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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

FRESNO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, Plaintiff and Respondent, v. ESTEBAN MUNOZ MARTINEZ, Defendant and Appellant.	F056496 (Super. Ct. No. 0542627) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Rhonda M. Duncan, Commissioner.

Esteban Munoz Martinez, in pro per, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Douglas M. Press, Assistant Attorney General, Paul Reynaga and Marina L. Soto, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Esteban Munoz Martinez contends he was denied due process when his driver's license was suspended for failure to pay child support arrearages and that the suspension is invalid. We reject his contentions and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On November 13, 1995, the Fresno County Department of Child Support Services (Department) obtained a judgment by default establishing Martinez as the father of a minor child and setting child support at $123 per month. Martinez also was ordered to pay child support arrearages for the period 1992 to 1995 in the amount of $4,551, payable at the rate of $75 per month.

Subsequently, the Department apparently notified Martinez that his license would be suspended for failure to comply with the child support judgment. Martinez filed for judicial review in March 2008. In his motion, Martinez stated that the Department had denied his request for release of his driver's license. Martinez asked the trial court to release his driver's license so he could seek employment because the "field of employment that I am seeking requires a valid driver's license."

The Department opposed Martinez's request, stating in its response that Martinez was not in compliance with the support order and had not made a payment towards his child support obligations since November 2007.

Both Martinez and the Department appeared at the hearing on the motion on April 4, 2008. At that time, the trial court conditionally released Martinez's license for a three-month period and ordered Martinez to make ongoing child support payments of $123 per month, plus $105 per month toward arrearages, for a total monthly payment of $228. The matter was continued to July 3, 2008, for a further hearing. The trial court also instructed the Department to take Martinez's license if he missed a payment.

At the July 3 hearing, both Martinez and the Department were present. The matter was continued to August 14, 2008, after Martinez would not stipulate to a judge pro tem. The prior order was continued in full force and effect pending the August hearing.

At the August 14 hearing, both Martinez and the Department again were present. The trial court found that no payments had been made by Martinez and ordered the conditional release lifted. Martinez's license was suspended, with no further hearing on the motion. It was noted in the order that Martinez could refile for a release, "IF NECESSARY."

Martinez appeals from the order lifting the conditional release and reinstating the suspension.

DISCUSSION

The basis of Martinez's appeal is somewhat difficult to discern from his opening brief, but it appears that he contends he was denied due process when his driver's license was suspended. We conclude Martinez forfeited this issue.

Forfeiture of due process issue

In order to preserve an issue for appeal, the record must establish that the issue was raised in the first instance in the trial court. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1182 (*Menefee*).) Martinez did not obtain reporter's transcripts or a settled statement to substitute for the reporter's transcripts. (Cal. Rules of Court, rules 8.130(g), 8.134, 8.137.)

The motion filed by Martinez seeking judicial review of the suspension of his driver's license does not raise any due process issue. The motion stated Martinez was seeking reinstatement of his license so he could obtain work and pay his child support arrearages. Pursuant to Family Code section 17520, subdivision (k),[1] Martinez would not be allowed to raise any issue at the judicial review hearing that he did not set forth in the moving papers.

There is nothing in the record establishing Martinez ever asserted a violation of due process in the trial court. Due process claims that are not asserted in the trial court

[1]All further statutory references are to the Family Code unless otherwise specified.

are deemed forfeited. (*People v. Marchand* (2002) 98 Cal.App.4th 1056, 1060, citing *People v. Toro* (1989) 47 Cal.3d 966, 975-976.) Although an appellate court retains the discretion to address constitutional issues raised for the first time on appeal, we decline to do so in this case. (*People v. Brown* (1996) 42 Cal.App.4th 461, 471.) A resolution of the due process claim raised by Martinez would require factual determinations, not just a resolution of a question of law. The claim therefore is not reviewable. (*Menefee, supra,* 163 Cal.App.3d at p. 1182.)

Suspension of license was proper

Martinez has failed to reference any facts in the record establishing that he did not receive notice and opportunity for review as provided for in section 17520 prior to suspension of his license. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Martinez also does not provide any legal argument or citation to authority that the notice and opportunity provisions set forth in section 17520 do not comport with due process requirements.

The record is silent as to how and when Martinez originally was notified that his driver's license would be suspended for nonpayment of child support and that he had a right to request an administrative and judicial hearing. There is a presumption, however, that an official duty has been performed. (Evid. Code, § 664.) This presumption applies to administrative bodies and prevails unless there is affirmative evidence that an agency failed to comply with the requirements of its regulatory program. (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 919 (*Gilroy Citizens*).)

Section 17520, subdivision (e)(3)(A) provides for the suspension of the driver's license of any obligor who is more than four months in arrears in child support. The record establishes that Martinez owed over $27,000 in child support arrearages. Since child support was payable at the rate of $123 per month, Martinez clearly was more than four months in arrears.

Upon receiving notification from the Department that Martinez was more than four months in arrears, the Department of Motor Vehicles (DMV) was required to notify the obligor, in this case Martinez, that his driver's license would be suspended automatically 150 days after service of the notice. (§ 17520, subds. (e)(3)(B) & (f)(2).) The notice must contain information about obtaining a release of the suspension. (*Id.*, subd. (f).)

If the obligor wishes to challenge the suspension, he or she must make a written request for review to the Department. (§ 17520, subd. (h).) The Department is statutorily prohibited from issuing a release of a suspension unless the obligor is in compliance with a support order or judgment. (*Id.*, subd. (j).)

If a release of the suspension is denied by the Department, the Department is required to notify the obligor in writing that he or she may request judicial review of the determination. (§ 17520, subd. (j)(1)-(3).) If an obligor receives a driver's license release from either the Department or the trial court, but again falls out of compliance with any order for payment, the Department again must notify the DMV of noncompliance and the DMV must in turn suspend the driver's license. (*Id.*, subd. (l).)

We will not presume error. (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) We presume the Department and DMV complied with the statutory notice requirements. (*Gilroy Citizens, supra*, 140 Cal.App.4th at p. 919.) The record here affirmatively demonstrates that Martinez requested judicial review and his moving papers acknowledge he is in arrears in paying child support. This fact further supports the presumption that the Department and the DMV complied with their official duties.

Martinez was present in court when the trial court temporarily released the suspension and therefore had actual notice of the terms of the interim order for release of the suspension. Martinez again was present in court when the trial court affirmed the suspension of the driver's license for failure to comply with its interim order.

Martinez has failed to present any evidence, or any reasoned argument supported by citation to relevant authority, establishing that his due process rights were violated or that suspension of his driver's license was improper.

DISPOSITION

The August 14, 2008, order is affirmed.

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CORNELL, J.

WE CONCUR:

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WISEMAN, Acting P.J.

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HILL, J.