CIRCUIT COURT OF SOUTH DAKOTA
SECOND JUDICIAL CIRCUIT
LINCOLN & MINNEHAHA COUNTIES
425 North Dakota Avenue
Sioux Falls, SD 57104-2471

CIRCUIT JUDGES
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William J. Srstka, Jr.
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C. Joseph Neiles
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June 15, 2010

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RE: CIV 06-3915
Wiedermann, a/k/a Vintage Auto Restoration, on behalf of himself and all others similarly situated v. City of Sioux Falls and Redflex Traffic Systems, Inc.
Defendants' Motion for Summary Judgment

Dear Counsel:

A hearing was held in the above-entitled matter on Monday, March 1, 2010. After reviewing the record and arguments of counsel, my decision is as follows:

FACTS

On or about April 8, 2002, the City of Sioux Falls ("City") passed Sioux Falls City Ordinances ("SFCO") 40-400 through 40-405, which established the Photo Monitoring Systems for the enforcement of traffic control signals. In establishing the system, the City entered into an agreement with Redflex Traffic Systems, Inc. ("Redflex") to share in the proceeds of the civil

penalties obtained from the enforcement of certain laws using the Redflex system. The Sioux Falls City Attorney's Office hired hearing examiners to review the contested stop light violations.

One such photo monitoring system was placed at the intersection of 10th Street and Minnesota Avenue in Sioux Falls. On March 13, 2006, Plaintiff I.L. Wiedermann's ("Plaintiff") vehicle was photographed violating the traffic signal at the intersection when his vehicle made a right-hand turn against a "no turn on red" sign. Plaintiff was notified of the violation in July, 2006, and was assessed an $86.00 fine. Plaintiff subsequently appealed the penalty, and was provided a hearing before a city-paid hearing examiner. The examiner ruled against Plaintiff on August 21, 2006, affirming the assessed fine. Plaintiff attempted to appeal the examiner's decision to the circuit court. However, on October 3, 2006, the Court dismissed the appeal for lack of jurisdiction because South Dakota law does not provide for an appeal to the circuit court from a local administrative decision.

Plaintiff subsequently filed this action in circuit court as a class action suit, asserting that the City and Redflex: (1) violated SDCL §32-28-4 by improperly modifying the right turn on a red signal at the intersection of 10th Street and Minnesota Avenue by failing to enact a local ordinance forbidding the turn; (2) violated SDCL §§ 32-28-8.1 and 32-28-11 by improperly positioning the traffic lights at the intersection; (3) exceeded the authority granted by the South Dakota Constitution and South Dakota Law by assessing civil penalties for traffic offenses; and (4) violated Due Process rights guaranteed by the United States and South Dakota Constitutions.

On January 12, 2007, Defendant Redflex moved to dismiss Plaintiff's Complaint in its entirety. Similarly, on May 22, 2007, the City moved for partial judgment on the pleadings as to Section III, and Count IV of Plaintiff's Complaint. The Court issued a decision letter on August 9, 2007, granting Defendant Redflex's Motion to Dismiss as to Counts I, II, and III, but denying as to Count IV of Plaintiff's Complaint. In that same decision letter, the Court granted the City's Motion for Judgment on the Pleadings as to Section III of the Complaint, but denied the motion with regard to Count IV. On August 27, 2007, an Order was entered to this effect. On March 12, 2008, Plaintiff filed a Motion for Leave to File Plaintiff's First Amended Class Action Complaint, which the Court denied on April 29, 2008. Currently, both the City and Redflex filed a Motion for Summary Judgment that Plaintiff resists.

STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." SDCL § 15-6-56(c). All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. *Hayes v. Northern Hills Gen. Hosp.*, 1999 SD 28, ¶12, 590 N.W.2d 243, 247 (citation omitted). The burden is on the moving party to show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. *Id.*

"A disputed fact is not material unless it would affect the outcome of the suit under the governing substantive law in that 'a reasonable jury could return a verdict for the nonmoving

party.'" *SD State Cement Plant Comm'n v. Wausau Underwriters Ins. Co.*, 2000 SD 116, ¶9, 616 N.W.2d 397, 400-01 (quoting *Weiss v. Van Norman,* 1997 SD 40, ¶11 n2, 562 N.W.2d 113, 116 (internal citations omitted)). The party who opposes a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in § 15-6-56, must set forth specific facts showing that there is a genuine issue for trial." SDCL § 15-6-56(e).

