefits are the sole source of any money that has ever been in her bank account since being released from prison. *Id.*

In February 2017, Flanagan also began receiving monthly SSI disability benefits in the amount of \$490/month. Tr., R. 125-26; Order, R. 195. She survives on this and \$94/month in food stamps, Tr., R. 132 & Order, R. 195, while temporarily living in her mother's house,² Tr., R. 133, 146. Flanagan lives a modest life with basic necessities. Tr., R. 127. She has no other source of income. Tr., R. 126, 133, 138. She does not anticipate one soon. Tr., R. 143.

² Because Flanagan lives at her mother's house, her SSI disability benefit is accordingly reduced. Tr., R. 127, 135, 143.

After she recovered from a total hip replacement and was able to walk again, Tr., R 128-29, in January 2017, she wanted to have her driver's license reinstated, Flanagan's Motion, R. 91. She requested the Clerk enroll her on a payment plan to repay the LFOs. *Id.* The enrollment would provide for reinstatement. *Id.* (citing § 322.245(5)(b), Fla. Stat., which permits license reinstatement upon enrollment in a payment plan). She explained that she was disabled and her sole source of income was SSI disability benefits. *Id.*, R. 91-92. She requested the Clerk waive the LFOs. *Id.*, R. 92 (citing § 938.30(9), Fla. Stat. (permitting a clerk to compromise or release any LFOs)). In the alternative, Flanagan requested the Clerk defer collection efforts (including the continued suspension of her driver's license) until Flanagan has a source of income other than SSI disability benefits. *Id.* Flanagan proposed accomplishing the reinstatement and collection deferment by enrolling her on a payment plan at \$0.00 per month until she has another source of income. *Id.*

The Clerk refused. *Id.* Instead, the Clerk conditioned reinstatement of Flanagan's driver's license on Flanagan enrolling on a payment plan with combined monthly installments of \$10.00. *Id.* This amount corresponds to 2% of Flanagan's monthly SSI disability benefits of \$490/month. *See* § 28.246(4), Fla. Stat. ("A monthly payment amount ... is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's" monthly

income). The Clerk further conditioned reinstatement on Flanagan's advance payment of a \$25 enrollment fee and in each case. *Id.*; Tr., R. 131-32.

In response, in March 2017, Flanagan requested the trial court review the reasonableness of the Clerk's payment plan pursuant to § 28.246(4), Fla. Stat. Flanagan's Motion, R. 91. While her motion was pending, out of desperation, in May 2017, Flanagan enrolled in the payment plan so she could legally drive to the grocery store and her doctors' appointments. Tr., R. 123-24. Since then she timely paid the \$10/month directly from her sole source of fungible income—SSI disability benefits. Tr., R. 143. Although enrolled in the Clerk's payment plan, Flanagan continued to request the trial court review its reasonableness. Flanagan's Reply, R. 112.

On November 13, 2017, the trial court approved as reasonable the Clerk's \$10/month payment plan. Order, R. 195-98. It reasoned that Flanagan had income with which to pay the LFOs from sources other than SSI disability benefits. Order, R. 196. It found her mother's allowing Flanagan to live in the mother's house constituted support and thus "income." *Id.* The trial court valued these "reoccurring in-kind payments" at over \$500. *Id.*, R. 196-97. It ruled that the Clerk properly included this income in calculating the payment plan's monthly installments at 2% of income pursuant to § 28.246(4), Fla. Stat. *Id.*

Additionally, the trial court rejected Flanagan's Anti-Attachment Clause argument. Order, R. 197-98; 42 U.S.C. § 407(a). It reasoned that the Clerk's collection enforcement by conditioning Flanagan's driver's license on monthly installments was not "legal process" governed by the Clause. *Id.*

On November 17, 2017, Flanagan requested the trial court reconsider. Flanagan's Motion for Rehearing, R. 199. On April 3, 2018, the trial court denied Flanagan's rehearing request. Order, R. 214. This appeal followed.

ARGUMENT SUMMARY

The Clerk's payment plan is unreasonable and violates the plain text of § 28.246(4), Fla. Stat. The trial court erroneously determined the affordability of the monthly installments based on Flanagan's "other income," which the Florida legislature excluded from consideration. When the housing support is set aside along with her SSI disability benefits and only her "net income" is considered, the payment plan is unaffordable because she has no current "net income."

