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August 21, 2015

Hon. Mary C. Jacobson, AJSC
Superior Court of New Jersey
Criminal Courthouse
400 South Warren Street
Trenton, NJ 08650-0068

Re: Kavadas, et al v. Martinez, et el
Docket No. MER-L-1004-15

Dear Judge Jacobson:

Please accept this letter brief in lieu of a more formal submission in support of plaintiffs' application.

Relevant procedural history

Plaintiffs filed a complaint and application for an order to show cause on May 1, 2015. Defendants filed opposition to the application on June 26. Although it was included with plaintiffs' application and thoroughly briefed, the State did not address the issue of requiring the Motor Vehicle Commission to begin complying with the mandate of N.J.S.A. 2A:17-56.44 that support-related license suspensions be effective 20 days after the postmark of the notice informing the obligor of the suspension. Plaintiffs filed a reply on July 13.

Defendants sought leave to file a surreply brief on July 15. Because plaintiffs had addressed new issues in their reply relief regarding statutory construction and whether the AOC had greatly exceeded its constitutional authority in the issuance of Directive #15-08 by providing insufficient due process before warrants (with

resulting automatic license suspensions) issue, plaintiffs consented to a surreply as to those issues.

In its surreply, *for the first time*, defendants addressed plaintiff's argument as to providing the statutorily required 20 days notice to obligors whose licenses are suspended. Defendants' brief was filed and served seven days before oral argument. Plaintiffs' attempted to file a response two days later on July 17, but did not have leave of the Court to do so as there had been no time to request same. Defendants should not have presented a new argument in a surreply to which plaintiffs had no right to respond.

Plaintiffs now file this application seeking partial summary judgment as to the singular issue of compelling the New Jersey Motor Vehicle Commission to provide fair notice to all persons facing a license suspension as the result of support arrears.

Statement of Facts

A Statement of Material Facts is attached. These are the only relevant facts. They are not in dispute and cannot be challenged:

1. Plaintiffs are child support obligors.
2. Plaintiffs are subject to "two week warrant status" orders.
3. Plaintiffs have, for periods of at least two years each, been in arrears that exceed that amount of support due for two weeks.
4. Plaintiffs' licenses are subject to automatic suspension as the result of the issuance of a child support-related warrant.
5. Pursuant to Directive #15-08, plaintiffs are not entitled any notice prior to the issuance of a warrant.

Legal Argument

I. THE COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT AND ENJOIN THE MVC FROM CONTINUING TO VIOLATE THE NOTICE PROVISIONS OF N.J.S.A. 39:5-30 AND N.J.S.A. 2A:17-56.44.

A. Summary judgment is appropriate when, as here, there are no genuine issues of material fact.

Rule 4:46-1 permits a party seeking affirmative relief to move for partial summary judgment at any time after the expiration of 35 days from the service of the pleading claiming such relief.

Summary judgment may be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See*, R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

While plaintiffs maintain that *all* the issues before this court are legal and not factual, the issue of obligors receiving adequate notice of a suspension is not contingent on any matters beyond those set forth in the annexed Statement of Material Facts (Exhibit G).

B. Background as to suspension of licenses as the result of an obligor defaulting on a support order.

There are two primary methods by which driver's licenses can be suspended as the result of child support arrears.

After a certain level of arrears develop, probation may schedule a hearing pursuant to N.J.S.A. 2A:17-56.43. The statute provides criteria that must be addressed in the context of a hearing as to whether a suspension would be justified and coercive rather than counterproductive and as to whether there is any

equitable reason, such as involuntary unemployment or disability, that would mitigate against a license suspension. In 2014, 109 obligor's licenses were suspended as the result of a such hearing (See Exhibit A-1).

Although otherwise only addressing the procedure to be employed when a license suspension is at issue, N.J.S.A. 2A:17-56.41(3)(a) contains a single line mandating the suspension of an obligor's license "by operation of law upon the issuance of a child support-related warrant." The Administrative Office of the Courts has instructed that when an obligor defaults, "the order may provide that if future payments are missed, a warrant may be issued without any additional notice to the obligor." AOC Directive #15-08 at page 3-4. In 2014, 20,381[1] licenses were suspended via this method - without a hearing and without the obligors receiving any notice that they had lost their license.

Additionally, an OPRA request revealed that the Motor Vehicle Commission erroneously suspends an average of 400 obligors per year (Exhibit A-2, A-3). An erroneous suspension means that the license

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[1] The data provided by the Division of Family Development as to the number of licenses suspended last year (20,498, Exhibit A, page 1) differs significantly from the information provided by the Motor Vehicle Commission (45,634, Exhibit A, page 2). Counsel is continuing to pursue some explanation for the significant divergence. For purposes of this application, plaintiffs utilize the numbers supplied by the DFD, however the court should be aware that the number of suspensions may be more than double this amount.

was not held by the support obligor, the order at issue had been vacated, the obligor had in fact appeared to answer a summons, or some other error occurred in the system. None of these people received notice that their license was being suspended.