DECISION

I. Redflex's Motion for Summary Judgment (Count IV Only)

Redflex argues that summary judgment is proper because Redflex did not have any role in the creation of the alleged violation of Due Process Rights. Redflex, in its Answer, denied improperly assessing penalties, creating an improper dispute system, or failing to create an independent judiciary. Redflex bases its argument on the fact that city officials stated Redflex did not have any role in creating or administering the dispute system. Plaintiff argues that Redflex trained adjudicatory officers hired by the City, decided which tickets should be mailed, and consequently, was entwined with the adjudicatory process.

"The application of facts to a legal standard presents a mixed question of fact and law." *State v. Bruder*, 2004 SD 12, ¶8, 676 N.W.2d 112, 115 (citing *State v. DeLaRosa*, 2003 SD 18, ¶5, 657 N.W.2d 683, 685). The South Dakota Supreme Court has stated that, "[t]he Fourteenth Amendment due process protections only proscribe state action that creates a deprivation of life, liberty, or property without due process of law. *See* U.S. Const. amend. XIV, § 1. It does not protect citizens from the actions of private individuals or private companies." *Holland v. FEM Elec. Ass'n, Inc.*, 2001 SD 143, ¶18, 637 N.W.2d 717, 722.

As this Court has previously stated in the memorandum decision dated August 9, 2007, a precursor to a private entity's liability for constitutional violations is a finding of "state action" by that private entity. Inasmuch, "state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the state itself.'" *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. 288, 295; 121 S.Ct. 924, 930; 148 L.Ed.2d 807 (2001) (quoting *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 351; 95 S.Ct. 449, 453; 42 L.Ed.2d 477 (1974)). The mere fact that a business is subject to state regulation does not, by itself, convert its action to that of the state for purposes of the Fourteenth Amendment. *Jackson,* 419 U.S. at 350; 95 S.Ct. at 453-54 (holding that the actions of a private utility company, which was issued a certificate of public convenience from the state of Pennsylvania, did not constitute state action for purposes of the Fourteenth Amendment).

It should be noted that in determining whether private action may be considered "state action," there is no one fact or attribute that can serve as the necessary condition to finding state action, "for there may be some countervailing reason against attributing activity to the government.." *Brentwood Academy,* 531 U.S. at 295-96; 121 S.Ct. at 930. Nonetheless, the United States Supreme Court has identified various facts that may be sufficient to show state action:

> [A] challenged activity may be state action when it results from the State's exercise of "coercive power," when the state provides "significant encouragement, either overt or covert," or when a private actor operates as a "willful participant in joint activity with the State or its agents," . . . . We have treated a nominally private entity as a state actor when it is controlled by an "agency of the State," when it has been delegated a public function by the State, when it is "entwined with governmental policies," or when government is "entwined in [its] management or control."

Id. (internal citations omitted). *See also Baker v. Immanuel Medical Center,* 2007 WL 1796254 (D. Neb. 2007) (unreported).

Consequently, it must be decided whether (1) the activity resulted from the City's "coercive power"; (2) the City provided "significant encouragement"; or (3) Redflex acted as a "willful participant in joint activity" with the City. *Id.* Additionally, if Redflex was "delegated a public function by the State," was "entwined with governmental policies," or the City was "entwined with [Redflex's] management or control," then the Court can find that Redflex was a state actor. *Id.*

Redflex is a private company. However, Redflex's involvement in the judicial process is demonstrated in exhibits offered by Plaintiff. Redflex's implementation proposal states, "Redflex provides jurisdictions with comprehensive adjudication, court support services, including the development of a court file transfer interface, court training modules, provisions for court packages for each hearing and expert witness testimony." Eiesland Affidavit Exhibit 3. Additionally, the proposal states, "Redflex can provide both Administrative Adjudication services and support and Court services and support. This includes the scheduling [of] appeal hearings, training hearing panels and/or hearing officers and providing critical documentation and hearing packages." Plaintiff also claims that Redflex decides which tickets are sent to the City for review. Redflex's proposal states, "the Redflex Project Management team works closely with the primary law enforcement agency, and other agencies as necessary, to develop citation issuance criteria. This issuance criteria is based on City specific requirements, policies, procedures and protocols regarding the governance of citation issuance and processing."

