

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

MARIA MARQUEZ HERNANDEZ,)
OCTAVIO GERMAN, ITZEL MARQUEZ)
HERNANDEZ, by and through her next)
Friend LUIS MARQUEZ, and ADRIANA)
ROMERO, by and through her next)
Friend, ALEJANDRA CASTILLO,)

CASE NO. CI 13-2124

Plaintiffs,)

Vs.)

ORDER

DAVE HEINEMAN, Governor of)
Nebraska, in his official capacity,)
NEBRASKA DEPARTMENT OF)
MOTOR VEHICLES, and RHONDA)
LAHM, Director of the Nebraska)
Department of Motor Vehicles, in her)
Official capacity,)

Defendants.)

LANCASTER COUNTY
2019 JAN 22 PM 4 53
CLERK OF THE
DISTRICT COURT

This matter is before the court on the motion to dismiss filed on behalf of the defendants. The plaintiffs, all immigrants who have been granted deferred action status by the federal government, seek a declaratory judgment and injunctive relief pursuant to Neb. Rev. Stat. Sec. 84-911 (Reissue 2008) and the Uniform Declaratory Judgments Act, Neb. Rev. Stat. Secs. 25-21,149 et seq. (Reissue 2008). The plaintiffs claim that they are entitled to obtain Nebraska driver's licenses but the defendants are unlawfully refusing to issue such licenses on the grounds the plaintiffs fail to qualify for the licenses under the federal REAL ID Act and Neb. Rev. Stat. Sec. 60-484.04(2) (Cum. Supp. 2012).



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The plaintiffs, all of whom have been granted deferred action status, as noted above, also have been issued an employment authorization document, a Social Security number and a Form I-797, which is the form notifying the plaintiffs of the approval of his or her deferred action status.

The defendants argue that this action is barred by the doctrine of sovereign immunity and that the first amended complaint fails to state a cause of action. The parties have furnished the court with extensive briefs and I do not find it necessary to set forth in this order the legal authorities applicable to this matter since we all are aware of what law is applicable. I do note that a number of the cases cited by the plaintiffs are appeals pursuant to the Administrative Procedure Act.

It is well established that the Uniform Declaratory Judgments Act does not, in and of itself, waive the sovereign immunity of the State of Nebraska. In addition, the Act cannot be used to compel an affirmative act on the part of state officers. It can be employed to restrain a state official from performing an invalid act or from an abuse of authority. A review of the opinions of our appellate courts does not provide a great deal of clarity as to whether the particular relief sought is that to compel an affirmative act or to restrain an invalid one. In the case before this court, I cannot, at this stage of the proceedings, make a definite determination that what the plaintiffs seek is one or the other. While it is true that there is no Constitutional right to a driver's license, it is equally true that such a license cannot be denied based on an unlawful classification. Therefore, the motion to dismiss based on sovereign immunity under the Uniform Declaratory Judgments Act must be overruled.

The plaintiffs also seek a declaratory judgment under Section 84-911

concerning the validity of what they perceive to be a rule or regulation of the Department of Motor Vehicles. They also contend that the Department is required to issue rules and regulations in regard to the issuance of driver's licenses to persons such as the plaintiffs. First, there is no rule or regulation which has been adopted by the Department on this subject. Since there is no rule, there is nothing for this court to interpret pursuant to Section 84-911. The public statements by the Governor are not rules. We are all familiar with what might be termed political talk and such statements do not constitute rules or regulations. Further, this court has no authority to order the Department to issue particular rules or regulations as requested by the plaintiffs. While it is clear that Section 60-482 provides that the "director shall adopt and promulgate such rules and regulations as may be necessary to carry out the Motor Vehicle Operator's License Act " (emphasis added), it is not the province of this court to determine which rules are necessary and to order the Director to adopt the same. To the extent the first amended complaint seeks relief under Section 84-911, it must be dismissed.

The plaintiffs argue that they can satisfy the two document requirement of Section 60-484.04 by presenting an employment authorization document and a Form I-797. This may be doubtful since the Form I-797 merely is the notification of a person's deferred action status and does not appear to carry any independent significance.

As noted above, the motion to dismiss the claims under the Uniform Declaratory Judgments Act is overruled. The motion is sustained as to the relief sought under Section 84-911. Although I fail to see why Governor Heineman is a necessary or proper party, I will take no action on this issue at this time.

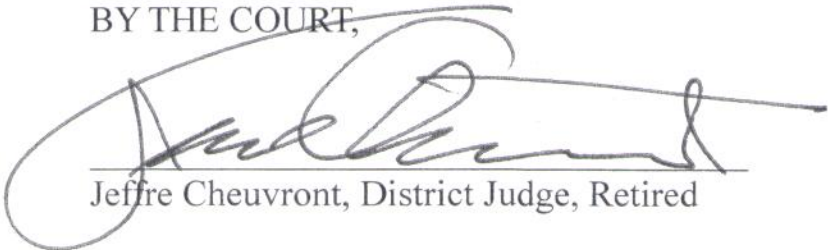
An observation; at the time of oral arguments on the motion to dismiss, I inquired of counsel as to why the plaintiffs did not choose a simpler and clearer avenue of attack. The plaintiffs could apply for a license, have it denied, request a hearing before the Department, and if unsuccessful, appeal to the district court pursuant to the Administrative Procedure Act. This would avoid fussing over jurisdiction and the issue of sovereign immunity which might not be finally decided for two or three years. However, the plaintiffs certainly have the right to proceed in any manner they determine appropriate.

If the plaintiffs wish to file a second amended complaint they are given 14 days from the date of this order to do so. The defendants are given 14 days thereafter to plead.

IT IS SO ORDERED.

Dated January 22, 2014.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Jeffrey Cheuvront", is written over a horizontal line. The signature is stylized and cursive.

Jeffrey Cheuvront, District Judge, Retired