

FILED

DEC 31 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 310485

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE EX REL
KENNETH J. INGEBO,

Appellant,

v.

KERRY FREEMAN, PAMELA BYRD, JOE CLARNO, AS AGENTS
OF THE WASHINGTON STATE DEPARTMENT OF LICENSING,
AND THE WASHINGTON STATE DEPARTMENT OF LICENSING,

Respondents.

BRIEF OF RESPONDENTS

ROBERT M. MCKENNA
Attorney General

JEREMY GELMS,
WSBA # 45646
Assistant Attorney General
Attorneys for Respondent
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Phone: (206) 464-7676
Fax: (206) 389-2800
E-mail: JeremyG1@atg.wa.gov

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I. INTRODUCTION

This is an appeal from a summary judgment. The superior court rejected appellant Kenneth Ingebo's argument that the court may require the Department of Licensing ("Department") to issue him a driver's license when he admittedly refused to provide his signature and Social Security number during the renewal process.

Under the plain statutory language, issuing a driver's license, new or renewed, requires the driver's signature. A driver's license serves as an official means of identification and "no license is valid until it has been so signed by the licensee." Ingebo's claim that the Department must issue him a license and allow him to keep it without his signature is inconsistent with the statutory language and would undermine the manifest statutory purpose to prevent fraud.

Further, Ingebo may not compel the Department to issue him a driver's license because he also refused to provide his Social Security number, another prerequisite to the issuance of a driver's license. It is immaterial whether the Department denied issuing Ingebo a license based on his refusal to provide his signature or Social Security number, where both are prerequisites to the issuance. The Court should affirm the superior court.

II. STATEMENT OF THE ISSUES

1. Under RCW 46.20.161 and WAC 308-104-014, issuance of a driver's license requires, among other things, signature "immediately upon receipt of the license," and no "license is valid until it has been so signed by the licensee." Did the superior court correctly conclude Ingebo may not compel the Department to issue him a renewed license because he refused to provide his signature during the renewal process?
2. Under RCW 26.23.150 and WAC 308-104-014, issuance of a driver's license requires, among other things, that an applicant "must furnish the licensing agency with the applicant's social security number." Did the superior court correctly conclude Ingebo may not compel the Department to issue him a renewed license because he refused to provide his issued Social Security number?
3. Where the state has a legitimate interest in preventing fraud, and the signature requirement furthers this interest by providing a means of identification and verification, is the statutory signature requirement for a driver's license constitutional? Did Ingebo fail to show otherwise beyond a reasonable doubt?

III. COUNTERSTATEMENT OF THE FACTS

The following facts are not in dispute. In September 2011, appellant, Kenneth J. Ingebo, attempted to renew his Washington State driver's license. Clerk's Papers (CP) 1. Ingebo applied for his renewal in person at the White Salmon Licensing Service Office and was initially helped by Licensing Service Representative Kerry Freeman. CP 39-40.

During the renewal process, Freeman requested that Ingebo sign a camera card. CP 40. The camera card enables the Department to place a facsimile of the applicant's signature on his or her driver's license.

Instead of complying with Freeman's request, Ingebo produced a copy of RCW 46.20.161 and refused to sign the camera card, claiming he was not statutorily required to provide a signature on the license. CP 40. Ingebo also did not provide a Social Security number. CP 42-43.

At an impasse, Freeman contacted the Department's District Manager Pamela Byrd. CP 40. Byrd spoke with Ingebo and informed him that he needed to provide his signature for his license to be issued, but that she would research the issue further. CP 40-41. As an alternative, Byrd also informed Ingebo that he was eligible to renew his license online. CP 43. The online renewal process would have used the last photo of Ingebo on file at the Department and would have required Ingebo to provide an e-signature. Ingebo also refused this option. CP 43.

In the same month, Ingebo was contacted by Joe Clarno of the Department about Ingebo's driver's license renewal. CP 42. The Department considered his driver's license renewal incomplete because he refused to provide a signature required under RCW 46.20.161 or Social Security number required under RCW 26.23.150. CP 9-10, 42-43. As a result, the Department was unable to renew his license.

In December 2011, Ingebo petitioned Klickitat County Superior Court for an Alternative Writ of Mandamus to compel the Department to issue the driver's license or show why it had not done so. CP 1-3. The

superior court required the Department to show cause why a writ should not issue. CP 6-8. The Department responded to Ingebo's writ application by explaining that Ingebo was not eligible for a license renewal because he did not provide all required information. CP 9-10. The Department explained that Ingebo's application was incomplete because he refused to provide his signature and Social Security number. CP 9-10.

Ingebo filed a motion for summary judgment, and the Department filed a cross-motion. CP 16-21, 30-36, 85-90. Ingebo then sought, and the court granted, a motion to amend his writ application to a Petition for Declaratory Judgment under the Uniform Declaratory Judgment Act. CP 1-3, 100. After a hearing, the court denied Ingebo's motion, granted the Department's cross-motion, and denied Ingebo's Petition for Declaratory Judgment. CP 92-94.

The court reasoned RCW 46.20.161 requires all licensees to immediately sign their licenses upon receipt and that RCW 26.23.150 requires all drivers' license applicants to furnish a Social Security number. CP 93. Ingebo did not provide his signature to renew his license. CP 93. He also was issued a Social Security number, did not provide his number when he attempted to renew his license, and had not provided the

Department with any documentation that he no longer had his number. CP 93. This appeal followed.

