NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1601

GARY L. RING, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, AND THE DIVISION OF WEIGHTS AND STANDARDS

Judgment Rendered: December 28, 2006

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Docket No. 481,767, Division "J"

Honorable Curtis A. Calloway, Judge Presiding

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Madro Bandaries
Gretna, LA
and
Kenneth A. Goodwin
New Orleans, LA

Counsel for Plaintiffs/Appellees
Gary L. Ring, et al.

Charles C. Foti, Jr.
Attorney General
James J. Bolner, Jr.
Keith M. Detweiler
Special Assistant Attorneys General
New Orleans, LA

Counsel for Defendant/Appellant
State of Louisiana, Department of Transportation and Development, Division of Weights and Standards

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BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

McDonald, J. dissents in part and concurs in part and assigns reasons.

HUGHES, J.

This is an appeal from a district court judgment certifying a suit as a class action. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

The factual and procedural history of this case was set forth by the supreme court in **Ring v. State, Dept. of Transp. and Development**, 2002-1367, pp. 1-4 (La. 1/14/03), 835 So.2d 423, 425-26 (**Ring I**), as follows:

> On March 9, 2000, Gary Ring, an Illinois resident, was operating an eighteen wheel vehicle owned by Landstar/Ligon on the interstate highway near Toomey, Louisiana, in Calcasieu Parish when he was stopped by a Calcasieu Parish Deputy and subsequently ticketed by an employee of the Department of Transportation and Development, Division of Weights and Standards, for failing to stop at a stationary weight enforcement scale, a violation of LSA-R.S. 32:388. At the time of the offense, the violation carried a fine of $2,000.00. Pursuant to LSA-R.S. 32:389, Ring, as a non-Louisiana resident, was required to pay the fine or face impoundment of his truck and cargo until such time as the fine was paid. Ring paid the fine under protest and sought administrative review of the citation before the Department of Transportation and Development's Violation Ticket Review Committee ("VTRC"). His protest was denied by the VTRC on June 15, 2000.
>
> On March 8, 2001, Ring instituted suit against the State of Louisiana, Department of Transportation and Development, and the Division of Weights and Standards ("W & S"). Ring's petition, styled a "Petition for Damages and Recognition as a Class Action," alleges that the enforcement and collection procedures set forth in LSA-R.S. 32:389 violate the constitutional rights of both resident and non-resident truck drivers who are issued citations by W & S personnel. In particular, Ring asserts that non-resident truck drivers are deprived of a substantive property right and liberty interest when, without notice or opportunity to be heard at a pre-deprivation hearing, they are required to pay fines "on the spot" or face impoundment of their vehicles. Ring alleges that because Louisiana truckers are not subject to these requirements, the State has placed an unfair burden upon non-residents in violation of the Equal Protection Clause of the United States Constitution and has impeded the free flow of interstate commerce. Further, Ring alleges that the enforcement and collection procedures set forth in LSA-R.S. 32:389 fail to provide both resident and non-resident truck drivers a meaningful pre-deprivation or post-deprivation hearing prior to the collection of fines or the seizure of property and the suspension of driving privileges in violation of the Due Process guarantee of the Fourteenth Amendment to the United States Constitution. Such action, Ring alleges, constitutes state

action in violation of 42 U.S.C. § 1983. Ring's petition seeks certification as a class action, a declaration of the illegality and/or unconstitutionality of LSA-R.S. 32:389 and damages.

The State responded to Ring's petition by filing exceptions of prescription and no cause of action. The prescription exception avers that Ring's suit was not filed within ninety days of payment of the assessed penalty as required by LSA-R.S. 32:389(C)(4)(a), and is therefore prescribed on its face. The no cause of action exception alleges that Ring's pleading fails to satisfy the requirements for class certification set forth in LSA-C.C.P. art. 591, and, in addition, challenges Ring's qualifications to represent the putative class.

