

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

REGINALD B. FOSTER,

Plaintiff,

v.

Case No.: 37 2013 CA 002558

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES,

Defendant.

/

COMPLAINT

Plaintiff REGINALD B. FOSTER (“Foster”) sues the FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES (“DMV”)
and alleges as follows:

INTRODUCTION

1. Reginald Foster, like 211,159 other drivers in Florida at the start of 2013, had a suspended driver’s license for failure to pay court costs and fines (legal financial obligations or “LFOs”) imposed after a misdemeanor or felony conviction. The DMV blindly suspended his license without any consideration into whether he willfully decided not to pay the LFOs or simply lacked the ability

to pay them. The DMV also suspended his license without providing Foster notice of the impending suspension or a meaningful opportunity for him to challenge the suspension. Yet, Foster, like most of the other drivers, simply lacked the ability to pay the LFOs and lost his driver's license as a consequence.

2. The DMV's suspension of Foster's driver's license for failure to pay the LFOs when he presently lacks the ability to pay them is arbitrary, capricious, and does not advance the government's interest in collecting LFOs. Moreover, the suspension of Foster's driver's license without notice and a meaningful opportunity to challenge the suspension deprived Foster of his due process and equal protection rights secured under Article I, Sections 2 and 9, of the Florida Constitution as well as the Fourteenth Amendment of the United States Constitution. Foster requests that this Court order the DMV to reinstate his driver's license, and order an evidentiary hearing regarding Foster's financial ability to satisfy his LFOs prior to any future suspension of his driver's license.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this equitable action pursuant to § 26.012(2)(c), Fla. Stat.

4. Venue is proper in this judicial circuit and county pursuant to § 47.011, Fla. Stat., and the home-venue privilege.

PARTIES AND PERSONS OF INTEREST

5. Plaintiff **Reginald B. Foster** (“Foster”) resides in Fort Lauderdale, Broward County, Florida. Foster was born in Florida, was first licensed to drive when he was eighteen years old and, prior to the suspension of his driver’s license, had been driving for decades.

6. Defendant **Florida Department of Highway Safety and Motor Vehicle** (“the DMV”), was created pursuant to § 20.24, Fla. Stat., and resides in Tallahassee, Florida.

GENERAL ALLEGATIONS

7. The DMV’s practice and policy is to suspend a driver’s license pursuant to § 322.245(5)(a), Fla. Stat., upon notice from the clerk of court that the driver has failed to pay LFOs related to a felony conviction. The DMV automatically suspends the license without inquiring about the driver’s present ability to pay the LFOs or providing notice to the driver and opportunity to be heard. The DMV suspended Foster’s driver’s license pursuant to this practice and policy.

8. The DMV suspended and continues to suspend Foster’s driver’s license because Foster failed to pay the LFOs in five felony cases (“the Five Felony Cases”). The sum of the outstanding LFOs (including a 40% collection

fee) for all of these Five Felony Cases is \$5,450.69. The crimes involved in the Five Felony Cases crimes were all unrelated to any driving offense or facility to drive.

9. Prior to the DMV's suspension, Foster was paying installments toward the outstanding LFOs. However, due to economic hardship and unsteady employment, Foster began to miss payments.

10. Foster never received a notice that the DMV would suspend his driver's license.

11. The DMV never sent a notice that it would suspend Foster's driver's license.

12. The DMV suspended Foster's driver's license for failure to pay the LFOs related to the Five Felony Cases without inquiring into Foster's ability to pay the LFOs or providing him with an opportunity to be heard or assert that he lacked the present ability to pay the LFOs. Had the DMV inquired, it would have discovered Foster's financial status.

13. Foster lacks the present ability to pay \$5,450.69. His take-home pay from a part-time job in the cruise ship industry is roughly \$1,200 per month. Because his license is suspended, he has fewer job opportunities, is excluded from

some higher-paying jobs, and cannot more easily repay the LFOs. He has no significant assets.

14. Foster cares for his elderly parents. Prior to the suspension of his driver's license, he regularly drove his parents to doctors' appointments and other places they needed to go. Now that he no longer can drive, his ability to assist his parents has been severely limited.

15. Every time Foster has been charged with a crime, he was determined indigent upon his sworn statement and was represented by an attorney appointed by the court at the state's expense.

16. Foster did not intend to fail to pay the LFOs. He simply did not have sufficient money to do so.

17. The DMV's suspension of Foster's driver's license has nothing to do with his driving skills or capabilities. His driving record for the last seven years reflects only one traffic infraction on his record—unknowingly driving without a license. *See State v. Foster*, No. 2009 TR 027146 (Fla. 17th Cir. (Broward Cnty.)). That offense was in fact the result of the practice that Foster challenges in this action. He first learned that his driver's license was suspended during this police traffic stop.

18. Foster wants to legally operate a motor vehicle in the State of Florida.

19. Foster has an important property interest in a driving license and legally driving.

20. Other than the suspension for failure to pay the LFOs related to the Five Felony Cases, no other reason prevents Foster from obtaining his driver's license. But for the DMV's suspension of his driver's license for failure to pay the LFOs related to the Five Felony Cases, Foster's driver's license could be reinstated.