IV. STANDARD OF REVIEW

Under the Uniform Declaratory Judgments Act, Chapter 7.24 RCW, courts may “declare rights, status and other legal relations.” RCW 7.24.010. A person whose rights are affected by a statute or municipal ordinance may obtain a declaration of rights thereunder. RCW 7.24.020. “All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.” RCW 7.24.070. Thus, courts apply customary principles of appellate review to court orders issued under the Act. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 410, 27 P.3d 1149 (2001).

The superior court denied Ingebo’s Petition for Declaratory Judgment by a summary judgment. This Court reviews an order granting or denying summary judgment de novo and performs the same inquiry as the trial court. *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003); CR 56(c). The reviewing court must view the

“facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.” *Michak*, 148 Wn.2d at 794.

Here, the underlying facts are undisputed. Ingebo refused to sign the camera card when requested by the Department and refused to provide a Social Security number, claiming that his Social Security number was revoked. Appellant’s Br. 4. The only question is whether Ingebo, as a matter of law, is entitled to an order directing the Department to issue him a driver’s license. This case thus turns on the interpretation of RCW 46.20.161 and RCW 26.23.150. “Statutory interpretation is a question of law reviewed de novo.” *Williams v. Tilaye*, 174 Wn.2d 57, 61, 272 P.3d 235 (2012) (citation omitted).

Ingebo also raises a constitutional challenge. Appellant’s Br. 8-12. Constitutional challenges are questions of law subject to de novo review. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006).

V. ARGUMENT

Under the plain language of RCW 46.20.161 and 26.23.150, a driver’s license applicant must provide the Department with a signature on the license and a Social Security number prior to issuance of the license. Consistent with the plain language of these statutes, the Department’s own regulation specifically requires a person applying for a driver’s license to provide the Department with a signature and Social Security number.

WAC 308-104-014. The Department properly denied Ingebo's driver's license renewal because he refused to provide both his signature and Social Security number during the renewal process.

Ingebo claims the Department is required to issue a license to an applicant irrespective of whether the applicant has provided a signature. Neither the statutory language nor statutory scheme supports this interpretation. Further, such a reading would lead to an absurd result requiring the Department to issue an invalid official state document, as a signature is a prerequisite to the validity of a driver's license. Even if the signature and Social Security statutes are ambiguous, the Department's interpretation is entitled to deference and, more importantly, best effectuates the manifest legislature's intent to prevent fraud.

Finally, Ingebo's assertion that the signature requirement is unconstitutional lacks merit. The signature requirement is rationally related to the state's legitimate interest in fraud prevention because a driver's license, and in particular the signature on it, provides a means for official identification and verification. This Court should affirm the trial court's order denying Ingebo's motion for summary judgment and granting the Department's cross-motion. CP 92-94.

A. RCW 46.20.161 and WAC 308-104-014 Require the Driver's Signature before the Department May Issue a License

Under RCW 46.20.161 and WAC 308-104-014, prior to issuance of a license, drivers' license applicants must provide the Department with their signatures. First, the plain language of the statute and the Department's rule require this interpretation. Second, this interpretation best effectuates the manifest legislative intent to prevent fraud. Any ambiguity should be resolved in favor of the Department's interpretation in light of the agency's expertise in administering the driver's licensing statutes.

1. The plain meaning of RCW 46.20.161 and WAC 308-104-014 required Ingebo to provide his signature prior to the issuance of a driver's license

When interpreting a statute, a court's fundamental duty is to give effect to the legislature's intent, which is primarily derived from the plain meaning of the statute. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Lake*, 169 Wn.2d at 526 (citation omitted). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. *Id.* "A statute is ambiguous only if

susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable.” *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).

The plain language of RCW 46.20.161 unambiguously requires that a driver’s license include a signature of the licensee. The statute requires the Department to issue a driver’s license only to “qualifying applicants.” RCW 46.20.161. Further, the license “must include” the following:

a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and *either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license.*

RCW 46.20.161 (emphasis added). “No license is valid until it has been so signed by the licensee.” RCW 46.20.161.

Reading the signature requirement in this statutory context confirms that a signature is required *before* issuance of a driver’s license. A “single word in a statute should not be read in isolation.” *State v. Flores*, 164 Wn.2d 1, 12, 186 P.3d 1038 (2008). When particular words are listed in a series, the court should “take into consideration the meaning naturally attaching to them from the context” and “adopt the sense of the

words which best harmonizes with the context.” *Id.* at 12 (citation omitted).

Here, the statute lists specific items besides a signature that must be on a driver’s license: a person’s name; address; date of birth; photograph; and a description of the licensee. By the plain statutory language, these items must be included in the license and must thus be provided before the issuance of the license. RCW 46.20.161. These items, like a signature, serve to verify a person’s identification and, for this reason, are required to be on the driver’s license before the Department issues the license. Like the other items listed under the statute, a signature serves to verify a person’s identity. *See, e.g.*, RCW 46.20.035 (requiring license applicant to show an identification document, which contains the applicant’s signature and photograph, such as a valid or recently expired driver’s license). Thus, reading the signature requirement in conjunction with the associated items required to be listed on a license confirms that the signature must also be provided before issuance.

WAC 308-104-014 further confirms that an applicant is required to provide a signature prior to issuance of a driver’s license. Properly promulgated substantive agency regulations have the “force and effect of law” and are “presumptively valid.” *Campbell v. Dep’t of Soc. & Health Servs.*, 150 Wn.2d 881, 892, 83 P.3d 999 (2004). “As in statutory

interpretation, where a regulation is clear and unambiguous, words in a regulation are given their plain and ordinary meaning unless a contrary intent appears.” *Silverstreak, Inc. v. Dep’t of Labor & Indus.*, 159 Wn.2d 868, 881, 154 P.3d 891 (2007) (citations omitted).