The Clerk conditions Flanagan's driver's license on monthly payments from her only fungible source of income, her SSI disability benefits. This violates Anti-Attachment Clause, 42 U.S.C. § 407(a). Federal law prohibits the Clerk from using Florida's "collection process" and thus "legal process" of suspending a license for nonpayment in § 322.245(5), Fla. Stat., to enforce the criminal money

judgments against Flanagan. The trial court erroneously approved—which is itself “legal process”—the Clerk’s conditioning Flanagan’s driver’s license on the payment of LFOs from her SSI disability.

STANDARD OF REVIEW

The trial court’s factual findings must be supported by competent, substantial evidence; conclusions of law are reviewed de novo. *Vill. of N. Palm Beach, Fla. v. S & H Foster's, Inc.*, 80 So.3d 433, 436 (Fla. 4th DCA 2012).

ARGUMENT

A. FUNDAMENTAL FAIRNESS DEMANDS AFFORDABLE PAYMENT PLANS.

Fundamental fairness predicated and thus guides the interpretation of the federal and state laws governing LFO payment plans for indigent. The suspension of a driver’s licenses for failure to pay LFO monthly installments when she lacks the present ability to pay them contravenes substantive rights and “fundamental fairness.” *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). In *Bearden*, the U.S. Supreme Court held that the state cannot sanction a defendant for failure to pay a fine when “through no fault of his own, he cannot pay the fine”—because he is indigent and cannot afford it. *Id.*

Similarly, in *Williams v. Illinois*, 399 U.S. 235, 242 (1970), the Court recognized that a facially neutral law that permits a person to avoid a sanction

“simply by satisfying a money judgment,” works “invidious discrimination.” A person without funds has only “an illusory choice” to avoid the consequence of nonpayment. *Id.* She will suffer “solely by reason of [her] indigency.” *Id.*; see also *Robinson v. California*, 370 U.S. 660 (1962) (ruling the state cannot sanction a person for certain conditions she is powerless to avoid). Therefore, the government may only impose a sanction after it inquires and determines that the person “willfully refused to pay.” *Bearden*, 461 U.S. at 672-73.

The Florida Supreme Court adopted the reasoning in *Bearden* in clarifying the timing of when trial courts must inquire into a criminal defendant’s ability to pay LFOs. *State v. Beasley*, 580 So. 2d 139 (Fla. 1991). The Court held that a trial court need not determine indigency at the time of assessing the LFOs. *Id.* at 142. However, when “the state seeks to enforce collection of the costs” and the criminal defendant “could suffer some loss of liberty or property,” then due process requires an inquiry into a defendant’s present ability to pay LFOs. *Id.*, at 142-43 (citing *Bearden*, 461 U.S. 660); see also *Jenkins v. State*, 444 So. 2d 947, 950 (Fla. 1984) (“any enforcement of the collection of those costs must occur only after a judicial finding that the indigent defendant has the ability to pay in accordance with the

principles enunciated in *Fuller v. Oregon*³). The Florida Supreme Court continues to hold that due process requires a determination of ability to pay before the state may impose a sanction for the failure to pay LFOs. *See Del Valle v. State*, 80 So. 3d 999, 1005 (Fla. 2011) (ruling “*Bearden* clearly mandates that ‘a sentencing court *must inquire* into the reasons for the failure to pay’” before imposing sanctions) (quoting *Bearden*, 461 U.S. at 672).

Accordingly, the Florida legislature demands fundamental fairness in its LFO collection process. A clerk may suspend the license of a driver who fails to make timely monthly installments on a payment plan.⁴ § 322.245(5)(a), Fla. Stat.

³ *Fuller v. Oregon*, 417 U.S. 40, 44-46 (1974) (approving as compliant with due process Oregon’s conditions for when a person must pay public defender costs—when the defendant had the ability to pay them).

⁴ The American Association of Motor Vehicles Administrators (a national association of DMVs) questions the wisdom of suspending a driver’s license to enforce a money judgment. The suspension of a driver’s license as a coercive measure detracts from the state’s primary interest in highway safety. For this reason, it recommended that state “legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations.” *See Am. Assoc. of Motor Vehicle Admin., Best Practices Guide to Reducing Suspended Drivers* (Feb. 2013), pp. 3, 32-54, available at www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723.