21. The DMV has no available administrative procedure by which Foster may have his driver's license reinstated because he lacks the present ability to pay the LFOs related to the Five Felony Cases.

22. When the DMV suspended Foster's driver's license, it had no administrative procedure by which Foster could have challenged the suspension before the actual suspension occurred.

23. Foster has suffered and will continue to suffer injury as a result of the DMV's suspension of his driver's license. He has fewer and diminished job opportunities and earning prospects. He also has lost income that he could have used to repay the LFOs. His professional and social interactions and engagements

have been significantly limited. He has lost autonomy to legally drive where he wants. Foster faces a real and immediate threat of irreparable injury as a result of the DMV's continued suspension of his driver's license. Unless restrained by this Court, Foster will continue to suffer these injuries.

24. Foster has no adequate remedy at law.

25. The DMV has acted and threatens to continue acting under color of state law at all times alleged in this complaint.

COUNT 1: SUBSTANTIVE DUE PROCESS

26. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this complaint.

27. Article I, Section 9 ("Due process"), of the Florida Constitution mandates that "[n]o person shall be deprived of life, liberty or property without due process of law."

28. The DMV's suspension and continued suspension of Foster's property—his driver's license—violates the substantive due process rights secured by the Florida Constitution. The DMV's suspension and continued suspension of Foster's driver's license does not bear a reasonable relation to a permissible legislative objective because Foster lacks the present ability to pay the LFOs. Its

suspension is actually counter-productive to Foster's ability and likelihood of paying the LFOs.

COUNT 2: PROCEDURAL DUE PROCESS

29. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

30. Plaintiff brings this count pursuant 42 U.S.C. § 1983 for violations of civil rights under the Fourteenth Amendment to the United States Constitution.

31. The Fourteenth Amendment to the United States Constitution prohibits Florida from "depriv[ing] any person of life, liberty, or property, without due process of law." *Id.*, § 1. Due process requires notice and an opportunity to be heard.

32. The DMV failed to provide Foster with notice that it would suspend his driver's license, or an opportunity to be heard before doing so. The DMV failed to inquire whether Foster had the present ability to pay the LFOs related to the Five Felony Cases before suspending his driver's license. Therefore, the DMV has deprived Foster of procedural due process secured by the United States Constitution.

COUNT 3: STATE EQUAL PROTECTION

33. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

34. Article I, Section 2 (“Basic rights”), of the Florida Constitution mandates that “[a]ll natural persons ... are equal before the law and have inalienable rights, among which are the right ... to acquire, possess and protect property.”

35. Because the DMV’s suspension and continued suspension of Foster’s driver’s license discriminates against Foster on the basis of economic status, the DMV’s suspension and continued suspension of Foster’s driver’s license violates his equal protection rights secured the by Florida Constitution.

36. Drivers who have been ordered to pay LFOs related to a felony conviction are similarly situated in every respect but their ability to pay. Treating Foster differently based on his inability to pay, and suspending his license because of his economic status is irrational, and therefore violates equal protection.

37. The DMV has no legitimate reason to treat these two classes of drivers differently. This disparate treatment is intentional, arbitrary, capricious and not rationally related to any legitimate government interest.

38. As a result of this disparate treatment, Foster cannot legally drive. If Foster had the present ability to pay his LFOs, as he wishes to, the DMV would not have suspended his driver's license.

39. In addition to any court ordered sentences, fines, or sanctions, the DMV suspends a driver's license for those criminal defendants unable to pay the LFOs, but not for those with financial means. In this way, the full penalty and consequences of a crime depend on a driver's economic status in violation of equal protection.

COUNT 4: FEDERAL EQUAL PROTECTION

40. Plaintiff realleges and incorporates by reference paragraphs 1 through 25, 30, and 36 through 39 of this Complaint.

41. The Fourteenth Amendment to the United States Constitution prohibits Florida from "deny[ing] to any person within its jurisdiction the equal protection of the laws." *Id.*, § 1.

42. Because the DMV's suspension and continued suspension of Foster's driver's license discriminates against Foster on the basis of economic status, the DMV's suspension and continued suspension of Foster's driver's license violates his equal protection rights secured the by United States Constitution.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief:

A. An order declaring unconstitutional the DMV's suspension of Foster's driver's license for failure to pay the LFOs;

B. An order permanently enjoining the DMV from maintaining its suspension of Foster's driver license for failure to pay the LFOs in the Five Felony Cases.

C. An order permanently enjoining the DMV from requiring Foster to pay (in order to reinstate his driver's license) any of the DMV's fines, costs, fees, charges, or expenses unless they are entirely related to an earlier suspension of his driver's license.

D. An order permanently enjoining the DMV from suspending Foster's driver license for failure to pay LFOs without first (1) giving Foster notice of the possible suspension, (2) providing Foster an opportunity to be heard, and (3) determining from substantive evidence that Foster has the present ability to pay the LFOs.

E. An award to Foster of reasonable attorneys' fees and costs incurred in connection with this action from Defendant pursuant to 42 U.S.C. § 1988;

F. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

G. Such further and different relief as is just and proper or that is necessary to make the Plaintiffs whole.

Respectfully Submitted,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have supplied a true and accurate copy of the forgoing on September 11, 2013, to the following via Email and U.S. Mail at the following address:

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