Pursuant to its rulemaking authority under RCW 46.01.110, the Department specified in rule what information a driver’s license applicant must provide to the Department. WAC 308-104-014. The rule requires that “[a] person applying for a driver’s license . . . *must* provide,” among other things, “the person’s signature”. WAC 308-104-014(10) (emphasis added). Here, Ingebo refused to provide his signature during the renewal process which is a statutory prerequisite under the plain language of RCW 46.20.161 and WAC 308-104-014. Thus, the Department properly denied his license renewal application.

Ingebo appears to read the statute to allow him to receive and keep a driver’s license without his signature. Ingebo argues the Department could have left a space on the license for him to sign directly on the license at a later time. Appellant’s Br. 7. This interpretation is unreasonable in light of the statutory language and larger statutory scheme because it would require the Department to issue an invalid license. *Burton*, 153 Wn.2d at 423 (statute is only ambiguous if susceptible to two or more reasonable interpretations). Requiring the Department to issue a

license without the applicant's signature would lead to an absurd result unintended by the legislature. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) ("The Court must also avoid constructions that yield unlikely, absurd or strained consequences.").

Ingebo's interpretation makes no sense, because a driver's license is not valid unless signed by the licensee. Requiring the Department to issue a license without a signature would force the Department to issue an invalid official state document. There is no purpose served by the Department issuing an invalid license. Instead, issuing an invalid license would undermine the purpose of a license as a means of official identification and fraud prevention. *See, e.g.*, RCW 46.20.220 (requiring person renting a car to inspect renter's driver's license and compare signature on license with signature written in their presence); RCW 46.20.035 (driver's license satisfies proof of identity requirement that driver's license applicants present identifying documentation containing the signature and his or her photograph).

The legislature explicitly found "the falsification of cards and licenses is a serious social problem" and was "particularly concerned with the increasing use of false drivers' licenses and identicards to purchase liquor, to cash bad checks, and to obtain food stamps and other benefits." Laws of 1977, 1st Ex. Sess., ch. 27, § 1; *see also* Purpose in RCW

46.20.114. As a result, the legislature requires that the Department “shall prepare and issue drivers’ licenses and identicards using processes that prohibit as nearly as possible the alteration or reproduction of such cards.” RCW 46.20.114. However, requiring the Department to issue an invalid license without the driver’s signature would undermine the legislative intent of creating licensing procedures that reduce falsification and fraud. Ingebo’s interpretation is not reasonable and thus does not present an ambiguity in the statute.

The statute requires a signature of the licensee on the license prior to issuance. The Department followed the statute when it requested Ingebo sign the camera card during the renewal process. As Ingebo concedes, the camera card is what enables a facsimile of the signature to be placed on the license. Appellant’s Br. 6. Ingebo’s refusal to sign left his application for renewal incomplete, made him an unqualified applicant because he did not provide all necessary information, and provided the Department with a lawful basis to not renew his license.

2. Even if there is any ambiguity, the Department’s interpretation best effectuates the legislative intent to prevent fraud and is entitled to deference

Even if there is any ambiguity in RCW 46.20.161, it should be resolved in favor of the Department’s interpretation because it best

effectuates the legislative intent to prevent fraud, as shown above. Further, this Court should give deference to the agency's interpretation.

The Department is charged with administering and enforcing the State's licensing statutes related to vehicles and vehicle operators. RCW 46.01.011. The Department is further tasked with adopting and enforcing provisions related to driver's licenses. RCW 46.01.110. When an agency is charged with the administration and enforcement of a statute, the agency's interpretation of an ambiguous statute is accorded great weight in determining legislative intent. *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994). The Court also "gives great deference" to an agency's interpretation of its own properly promulgated regulations because the agency has expertise and insight gained from administering the regulation that the reviewing court does not possess. *Silverstreak*, 159 Wn.2d at 884-85.

As noted above, the Department's interpretation of RCW 46.20.161 and WAC 308-104-014 is not only reasonable but best effectuates the legislative intent for a driver's license to serve as an official means of identification and fraud prevention. The Court should thus defer to the Department's interpretation.

B. RCW 26.23.150 and WAC 308-104-014 Require Ingebo to Provide the Department with His Social Security Number Prior to Issuing a Driver's License

The Department also properly declined to issue Ingebo a driver's license because he refused to provide his Social Security number. Regardless of whether the specific reason the Department gave in denying his driver's license was due to his refusal to provide his signature or Social Security number, Ingebo may not, as a matter of law, compel the Department to issue him a driver's license unless he provides both. Ingebo was required to provide the Department with his Social Security number, which is a second, independent ground to deny his license renewal.

As a condition for receipt of federal aid for dependent children, federal law at 42 USC § 666-(a)(13) requires that each state have in effect laws and procedures requiring "that the social security number of any applicant for a professional license, drivers license, occupational license, recreational license, or marriage license to be recorded on the application." The purpose of requiring states to collect Social Security numbers is to increase the effectiveness of child support enforcement. 42 USC § 666 (a).