Taking the evidence in the light most favorable to Plaintiff, Redflex offered training to administrative judges, gathered the evidence necessary, prepared all evidence against the alleged violator, and worked to develop the criteria on which Redflex accepts or rejects tickets to send to the City and subsequently, screens these tickets based on that criteria. Based on the foregoing facts along with the pertinent case law, I find that genuine issues of material fact exist as to whether Redflex was a state actor and thus, is a "willful participant in joint activity" with the City and whether Redflex was "delegated a public function (i.e. law enforcement) by the state." *Brentwood Academy,* 531 U.S. at 296; 121 S.Ct. at 930. However, Redflex has joined in the City's Motion for Summary Judgment and therefore, Redflex's Motion for Summary Judgment will depend upon the resolution of the City's motion as to Count IV. *See* § II.D.

II. City's Motion for Summary Judgment

A. Count I

Plaintiff's Count I alleges that the City violated SDCL §32-28-4 by improperly modifying the right turn on a red signal at the intersection of 10th Street and Minnesota Avenue without enacting a local ordinance forbidding the turn. SDCL §32-28-4 reads, "[t]his provision permitting a right turn after a stop when facing a steady red light alone or stop signal shall not be effective if any local ordinance prohibits such turn and if a sign is erected at such intersection giving notice thereof." Plaintiff asserts that the City did not enact an ordinance and therefore was in violation of SDCL §32-28-4.

SFCO §40-171, which was enacted at the time Plaintiff was cited, reads,

> Except where permitted by signage approved by the traffic engineer, at any intersection where traffic is controlled by traffic control signals or by a police officer, or where warned by an official traffic control sign displaying the words "no U-turn," or "no left turn" or "no right turn," it shall be unlawful for the driver of the vehicle to turn such vehicle at the intersection in a complete circle, or so as to proceed in the opposite direction or to make a left turn or right turn as may be regulated by such sign.

In light of this ordinance, the Court finds that the City had enacted a local ordinance forbidding the turn. Thus, the City's Motion for Summary Judgment as to Count I of the Plaintiff's Complaint is GRANTED.

B. Count II

In Count II of Plaintiff's Complaint, Plaintiff contends that that the lights were not in the right position and the placement of lights were confusing under SDCL §§32-28-8.1 and 32-28-11. The City counters that Plaintiff does not have an identifiable property right and that his claim is barred by the doctrine of sovereign immunity. However, the Court does not need to reach a decision as to whether the doctrine of sovereign immunity applies or whether Plaintiff has an identifiable property right because Plaintiff does not present any disputed genuine issues of material facts as to Count II.

The argument advanced by Plaintiff is that Plaintiff cannot be held liable for this infraction because of SDCL §32-28-11, which reads, "[n]o provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person." The operative language is that, "[n]o provision of this chapter" can be enforced against Plaintiff if the signs are not sufficiently legible or in the proper position. *Id.* However, a provision of SDCL Chapter 32 was not enforced against Plaintiff, a city ordinance was enforced against Plaintiff under SDCL §9-19-3. Consequently, Plaintiff's argument that the signs were not legible or in proper position has no merit.

Additionally, Plaintiff alleges that the lights were confusing and that Defendants created this confusion to increase profits. Plaintiff cites SDCL §32-28-8.1 which reads, "[w]hen lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown." The picture of the lights in the record clearly demonstrates that a red arrow is placed over right turn lane, and Plaintiff has not provided any evidence to show that the arrow over the right turn lane in which Plaintiff's vehicle turned right was anything but red.

The party who opposes a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in §15-6-56, must set forth specific facts showing that there is a genuine issue for trial." SDCL §15-6-56(e). Plaintiff has not set forth any facts demonstrating "a genuine issue for trial" regarding the placement of the lights. *Id.* As such, the City's Motion for Summary Judgment as to Count II of Plaintiff's Complaint is hereby GRANTED.