The statute that permits the MVC to suspend licenses makes clear that this can never occur without notice. N.J.S.A. 39:5-30 states, in relevant part:

> a. Every . . . privilege to drive motor vehicles . . . may be suspended or revoked by the director for a violation of any of the provisions of this Title or on any other reasonable grounds, **after due notice in writing of such proposed suspension**, revocation, disqualification or prohibition and the ground thereof." (Emphasis added).

More specifically, N.J.S.A. 2A:17-56.44 states that "upon the receipt of an order requiring the suspension or revocation of a license, the licensing authority shall immediately notify the licensee of the effective date of the suspension, which shall be 20 days after the postmark of the notice."

Suspending licenses without notice is thus violative of the text of two statutes, of explicit case law, of every basic notion of procedural due process, and is fundamentally unfair. This Court is asked to grant partial summary judgment in plaintiff's favor and enjoin the MVC from continuing it.

C. A "license" includes a driver's license and a warrant is an order.

In its surreply, defendants argued that a warrant is fundamentally different from an order and that the statute

requiring notification be provided to obligors suspended via a warrant does not apply as the definition of "license" does not include a "driver's license."

The idea that a "license" does not include a driver's license is belied not only by common sense, but by the "definitions" section of the New Jersey Child Support Improvement Act ("the Act.")

N.J.S.A. 2A:17-56.52 provides that, for purposes of the Act (which would obviously include but not be limited to N.J.S.A. 2A:17-56.44): "License" means any license, registration or certificate issued by the State or its agencies or boards that is directly necessary to provide a product or service for compensation, **to operate a motor vehicle**, or for recreational or sporting purposes. (Emphasis added).

Therefore, a license includes a driver's license and is subject to the statute.

Defendants next argued "The Legislature was clear in its language that the 20 days' notice given by the licensing authority, here the MVC, applies when the Court *orders* the suspension of a license, not when a warrant is issued suspending a license." (Exhibit B at 13).

The underlying premise of this argument - that a warrant and an order are legally distinguishable - is erroneous. A warrant *is* an order.

The word "order" is clearly defined in the law. Black's Law Dictionary defines an order as "A mandate. precept; a command or

direction authoritatively given ..." http://thelawdictionary.org/order/ (visited 8/9/15). There is no definition of the word "order" that excludes a command or direction authoritatively given to a third party.

A warrant is "1. A writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage, if he does it. People v. Wood, 71 N.Y. 376 (1877). 2. Particularly, a writ or precept issued by a magistrate, justice, or other competent authority, addressed to a sheriff, constable, or other officer, requiring him to arrest the body of a person therein named, and bring him before the magistrate or court... 3. **A warrant is an order** by which the drawer authorizes one person to pay a particular sum of money" *citing* Shawnee County v. Carter, 2 Kan. 130 (1863) (Emphasis added). Other legal dictionaries provide essentially identical definitions for this common word, all of which affirm that a warrant is an order. "**A warrant is an order** giving law enforcement authorization to take a particular action." http://dictionary.reference.com/browse/warrant (Emphasis added) (visited 8/9/15). *See also*, http://thelawdictionary.org/warrant-of-arrest/ (visited 8/9/15) (an arrest warrant is " [a] written order. . . " *citing* Brown v. State, 109 Ala. 70, 20 So. 103 (1895)); People v. Smith, 926 P.2d 186 (Colo.App.1996) ("**An arrest warrant is an order** from a court directed to any peace officer commanding the arrest of the person named or described in the order.) (Emphasis added); People v.

Kempner, 208 N.Y. 16 (1913); ("Arrest Warrant: A written order issued by authority of the state and commanding the seizure of the person named") http://legal-dictionary.thefreedictionary.com /Arrest+Warrant (visited 8/9/15).

Unquestionably, a warrant is an order.[2] That is, it is a command signed by a judge requiring that some act occur. From as far back as legal authority goes, every definition of the term confirms that a warrant is therefore a type of order.

Additionally, every warrant originates with an order. As Directive #15-08 notes, "The Court has discretion to order the issuance of a warrant ..." Id. at 6.[3] Even if they were legally distinguishable, every warrant originates with an order. Legal semantics that do not withstand scrutiny should not serve to perpetuate the ongoing violation of plaintiffs' basic right to be notified before this "consequence of magnitude" is imposed.

Finally, defendants' position as to this issue defies common sense. When an obligor is suspended via an in-court order, he or she is obviously present and advised of the suspension. No additional notice from the MVC would therefore be required. Conversely, when a warrant is issued "without further notice", the

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[2] Citing not only to case law but to law review articles, attorney websites, and other general reference materials, a Google search of the phrase "an arrest warrant is an order" provides 14,400 results bearing that exact phrase.