In response to this federal requirement, the Washington Legislature passed RCW 26.23.150, which requires a Social Security number for issuing a driver's license:

In order to assist in child support enforcement as required by federal law, *all applicants* for an original, replacement, or *renewal* of a professional license, commercial driver's license, occupational license, or recreational license *must furnish the licensing agency with the applicant's social security number, which shall be recorded on the application.*

RCW 26.23.150 (emphasis added.)¹ As noted in the emphasized portion above, the driver's license applicant "must" furnish his or her Social Security number, which "shall" be recorded on the application. "Must" and "shall" are generally construed as mandatory rather than permissive. *Kelleher v. Ephrata Sch. Dist. No. 165*, 56 Wn.2d 866, 872, 355 P.2d 989 (1960).

The Department's rule WAC 308-104-014 eliminates any doubt by explicitly requiring a person applying for a driver's license provide a "Social Security number, if the Social Security number is required by state or federal law." WAC 308-104-014(4)(a). The only exception to this

¹ As set forth in RCW 26.23.140, the State of Washington requested a waiver of the federal mandate to record Social Security numbers, and the request was denied. CP 54-55. The Washington legislature directed that if the waiver was not granted, "licensing agencies *shall* collect and disclose social security numbers as required under RCW 26.23.150." RCW 26.23.140. Before the federal October 1, 2000 deadline for compliance, the Washington legislature did not require non-commercial driver's license applicants to furnish their Social Security number. *See* RCW 26.23.150. However, Ingebo's application occurred after the October 1, 2000 federal deadline. *See* 42 U.S.C. § 654 A(6). Therefore, his application is subject to the Social Security requirement.

requirement is that if a “person *has not been issued* a Social Security number” the Department will accept a “sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number.” WAC 308-104-014(4)(b) (emphasis added). However, this exception does not apply to Ingebo because he admitted to the Department that he was issued a Social Security number. CP 42.

Despite this plain statutory and rule language requiring that he provide his issued Social Security number, Ingebo alleges that he unilaterally revoked his Social Security number. CP 52. However, Ingebo cites no legal authority to support his claim that he can unilaterally revoke his Social Security number. Rather, it is undisputed that Ingebo had a Social Security number issued to him. Absent some evidence from the federal government, he continues to have his Social Security number. *Hershey v. Dep’t of Transp., Bureau of Driver Licensing*, 669 A.2d 517 (Pa. Commw. Ct. 1996).

For example, in *Hershey v. Dep’t of Transp.*, an applicant for a driver’s license refused to provide a Social Security number, contrary to Pennsylvania law. Pennsylvania mistakenly issued a driver’s license but then cancelled the license once it discovered that the applicant refused to provide his Social Security number. *Hershey*, 669 A.2d at 518. Like Ingebo, the applicant there argued that he revoked his Social Security

number when he sent an affidavit to the Secretary of the United States Treasury claiming that he changed his status to a “free sovereign individual citizen.” *Id.* He acknowledged that he did not receive a response to his affidavit. *Id.* The court found the applicant’s statement that he no longer has a Social Security number is insufficient to establish that they do not have a Social Security number. Instead, the applicant must obtain written documentation from the federal government showing that the government does not maintain a number or account in the individual’s name. *Id.*; *see also Alpert v. Harrington*, 925 A.2d 716, 719 (N.J. Super. Ct. 2007) (applicant for driver’s license was not relieved of requirement to provide Social Security number despite asserting that he revoked his number).

Like the applicant in *Hershey*, absent any affirmative evidence of revocation from the federal government, Ingebo is presumed to have a Social Security number and is thus statutorily required to provide his Social Security number to the Department as a condition precedent to issuance of a driver’s license. Ingebo did not provide his Social Security number during the renewal process. Accordingly, the Department properly denied issuing a license.

In sum, the superior court correctly concluded that Ingebo may not compel the Department to issue him a driver’s license without first

providing his signature and Social Security number. The Superior court's order should be affirmed.

C. The Signature Requirement is Constitutional Because it is Rationally Related to the State's Legitimate Interest in Preventing Fraud and Having Proof of Identity

Ingebo argues the requirement that he sign his driver's license is unconstitutional. Appellant's Br. 8-12. Ingebo cites to *Thompson v. Smith*, 154 S.E. 579 (Va. 1930), *Schafer v. City of Spokane*, 109 Wash. 360, 186 P. 864 (1920), and *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516 (1917), to argue that "the right of a citizen to travel on the highways in the ordinary course of life and business is a common right which he has under his right to life, liberty and property." Appellant's Br. 8-9. According to him, a signature requirement restricts this right and is "arbitrary and unreasonable because it does not serve a legitimate police power purpose." Appellant's Br. 8-9.

However, the cases cited by Ingebo do not support the contention that the signature requirement is arbitrary or capricious. More recently, courts have explained that a driver's interest in his or her driver's license, while important, is not "fundamental" in the constitutional sense. A license to drive on public highways is a "privilege," which is "always subject to such reasonable regulation and control as the legislature may see fit to impose under the police power in the interest of public safety and

welfare.” *State v. Scheffel*, 82 Wn.2d 872, 880, 514 P.2d 1052 (1973); *see also City of Spokane v. Port*, 43 Wash. App. 273, 277, 716 P.2d 945 (1986) (exercise of any right to travel public highways “may be regulated under the [government’s] police power if in the interest of public safety and welfare”). The signature requirement is within the police power of the state because it furthers the interests of public safety and welfare by providing a means of licensing verification and personal identification. *See* Laws of 1977, 1st Ex. Sess., ch. 27, § 1 (requirement that Department adopt processes that prohibit as nearly as possible alteration or reproduction of driver’s license is “to promote the public health and safety of the people of this state.”). Thus, a signature requirement is a reasonable and justifiable exercise of police power.