On October 26, 2001, Ring filed a motion for partial summary judgment, seeking a declaration that LSA-R.S. 32:389 is unconstitutional. The motion came on for hearing on December 3, 2001, prior to resolution of the pending exceptions of prescription and no cause of action, prior to answer being filed by the State, and prior to class certification. At the close of argument, and over the State's objection, the district court granted Ring's motion and declared LSA-R.S. 32:389, in its form prior to its August 15, 2001 amendment, unconstitutional. In oral reasons, the court ruled that the statute violates the Equal Protection and Due Process guarantees and, in addition, violates the provisions of the Louisiana Administrative Procedure Act, specifically LSA-R.S. 49:955 et seq.

In the meantime, during the pendency of this proceeding, LSA-R.S. 32:389 was amended pursuant to Acts 2001, No. 1201, § 1, which became effective on August 15, 2001. The amended statute reduced the fine to $500.00 and set forth new procedures for the review of violations and payment of fines. On December 26, 2001, Ring filed a second motion for partial summary judgment and, alternatively, for partial new trial seeking a declaration that the amended version of the statute is also unconstitutional. On February 21, 2002, the district court signed a judgment granting Ring's second motion for partial summary judgment and declaring LSA-R.S. 32:389, as amended, unconstitutional. The court found that the amendment did not cure the constitutional defects in the statute. The court certified the judgments on both motions for partial summary judgment as final and the State appealed. This court has jurisdiction over that appeal pursuant to Article V, § 5(D)(1) of the Louisiana Constitution of 1974 which provides this court with appellate jurisdiction over all cases in which "a law or ordinance has been declared unconstitutional."

The supreme court ruled that the district court had decided the issue of constitutionality prematurely and remanded the matter to the district court for consideration of the State's challenge to Mr. Ring's standing to bring the action, in light of assertions to the contrary based on prescription under LSA-R.S. 32:389, and the allegation that Mr. Ring was ticketed prior to

amendment of the statute, but sought a ruling on pre- and post-amendment versions. **Ring v. State, Dept. of Transp. and Development**, 2002-1367 at pp. 8-9, 835 So.2d at 429.

On remand to the district court, the State filed a motion to have its exceptions of prescription and no cause of action set for hearing, and a hearing was set for May 5, 2003. Mr. Ring's subsequent motion seeking leave of court to file an amended petition was also set for hearing on May 5, 2003. Following the May 2003 hearing, the State's exceptions were denied, and plaintiff was allowed to file a "First Amended and Supplemental Petition for Damages and Recognition as a Class Action." Although not mentioned in the signed judgment, the minute entry of the district court for May 5, 2003 states that the court found the ninety-day prescriptive period to be "unreasonable" in overruling the exception of prescription. Presumably because no written ruling on the validity of the ninety-day prescriptive period appears in the 2003 judgment of the district court, the supreme court, on subsequent writ application by the State, issued the following action: "Writ granted. This court's appellate jurisdiction is not invoked. La. Const. Ann. Art. V, Section 5; La. Sup. Court Rule X, Section 5. Case transferred to the Court of Appeal, First Circuit." **Ring v. State, Dept. of Transp. and Development**, 2003-1772 (La. 6/27/03), 847 So.2d 1281 (**Ring II**).

Meanwhile, the amended and supplemental petition was filed in the district court and named the following additional plaintiffs: Stephen Tassin, Carl D. Picklesimer, and Mary Ellen Hoffman.

It was alleged that Mr. Tassin was ticketed on May 16, 2000 for bypassing a weigh station while driving an eighteen-wheel tractor-trailer on I-10 in St. Tammany Parish, and fined $2,000.00. Mr. Tassin, a domiciliary of St. Tammany Parish, was allegedly allowed to post his driver's license in lieu of immediately paying the fine, and he thereafter paid the fine under

protest on June 11, 2000. Although Mr. Tassin filed a separate suit on August 11, 2000, within the ninety-day time period allowed under LSA-R.S. 32:389 to contest a fine, he joined the instant suit along with Mr. Ring to assert that the ninety-day time period for filing suit is "far too short to conform with due process requirements."