Moreover, OPPAGA concluded in 2007 that the threat of suspending a driver’s license for failure to pay LFOs has no demonstrated impact on the state’s ability to collect the LFOs. OPPAGA, *Clerks of Court Generally Are Meeting the*

However, the monthly installments must be affordable. § 28.246(4), Fla. Stat. The legislature defined what portion of what income a person can afford. Its guideline was 2% of the person's "net income." *Id.*

System's Collections Performance Standards, Report No. 07-21 (Mar. 2007), at 4 (concluding that "there was no meaningful difference between the average percentage of revenue collected overall and clerks' use of any particular method," including driver's license sanction), *available at* www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf. Suspending the driver's license only results in a minor increase—across all court divisions (e.g., traffic, misdemeanor, and felony)—from 72% to 78%. *Id.*, p. 5, Table 5; *see also* AAMVA, *Best Practices*, p. 4 ("no empirical evidence ... indicates that suspending a person's driving privilege for social non-conformance reasons is effective in gaining compliance with the reason for the original nondriving suspension").

More recently, OPPAGA noted that "[o]ne of the measures of effectiveness of suspending driver licenses for non-driving violations is determining how quickly the suspension or revocation leads to reinstatement". OPPAGA *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07 (Feb. 2014), at 7, *available at* <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf>. However, whereas suspensions for delinquent child support were fairly quickly reinstated—showing they were effective, *id.*, at 8, suspensions for unpaid LFOs often continue for years, *id.* at 9. Although clerks claim the suspensions aid their collection efforts, the collection results tell a different story.

Despite the wisdom or efficacy of suspending a driver's license for unpaid LFOs, Florida helps unsafe drivers continue to drive on a hardship license, while making no similar allowance for insolvent drivers, like Flanagan, to have her driver's license reinstated because of a hardship. § 322.271(1), Fla. Stat.

Equally, Congress upholds fundamental fairness by prohibiting judgment creditors from compelling payments from SSI disability benefits. 42 U.S.C. § 407(a). Because the benefits are only extended to a person who is both poor and disabled, Congress wanted to prevent creditors from depriving those in need of this important social safety net. Public funds for SSI disability benefits should be used for the needy's basic necessities, not judgment creditors.

B. THE LOWER COURT ERRED IN CONSIDERING FLANAGAN'S "OTHER INCOME" IN DETERMINING THE REASONABLENESS OF THE PAYMENT PLAN.

Florida law dictates the income the clerk should consider in setting affordable monthly payments. § 28.246(4), Fla. Stat. Monthly installments are presumptively affordable when they do not exceed 2% of the "net income" as defined in § 27.52(1), Fla. Stat. *Id.* The trial court erred by determining the reasonableness of Flanagan's payment plan based on "other income." The Florida legislature specifically mandated clerks should look to "net income" and not "other income"⁵ or simply "income" to test affordability of the monthly installments.

⁵ As defined in § 27.52(1)(a)(2), Fla. Stat., "[o]ther income" includes income and property exempt from legal process, including veterans' benefits (§ 77.041(1), Fla. Stat.) and unemployment compensation or reemployment assistance benefits (§ 443.051(2), Fla. Stat.).

“Net income, consist[s] of total salary and wages, minus deductions required by law, including court-ordered support payments.” § 27.52(1)(a)(1), Fla. Stat. Flanagan has no current “net income.” Tr., R. 125-26, 133, 138. So, the trial court picked and chose from Flanagan’s “other income” to determine the affordability of her payment plan. § 27.52(1)(a)(2), Fla. Stat. Flanagan’s “other income” includes her SSI disability benefits, food stamps, and her mother’s housing “support.” *Id.* While the trial court correctly disregarded Flanagan’s SSI disability benefits and food stamps,⁶ it considered “the regular [housing] support” in determining whether the payment plan was affordable. Order, R. 196-97.

Nothing supports the trial court’s selective consideration of “other income.” The consideration of any “other income” contravenes the Florida legislature’s clear public policy decision that clerks should look solely to “net income” to determine an affordable payment plan. The trial court’s consideration of some, but not all, “other income” undermines its validity of its ruling.

⁶ Indeed, this public assistance is “exempt from garnishment” and other legal process. § 77.041(1), Fla. Stat. (listing “public assistance (welfare)” among the “major exemptions”); § 414.0252(10), Fla. Stat. (defining “public assistance” to include “temporary cash assistance [TANF], food assistance, Medicaid, or optional state supplementation program”); *see also* 26 U.S.C. § 6334(a)(11)(B).

