COURT OF APPEALS
DECISION
DATED AND FILED

June 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2578 **Cir. Ct. No. 2010CV1048**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

SONJA BLAKE,

PLAINTIFF-APPELLANT,

V.

DEBRA JOSSART, KERRY MILKIE AND RACINE COUNTY HUMAN SERVICES DEPARTMENT,

DEFENDANTS,

DEPARTMENT OF CHILDREN AND FAMILIES AND REGGIE BICHA,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: SHELLEY J. GAYLORD, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten, and Kloppenburg, JJ.

¶1 PER CURIAM. Sonja Blake appeals an order denying her claim for a declaratory judgment holding that her child-care certification was unconstitutionally revoked. We affirm.

¶2 Blake's complaint, as it pertains to this appeal, alleged that her childcare certification was revoked by Racine County due to a past criminal conviction. Blake's revocation was prompted by a change in the law that is thoroughly described in ***Jamerson v. DCF***, 2012 WI App 32, ¶¶12-17, 340 Wis. 2d 215, 813 N.W.2d 221, and which we do not repeat here. Blake sought a judgment declaring that the new law is facially unconstitutional, or unconstitutional as applied to her. The circuit court denied these claims on summary judgment.

¶3 On appeal, Blake first argues that WIS. STAT. § 48.685 (2013-14)[1] is facially unconstitutional because it creates arbitrary classifications that are not rationally related to a legitimate governmental purpose. However, in a footnote that starts this section of her brief, Blake appears to acknowledge that this equal protection argument has already been rejected in ***Brown v. DCF***, 2012 WI App 61, ¶¶35-40, 341 Wis. 2d 449, 819 N.W.2d 827, and that we must follow that decision. Therefore, we do not discuss this issue further.

¶4 In the last paragraph of that section of Blake's brief, she may be attempting to make an as-applied equal protection argument. However, she does not use that term, and does not cite any case law or legal standard relevant to such an analysis. Furthermore, as the Department points out, the standard she applies in

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

this argument actually appears to be the standard for a substantive due process claim. For these reasons, we do not address this argument further.

¶5 Blake next argues that the new version of the childcare law is unconstitutional because it creates an irrebuttable presumption. The presumption she appears to be referring to is that persons, like her, who have been convicted of an offense involving "fraudulent activity" are not permitted to attempt to regain their certificate by showing that they have been rehabilitated, thus creating an irrebuttable presumption that those who committed fraudulent activity are unfit for certification.

¶6 Blake acknowledges that the current vitality of the irrebuttable presumption concept is questionable. Blake does not cite any case law in which an occupational-regulation statute such as this one has been held unconstitutional for relying on such a presumption. She has not persuaded us that this is a basis on which to hold in her favor.

¶7 Finally, Blake argues that the statute violates substantive due process as applied to her because it arbitrarily and irrationally deprives her of her liberty interest in working in her chosen profession in state-regulated child care services. For purposes of this argument, we assume, without deciding, that Blake has a protected liberty interest in working in the field of state-regulated child care.

¶8 The core of Blake's argument is that it is irrational and arbitrary to deprive her of this interest solely because of a single conviction many years ago, before she was certified. She argues that her specific conduct was a "de minim[i]s" example of fraudulent activity, and is a very weak predictor of future likelihood to offend, in light of her many years of child care without a further offense.

¶9 As Blake acknowledges, in ***Brown*** we held that barring persons convicted of "crimes involving fraudulent use of funds from enumerated government programs is rationally related to a legitimate government interest in preventing further fraud" to the child care subsidy program. ***Brown***, 341 Wis. 2d 449, ¶40. Blake has not persuaded us that this relationship becomes irrational or arbitrary when the person's criminal conduct was a de minimis example of fraudulent activity.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.