IN THE CIRCUIT COURT, OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 37-2013-CA-002558

REGINALD B. FOSTER,

Plaintiff,

vs.

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES,

Defendant.
_____/

ORDER GRANTING DEFENDANT DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINITIFF FOSTER'S MOTION FOR SUMMARY JUDGMENT

This case is before me on cross motions for summary judgment filed by the Plaintiff, Reginald B. Foster ("Foster") and the Defendant, Department of Highway Safety and Motor Vehicles ("Department"). Having considered the motions, Foster's response to the Department's motion, the stipulation of facts filed by the parties and its exhibits, the authorities cited and the arguments of counsel, I conclude, for the reasons set forth below, that the Department's motion should be granted and Foster's motion should be denied.

INTRODUCTION

The parties submitted a stipulation of undisputed facts with attachments, along with affidavits. From these documents I find that there is no genuine issue of material fact in this case.

During 2004 through 2007, Foster was adjudicated guilty in five felony cases in the Ninth Circuit Court in and for Orange County. These adjudications resulted in the imposition of fines, court costs and ancillary fees. Foster entered into a payment plan to pay these financial obligations in installments. At some point, Foster stopped making payments and the clerk of court for Orange County sent notices to the Department which resulted in the suspension of Foster's driver license under section 322.245(5) (a), Florida Statutes. The Department sent five notices of driver license suspensions to Foster at his last address known to the Department. Foster claims that the suspension of his driver's license, without an administrative hearing before the Department on Foster's ability to pay what he owes to the court, violates his right to equal protection and due process under both the Florida and U. S. constitutions.

Section 28.246(4), Florida Statutes, establishes a method for convicted criminals to pay court-related fees, service charges, costs, and fines on an installment plan. The reasonableness of the payment plan is reviewed by the court. In addition, the court may determine the person's ability to pay, and may convert

the financial obligation into an obligation to perform community service under Section 938.30, Florida Statutes. Section 322.245(5) (a) requires the Department to suspend the driver's license of a person when the Department receives a notice from a clerk of the court that the person has failed to pay financial obligations for a criminal offense. Section 322.245(5)(b) requires the Department to restore the driver's license upon receiving a notice from the court that the financial obligations have been paid, that a payment plan has been accepted, or that the court has ordered reinstatement of the license.

LEVEL OF SCRUTINY

Unless a statute interferes with a "fundamental right" or discriminates against a "suspect class," it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose. *Id* at 487 U.S. 450, 457-458, 108 Sc.D. 2481, 2487 (1988). Foster concedes that driving has not been recognized as a "fundamental right." See Jones v. Kirkman 138 So.2d 513, 515 (Fla.1962). Poverty alone is not considered a "suspect class." *Kadrmas v. Dickinson Public Schools* 487 U.S. 450, 458, 108 S.Ct. 2481, 2487, 2488 (1988).

The recent decision in *City of Fort Lauderdale v. Gonzalez* __So.3d __, 2014 WL 444171, (Fla. 4th DCA, 2014), contains the following summary of the rational basis test:

> The constitutional principle of equal protection "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Commc'ns., Inc.,* 508 U.S. 307, 314, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993). "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Metropolis Theatre Co. v. Chicago,* 228 U.S. 61, 69–70, 33 S.Ct. 441, 57 L.Ed. 730 (1913). Under rational basis review, a statute bears a strong presumption of validity and "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Beach Commc'ns.,* 508 U.S. at 313, 113 S.Ct. 2096. "In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* at 315, 113 S.Ct. 2096.
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> Indeed, "the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature ... actually articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn,* 505 U.S. 1, 15, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992). The burden is on the party attacking the legislation to negate every conceivable basis which might support it. *Lehnhausen v. Lake Shore Auto Parts Co.,* 410 U.S. 356, 364, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973). A classification does not fail rational basis review merely because it is not made with mathematical nicety or because in practice it results in some inequality. *Heller,* 509 U.S. at 321, 113 S.Ct. 2637. Emphasis supplied.