It also properly disregarded the telephone her sister gave her and the 2002 Dodge Intrepid as “income,” presumably because they do not amount to “regular support.” § 27.52(1)(a)(2), Fla. Stat.

Furthermore, determining the affordability based on Flanagan's mother's housing support makes little sense. The support is not fungible. It cannot be used, bartered, or sold to pay the Clerk the monthly installments. The only source of money Flanagan has with which to pay the Clerk—and the actual source she uses—are her SSI disability benefits, Tr., R. 143, 150, which the trial court properly disregarded.

Notably, while the trial court considered the housing support as “income” that could somehow be used to pay the Clerk, it took a more practical approach in its Anti-Attachment Clause analysis. There, the trial court correctly understood the source of the payment would be Flanagan's SSI disability benefits. Final Order, R. 197-98. The trial court might have rejected Flanagan's federal claim on the basis that the Clerk compelled payment from the housing support, which federal law does not protect. However, it understood that Flanagan could not practically pay monthly installments from a nonfungible housing support. Accordingly, it resolved the federal claim on the basis that the Clerk's collection was not “legal process.”

Because Flanagan cannot reasonably be expected to pay monthly installments from her mother's housing support, this “other income” cannot be considered in setting a reasonable payment plan. The trial court violated the

legislature’s clear intent and specific mandate to consider only “net income.” The government should encourage a mother to help a daughter in need and not attempt to tax this benevolence.

C. THE ANTI-ATTACHMENT CLAUSE PROHIBITS THE CLERK’S ENFORCEMENT OF MONEY JUDGMENTS FROM FLANAGAN’S SSI DISABILITY BENEFITS.

The federal Anti-Attachment Clause, 42 U.S.C. § 407(a), protects SSI disability benefits from “execution, levy, attachment, garnishment, or other legal process.” *See also Washington State Dept. of Soc. & Health Services v. Guardianship Estate of Keffeler*, 537 U.S. 371, 382 (2003) (observing the Anti-Attachment Clause applies to SSI disability benefits). This law controls how the Clerk may enforce the trial court’s orders that Flanagan pay LFOs. *See, e.g., Final Judgment for Fines & Costs*, R. 88. Yet, the Clerk enforces these money judgments and compels compliance by conditioning Flanagan’s continued driver’s license on her making monthly installments from her SSI disability benefits.

The Anti-Attachment Clause reads:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). “Legal process” involves “some judicial or quasi-judicial mechanism” by which property passes from a debtor to a creditor. *Keffeler*, 537 U.S. at 385. In interpreting the statute, the U.S. Supreme Court gave weight to Social Security Administration’s (“SSA”) interpretation. *Id.*, at 385, 390. The SSA Commissioner explains that “legal process” is “the means by which a court (*or agency or official authorized by law*) compels compliance with its demand.” *Id.*, at 385 (emphasis added).

The Anti-Attachment Clause does not prohibit a court from entering an LFO judgment, R. 42-43. *Accord Beasley*, 580 So. 2d at 142-43. But at its core, the law does prohibit the enforcement of the money judgment by compelling payment from SSI disability benefits, which provides a safety net for low-income, disabled persons.

1. The Clerk compels payment of monthly installments from Flanagan’s SSI disability benefits.

The Clerk conditions Flanagan’s driver’s license on Flanagan’s payment of monthly installments from her SSI disability benefits. If Flanagan fails to pay monthly installments, the Clerk will suspend Flanagan’s driver’s license pursuant to § 322.245(5), Fla. Stat. R. 110. Although the explicit terms of the payment plan do not require she pay the monthly installments from her SSI disability benefits, Final Order, R. 197-98, the trial court noted no other fungible income source, *id.*,

R 195. Accordingly, as a practical matter, her SSI disability benefits are the only source from which Flanagan can make the payments.