C. Count III

Count III of Plaintiff's Complaint asserts that the City exceeded the authority granted by the South Dakota Constitution and Codified Laws. The City filed a Motion for Summary Judgment arguing that the City had the authority to enact this ordinance and enforce this ordinance under SDCL §32-28-4 which reads,

> A steady red light alone or stop shall indicate that:
>
> (1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or go is shown alone, except as hereinafter provided;
>
> (2) The driver of any vehicle which is stopped as close as practicable at the entrance to the crosswalk and to the far right side of the roadway, then at the entrance to the intersection in obedience to a red or stop signal, may make a right turn but shall yield the right-of-way to any pedestrian and other traffic proceeding as directed by the signal at the intersection. This provision permitting a right turn after a stop when facing a steady red light alone or stop signal shall not be effective if any local ordinance prohibits such turn and if a sign is erected at such intersection giving notice thereof.

Plaintiff argues that the City went beyond its legislative authority when it enacted SFCO §§ 40-401 and 40-404. The crux of Plaintiff's argument is contained in the language of SDCL §6-12-5 which states,

> Neither charter nor ordinances adopted thereunder may set standards and requirements which ***are lower or less stringent than those imposed by state law,***

> but they may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

(emphasis added). Plaintiff argues that the prior penalty under SDCL §32-28-10 for the failure to obey the instruction of a traffic control device is a Class 2 misdemeanor. Therefore, the City's enactment of SFCO §§ 40-401 and 404 changed this penalty into a civil penalty thereby violating SDCL §6-12-5.

Plaintiff cites a South Dakota Supreme Court case where the Court held that a city ordinance, which exempted a defendant from liability resulting in injuries from inherent dangers and risks of skiing, was preempted by state law. *Rantapaa v. Black Hills Chair Lift Co.*, 2001 SD 111, ¶23, 633 N.W.2d 196, 203. The Court found that,

> [t]here are several ways in which a local ordinance may conflict with state law. In that event, state law preempts or abrogates the conflicting local law. First, an ordinance may prohibit an act which is forbidden by state law and, in that event, the ordinance is void to the extent it duplicates state law. *See People v. Commons*, 64 Cal.App.2d. Supp. 925, 148 P.2d 724, 727 (1944). Second, a conflict may exist between state law and an ordinance because one prohibits what the other allows. *Snow Land, Inc. v. City of Brookings*, 282 N.W.2d 607, 608 (S.D.1979) (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966)). And, third, state law may occupy a particular field to the exclusion of all local regulation. *Envirosafe Serv. of Idaho v. Cty. of Owyhee*, 112 Idaho 687, 735 P.2d 998, 1000 (1987).

Id. Out of the three ways the local ordinance may conflict with state law, the second or third sections do not apply in this case. However, whether the ordinance prohibits an act which is forbidden by state law and is consequently void to the extent it duplicates and conflicts with state law is another question.

Although genuine issues of material fact do not remain, the City's Motion for Summary Judgment regarding Plaintiff's Count III of the Complaint cannot be resolved in the City's favor because the ordinance adopted by the City sets standards or requirements which are less stringent than state law under SDCL § 6-12-5. State law makes it a Class 2 misdemeanor to run a red light while the City ordinance in essence decriminalizes the same conduct and makes it a civil penalty. See SDCL §32-28-10 ("The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, and subject to the exceptions granted the driver of an authorized emergency vehicle in § 32-26-15. A violation of this section is a Class 2 misdemeanor."); SFCO § 40-401 and 40-404.

Although only persuasive law, the Minnesota Supreme Court previously looked at this exact issue under Minnesota statutes which are similar to South Dakota statutes[1] in *Minnesota v.*

[1] The ordinance provides that owner of a vehicle, which runs a red light is guilty of a petty misdemeanor. The Court did not specifically hold whether or not a petty misdemeanor was within the definition of "crime" under Minn.Stat. § 609.02, subd. 1 (2006) but instead found that the rules of criminal procedure apply to petty misdemeanors.

Kuhlman, 729 N.W.2d 577 (Minn. 2007). In *Kuhlman*, the Minnesota Supreme Court found that the Minneapolis city ordinance was in conflict with Minnesota state law and specifically, reversed the presumption of innocence required by the rules of criminal procedure. *Id.* at 584. Therefore, the court found the ordinance was invalid. *Id.*

In light of SDCL §6-12-5, I find that the City's ordinance sets standards that are "lower or less stringent than those imposed by state law" and therefore, SFCO §§40-402 and 40-403 are in direct conflict with SDCL §23A-22-3. Consequently, even though no genuine issues of material fact remain as to whether SDCL §6-12-5 sets "lower or less stringent" standards, the City's Motion for Summary Judgment is DENIED as to Count III of Plaintiff's Complaint.