It is unclear whether Ingebo’s constitutional argument is based on equal protection or due process grounds. Regardless, Ingebo’s argument fails under both. “Statutes are presumed to be constitutional” and the burden is on the challenger to establish its unconstitutionality beyond a reasonable doubt. *Amunrud*, 158 Wn.2d at 215 (citation omitted). Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures. *Id.* at 219 (citations omitted). “When state action does not affect a fundamental right, the proper

standard of review is rational basis.” *Id.* at 222 (citations omitted). On the other hand, equal protection requires that all persons similarly situated be treated alike. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (citation omitted). Like substantive due process, rational basis applies when the challenged law involves neither a suspect or semi-suspect class, nor a fundamental right. *Id.* (citation omitted).

Because a driver’s license is a privilege and not a fundamental right, regardless of whether Ingebo presents a due process or equal protection challenge, rational basis is the appropriate standard to evaluate the signature requirement. “The rational basis test is the most relaxed form of judicial scrutiny” and simply requires the law to be “rationally related to a legitimate state interest.” *Amunrud*, 158 Wn.2d at 222-23 (citation omitted). Under this test, “a court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest.” *Id.* at 223 (citations omitted).

The State has a legitimate interest in preventing fraud. *Secretary of State v. Joseph H. Munson, Co.*, 467 U.S. 947, 961 (1984) (preventing fraud is legitimate state interest). A driver’s license, and in particular the driver’s signature on it, furthers this goal by providing a means of official identification and as verification that the person is validly able to drive.

See, e.g., RCW 46.20.017 (requiring driver to have a valid driver's license in their "possession at all times when operating a motor vehicle and shall display the same upon demand to any police officer" if required by law to do so.). RCW 46.20.017. Other statutes passed by the Legislature confirm that a driver's license and driver's signature on the license are used for identification and fraud prevention purposes outside the driving context. *See, e.g.*, RCW 46.20.220 (making it unlawful for any person to rent a motor vehicle to another person until "he or she has inspected the vehicle driver's license of such other person and compared and verified the signature thereon with the signature of such person written in his or her presence."); RCW 70.155.090 (requiring that retailer or agent selling tobacco "shall require the purchaser to present," among other options, a "driver's license" which "shows the purchaser's age and bears his or her signature and photograph.").

The signature requirement is thus rationally related to the state's legitimate interest in preventing fraud. Ingebo cannot prove otherwise beyond a reasonable doubt. Accordingly, the Court should reject Ingebo's constitutional challenge to the statutory signature requirement.

VI. CONCLUSION

A driver's license applicant is statutorily required to provide the Department with his or her signature and Social Security number prior to

issuance of a license. Ingebo refused to provide either item to the Department during the license renewal process. Thus, the Department correctly denied Ingebo's incomplete license application. The Department asks the Court to affirm the superior court's judgment denying Ingebo's petition under the Uniform Declaratory Judgments Act.

RESPECTFULLY SUBMITTED this 28th day of December, 2012.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in black ink, appearing to read "Jeremy Gelms", is written over the printed name and title of the signatory.

JEREMY GELMS
WSBA # 45646
Assistant Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676
Attorney for Respondent

PROOF OF SERVICE

I, Dan Marvin, certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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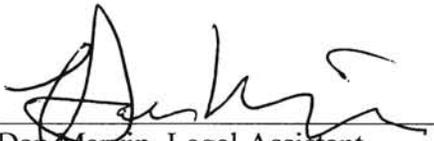
Kenneth Ingebo
33 Skookum Flat
Lyle, WA 98635

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Renee S. Townsley, Clerk/Administrator
Washington State Court of Appeals, Division III
500 N. Cedar St.
Spokane, WA 99201

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of December, 2012, at Seattle, WA.


Dan Marvin, Legal Assistant

394 N.J.Super. 153
Superior Court of New Jersey,
Appellate Division.

Robert M. ALPERT, Appellant,
v.
Sharon HARRINGTON, Respondent.

Argued May 30, 2007. | Decided June 26, 2007.

Synopsis

Background: Driver's license applicant sought review of Motor Vehicle Commission's refusal to renew his license. The Superior Court, Law Division, transferred the action.

[Holding:] The Superior Court, Appellate Division, Skillman, P.J.A.D., held that license applicant was not relieved of requirement of submission of a Social Security number with an application for a driver's license by simply revoking his registration with the Social Security Administration.

Affirmed.

Attorneys and Law Firms

**717 William H. Buckman, Moorestown, argued the cause for appellant.

Emily H. Armstrong, Deputy Attorney General, argued the cause for respondent (Stuart Rabner, Attorney General, attorney; Michael J. Haas, Assistant Attorney General, of counsel; Ms. Armstrong, on the brief).

Before Judges SKILLMAN, LISA and GRALL.¹

¹ Judge Grall did not hear oral argument. However, with the parties' consent, she has participated in the decision.

Opinion

The opinion of the court was delivered by

SKILLMAN, P.J.A.D.

*154 A federal statute, enacted in 1996, mandates that "each State must have in effect laws requiring the use of ...