Although the trial court ruled that Flanagan *voluntarily* “chose to enter into a payment plan” without any “court order requiring” her, Order, R 197, this ignores the realities of modern life in Florida. The Clerk would not reinstate Flanagan’s driver’s license until she enrolled in the payment plan. And Flanagan needed a license. “[D]riving has become an increasingly important part of American life.” *Florida Dept. of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1078 (Fla. 2011) (citing *Bell v. Burson*, 402 U.S. 535, 539 (1971)); *see also Delaware v. Prouse*, 440 U.S. 648, 662 (1979) (“Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one’s home, workplace, and leisure activities.”); *Wall-DeSousa v. Florida Dep’t of Highway Safety & Motor Vehicles*, 691 Fed. Appx. 584, 591 (11th Cir. 2017) (“It is clear that the loss of a driver’s license would make a number of basic daily functions of modern life appreciably more difficult for the ordinary person.”). “When the [government] takes away a person’s right to drive, that person does not, suddenly and conveniently, stop having to go to medical appointments, stop having to report to court dates, or stop having to venture into the world to obtain food and necessities.” *Thomas v. Haslam*, No. 3:17cv5, 2018 WL 3301648, at *32 (M.D. Tenn. July 2, 2018). Therefore, far from being a mere “privilege” that state actors

withdraw at their whim, a driver's license constitutes "property" guarded by the Fourteenth Amendment to the U.S. Constitution. *Hernandez*, 74 So. 3d at 1073.

Furthermore, Florida law defines "voluntary" much more narrowly—a decision free of coercion. *See, e.g., Pierce v. State*, 221 So. 3d 1218, 1221 (Fla. 1st DCA 2017) (noting a voluntary statement is one produced without coercion); *see also Am. Fed'n of State, County & Mun. Employees Council 79 v. Scott*, 717 F.3d 851, 874 (11th Cir. 2013) ("Employees who must submit to a drug test or be fired are hardly acting voluntarily, free of either express or implied duress and coercion."). To participate in modern life, a driver's license is not a luxury, but "essential." *Bell*, 402 U.S. at 539 ("Once licenses are issued ... their continued possession may become essential in the pursuit of a livelihood."). Flanagan did not voluntarily agree to the Clerk's payment plan, she had no real choice. The Clerk coerced Flanagan to either pay money from her SSI disability or live a life as if it were the turn of the 19th century when driving a personal car was not ubiquitous.

Although "Flanagan can choose to stop making payments" from her SSI disability benefits, Final Order, R. 198, the consequences negate any actual choice. The choice is "illusory." *Williams v. Illinois*, 399 U.S. 235, 242 (1970).

2. The Clerk’s conditioning a driver’s license on LFO payments is “legal process.”

Judgment creditors enforce money judgments through “final process.”

Fla.R.Civ.P. 1.570(a); *see also Raulerson v. Peeples*, 87 So. 629, 630 (Fla. 1921) (defining execution as the “act of carrying into effect the final judgment or decree of a court”). The suspension of Flanagan’s driver’s license as a sanction to compel Flanagan to make partial payments from her SSI disability benefits constitutes “legal process” to collect the criminal money judgments.⁷

Florida law provides a process for judgment creditors to enforce money judgments and compel their satisfaction through the suspension of the judgment debtor’s driver’s license. Upon the judgment creditor’s written request, the clerk of court shall notify the DMV of the nonpayment and the DMV shall suspend the judgment debtor’s driver’s license. §§ 324.111 & 324.121(a), Fla. Stat. Florida law provides the same legal process to clerks as judgment creditors to enforce LFO

⁷ Often, money judgments explicitly provide for enforcement through final process. *See* Final Judgment for Fines & Costs, R. 88 (including the phrase “for which let execution issue”). However, these “[p]articular words and phrases are not essential to finality of an order.” *Hoffman v. Hall*, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002). A money judgment itself can be enforced by the processes provided by law—whether or not it includes this language. *See, e.g.*, § 938.30(6), Fla. Stat. (an LFOs money judgment itself “constitutes a civil lien”).

judgments. The DMV shall suspend the judgment debtor's driver license upon the clerk's notification of nonpayment of LFOs. § 322.245(5)(a), Fla. Stat.

The Clerk enforced the court's money judgments, *see, e.g.*, Final Judgment for Fines & Costs, R. 88, through this legal process. The Clerk suspended Flanagan's driver license when she failed to pay the LFOs. R. 9 (docket Nos. 115-16), 12 (docket Nos. 60-61). Now that Flanagan is on a payment plan, R. 110, the Clerk compels Flanagan to pay monthly installments on the threat of suspension of her driver's license for nonpayment. § 322.245(5)(a), Fla. Stat. The Clerk continues to use this legal process to compel payment. The Clerk telegraphed her clear intention if Flanagan misses a monthly installment: "a [driver's license] suspension will be processed for each case in this plan." R. 110.