In W*CI Communities, Inc. v. City of Coral Springs* 885 So.2d 912, 914 (Fla. 4th DCA, 2004), the court stated:

> Under both substantive due process and equal protection, when the legislation being challenged does not target a protected class, the rational basis test is applied.
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> The first step in determining whether legislation survives the rational basis test is identifying a legitimate government purpose which the governing body could have been pursuing. *See Restigouche,* 59 F.3d at 1214. The second step of the rational basis test asks whether a rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose. *See id.* The

> proper inquiry is concerned with the existence of a conceivably rational basis, not whether that basis is actually considered by the legislative body. *See id.* The rational basis standard is highly deferential. *See Gary*, 311 F.3d at 1339. Emphasis supplied.

Section 322.245(5) meets the first part of the test laid out by *WCI Communities, Inc.*, in that its manifest purpose is the recovery of criminal fines and court costs, which is a legitimate government purpose. As to the second part, it is *conceivable* that the legislature believed that having provided not just one, but two methods for a court to review the person's ability to pay and provide relief, (ss. 28.246 and 938.30) there was no need for a yet another hearing by the Department. In addition, it is conceivable that the legislature believed that such a proceeding by the Department would have put the Department in the position of reviewing decisions of the court, thus interfering in the operation of the judicial branch. Finally, it is conceivable that the legislature may have believed that an administrative agency, lacking the tools available to the judicial branch, may have been less effective in dealing with those, such as Foster, who have shown a predilection for law breaking than they would for the general population. It is reasonable to suppose that convicted criminals may attempt to hide assets, may be less likely to show diligence in pursuing job opportunities, less likely to seek help from family and friends and to attempt to secure loans and generally behave in a responsible manner. See, for example, s. 938.30(5), "The court may order that any nonexempt property of the person which is in the hands of another be applied

toward satisfying the obligation." Thus, Foster has not carried his burden of showing that there is no conceivably rational basis for section 322.245(5), Florida Statutes.

Foster relies on *Bearden v. Georgia*, 461 U.S. 660 (1983). This case is distinguishable in that the sanction involved was imprisonment, not driver license suspension. Likewise, *State v. Beasley*, 580 So. 2d 139 (Fla. 1991), also relied on by Foster, is also inapposite in that it requires that a *court* must determine that a defendant has the ability to pay before the state seeks to enforce the collection of costs. *State v. Beasley, supra* at 142. Sections 28.246 and 938.30 provide not one, but two judicial methods to provide relief for inability to pay.

Foster claims that by failing to provide an administrative hearing prior to his suspension, the Department has violated his right to due process under *Bell v. Burson* 402 U. S 535 (197) and related cases. The Department provided twenty days notice by mail for each of the five suspensions to Foster's last known address furnished to the Department as required by section 322.251, Florida Statutes. The notice offered Foster a hearing to show cause why his license should not be suspended. Foster claims that he did not receive the notices, but does not allege that he furnished his current address to the Department as required by section 322.19(2), Florida Statutes. Because the Department has a ministerial duty to suspend the license under section 322.245(5) upon receipt of the notice from the

clerk, the hearing in this case would have been limited to the issue of whether the Department had received such notices relating to Foster. Because the receipt of notices by the Department is undisputed, the hearing would have served no purpose. Thus, the only way Foster can prevail on his due process claim is if he is entitled to a presuspension before the Department on this ability to pay. As may be seen from the foregoing, he is not entitled to such hearing.

Foster has submitted a number of studies on the efficacy of section 322.245 in collecting financial obligations, the effect of non-safety suspensions on public safety, and the lack of means of those with criminal convictions. These studies go to the wisdom, fairness or logic of the legislation, which is outside the purview of this court to judge. See *Houston v. Williams supra* at 1363, and case authorities cited therein. Foster should address the legislature on these issues.

Accordingly, I find that Defendant, Department of Highway Safety and Motor Vehicles is entitled to judgment has a matter of law. Therefore, the Department's motion for summary judgment is granted and Foster's motion for summary judgment is denied.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida this 5 day of ~~February~~ March, 2014.

TERRY P. LEWIS, Circuit Judge