Carl D. Picklesimer and Mary Ellen Hoffman, both out-of-state residents, were driving their respective trucks on I-20 in Caddo Parish on April 17, 2002, when they were each ticketed for bypassing a weigh station and fined $500.00; however, they were not required to pay the fine at the scene. Both Mr. Picklesimer and Ms. Hoffman filed protests, which were denied. The State instituted suits to collect the fines that were imposed. Thereafter, Mr. Picklesimer and Ms. Hoffman joined the instant suit, urging along with Mr. Ring and Mr. Tassin, that the ninety-day time limit to file suit against the State for the recovery of penalties paid under protest is unconstitutionally short.[1]

The amended petition further asserts that as to both resident and non-resident truck drivers, the enforcement scheme set up by the Weights and Standards Division, prior to the August 15, 2001 amendment of LSA-R.S. 32:389 and the March 20, 2002 revision of the Administrative Code, 73:1201 et seq., denied truckers a meaningful pre-deprivation and/or post-deprivation review and thus did not afford them due process. With respect to the pertinent provisions subsequent to their amendment, the amended petition maintains that procedures continue to "[fall] short of providing constitutionally adequate provisions to protect the procedural and substantive due process rights of ticketed truckers." According to plaintiffs,

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[1] Plaintiffs point out that the State can file suit up to one year to collect a fine under LSA-R.S. 32:389(C)(6). Further, plaintiffs cite inconsistencies and/or deficiencies in the Louisiana Administrative Code regarding the interruption of the ninety-day period following an administrative protest, and the failure of the administrative provisions to allow truckers an opportunity to cross-examine witnesses and/or the evidence against them.

these provisions are not in conformity with the Louisiana Administrative Procedure Act (LSA-R.S. 49:950 et seq.).[2]

Plaintiffs requested that they be named class representatives and that the class be defined as follows:

> All of those truck drivers who have paid on-site fines or posted on-site bonds, or paid fines within 30 days of receiving their citations, or who have been cited for violations and demanded fines therefor at a later date, all such citations being issued by W&S personnel, under the threat of seizure/forfeiture/impoundment of their trucks, cargo, and/or their driver's licenses, or without such threat, and which drivers have not received adequate notice nor an adequate opportunity to contest the fines in an administrative review or other hearing conducted pursuant to the Louisiana Administrative [Procedure] Act.

A hearing on the issue of certification was held by the district court on August 12, 2003, and the matter was taken under advisement. On September 11, 2003, written reasons were issued by the district court, and a judgment was thereafter signed on September 24, 2003, certifying the matter as a class action, naming Gary L. Ring, Stephen Tassin, Carl D. Picklesimer, and Mary Ellen Hoffman as class representatives, and defining the class as prayed for by plaintiffs. On October 15, 2003, the State filed alternative motions for suspensive appeal and/or for supervisory review. The district court set a return day of December 1, 2003 on the application for supervisory review and ordered the motion for suspensive appeal filed "as is" and unsigned.

On November 17, 2003, this court issued an interim order to the district court pursuant to the earlier transfer from the supreme court, as follows:

> [T]he trial court is

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[2] Subsequent to the joinder of Tassin, Picklesimer, and Hoffman, motions were filed to consolidate the other actions previously filed by these plaintiffs with the instant case. These other cases were also filed in the 19th Judicial District Court and involved similar issues. The motions to consolidate were granted and those suits (Number 508,176, 510,865, and 510,866) were consolidated with the instant suit in the district court.

> **ORDERED** to make a specific finding as to whether the prescriptive period of La. R.S. 32:389 is unconstitutional under the criteria set forth in **Atchafalaya Land Co. v. F.B. Williams Cypress Co.**, 146 La. 1047, 1064, 84 So. 351 (1920), affirmed, 258 U.S. 190, 42 S.Ct. 284, 66 L.Ed. 559 (1922), cited in **Ring v. State, Dept. of Transp. and Development**, 2002-1367 p.8 fn. 3 (La. 1/14/03), 835 So.2d 423, 429. Further action by this Court will be dependent on the findings of the trial court.