[3] *See also*, box 17, page 2 of the form Title IV-D order, "ordering" the issuance of a warrant (E.g., Exhibit C-13).

obligor has no notice of the suspension. Defendants' position -- that the legislature intended that only obligors who have already received notice at a hearing are covered by the statute, and those who are suspended "without additional notice" via the issuance of a warrant are not -- simply makes no sense. A statute should never be construed in a manner which leads to such a manifestly absurd result. Turner v. First Union Nat. Bank, 162 N.J. 75, 84, (1999) (*citing* Watt v. Mayor of Franklin, 21 N.J. 274, 278 (1956)); Cornblatt v. Barow, 153 N.J. 218, 242 (1998).

D. This matter is cognizable under the New Jersey Civil Rights Act.

In its surreply, defendants argued "[a]lthough the issue complained of by Plaintiffs appears to be enforcement related and not aimed at the constitutionality of the Act, no enforcement issue exists." (Exhibit B at page 12).

In relevant part, plaintiffs' complaint asserts a cause of action under The New Jersey Civil Rights Act of 2004 (NJCRA). N.J.S.A. 10:6-1 to -2. N.J.S.A. 10:6-2(c) specifically provides jurisdiction to seek enforcement of state statutory rights. The NJCRA protects against the deprivation of and interference with "substantive rights, privileges or immunities secured by the Constitution **or laws of this State**" (Emphasis added). The NJCRA is thus a vehicle to protect and vindicate both constitutional *and statutory* rights and the bald claim that "there is no enforcement issue" is without support.

To determine whether a statutory violation is actionable under the NJCRA, plaintiffs must establish that the statute at issue was intended to confer a benefit on plaintiffs...; (2) whether the benefit is not "so 'vague [or] amorphous' that its enforcement would strain judicial competence"; and (3) whether the law unambiguously imposes a binding obligation on defendants. *See* Tumpson v. Farina, 218 N.J. 450, 473 (2014), *citing* Blessing v. Freestone, 520 U.S. 329, 340-341 (1997).

The existence of these factors here should be self-evident. The purpose for the notice requirement of N.J.S.A. 39:5-30 and 2A:17-56.44 is to provide fairness, due process, to alert suspended obligors so they will cease driving, and to provide an opportunity for those erroneously suspended to rectify the error. This (1) provides a direct benefit to plaintiffs, (2) is not in any way "vague [or] amorphous", and (3) imposes a binding obligation on the MVC to provide fair notice before a suspension is effective.

In addition to the direct text of the statute requiring that the "20 day window" be provided, every case to address the issue has affirmed what would appear to be a common sense fairness and due process issue: It is mandatory that the State provide adequate notice before suspending a license, rather than leaving a driver to discover the suspension by being arrested, issued a summons, having his/her vehicle towed, and incurring criminal penalties for Driving While Revoked. *See, e.g.,* Bechler v. Parsekian, 36 N.J. 242 (1961); Parsekian v. Cress, 75 N.J. Super. 405 (App. Div. 1962); State v. Wenof, 102 N.J.Super. (Law Div. 1968).

The text of two statutes, along with basic notions of fundamental fairness, dictate that no person should learn of a suspension by being charged criminally, incurring fines and penalties that make it more difficult to pay support, incurring an additional punitive license suspension as a result of a Driving While Revoked conviction, and having their vehicle towed.

As set forth in the annexed certifications, all of the named plaintiffs are on two week bench warrant status. All of them have arrears that exceed the amount of support due for two weeks. Therefore, any of them could be suspended pursuant to the procedures in Directive #15-08 "without additional notice."[4]

Leaving for another day the overall constitutionality of this process, there can be no question that all of them have a cognizable right under the NJCRA to receive the statutorily-mandated 20 day notice before a suspension is effective.

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[4] Directive #15-08 actually permits the issuance of a warrant based on the existence of *any* arrears whatsoever at any time - it does not restrict this to only those cases where an obligor has defaulted on a two week warrant status order: "B-1. Two Types of Hearings. To coerce payment from an obligor who has become delinquent . . . the court may conduct a hearing to enforce litigant's rights under R. 1:10-3. The obligor's appearance for an Expedited ELR hearing may be compelled by either the issuance of a warrant or a notice to appear." Directive #15-08 at page 4.

Conclusion

For the above reasons, plaintiffs respectfully aver that there are no material fact questions relevant to the singular issue now before the Court. The Court should enter partial summary judgment and require the MVC to immediately begin complying with N.J.S.A. 39:5-30 and N.J.S.A. 2A:17-56.44 by providing 20 days notice to obligors before a license suspension is effective.

Respectfully,

David Perry Davis, Esq.

Cc: Shana Bellin, DAG, Esq. *(Via hand delivery and PDF)*
Named plaintiffs *(Via PDF)*