D. Count IV

In Count IV, Plaintiff maintains that the City set up an improper dispute system and failed to provide an independent judiciary and therefore Plaintiff's due process rights were violated under both state law and the Fourteenth Amendment to the United States Constitution. The City argues that a state law error does not create a federal due process claim and therefore, Plaintiff is not entitled to receive any damages under this claim or attorney's fees. The City also claims that Plaintiff was given notice and an opportunity to be heard, which is all the Fourteenth Amendment of the Federal Constitution requires. Redflex joins in this portion of the City's Motion.

1. Procedural Due Process

Plaintiff argues that his rights under the Fourteenth Amendment Due Process Clause were violated by the City's appeals process. The United States Supreme Court has stated that procedural due process requirements are met when one is given notice and a meaningful opportunity to be heard. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533, 124 S.Ct. 2633, 2649 (2004) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" (quoting *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972))).

Like the United States Supreme Court, the South Dakota Supreme Court also requires notice and opportunity to be heard but "the sufficiency of the notice and opportunity required under due process is flexible and 'requires only such procedural protections as the particular situation demands.'" *State v. I-90 Truck Haven Service, Inc.*, 2003 SD 51, ¶15, 662 N.W.2d 288, 293 (quoting *Matter of Estate of Washburn*, 1998 SD 11, ¶19, 575 N.W.2d 245, 250 (additional citations omitted)). The South Dakota Supreme Court has further held that, "[t]here are substantial constitutional and statutory differences between the conduct of a misdemeanor criminal proceeding versus an administrative proceeding, which may lead to the imposition of a civil fine." *Id.* at ¶17; 662 N.W.2d at 293. (citing *City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581).

The Court went on to hold in *Truck Haven* that because the State provided a detailed affidavit to Truck Haven containing all the relevant information on which the State's action was

based and Truck Haven had a full opportunity to be heard in front of the court, that Truck Haven was provided "the full amount of due process protection guaranteed to it under such a civil regulatory proceeding." *Id.* Although the *Truck Haven* case was the State imposing fines upon a licensee for selling alcohol to a minor, the due process issue remains the same.

Plaintiff does not dispute that he was given notice and a hearing before a City hearing officer. However, Plaintiff claims that the City's appeals process did not grant Plaintiff a reasonable opportunity to be heard. This Court recently decided in *Daily v. City of Sioux Falls*, (Civil Number 08-2478), that the City is still subject to the United States Constitution as well as the South Dakota Constitution and that the City's Administrative Appeals Ordinance (Article VI, Administrative Appeals) as written, and as applied, violates citizens' Constitutional Right to Due Process of the Law. Additionally, this Court held in *Daily* that the city's reversal the usual burden of proof, which requires that the government prove that the citizen has violated a law in a criminal matter, or to prove its entitlement to a claim against a citizen in a civil matter was unconstitutional. The Court in *Daily* found that this reversal created a presumption that the city acted correctly and placed on the citizen the burden of overcoming that presumption and proving the city acted improperly, which was an unconstitutional violation of citizen's due process rights.

In *Daily*, this Court held that the City's Administrative Appeals Ordinance (Chapter 2 Article VI) was unconstitutional as written, and this Court's prior decision is applicable to this case. Therefore, Defendant's Motion for Summary Judgment must be DENIED as to Plaintiff's claim that the City violated his procedural due process rights.

Additionally, Plaintiff seems to make an argument that the City hearing officer is biased. As pointed out by the City, a District of Columbia court addressed similar issues in *Agomo v. Fenty*, 916 A.2d 181 (D.C. 2007). In *Fenty*, Agomo, the party who was cited, argued that the adjudication process was biased because of the large sums of money involved in the administration of the red light system. *Id*, at 194-95. The court in *Fenty* held that there must be "a direct link between the judge's behavior and the money received." *Id.* at 196. The court further held that the test to be used is basically whether the situation would offer temptation to an average man as a judge so that he or she forgets the burden of proof required to convict, or which might lead the judicial officer not to hold the balance between the state and the accused. *Id.*

In this case, the only evidence on the record as to any possible bias of the judiciary is that Allen Eide was not sure whether the administrative judges were paid by the hour or paid by the case, and that the City earned large sums of money by operating the traffic lights. *See* Eide Deposition at Pg. 25. Plaintiff has not provided any material facts concerning the payment of administrative judges or any bias of the judges other than the fact that these judicial officers were hired by the City and possibly trained by Redflex. The party who opposes a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in § 15-6-56, must set forth specific facts showing that there is a genuine issue for trial." SDCL § 15-6-56(e).