Ring v. State, Dept. of Transp. and Development, 2003-1331 (La. App. 1 Cir. 11/17/03) (unpublished). Upon receipt of this order, the district court issued "Specific Findings by the Trial Court as to the Constitutionality of the Prescriptive Period of LSA-R.S. 32:389," finding the ninety-day prescriptive period provided in LSA-R.S. 32:389 "unconstitutional because 1) it does not allow a reasonable amount of time for the assertion of a nonresident complainant's right to due process of the law and 2) it violates the equal protection clause of the United States and Louisiana Constitution." This court then issued the following writ action:

> **WRIT DENIED**. This Court declines to exercise its supervisory jurisdiction. Once a judgment is signed in this matter declaring the prescriptive period of La. R.S. 32:389 unconstitutional in accordance with the trial court's findings, the matter is appealable to the Supreme Court. See La. Const. Art. 5, Sec. 5(d).

Ring v. State, Dept. of Transp. and Development, 2003-1331 (La. App. 1 Cir. 1/5/04) (unpublished).

On January 21, 2004, the district court signed a judgment declaring that "the 90-day prescriptive period contained in LSA-R.S. 32:389 is unconstitutional." Thereafter, the State was granted a suspensive appeal directly to the Louisiana Supreme Court. The supreme court ruled that the district court failed to rule on the *merits* of the exception of prescription as directed by the court in **Ring I**, and the district court's ruling on the constitutionality of LSA-R.S. 32:389 was therefore premature. **Ring v. State, Dept. of Transp. and Development**, 2004-0671, p. 2 (La. 4/30/04),

871 So.2d 1108, 1109 (**Ring III**). The supreme court vacated the district court judgment declaring LSA-R.S. 32:389(C)(4)(a) unconstitutional and remanded the case to the district court "to determine the merits of the State's exception of prescription and other pending exceptions" as directed in **Ring I. Id.**

On August 9, 2004, this court ruled on the State's writ application complaining of the September 24, 2003 district court judgment certifying the matter as a class action, as follows:

> **WRIT DENIED WITH ORDER.** An interlocutory ruling certifying a class may create irreparable injury to defendants, thus justifying appellate review. See, e.g., **[Carr] v. GAF, Inc.**, 97-2325 (La. 11/14/97), 702 So.2d 1384, 1385. Therefore, it is hereby ordered that this case be remanded to the trial court with instructions to grant the relator an appeal pursuant to the October 15, 2003 pleading seeking, alternatively, a suspensive appeal or writs. See **In re Howard**, 541 So.2d 195 (La. 1989). A copy of this Court's action is to be included in the appellate record. Briefs are required in compliance with the Uniform Rules of Louisiana Courts of Appeal.

Ring v. State, Dept. of Transp. and Development, 2004-0543 (La. App. 1 Cir. 8/9/04) (unpublished), writ denied, 2004-2274 (La. 9/24/04), 882 So.2d 1135. The State's motion for suspensive appeal was granted by the district court on June 5, 2005. It is this appeal that is currently before this court.

On appeal, the State asserts the district court erred in: (1) permitting plaintiffs (Ring, Picklesimer, and Hoffman) to act as representatives of a class challenging the constitutionality of LSA-R.S. 32:389, because their claims have prescribed; and (2) defining an overbroad class of plaintiffs, because the proposed class seeks to lump together all persons ticketed from 1996 to 2000 for a myriad of violations that are in fact unique and independent of one another.

LAW AND ANALYSIS

The class action is a nontraditional litigation procedure permitting a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common or general interest to persons so numerous as to make it impracticable to bring them all before the court. The purpose and intent of class action procedure is to adjudicate and obtain res judicata effect on all common issues applicable not only to the representatives who bring the action, but to all others who are "similarly situated," provided they are given adequate notice of the pending class action and do not timely exercise the option of exclusion from the action. **State v. Sprint Communications Co., L.P.**, 2003-1264, pp. 6-7 (La. App. 1 Cir. 10/29/04), 897 So.2d 85, 90, writs denied, 2005-1180, 2005-1190 (La. 12/9/05), 916 So.2d 1056 and 1057; **Ford v. Murphy Oil U.S.A., Inc.,** 96-2913 (La. 9/9/97), 703 So.2d 542; **White v. General Motors Corp.**, 97-1028 (La. App. 1 Cir. 6/29/98), 718 So.2d 480, writ not considered, 98-2522 (La. 12/11/98), 729 So.2d 587, writs denied, 98-2502, 98-2511 (La. 12/11/98), 729 So.2d 590, 591.

