STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1713

In the Matter of the Administrative Citations:
RFS 080611775, January 29, 2008, 800 Washington Avenue North,
Issued to: Waleed Ahmed Sonbol d/b/a Blue & White Taxi,

and

RFS 080611777, January 29, 2008, 800 Washington Avenue North,
Issued to: Waleed Sonbol d/b/a ABC Taxi.

Filed August 24, 2010
Affirmed
Minge, Judge

Minneapolis Department of Regulatory Services
File No. 080611775, 080611777

Scott J. Strouts, Minneapolis, Minnesota (for relator Sonbol)

Susan L. Segal, Minneapolis City Attorney, Joel M. Fussy, Assistant City Attorney, Minneapolis, Minnesota (for respondent city of Minneapolis)

Considered and decided by Minge, Presiding Judge; Hudson, Judge; and Muehlberg, Judge.*

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Relator taxicab-service company argues that a Minneapolis ordinance requiring it to have certain percentages of fuel-efficient and wheelchair-accessible vehicles violates

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

substantive-due-process protections in the Minnesota and United States Constitutions. We affirm.

FACTS

Relator Waleed Ahmed Sonbol operates Blue & White Taxi Service Corporation (B&W) and ABC Taxi (ABC). B&W and ABC are licensed as taxicab-service companies by respondent City of Minneapolis.

Minneapolis comprehensively regulates its taxicab industry. Minneapolis, Minn., Code of Ordinances (MCO) § 341.300 (2008). In October 2006, the city amended its ordinance to include a requirement that five percent of service companies' "operational fleets" be wheelchair accessible and an additional five percent be fuel efficient by the end of 2007. *Id*. § 341.300(b). The mandate phases in a ten-percent requirement in each category for the next year. *Id.*

The amendment was adopted after two hearings in which 49 people, including Sonbol, testified. A summary of the hearings indicates that some witnesses urged adoption of the fuel-efficiency requirement because of the environmental need to curb vehicle emissions. In support of the wheelchair-accessibility requirement, at least one witness and the Minneapolis Advisory Committee on People with Disabilities testified that disabled individuals were poorly served by taxicabs because currently licensed companies did not maintain enough wheelchair-accessible vehicles.

Following its adoption, the constitutionality of the amended ordinance was promptly challenged by a different taxicab-service company. *Rainbow Taxi v. City of Minneapolis*, No. A08-0993, 2009 WL 1444100 (Minn. App. May 26, 2009), *review*

denied (Minn. Aug. 11, 2009). In *Rainbow Taxi*, this court affirmed the validity of the wheelchair/fuel-efficiency provision on several grounds including the equal-protection provisions of the state and federal constitutions. No substantive-due-process challenge was raised or addressed in that litigation.

In January 2008, the city issued citations to Sonbol for violations of the wheelchair/fuel-efficiency provision. In his appeal to an administrative hearing officer, Sonbol did not dispute that he was in violation of both requirements. Rather, he argued that the ordinance violates constitutional substantive due process. Lacking authority to determine the constitutional challenge, the hearing officer affirmed the citations. *See* MCO § 2.100(g) (2008) (limiting hearing officer's scope of review). Sonbol appeals the decision by writ of certiorari to this court. *See* MCO § 2.110 (authorizing certiorari review of hearing-officer decisions by court of appeals); *In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) ("[A]n aggrieved party has the common law right to petition for a writ of certiorari pursuant to Minn. R. Civ. App. P. 120 and Minn. Stat. § 606.01.").

D E C I S I O N

This certiorari review allows consideration of questions of law. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). The evaluation of an ordinance's constitutionality is a question of law falling exclusively within the province of the judicial branch. *Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998). Where an aggrieved party was not allowed to raise a legal issue to the tribunal below, he may raise it for the first time on appeal if it is properly briefed and argued on an adequate record. *Id.*

Sonbol argues that MCO § 341, as amended, violates substantive due process prescribed by our state and federal constitutions. Sonbol has the burden of establishing that the ordinance is unconstitutional. *Press v. City of Minneapolis*, 553 N.W.2d 80, 84 (Minn. App. 1996). The due process clauses of the Minnesota and United States Constitutions provide that government cannot deprive a person of "life, liberty, or property without due process of law." U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7. When a statute does not affect a fundamental right, substantive due process only requires that the statute bear a rational relation to a legitimate state interest. *Reno v. Flores*, 507 U.S. 292, 305, 113 S. Ct. 1439, 1448-49 (1993); *Doll v. Barnell*, 693 N.W.2d 455, 461 (Minn. App. 2005), *review denied* (Minn. June 14, 2005).

I.