[p]rocedures requiring that the social security number of ... any applicant for a ... driver's license ... be recorded on the application[.]” 42 U.S.C.A. § 666(a)(13)(A). If a state fails to comply with this mandate, it “lose[s] a substantial portion of [its] federal funding for various welfare programs[.]” *Tenison v. State*, 38 P.3d 535, 537 (Alaska Ct.App.2001). In conformity with this mandate, the Legislature enacted *N.J.S.A. 2A:17-56.60(a)(1)*, which provides in pertinent part that “[t]he Social Security number of an applicant for any ... driver's license ... shall be recorded on the application.” *155 To implement this legislation, the Motor Vehicle Commission adopted a regulation, which provides in pertinent part:

(a) An applicant for any ... driver license ... or registration shall disclose his or her social security number(s) upon the application form furnished by the Chief Administrator of the Motor Vehicle Commission.

....
(c) This section shall not apply to persons who are exempt from applying for a social security number.

[*N.J.A.C. 13:21-1.3.*]

In September 2005, the Commission notified appellant, whose driver's license was scheduled to expire on January 31, 2006, that “your name and/or date of birth on your motor vehicle record does not match information contained in Social Security Administration files[.]” and that the Commission would not be able to renew his license unless he resolved this discrepancy.²

² Appellant's 2001 application for renewal of his driver's license included a social security number, which apparently did not correspond with Social Security Administration records.

Appellant responded to this letter by submitting a letter in November 2005, followed by an affidavit, executed on January 17, 2006, which asserted that he was not required by federal law to maintain a social security number, that he had revoked any social security registration he may **718 have obtained before he became “of legal age,” and therefore, he had “no valid social security account number.” These submissions were accompanied by a document, entitled “Affidavit of Revocation and Rescission,” submitted by appellant to the Department of Treasury in 1990, by which appellant purported to revoke his registration with the Social Security Administration. Appellant claimed that as a result

of his submission of this document to the Social Security Administration, he was "exempt" within the intent of *N.J.A.C.* 13:21-1.3(c) from the requirement of submission of a social security number on his application for renewal of his driver's license.

Although the Commission did not respond directly to appellant's letter and affidavit claiming this exemption, it did not renew his *156 driver's license. Appellant also went to the Commission's service center in Trenton and made telephone calls to the Commission's offices, but the representatives with whom he spoke declined to renew his driver's license on the ground that his application did not include a social security number.

Appellant then wrote letters to the Commission, a state Senator and two members of the Assembly objecting to the Commission's refusal to renew his driver's license. The Commission responded to communications from the state legislators by a letter dated March 21, 2006, a copy of which was sent to appellant, which stated in pertinent part:

Please be advised that the only exception from the MVC's requirement for driver license renewal applicants to provide their Social Security numbers is for "persons who are exempt from applying for a social security number." See *New Jersey Administrative Code* 13:21-1.3(c) which is enclosed.

Mr. Alpert indicated that he filed an Affidavit of Revocation and Rescission with the United States Treasury Department in 1990, and he provided a receipt for certified mail to indicate that he sent the letter by certified mail. Mr. Alpert also provided a letter from the Social Security Administration (SSA), dated August 12, 2005. That letter indicated, among other things, that the SSA does not require a person to obtain a Social Security number but that other agencies do require Social Security numbers. One such agency mentioned is the Internal Revenue Service (IRS) which requires Social Security numbers on tax returns.

The actions that Mr. Alpert has taken do not prove that he is exempt from applying for a Social Security number.

MVC needs a letter from the SSA which indicates that Mr. Alpert is no longer a participant in the Social Security system and that he no longer has a Social Security number in order to exempt him from MVC's regulatory requirement

that he must submit his Social Security number before his driver license can be renewed.

The letter that Mr. Alpert provided from the SSA merely indicates that the Social Security Act does not require a person to obtain a Social Security number. It does not state that Mr. Alpert does not have a Social Security number.

Several years ago, in a very similar situation, a driver claimed that he was no longer a participant in the Social Security system and he wanted to renew his driver license without submitting his Social Security number. The former Division of Motor Vehicle[s] (DMV) (now MVC) rejected his renewal application when he failed to provide proof that he no longer participated in the Social Security system and no longer had a Social Security number.

The applicant sued the DMV and DMV ultimately prevailed. The Appellate **719 Division of the New Jersey Superior Court in an unreported decision (copy *157 enclosed), *Earl W. Werline, III v. Jeffrey T. Pistol and C. Richard Kamin* (Docket No. A-4830-00T5) (unpublished, 2002), stated on page 6:

[Appellant's] unilateral execution of an affidavit is insufficient to eliminate a social security number and need not be recognized by the Division of Motor Vehicles.

On the date of expiration of his driver's license, appellant filed an action in the Law Division seeking to compel the Commission to renew his license. The Law Division transferred the action, which challenges the decision of a state administrative agency, to this court. See *R. 1:13-4(a); R. 2:2-3(a)(2)*.

We disapprove of the informal manner in which the Commission acted upon appellant's application for renewal of his driver's license. The Commission should have responded to appellant's November 2005 letter and/or his January 17, 2006 affidavit with a clear statement of its reasons for refusing to renew his driver's license. Appellant should not have been forced to seek the assistance of state legislators in order to obtain such a statement. However, the letter to the legislators has now provided appellant with that statement. Moreover, we are satisfied that there is no contested issue of fact material to appellant's entitlement to a driver's license that requires referral of this matter to the Office of Administrative Law for

an evidentiary hearing. Therefore, we address the merits of the appeal.

