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Opinion No. 00-141

License Revocation for Non-Compliance with a Court Order of Visitation

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QUESTION

1. Is 2000 Tenn. Pub. Acts ch. 971 constitutional?

2. Does the statute which excludes attorney's licenses, but includes all other professional licenses, violate equal protection?

3. Is it proper to revoke a parent's professional license, thereby jeopardizing the parent's ability to support the child?

4. Is a decision under this statute appealable?

OPINION

1. Yes, 2000 Tenn. Pub. Acts ch. 971 is constitutional.

2. The fact that lawyer's licenses are excluded from this statute does not violate equal protection.

3. The decision to revoke a parent's professional license is a public policy decision and as such is a concern for the legislature to resolve.

4. Under this statute, the decision of the trial court is appealable under Tenn. Code Ann. § 16-4-108(a)(1) and Tenn. R. App. P. 3(a).

ANALYSIS

Your opinion request asks this Office to generally assess the constitutionality of 2000 Tenn. Pub. Acts ch. 971 and in addition raises several specific concerns. As will be discussed in detail

below, it is the opinion of this Office that the statute is constitutional and that the other concerns raised do not affect the validity of the statute.

The statute in question allows a parent who has been victimized by the other parent's intentional violation of a court-ordered visitation schedule twice within six months to petition the court to sanction the violating parent by certifying the parent to a licensing authority and requiring that the licensing authority revoke the offending parent's license to engage in a profession, trade, occupation, business or industry or to hunt or fish. The statute specifically excludes licenses to practice law and drivers licenses. Before a court may order such a sanction the victimized parent must notify the offending parent by certified mail, return receipt requested, before a scheduled visitation that further violations of court-ordered visitation may be subject to such sanctions. The parent who has violated the visitation schedule may request a hearing at which the court must determine: (1) whether the licensee is a parent subject to an order of visitation; (2) whether the licensee is not in compliance with an order of visitation; and (3) whether good cause exists to impose the licensing sanction. If the court finds that these three requirements are met it is to certify to the licensing authority that the parent is in non-compliance and require that the licensing authority revoke the parent's license.

While a challenge to the constitutionality of a statute may take many forms, the most common are attacks based on due process and equal protection. When evaluating the constitutionality of a statute courts begin with a strong presumption that an act of the legislature is constitutional. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997); *In Re Petition of Burson*, 909 S.W.2d 768 (Tenn. 1995). Courts are required to resolve every doubt in the favor of the statute and a statute will not be held unconstitutional merely for policy reasons. *In Re Petition of Burson*, 909 S.W.2d 768 (Tenn. 1995); *Bozeman v. Barker*, 571 S.W.2d 279 (Tenn. 1978).

Due process protections arise from the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution.[1] The Tennessee Supreme Court has held on several occasions that these two provisions are synonymous and has, therefore, adopted the analytical framework of the United State Supreme Court in interpreting the two provisions. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997); *Newton v. Cox*, 878 S.W.2d 105 (Tenn. 1994). Due process is composed of both a substantive and a procedural aspect.

A statute will pass constitutional muster under substantive due process, as long as the statute does not implicate a fundamental right, if it bears a "reasonable relation to a proper legislative purpose" and is "neither arbitrary or discriminatory." *Riggs v. Burson*, 941 S.W.2d at 51(quoting *Newton v. Cox*, 878 S.W.2d at 110). The right at issue in this statute - a state-issued license - is not a fundamental right. Furthermore, the revocation of a license is a reasonable means by which to

[1]The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law. . .." Likewise, Article I, Section 8 of the Tennessee Constitution states "[t]hat no man shall be taken or imprisoned, or disseazed of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by judgment of his peers or the law of the land."

enforce a valid court order. Providing a means of enforcement of such an order is clearly a proper legislative purpose. Thus, we feel that this statute is constitutional under a substantive due process analysis.

A statute may also be constitutionally infirm if it deprives a person of a life, liberty or property interest without proper procedures. The cornerstone of procedural due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The Tennessee Supreme Court applies a two-step analysis when addressing a claim of a denial of procedural due process. This analysis determines first, whether the interest rises to the level of a constitutionally protected property interest. *The Eye Clinic, P.C., et al. v. Jackson-Madison County General Hospital, et al.*, 986 S.W.2d 565 (Tenn. Ct. App. 1998); *Rowe v. Board of Education of the City of Chattanooga*, 938 S.W.2d 351 (Tenn. 1996)). A property interest "must be more than a 'unilateral expectation' or an 'abstract need or desire.' It must be a 'legitimate claim of entitlement' to a specific benefit." *The Eye Clinic, P.C., et al. v. Jackson-Madison County General Hospital, et al.*, 986 S.W.2d 565 (Tenn. Ct. App. 1998) (quoting *Rowe v. Board of Education of the City of Chattanooga*, 938 S.W.2d 351 (Tenn. 1996)). Clearly, a current license holder in good standing has a "legitimate claim of entitlement" in the continuing validity of that person's license. *Estrin v. Moss*, 430 S.W.2d 345 (Tenn. 1968). Therefore, this statute does affect a protected property interest.