The trial court is afforded great discretion in class action certification. Wide latitude must be given the trial court in considerations involving policy matters and requiring an analysis of the facts under guidelines helpful to a determination of the appropriateness of a class action. In other words, the trial court has great discretion in deciding whether a suit should be certified as a class action. Unless the trial court has committed manifest error in its factual findings, or has abused its discretion in deciding that class certification is appropriate, the trial court's determination should be affirmed. **State v. Sprint Communications Co., L.P.**, 2003-1264 at pp. 6-7, 897 So.2d at 90; **White v. General Motors Corp.**, 718 So.2d at 488;

Lewis v. Texaco Exploration and Production Co., 96-1458, p. 14 (La. App. 1 Cir. 7/30/97), 698 So.2d 1001, 1012.

The district court's written reasons for certifying this matter as a class action stated:

> This action was brought to determine whether this matter should be certified and recognized as a class action lawsuit. The factors to be looked at by the Court in determining whether or not to maintain a class action are set forth in LSA-C.C.P. [a]rt. 591. Under subsection (A) of that article the following requirements are set forth:
>
> (1) Numerosity;
> (2) Commonality of law or fact;
> (3) Typicality of claims or defenses;
> (4) Adequacy of representation; and
> (5) Objective definition of the class under ascertainable criteria regarding the class constituency, which will insure the conclusiveness of any judgment rendered in the case.
>
> Furthermore, once all of the five criteria in subsection (A) have been met, the Court must also find under subsection (B) that:
>
> (1) the prosecution of separate actions by or against individual members of the class would create a risk of:
>
> (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
>
> (b) adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of other class members not parties to those adjudications or would substantially impair or impede their ability to protect those interest[s]; or
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (3) common questions of law and or fact of the class as a whole predominate over questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
>
> Pertinent to subsection (B)(3) are the following:
>
> (a) interest of the members of the class in individually controlling the prosecution of separate actions;

(b) the extent and nature of any litigation concerning the controversy already commenced by members of the class;

(c) desirability or undesirability of concentrating the litigation in the particular forum;

(d) difficulties likely encountered in the management of a class action;

(e) the practical ability of individual class members to pursue their claims without class certification;

(f) the extent to which the relief demanded on behalf of the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation.

Counsel for plaintiffs assert that evidence provided by the [State] at the hearing of this matter, show[s] that from July 1996 to June 2003, almost 300,000 tickets were issued to truckers at weigh stations across the state and [the State] collected in excess of $22,000,000 in fines from those truckers on various violations. Further, plaintiffs contend that the prerequisites to maintaining a class action have all been met.... Counsel for the [State] disagreed. [The State] argue[s] that rather than define their class as all persons who have been ticketed for violating [LSA-]R.S. 32:388, these plaintiffs have sought to have this court adjudicate the rights of 292,203 persons whose claims may or may not have anything in common with the class representatives. According to the [State], at the hearing of this matter, an attorney with the Department of Transportation and Development testified that the 292,203 tickets written were for various violations of all of the statutes that the [D]epartment of Weights and Standards enforces. Further, [the State] contend[s] that given the lack of commonality among the class representatives, it is difficult, if not impossible to comprehend how there can be commonality among the proposed class. However, counsel for plaintiffs argue that the common question of law which applies to each class member is that not one of the individual members was offered a pre-/post-deprivation hearing which meets the constitutional due process requirements of the United States and Louisiana constitutions nor meets the statutorily-mandated requirements of the Louisiana Administrative Procedure[] Act.

...[T]his Court finds that the plaintiffs have met the necessary statutory requirements under LSA-C.C.P. [a]rt. 591 to have this case certified as a class action lawsuit.