[1] Initially, we note that appellant did not present any evidence that the Social Security Administration had accepted his purported "Affidavit of Revocation and Rescission" of his social security registration. Appellant suggests that the Commission had some sort of an obligation to investigate the status of his social security registration. However, appellant is the one who claimed the exemption provided by *N.J.A.C.* 13:21-1.3 from the requirement of submission of a social security number with an application for a driver's license. Therefore, appellant had the burden to submit satisfactory evidence that he qualified for the exemption. Appellant's submission of evidence demonstrating that the Department of Treasury received his purported "Affidavit of Revocation and Rescission," without submission of any evidence *158 that the Social Security Administration had accepted that affidavit, did not satisfy this burden. See *Hershey v. Pa. Dep't of Transp.*, 669 A.2d 517, 519-20 (Pa. Commw. Ct.), *appeal denied*, 544 Pa. 664, 676 A.2d 1202 (1996).

[2] Moreover, *N.J.S.A.* 2A:17-56.60(a)(1), and the federal statute it was enacted to comply with, do not provide that a person may be relieved of the requirement of submission of a social security number with an application for a driver's license by simply failing to apply for or revoking a

registration with the Social Security Administration. Federal law provides limited exemptions from the requirement of payment of social security taxes. For example, such an exemption is provided to a person who is "conscientiously opposed to acceptance" of social security benefits as a result of membership in a "recognized religious sect" whose teachings oppose receipt of such benefits. 26 *U.S.C.A.* § 1402(g); see *Kocher v. Bickley*, 722 A.2d 756, 760 n. 11 (Pa. Commw. Ct. 1999). We believe that *N.J.A.C.* 13:21-1.3(c) must be read to provide an exemption from the requirement of submission of a social security number with an application for a driver's license only to persons who are exempt under 26 *U.S.C.A.* § 1402(g) or other similar provision. Appellant has not presented any evidence that he qualifies for such a federal statutory exemption. Therefore, he **720 would not be exempt from the requirement of submission of a social security number with the application for renewal of his driver's license even if he could show that the Social Security Administration had accepted his "Affidavit of Revocation and Rescission."

Affirmed.

Parallel Citations

925 A.2d 716

669 A.2d 517
Commonwealth Court of Pennsylvania.

Barry K. HERSHEY, Appellant,
v.
COMMONWEALTH of Pennsylvania,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING.

Submitted on Briefs Oct. 6,
1995. | Decided Jan. 3, 1996.

Applicant filed statutory appeal from cancellation by the Department of Transportation of his driver's license for failure to provide his social security number on license camera card the Department issued to him. The Court of Common Pleas, Franklin County, Misc. Volume BB, Page 121, Herman, J., dismissed appeal, and applicant appealed. The Commonwealth Court, No. 962 C.D. 1995, Kelton, Senior Judge, held that Department could cancel applicant's driver's license for failure to provide his social security number.

Affirmed.

Attorneys and Law Firms

*517 Barry K. Hershey, appellant, for himself.

*518 Timothy P. Wile, Assistant Counsel In-Charge Appellant Section, for appellee.

Before PELLEGRINI and NEWMAN, JJ., and KELTON, Senior Judge.

Opinion

KELTON, Senior Judge.

Barry K. Hershey (Applicant) appeals from the March 22, 1995 order of the Court of Common Pleas for the 39th Judicial District—Franklin County Branch (trial court) which dismissed his appeal from the cancellation of his driver's license. We affirm.

Issue

The unique issue before us on appeal is whether the Department of Transportation (Department) may cancel an applicant's driver's license for failure to provide his social security number on the license camera card the Department issued to him. Applicant claims that he was not required to furnish the number because he unilaterally "rescinded" his social security number with an affidavit he sent to the Secretary of the United States Treasury.

Facts

In February 1993, Applicant submitted a driver's license renewal application to the Department. As required under Section 1510(a) of the Vehicle Code, 75 Pa.C.S. § 1510(a), the renewal form has a space for the applicant to provide his or her social security number. Applicant stated that he did not put his social security number on the application. The Department returned his renewal application, informing him that it could not be processed due to the lack of a social security number. Applicant responded that he did not have a social security number. The Department issued a camera card by mistake and, in the space on the card for the licensee's social security, the word "refused" was written by either Applicant or a Department employee. When the Department became aware that it had mistakenly issued a camera card to Applicant, it cancelled his driver's license pursuant to 75 Pa.C.S. § 1572(a)(1)(ii).¹

¹ Section 1572 of the Vehicle Code provides, in pertinent part, as follows:

(1) The department may cancel any driver's license upon determining that one of the following applies:

....

(ii) The person failed to give the required information or committed fraud in making the application or in obtaining the license.

75 Pa.C.S. § 1572.

Applicant filed a statutory appeal from the cancellation with the trial court. At the *de novo* hearing, Applicant testified that he had sent Nicholas F. Brady, Secretary of the United States Treasury, a six-page affidavit whereby he claimed to be changing his status to a "free sovereign individual citizen" and to be revoking and rendering null and void his social security number. Applicant testified that he had no response from Secretary Brady regarding his affidavit. Applicant stated that he did not contact the Social Security Administration regarding his rescission of his social security number because

such contact may have exposed him to "other things." (N.T. at 25.)

Applicant contended before the trial court that the alternate provision set forth in 75 Pa.C.S. § 1510(f), which allows an individual without a social security number to obtain a driver's license upon submission of a Federal Government waiver, was inapplicable to him because the federal government has no waiver as referred to in that section. Further, Applicant claimed it was his God-given right not to have a social security number.