Plaintiff has failed to set forth any genuine issues as to whether the administrative judges were biased. Plaintiff only has conjecture that because the judicial officers are hired by the City and possibly trained by Redflex, they must be biased. Plaintiff was given notice but the Court

finds that Plaintiff was not given a meaningful opportunity to be heard under the Fourteenth Amendment to the United States Constitution and Article 6 §2 of the South Dakota Constitution in light of this Court's recent decision in *Daily v. City of Sioux Falls* (Minnehaha County Civil Number 08-2478). Consequently, Redflex's and the City's Motion for Summary Judgment are both DENIED as to the procedural due process claim.

2. Substantive Due Process

Although Plaintiff does not distinguish whether he is making a substantive due process argument or a procedural due process argument, both are addressed by the Court. According to the South Dakota Supreme Court, "[a] violation of substantive due process occurs when 'certain types of governmental acts [breach] the Due Process Clause regardless of the procedures used to implement them.' Substantive due process analysis begins with an examination of the 'interest allegedly violated.'" *Esling v. Krambeck*, 2003 SD 59, ¶18, 663 N.W.2d 671, 678-79 (alterations in original) (internal citations omitted) (quoting *Tri County Landfill Ass'n, Inc. v. Brule County*, 2002 SD 32, ¶10, 641 N.W.2d 147, 151 (Tri County III)). When neither a suspect classification nor a fundamental right is involved, a rational basis test is used to assess whether the conduct violates the Fourteenth Amendment. *City of Brookings v. Winker*, 1996 SD 129, ¶8, 554 N.W.2d 827, 830 (quoting *Katz v. State Bd. of Medical & Osteo. Examiners*, 432 N.W.2d 274; 278 n. 6 (SD 1988), reh'g denied). "The rational basis test requires statutes to be reasonably related to a legitimate state interest." *Id.*

In this case, Plaintiff has not alleged that he is part of a suspect class or that the right to run a red light, not be photographed, or an $86 property interest is a fundamental right. *See Idris v. City of Chicago, Illinois*, 552 F.3d 564, 566 (7th Cir. 2009). Thus, in order to have a viable due process claim, Plaintiff needs to demonstrate that the ordinance and the judiciary process provided pursuant to the city ordinance is not "reasonably related to a legitimate state interest." *Winker*, 1996 SD at ¶8, 554 N.W.2d at 830.

Plaintiff has not made a proper showing that the camera usage and procedural safeguards offered by the City are not rationally related to a legitimate governmental interest. In fact, the record contains evidence in Exhibit 17 to the Affidavit of Attorney Aaron Eiesland that there has been a 12.5% reduction in total accidents at the intersection and a 16.6% reduction in angle accidents at the intersection. The City contends that the purpose of cameras is safety. I find that the ordinance is rationally related to the legitimate governmental interest, which is safety. Consequently, Plaintiff cannot sustain a substantive due process claim and the Court hereby GRANTS Redflex's and the City's Motion for Summary Judgment as to the substantive due process claim.

CONCLUSION

Based on the foregoing facts and conclusions of law, the Court GRANTS Redflex's Motion for Summary Judgment as to Plaintiff's substantive due process claim and DENIES the Motion as to the Plaintiff's procedural due process claim and the issue of whether Redflex is a state actor. Additionally, the Court GRANTS the City's Motion for Summary Judgment as to Count I, Count II, and the substantive due process claim of Count IV but DENIES the Motion as

to Count III and the procedural due process claim of Count IV. Consequently, the only issues for the trier of fact to decide are whether Redflex was a state actor and what damages, if any, to which Plaintiff is entitled. Counsel for the Defendants shall prepare an order incorporating this decision.

Sincerely,

Kathleen K. Caldwell
Circuit Judge

C/c Clerk's File

FILED
JUN 15 2010
Minnehaha County, S.D.
Clerk Circuit Court