

4-18-2008

Wheeler v. Idaho Dept. of Health and Welfare Appellant's Reply Brief Dckt. 34426

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Wheeler v. Idaho Dept. of Health and Welfare Appellant's Reply Brief Dckt. 34426" (2008). *Idaho Supreme Court Records & Briefs*. 1642.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1642

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DENNIS N. WHEELER,

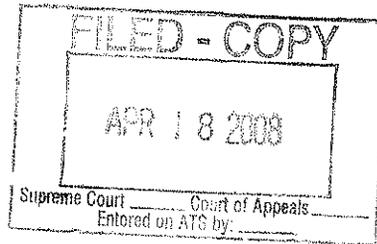
Appellant,

v.

IDAHO DEPARTMENT OF HEALTH
AND WELFARE,

Respondent.

Supreme Court No. 34426



APPELLANT'S REPLY BRIEF

Appeal From The District Court Of The
Fourth Judicial District Of The State Of Idaho,
In And For The County of Ada

D. Duff McKee – District Judge

Vernon K. Smith
Attorney At Law
Attorney for Appellant
1900 West Main Street
Boise, Idaho 83702

M. Scott Keim
Deputy Attorney General
Attorney for Respondent
P.O. Box 83720
Boise, Idaho 83720-0036

TABLE OF CONTENTS

| | <i>Page</i> |
|------------------------|-------------|
| REPLY ARGUMENT | 1 |
| CERTIFICATE OF SERVICE | 10 |

TABLE OF CASES AND AUTHORITY

Page

U.S. Statutes

42 U.S.C. § 666(a)(16) 7

Idaho Statutes

*Idaho Code, §7-1401 et seq., Family Law License
Suspension Act (FLLSA)* 1, 2, 6, 9

CONSTITUTION

Idaho Constitution 7

U.S. Constitution 5, 7

OTHER AUTHORITY

IDAPA 16.03.03.604 1

CASE AUTHORITY

Aberdeen-Springfield Canal Co. v. Peiper,
133 Idaho 82, 90, 982 P.2d 914, 926 (1999). 2

Adams v. City of Pocatello,
91 Idaho 99, 416 P.2d 46 (1966). 7, 8

J.R. Simplot Co. v. Idaho State Tax Commission,
120 Idaho 849, 820 P.2d 1206 (1991). 2

Maron v. Donnelly Club,
135 Idaho 581, 21 P.3d 903 (2001). 2

Spencer v. Kootenai County,
Supreme Court of Idaho, Docket No. 33060, March 6, 2008. 2

Reply Argument

This appeal arises from the legislation that allows Administrative Decisions affecting enforcement of court orders upon a request from the Department of Health and Welfare, seeking to suspend an individual's driver's license as a sanction for violating a court order of support, pursuant to the perceived authority contained within FLLSA, a legislative enactment with little or no enforcement criteria as to the basis, duration or particular class of license holding a property interest, compounded by the use of an Agency's definition of "good cause", later identified in the IDAPA Rules, 16.03.03.604, which appears to provide the only "relevant" analysis allowed by the Department to evaluate upon what basis a court order for support is not subject to be performed. The district court, upon this Appellant's Petition for Judicial Review, elected to affirm the license suspension sought by the Agency and endorsed the administrative process that authorizes suspension of the license under FLLSA, and this appeal has raised a series of aspects affecting that legislation, including the validity, constitutionality, application and enforceability of that FLLSA enactment, and its administrative use as a replacement for judicial enforcement of court orders.

There is no dispute over the fact the court order for support exists, and no dispute over the fact Appellant's support obligation was partially unpaid, and that arrears had accrued under each of those court orders, both before and after the enactment of this challenged legislation. Our Opening Brief has identified Appellant's challenge and the issues raised regarding the FLLSA, and this ongoing disagreement over the enforcement of this administrative decision, continues in the assessment of these issues raised by this appeal.

The Department would urge this Court to find our appeal is without any merit, yet goes to great length to recognize the concerns raised by Appellant, as they seek to find support for their arguments. They begin with wanting this Court to give “considerable weight” to the Department’s limited definition of “good cause”, apparently wanting this Court to equate the “considerable weight” concept to be interpreted to mean their exclusive definition is a valid exercise of providing substantive due process of law, when it comes to defining the allowed reasons for exempting enforcement of FLLSA over an existing state of non-payment of support, and has proposed this Court consider as the authority for doing so the cases of *Maron v. Donnelly Club*, 135 Idaho 581, 21 P.3d 903 (2001) and *J.R. Simplot Co. v. Idaho State Tax Commission*, 120 Idaho 849, 820 P.2d 1206 (1991). The Department suggests such limitations and adoption of the exclusive reasons for exemption are “reasonably related to the legislation it was being promulgated to carry out”. We respectfully disagree, as such restrictive allowance of such limited relevant and admissible reasons of non-payment do not cover any of the logical and realistic economic factors that exist in the real world, such as lay offs, limited skills, limited employment opportunities, financial downturns, economic disasters, and temporary illnesses or disabilities that cause the deficiencies in all facets of obligations to occur, and perpetuate the delinquencies in all forms of obligations to accrue.