We find no error in the judgment of the district court certifying this suit as a class action. Plaintiffs herein seek to contest the constitutionality of the enforcement and/or penalty system set up by the Louisiana Highway

Regulatory Act as it affects truck drivers, essentially asserting a lack of a meaningful pre- or post-deprivation hearing that comports with constitutional requirements of procedural and substantive due process, with respect to the fines authorized thereunder.[3] Thus, the suit presents legal issues common to all plaintiff truck drivers, which predominate over questions affecting individual plaintiffs. Further, it is desirable that the issues presented in this suit be adjudicated in one forum for the sake of consistency among the plaintiffs in this class respecting the highway regulatory laws of this state. We conclude the district court did not abuse its discretion in maintaining this class action.

We are unable to address the merits of the State's remaining assignment of error, concerning whether the plaintiffs Ring, Picklesimer, and Hoffman should be allowed to act as representatives of a class because their claims have allegedly prescribed, since the appellate record contains no valid judgment of the district court ruling on this issue. The prior judgment of the district court declaring LSA-R.S. 32:389(C)(4)(a) unconstitutional was vacated by the supreme court and the matter was remanded to the district court for a ruling on the merits of the State's exception of

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[3] Primarily at issue are the penalties imposed on truck drivers under LSA-R.S. 32:389 as to weights and standards. Violation tickets issued under that statute must be paid either at the time issued, by non-resident drivers, or within thirty days of issuance, by Louisiana resident drivers and non-resident drivers who post a bond. Payment of the ticket within the thirty-day time period is mandatory unless the driver requests agency review. The agency review to be accorded is required by the statute to be in accordance with the Louisiana Administrative Procedure Act. See LSA-R.S. 32:389(D). The "Violation Ticket Review Committee" (VTRC) was created in Title 73 of the Louisiana Administrative Code to perform agency review of weights and standards violation tickets. These regulations currently provide: "The protesting party will not be afforded the opportunity to personally appear before the violation ticket review committee, except as provided for in §1215 below. Only his written statement will be considered." La. Admin. Code, 73:1211 (B). Section 1215 provides that when reconsideration of a VTRC disposition is requested and if the protestor requests that he be allowed to personally appear before the committee, "he may be allowed by the committee to do so at the hearing on reconsideration." 73 La. Admin. Code 73:1215 (A). The testimony of VTRC committee members was submitted into evidence in connection with this matter. Some of the committee members could not recall whether protestors were allowed to appear in person; none could recall any protestor having actually appeared before the committee. The VTRC committee members were said to make decisions based on documentary evidence submitted by a Department of Transportation and Development administrator, which might also include a written statement by the protestor/trucker. One committee member testified that he "put[s] more stock in a law enforcement officer than [a] trucker."

prescription and other pending exceptions in **Ring III**, 2004-0671 at p. 2, 871 So.2d at 1109. The record presented to this court on appeal does not reflect that any additional action has been taken by the district court on the issue of prescription; therefore, this court has nothing to review on the issue of prescription.

CONCLUSION

For the reasons assigned herein, the judgment of the trial court certifying this matter as a class action is affirmed. All costs of this appeal in the amount of $1,749.86 are to be borne by the State of Louisiana, Department of Transportation and Development, Division of Weights and Standards.

AFFIRMED.

GARY L. RING, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, AND THE DIVISION OF WEIGHTS AND STANDARDS

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 1601

McDONALD, J. CONCURS IN PART AND DISSENTS IN PART:[1]

I respectfully disagree with the majority opinion that affirms the trial court certification of the class. As mentioned by the majority, the supreme court previously noted that the district court had failed to rule on the merits of the exception of prescription as ordered in *Ring I*, and found that a ruling on the constitutionality of the statute was premature until a ruling on the exception. The majority notes that there is no judgment in the record of a ruling on the issue of prescription. Therefore, I would remand the case to the district court to rule on the prescription exception. Should the district court find that the claims by these plaintiffs have not prescribed, I would further remand for the district court to reconsider the class certification.

In order for class certification, the court must find numerosity, commonality, typicality, and adequacy of representation. (La. C.Civ. Pro. art. 591 (A).