The trial concluded to the contrary based on three misunderstandings. Final Order, R. 197-98. First, the trial court misidentified the "legal process" as Flanagan's "[e]ntry into a payment plan" to pay the LFOs. *Id.* The plan defines the terms and conditions of payment—it dictates what Flanagan must do, much like the money judgment. The agreement even telegraphs that the Clerk will suspend her driver's license for missed installments. R. 110. However, like the money judgment itself, the payment plan agreement is not self-executing. Instead, the "legal process" is the enforcement mechanism for a money judgment. It

specifics the legal consequence—the “or else”—of failing to comply with a money judgment or payment plan that “carr[ies] into effect the final judgment.”

Raulerson, 87 So. at 630. The enforcement of the judgment by suspending a driver’s license as a consequence of failure to comply is the legal process.

Second, no “court order” identifying specific property (or a “source”) is required for the Anti-Attachment Clause to apply. *Id.*, R. 197-98. In Florida, final legal process can be accomplished without a court enforcement order. For example, the clerk, not the court,⁸ issues the execution directing that the sheriff levy a judgment-debtor’s property as a matter of course upon a judgment-creditor’s request without any action by the court. Fla.R.Civ.P. Form 1.914(a) (execution issued by the clerk); *see also* Fla.R.Civ.P. 1.550(a). Furthermore, final process need not identify the specific property. Final Order, R 198. For example, a writ of execution (levy) need not identify specific property. § 30.30(1), Fla. Stat. (“If no property is specifically described in the writ ...”). Accordingly, just as the Anti-Attachment Clause explicitly governs executions and levies issued without an enforcement order, it governs the Clerk’s suspension of a driver’s licenses to enforce the money judgment.

⁸ If the clerk of the court in issuing legal process like an execution is merely a proxy for the court, then its suspension of a driver’s license for failure to pay LFOs would likewise be court action satisfying the trial court’s concern.

Third, the Anti-Attachment Clause applies to debt collection—mechanisms “to discharge or secure discharge of an allegedly existing or anticipated liability.” *Keffeler*, 537 U.S. at 385. Consequently, it does not apply simply to “any fee required by state law to obtain or keep a driver’s license.” Final Order, R. 197. Nothing prohibits the state from charging administrative fees to defray the state’s costs of licensing drivers and withholding a license for failure to pay them.⁹

Therefore, the Clerk’s conditioning Flanagan’s driver’s license on monthly installments is “legal process.” The Anti-Attachment Clause prohibits the Clerk from so enforcing the money judgments from SSI disability benefits.

⁹ Arguably, the state may not use its licensing authority to extract payments for obligations unrelated to the licensed activity. Indeed, in other contexts, the U.S. Supreme Court has forbidden states from withholding a license for failure to pay unrelated fees and costs. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 113-14 (1943) (striking a soliciting license fee that was in excess of any “apportioned,” “nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question” because the excess amounted to an unconstitutional tax and an improper restraint). The Clerk’s conditioning a driver’s license on the payment of LFOs unrelated to driving. As such, it is little different than the general tax on an exercise of a basic citizen activity—a tax abhorred by *Murdock*.

3. The Clerk may only suspend a driver's license through a collection "process."

The Clerk can only condition Flanagan's driver's license on monthly payments as part of Florida's prescribed legal, collection process. Clerks must "pursue the collection" of LFOs "through a collection court, collections docket, or other collection process." § 28.246(6), Fla. Stat. Through this collection process, the "court may order the person to comply with a payment schedule to satisfy the obligation," § 938.30(10), Fla. Stat., and hold the defendant in civil contempt and suspend her driver's license¹⁰ for "willfully failing to comply" with the execution, § 938.30(11), Fla. Stat. The Clerk would also be entitled to "any writ necessary to enforce the judgment in the manner allowed in civil cases." § 938.30(6), Fla. Stat. When the Clerk follows the prescribed "collection process," § 28.246(6), Fla. Stat., in § 938.30, Fla. Stat., the suspension of Flanagan's driver's license for failure to pay the LFOs would unquestionably constitute "legal process" prohibited by the Anti-Attachment Clause. *See City of Richland v. Wakefield*, 380 P.3d 459, 465 (Wash. 2016); *In re Lamport*, 856 N.W.2d 192, 196-97 (Mich. 2014).