Economic factors are critical, and to disregard their rightful application in the legislative scheme is only further aggravated by the imposition of an administrative order that takes away your license to drive, the only sensible means by which the average person is able to obtain and maintain any gainful employment to generate an income stream to pay his support and other

financial obligations. To take the license to drive a motor vehicle serves only to take away the ability to get and to keep the job, and without the job you take away employment opportunity and increase the deficiency and accomplish only a worse situation than before the intervention of the Department. The courts, if allowed to address these enforcement issues, would not take the license of an individual, but rather consider the true reasons for the state of the delinquency, and schedule the obligee to return for review hearings to determine his **true ability** to pay current support and accrued arrearages, and use the court's inherent contempt powers to control enforcement of its orders, and would not impose a failed concept of limiting "good cause" to impossible situations only, but rather relate to and work within the court's ability to marshal some level of compliance. To even suggest there is a "rational relationship", let alone a "reasonable relation to the legislation being enforced" with the harsh sanction of a license suspension denies logic and defies reason, and it becomes a stretch of logic in finding that it would not go beyond the objectives to be accomplished by the purpose of the enactment. To make the situation become one of an "all or nothing" proposition in the relation between finding a way to force payment of child support, and being able to keep a job is not reasonable, as it becomes an "all or nothing" proposition on the right to have a license to service the debt, and if you can't meet the limited good cause exception, the you are defeated entirely, and that is not an exercise of justice, equity, or fundamental fairness under the elements of substantive due process of law.

In the context of legislation dealing with social or economic interests, this Court assumes a deferential review. *See Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 90, 982 P.2d

914, 926 (1999). In this context, substantive due process requires that legislation which deprives a person of life, liberty, or property must have a rational basis. *Id.* That is, the statute must bear a reasonable relationship to a permissible legislative objective. *Id.* The reason for the deprivation must not be so inadequate that it may be characterized as an arbitrary exercise of state police powers. *Id.* See also *Spencer v. Kootenai County*, Supreme Court of Idaho, Docket No. 33060, March 6, 2008.

The reality is that to take a driver's license by an administrative agency serves only to make an undesirable situation a far worse situation, as you in essence are telling the person you don't care about economic interests, you don't care if he keeps his job, and you don't care if he becomes part of the unemployment trend. To add insult to the economic factor, you ignore social aspects, and you are then also saying you don't care if he has to violate the law by driving, and should he elect to do so to keep his job, his conduct will give rise to a new crime for which he will then be punished, despite his economic efforts to keep a job and pay bills and stay off the unemployment rolls of the State. It is not sensible to force an individual to consider the violation of another law, when he can't even comply with an existing court order on support. Compounding economic disasters is not in the State's best interests. This is hardly seen as an equitable way to achieve the objective of providing for the welfare of the people of the State of Idaho, and serve its social and economic interests. It must be seen as purely an arbitrary exercise of a police power, with no rational relationship to the purpose of the State's objective to serve its best financial, economic and social interests.

There is no rationale in asking the court to ignore the elements of the contempt powers of the court normally exercised in the enforcement of a court order in the traditional sense of court compliance. The elements of intentional indifferent disregard, and the opportunity of exercising reasonable logic to accept the reason why the individual finds himself in the current financial situation he must address and work his way through, is the preferred course of judicial and equitable fairness.

We urge this Court to appreciate the reality this administrative process is inherently flawed, and a judicial review of a court order on support is the only substantive way for court order enforcement to be addressed, as courts have inherently viewed the means and purpose of enforcement differently than an administrative proceeding where there is a "flat out" finding of no good cause exists under the Agency definition, and your driver's license is now suspended indefinitely, and that becomes the end of the support issue, and level of enforcement of the order from there on.

Where is the rational relationship to the end objective of trying to get fathers to be more responsive to support with their contributions for the welfare and benefit of their children, when you allow administrative rulings on the issue of cause that are so short-sighted that it eliminates explanations of financial difficulties, and then disregard substantive due process with the obligation to protect the property rights guaranteed by the Constitution.

The Department has expressed the idea Mr. Wheeler should have presented "facts" into evidence to preserve his right to raise his issues as to good cause on appeal. That argument is neither logical nor consistent with the promulgated administrative rules or the purpose

announced in the notification for the hearing. The individual is "told" in the "Notice of Suspension" what qualifies for "good cause", and nowhere does the Department invite or allow an individual to produce evidence by going outside the Department's definition of good cause, as a requirement to preserve a challenge to the wrongfulness of that administrative process. The proposed evidence of a licensee, outside the Agency definition, would be irrelevant to the cause, and it becomes inadmissible to the purpose of the hearing, and the Department has no basis to now argue or suggest Mr. Wheeler had an obligation to produce "irrelevant" and "inadmissible" evidence at a hearing, as it only serves to ask Mr. Wheeler to ignore the administrative process and disregard the rules that he must abide by, if he wants to challenge the process. It is illogical to require Mr. Wheeler to present irrelevant and inadmissible facts, as a basis or condition to challenge the substantive due process, reasonableness of the law, its relationship of good cause to the purpose of the legislation, the constitutionality of the enactment, and the infringement upon his constitutional rights under the structure of this FLLSA enactment and the definitions contained in the Agency rules.