[1] In a well-considered opinion, the Honorable Douglas W. Herman, for the trial court, dismissed Applicant's statutory appeal. In doing so, the court stated that a person's belief that he lacks a social security number is not relevant under Section 1510(f). Judge Herman found that a licensee is required to obtain written documentation from the federal government showing that the government does not maintain a number or account in the individual's name. The individual's statement that he no longer has a social security number is not enough. Therefore, the trial court found that Applicant did not show that he was unable to comply with the provisions of the Vehicle Code and that his noncompliance compelled a finding that the Department's cancellation of his license was appropriate. *519 Applicant appealed the trial court's order to this Court.²

² Our scope of review of the trial court's decision is limited to determining whether necessary findings made by the trial court are unsupported by competent evidence and the whether the trial court committed an error of law or abused its discretion. *Department of Transportation, Bureau of Driver Licensing v. Ingram*, 538 Pa. 236, 648 A.2d 285 (1994).

Discussion

Section 1510 provides, in pertinent part, as follows:

(a) General rule.—... Except as provided in subsection (f), an applicant shall include his Social Security number on his license application, but the Social Security number shall not be included on the license....

....

(f) Waiver.—Notwithstanding the provisions of subsection (a), the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits a waiver obtained from the Federal Government permitting him not to have a Social Security number. The department may require other identifiers, including but not limited to, a taxpayer identification number, before issuing the license.

75 Pa.C.S. § 1510(a) & (f).

Applicant attacks the validity of Section 1510(f) because it does not provide for his situation. He claims that because he no longer has a social security number, he cannot provide one as required. He further argues that he cannot obtain a "waiver" from the federal government because no such waiver exists and, if one does exist, Section 1510(f) does not inform the public from which federal agency it may obtain such a waiver. Applicant further argues that Section 1510(f) requires that a person without a social security number not only present a waiver, but also a tax identification number. He claims that not everyone is a taxpayer. Further, the taxpayer identification number is a social security number. In essence, Applicant argues that the law does not provide for those individuals who, like himself, do not have, or are not required to have, social security numbers or taxpayer identification numbers.³

³ The basis of Applicant's arguments is his belief that he is not required to have a social security number because the social security program is a voluntary insurance program. He contends that he never voluntarily applied for a social security number and that his father applied for and obtained a social security number for him when he was a minor. He has since rescinded that number. Further, Applicant claims not to have a taxpayer identification number because the income tax system is also a voluntary program and he has decided not to participate in it. His arguments regarding the federal requirements of a social security number and his participation in the federal tax system, however, are beyond the jurisdiction of this Court. We will not be drawn into a discussion of these issues. The sole issue before us is whether he complied with the applicable provisions of the Vehicle Code in applying for a renewal of his driver's license.

[2] It is clear that, for whatever reasons, Applicant has failed to comply with the requirements of Section 1510(a) and (f). Despite his strenuous arguments to the contrary, Applicant *does* have a social security number. He failed to produce any documentation from the Department of the Treasury or

the Social Security Administration indicating that his social security number had been rescinded.

The Department is authorized by the federal government to require a social security number as a means of identification in issuing driver's licenses. See 42 U.S.C. § 405(c)(2)(C)(i).⁴ Therefore, if Applicant was issued a social security number and that number was not revoked by the Social Security Administration for any reason, he is required to obey the statute which requires that he provide the number when applying for a renewal of his driver's license.

⁴ We note that in a recent *en banc* decision by this court, we denied access to a public agency's payroll records by a newspaper because those records contained, among other things, social security numbers. *Tribune-Review Publishing Co. v. Allegheny County Housing Authority*, 662 A.2d 677 (Pa.Cmwlt.1995). We held that social security numbers are protected from public dissemination under the Privacy Act, Privacy Act of 1974, Act of December 31, 1976, P.L. 93-579 § 2, Title V, § 552a note, 88 Stat. 1897. This holding does not prohibit states from requiring social security numbers to be furnished by vehicle operators for identification purposes as authorized by 42 U.S.C. § 504(c)(2)(C)(i). Further, Section 1510(a) specifically protects driver license applicants' privacy by providing that the social security number shall not be included on the license itself.

Applicant admits that he was issued a social security number and he has not presented any evidence that that number has been revoked by any agency of the Federal government. Therefore, he has a social security number for purposes of Section 1510(a) and is required to provide it when applying for renewal of his driver's license. Failure to do so is grounds for the Department to reject the application or, as in this case, cancel the driver's license.

[3] Applicant's argument that he is unable to obtain the "waiver" mentioned in Section 1510(f) is irrelevant because that section does not pertain to him. He is not entitled to any

kind of "waiver," whether such a document exists or not, because he has a social security number.

In Pennsylvania, the ability of an individual to operate a motor vehicle upon a public highway is a privilege and not a contract, property or constitutional right. 75 Pa.C.S. § 102. This privilege is contingent upon terms and conditions imposed by the legislature. Section 1510(a) imposes conditions upon the issuance of a driver's license, including the submission of one's social security number as a means of identification. Applicant failed to meet this mandatory condition. Therefore, the Department was within its authority to cancel his driver's license.

Conclusion

We must conclude that substantial evidence exists to support the trial court's findings that Applicant does have a social security number and that he failed to provide it in contravention of Section 1510(a). Therefore, the trial court did not commit an error of law in determining that the Department was within its authority to cancel Applicant's driver's license.

For the reasons stated above, we affirm the order of the trial court.

ORDER

AND NOW, this 3rd day of January, 1996, the order of the Court of Common Pleas for the 39th Judicial District—Franklin County Branch, Civil Division, at Mis. Col. BB, Page 121, dated March 22, 1995 is hereby affirmed.

This decision was reached before the resignation of Judge NEWMAN.