¹⁰ Civil contempt sanctions include the revocation of a driver's license. *Parisi v. Broward County*, 769 So. 2d 359, 363 (Fla. 2000) ("It has long been recognized that courts have the authority to enforce a judgment by the exercise of their contempt powers.").

Suspending a driver's license for nonpayment pursuant to § 322.245(5), Fla. Stat., is part of this "collection process" and as such constitutes "legal process." Unlike subsection (3) of the statute, which directs the clerk to notify the DMV of unpaid LFOs in traffic and criminal traffic cases, subsection (5) contains no mandate to the clerks.¹¹ It only instructs the DMV what to do if a clerk decides to notify the DMV. Because § 322.245(5), Fla. Stat., provides no guidance as to when the Clerk should notify the DMV, it is best understood as attendant to the collection process in § 938.30, Fla. Stat., which informs the clerk when to notify the DMV.¹²

Because § 322.245(5), Fla. Stat., is a part of the legal, collection process, the Clerk both has authority to use it to compel monthly payments and the responsibility to comply with federal law's limitations on legal process.

¹¹ § 322.245(5), Fla. Stat., applies to misdemeanors and felonies and specifically Flanagan's felony convictions. *Id.* (concerning "criminal offense other than those specified in subsection (1)")

¹² Of course, if suspending a driver's license pursuant to § 322.245(5), Fla. Stat., is not part of the "collection process[es]" mandated by § 28.246(6), Fla. Stat., then the clerk has no authority to utilize it while bypassing the prescribed processes. Thus, the Clerk could not condition Flanagan's driver's license on monthly payments.

4. The trial court’s approval of the payment plan constitutes “legal process.”

The trial court found reasonable the Clerk’s payment plan. Final Order, R. 195-98. In doing so, it permitted at the Clerk’s election¹³ the suspension of Flanagan’s driver license for the nonpayment of the monthly installments. Thus, the Final Order, R. 195-98, constitutes “legal process” because it conditions the certain imposition of an enforcement sanction on compliance with the payment plan. *See City of Richland v. Wakefield*, 380 P.3d 459, 465 (Wash. 2016); *In re Lampport*, 856 N.W.2d 192, 196-97 (Mich. 2014).

Flanagan was afforded no predeprivation hearing before the Clerk suspended her driver’s license to compel her payment of the LFOs. However, due process does not always require a predeprivation hearing. “In some circumstances, however, the [U.S. Supreme] Court has held that a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process.” *Zinermon v. Burch*, 494 U.S. 113, 128 (1990). Florida law permits state courts to “review the reasonableness of the payment plan.”

¹³ The Clerk has clearly indicated what the Clerk intends to do if Flanagan misses a monthly installment: “a [driver’s license] suspension will be processed for each case in this plan.” R. 110. By empowering the Clerk to flow-through and suspend Flanagan’s license for nonpayment, the court’s reasonableness review itself qualifies as “legal process” to enforce the money judgments on penalty of continued driver’s license suspension.

§ 28.246(4), Fla. Stat. Flanagan availed herself of this postdeprivation hearing to test whether the government could condition her driver's license on monthly payments from her SSI disability benefits. Flanagan's Motion, R. 91. The trial court's review was not merely advisory, but had effect. And the state court approved the Clerk's condition and the inherent consequences of nonpayment in Section 322.245(5), Fla. Stat.

Thus, even if the trial court had not previously authorized the Clerk to suspend Flanagan's driver's license for nonpayment of LFOs or enrollment in a payment plan, *see* Final Judgment for Fines & Costs, R. 88 ("for which let execution issue"), the trial court's permitting the Clerk to condition Flanagan's driver's license on monthly installments from her SSI disability constitutes "legal process."

CONCLUSION

Flanagan is poor, disabled, and survives on meager assistance from her family and our social safety net. The Clerk unreasonably conditions her continued ability to lawfully drive to the grocery and doctors' appointments on paying a portion of her SSI disability to satisfy a debt. This violates Florida law. It violates federal law. It violates fundamental fairness.

This Court should reverse the trial court's ruling and remand with instructions to review the payment plan without considering "other income," including but not limited to, her SSI disability benefits, which are protected by the Attachment Clause.

Dated: July 20, 2018

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished today to the following person(s) by email:

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CERTIFICATE OF COMPLIANCE

I certify that I used 14 point New Times Roman font in this brief; and therefore, it complies with the font requirements of Fla.R.App.P 9.210(a)(2).

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