The second step of the analysis is to weigh the competing interests of the plaintiff and the government to determine what process is due. *The Eye Clinic, P.C., et al. v. Jackson-Madison County General Hospital, et al.*, 986 S.W.2d 565 (Tenn. Ct. App. 1998). In evaluating the procedural safeguards that should be used both Tennessee courts and the United States Supreme Court consider three factors: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional safeguards; and (3) the government's interest. *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *State, ex rel. McCormick v. Burson, et al.*, 894 S.W.2d 739 (Tenn. Ct. App. 1994). We feel that a court would find this statute constitutional in evaluating these three factors. While the parent does have an interest in the continued validity of his or her license, that interest is well protected by this statute. First, the offending parent must be notified before any action is taken that further violations of the visitation schedule may result in license revocation. This allows the parent the opportunity to come into compliance with the visitation order before there is any risk to his or her license. Second, the offending parent is afforded the opportunity of a full hearing before the court certifies the parent to the licensing authority. This hearing greatly reduces the risk of any erroneous deprivation. Finally, the government clearly has an overwhelming interest in ensuring that valid court orders are followed and enforced. The procedures of this statute are a reasonable method of enforcement for courts and victimized parents to utilize so that orders of the court are followed. Thus, it is the opinion of this Office that this statute is constitutional under a procedural due process analysis.

One of the specific concerns raised in this opinion request is that attorneys' licenses are exempted from the provisions of this statute while other types of professional licenses may be

revoked due to failure to comply with a visitation order. This issue involves the application of principles of equal protection of the laws under the United States Constitution and the Tennessee Constitution.[2] Equal protection guarantees that all persons similarly situated will be treated alike. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997); *Tennessee Small School Systems v. McWherter,* 851 S.W.2d 139 (Tenn. 1993). However, persons who are different in fact or opinion are not required to receive equal treatment. *Tennessee Small School Systems v. McWherter,* 851 S.W.2d 139 (Tenn. 1993). Tennessee courts have recognized that different professions are not similarly situated and, therefore, do not have to be treated alike. *Lufkin v. Tennessee Department of Revenue*, No. 03A01-9410-CH-00388, 1995 WL 231446 *2 (Tenn. Ct. App. E.S. April 20, 1995); *State v. Blockman*, 615 S.W.2d 672 (Tenn. 1981). Therefore, Tennessee courts have applied the "rational basis" test when faced with classifications based on different professions or occupations. *Lufkin v. Tennessee Department of Revenue*, No. 03A01-9410-CH-00388, 1995 WL 231446 *2 (Tenn. Ct. App. E.S. April 20, 1995); *State v. Blockman*, 615 S.W.2d 672 (Tenn. 1981). Under the "rational basis" standard the statute will be upheld "if some reasonable basis for the classification can be found." *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997) (quoting *Tennessee Small School Systems v. McWherter,* 851 S.W.2d 139 (Tenn. 1993)). There are several possible rational bases for exempting attorney's licenses. First, the Legislature is free to regulate one profession without having to treat all professions identically. *Lufkin v. Tennessee Department of Revenue*, No. 03A01-9410-CH-00388, 1995 WL 231446 *2 (Tenn. Ct. App. E.S. April 20, 1995); *State v. Blockman*, 615 S.W.2d 672 (Tenn. 1981). Second, the legal profession is not similar to other professions with regard to the imposition of regulations. As officers of the court attorneys have public duties and responsibilities and are ultimately regulated by the Supreme Court. *In Re Petition of Burson*, 909 S.W.2d 768 (Tenn. 1995). The legislature's decision to exempt attorneys' licenses from this statute could be explained as an effort to avoid what could be viewed as an attempt to regulate the practice of law on the part of the legislature. *See,* Tenn. Op. Atty. Gen. 99-078 (April 5, 1999). This is further supported by the fact that the statute encourages the Supreme Court to pass similar guidelines to suspend the licenses of attorneys who fail to comply with an order of visitation. Thus, we believe there is a rational basis for the legislature's decision to exempt the licenses of attorneys from the scope of this statute.

This opinion request also questions the wisdom of a procedure which would revoke a parent's professional license, thereby potentially jeopardizing that parent's ability to financially support the child. While such a concern is understandable, that is a policy decision and as such is a concern solely for the legislature. *Estrin v. Moss*, 430 S.W.2d 657, 669; Tenn. Op. Atty. Gen. 94-032 (March 15, 1994).

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[2]The Fourteenth Amendment of the United States Constitution provides that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Tennessee Constitution provides Equal Protection guarantees in two provisions; Article I, Section 8 which is quoted in footnote 1, supra, and Article XI, Section 8 which reads: "The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law."

Finally, your request asks whether it is permissible for a judge's decision to be un-appealable. We believe this question is based on a misreading of the statute. All civil cases are appealable as of right to the Court of Appeals. Tenn. Code Ann. § 16-4-108(a)(1) and Tenn. R. App. P. 3(a). Nothing in the statute suggests that this means of appeal is unavailable when a parent petitions the court to revoke the other parent's license for failure to comply with a visitation order. Indeed, in Section 6(a) the statute specifically contemplates that such orders may be appealed by requiring an automatic stay upon the filing of a notice of appeal. We believe that the impression that such orders are not appealable came from Section 8(e) of the statute. This provision only prohibits an appeal under the Uniform Administrative Procedures Act which is the usual means of administrative appeal of an adverse decision regarding a state-issued license. A judge's decision to certify an individual to a licensing authority as a sanction for that parent being in non-compliance with a visitation order would be appealable as any other final order from a judge is appealable.

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