The Department argues FLLSA was designed to include a driver's license as being justifiably within the reach of the Department's right to infringe upon its issuance, and take that right away from an individual. We must respectfully disagree that FLLSA has that effect by the language used, as a driver's license would appear to be regarded a "property right" or a "property interest", and must be exempted by virtue of part (d) of the enactment, which specifically says what license is subject to suspension. It must be a license that does not constitute a property interest. Was that meant to mean only a water right, or only a mineral interest in real property?

Why didn't the legislature expressly define what it was meant to be by the use of the phrase "property interest"?

The debate is now over whether that was meant to include what is a driver's license. That matter of definition was thought to have been decided in the *Adams* case rendered in 1966, which we rely upon as demonstrating a proposition a driver's license constitutes a property right or property interest, as a matter of case law. *Adams* specifically provides "the right to operate a motor vehicle upon the public streets and highways is not a mere privilege. It is a **right** or **liberty**, the enjoyment of which is **protected** by the **guarantees** of the **Federal** and **State** Constitutions". See *Adams v. City of Pocatello*, 91 Idaho 99, 101, 416 P.2d 46, 48 (1966).

The guarantees under the constitution are often characterized as "property rights", "liberty interests", or "property interests" and "liberty rights", depending on the context of the discussion, whose saying it, and in what context. At the very least, a driver's license, under Idaho law, is not a "mere privilege", and is a "protected" and "guaranteed" "right" under Federal and State Constitutions. Can you simply infringe upon a protected and guaranteed right, preserved in the Constitution with an administrative ruling that suspends it upon an Agency basis, and if you can, are you allowed to do so without compensation or without allowing substantive due process of law, inherent in the enforcement of all court orders?

Where is the statutory procedural or substantive "due process" in this administrative process that allows the Agency to take a right as defined, when in the statute it says you **cannot** take that which constitutes a property interest; where is that needed substantive due process in

this statute when it does not define the basis upon what constitutes cause to take or not to take the right or interest?

We understand FLLSA came into being, and by now recognized by all, as an attempt to secure the right to receive the Federal grants to provide welfare for families under the Temporary Assistance to Needy Families Program (TANF). Idaho was faced with the need to demonstrate some level of compliance with 42 U.S.C. § 666(a)(16). It created this enactment as a way to retain a right to receive grants, but should it be allowed to disregard substantive due process, override the *Adams* case, and sidestep judicial proceedings with non-legislative administrative rulings and definitions that ignore the contempt powers of the court and eliminate the critical review of the elements of willfulness required in traditional analysis for the enforcement of court orders?

The Department wants to preserve the use of this legislation, apparently to preserve its right to receive grants, but has it proven over time to be even remotely related to the purpose that was objectively being sought to be achieved to get more child support from fathers when you add to unemployment and take the enforcement of court orders out of the court from where they were created, and make a bad situation even worse with administrative decisions, based on Agency rulings.

The legislation is flawed; its enforcement has left us with a poor choice of available venues, and the good cause used has resulted in a situation that contradicts case authority and required elements of due process, and is being enforced in a way that preempts the rational enforcement of judicial orders with the proper oversight of judicial proceedings.

This Appellant's license must be reinstated, and should FLLSA not be ruled unconstitutional and unenforceable as written, with respect to a driver's license, and if construed to be enforceable in any fashion, we do urge this Court to find it must be enforced only in a judicial setting, and allow for judicial proceedings, and Appellant would then request the matter be remanded in such a manner as to allow Appellant the alternative avenue of proceeding in a judicial proceeding, to address his financial ability and in what manner he may come into compliance with the lawful enforcement of these court orders, under the jurisdiction of the court.

Respectfully submitted this 16th day of April 2008.



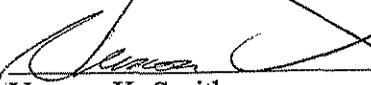
Vernon K. Smith
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 16th day of April 2008, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

| | | |
|-------------------------|-----------------------------------------|----------------|
| Idaho Supreme Court | (<input checked="" type="checkbox"/>) | U.S. Mail |
| P.O. Box 83720 | ()) | Fax |
| Boise, Idaho 83720-0101 | ()) | Hand Delivered |

| | | |
|-------------------------|-----------------------------------------|---------------|
| M. Scott Keim | (<input checked="" type="checkbox"/>) | U.S. Mail |
| Deputy Attorney General | ()) | Fax |
| P.O. Box 83720 | ()) | Hand Delivery |
| Boise, Idaho 83720-0036 | | |


Vernon K. Smith