The purpose of the adequacy requirement is to protect the legal rights of the unnamed class members. (*Duhe v. Texaco*, 779 So.2d 1070, (La. App. 3 Cir. 2001) at 1079). This is a three prong test in Louisiana:

1) the chosen class representatives cannot have antagonistic or conflicting claims with other members of the class;

[1] Much of the information and citations concerning class actions comes from Complex Louisiana Litigation by Charles S. McCowan, Jr. and Calvin C. Fayard, Jr. and "A Practical Digest of Louisiana Class Action Decisions 2006" by the Honorable Thomas F. Daley, Charles S. McCowan, Jr., and Gerald E. Meunier.

2) the named representatives must have a sufficient interest in the outcome to ensure vigorous advocacy; and
3) counsel for the named plaintiffs must be competent, experienced, qualified, and generally able to conduct the proposed litigation vigorously.

Singleton v. Northfield Inc., 826 So.2d 55 (La. App. 1 Cir. 2002) at 64. Accord: *Duhe*, supra.

While it is likely that counsel for the class is very qualified, competent, and experienced, there is no evidence in the record to indicate anything about the attorney. There is nothing about how many years he has been in practice, the type of practice in which he has been engaged, or his experience with previous class action suits. Additionally, there is no evidence of counsel's ability to vigorously conduct the prosecution of this case. Again, there is no record of his experience in handling class action lawsuits nor his financial ability to handle this one.

The standard of review on appeal of a class action certification involves a review of a two-step process by the trial court in the certification process. "The trial court must first determine whether a factual basis exists for class action certification. If the trial court finds that a factual basis exists for certification, it then must exercise its discretion in deciding whether to certify the class. Appellate review must therefore consist of a two-part analysis. The trial court's factual findings in the first step of certification are subject to review under the manifest error standard. The trial court's ultimate decision regarding certification is then reviewed under the abuse of discretion standard." *Boyd v. Allied Signal*, 2003 CA 1840, (La. App. 1 Cir. 12/30/04)

I also have serious questions on the issues of numerosity and commonality. I believe the class as sought to be certified is overly broad and lacks commonality with the representatives. The named plaintiffs all

failed to stop at a weigh station and were ticketed. They are all alleged to have violated La. R.S. 32:388 and are, therefore, subject to the provisions of La. R.S. 32:389. The trial court defined the class as "All those truck drivers who have paid on-site fines or posted on-site bonds, or paid fines within 30 days of receiving their citations, or who have been cited for violations and demanded fines therefore at a later date, all such citations being issued by W&S [Weight and Standards] personnel, under the threat of seizure/forfeiture/impoundment of their trucks, cargo, and/or their driver's licenses, or without such threat, and which drivers have not received adequate notice nor an adequate opportunity to contest the fines in an administrative review or other hearing conducted pursuant to the Louisiana Administrative Procedures Act."

It seems that the proper class should only be those truckers who received tickets for failing to stop at a weigh station. That is the common thread between the four named petitioners. However, the petitioners have been certified as part of a class involving any truck drivers who had received any tickets for any offense. Also, the statute was amended with an effective date of August 15, 2001. The amendment provides for an administrative procedure to contest the tickets and fines. Whether this procedure is sufficient or not to satisfy due process and other constitutional requirements remains to be resolved. Thus, a determination should be made as to how many truckers were ticketed for failing to stop at a weigh station, and a further determination as to how many were ticketed prior to August 15, 2001, and how many were ticketed after August 15, 2001. This will satisfy the commonality issue and will determine if the numerosity question has been satisfied.

For these reasons I would reverse the judgment of the trial court and decertify the class. On remand, if the trial court determines that the claims have not prescribed I would remand for the trial court to determine how many truckers received tickets for failing to stop at a weigh station prior to August 15, 2001 and how many received tickets for the same offense after August 15, 2001, and to determine if the numbers in these two separate categories are sufficient to satisfy the numerosity requirement. If the trial court again certifies the case as a class action, the court should also determine the ability of plaintiff's counsel to adequately represent the class.