We initially address the city's argument that the equal-protection ruling in *Rainbow Taxi* is an adequate basis to reject relator's substantive-due-process claims. In *Rainbow Taxi*, this court affirmed the dismissal of another taxicab-service company's claim that the Minneapolis ordinance violated equal-protection rights. 2009 WL 1444100, at *2. An equal-protection analysis involves three questions: first, whether the statute provides for disparate treatment of similarly situated persons; second, if it does, whether the classification is either inherently suspect or deprives a fundamental right; and third, if not suspect or depriving of a fundamental right, whether the disparate treatment rationally relates to a legitimate governmental interest. *Cleburne v. Cleburne Living Ctr, Inc.*, 473 U.S. 432, 446, 105 S. Ct. 3249, 3257 (1985); *Bernthal v. City of St. Paul*, 376

N.W.2d 422, 424 (Minn. 1985); *Studor v. State*, 781 N.W.2d 403, 408 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

The argument that *Rainbow Taxi* effectively decided the substantive-due-process claim is as follows: (a) *Rainbow Taxi* rejected an equal-protection claim; (b) equal-protection claims involve a rational-basis test; (c) substantive due process involves a rational-basis test; and (d) therefore rejecting an equal-protection claim necessarily disposes of the substantive-due-process claim. But this syllogism is flawed because, as outlined above, equal protection involves more than the rational-basis test. Thus, rejecting an equal-protection claim does not *automatically* mean that a rational basis has been found.[1] Because *Rainbow Taxi* found that there was no disparate treatment of similarly situated persons, *Rainbow Taxi* never reached the rational-basis dimension of equal protection. *Rainbow*, 2009 WL 1444100, at *2. Therefore, our ruling in *Rainbow Taxi* is not an adequate basis for rejecting Sonbol's substantive-due-process argument, and we next turn to that argument.

[1] We acknowledge that there are cases stating, "if legislation does not violate equal protection, it does not violate substantive due process." *Everything Etched, Inc. v. Shakopee Towing, Inc.*, 634 N.W.2d 450, 453 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). But these cases have only applied such reasoning when application of the equal-protection test involved a determination that the statute actually had been found to have had a rational basis. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470, 101 S. Ct. 715, 727 (1981) (concluding that statute bears a rational relation to legitimate state objectives and therefore survives equal-protection and substantive-due-process claim); *Everything Etched*, 634 N.W.2d at 455 (finding legitimate purpose behind Minn. Stat. § 168B.08 (2000)); *see also Executive Air Taxi Corp. v. City of Bismarck*, 518 F.3d 562, 569 (8th Cir. 2008) ("A *rational basis* that survives equal protection scrutiny also satisfies substantive due process analysis." (emphasis added)).

The record of the city's hearings reveals that the purpose behind the fuel-efficient-vehicle requirement is environmental sustainability. Sonbol does not claim that this purpose falls outside the ambit of legitimate state interests and local police powers. *See* Minneapolis, Minn., City Charter ch. 4, § 5 ("The City Council shall have full power and authority to make . . . ordinances for the . . . good order of the City . . . ."); *see Can Mfrs. Inst., Inc. v. State*, 289 N.W.2d 416, 420 (Minn. 1979) ("[A] regulatory scheme designed to conserve resources, decrease pollution, and protect the environment unquestionably deals with state interests of great magnitude."). We note that requiring more fuel-efficient vehicles also reasonably promotes environmental protection by reducing emissions connected to smog and climate change. Sonbol has produced no evidence showing that the fuel-efficiency requirement lacks a rational relationship to this environmental objective.

The hearings also show that the requirement for wheelchair-accessible vehicles was based on an asserted need to better serve Minneapolis residents and visitors with physical disabilities. This interest is also legitimate. Sonbol points to testimony at the hearings that other taxicab-service companies have allowed permits for wheelchair-accessible taxicabs to go "dormant" due to lack of demand, and that his companies receive few calls for such taxicabs. But even if this testimony implied that taxicab services for handicapped individuals was adequate, other witnesses testified to long waits and inadequate service for customers dependent on wheelchairs. Because the city has the legislative discretion to resolve conflicting factual and policy claims in adopting an ordinance, we defer to the city council's determination that this is a legitimate need. *See*

Clover Leaf Creamery Co., 449 U.S. at 464, 101 S. Ct. at 724 ("States are not required to convince the courts of the correctness of their legislative judgments.").

Sonbol also asserts that the means employed by the city to achieve the wheelchair-accessible-vehicle target are oppressive and unreasonable; in other words, that the means are not rationally linked to the objective. If circumstances unfairly prevent compliance with an ordinance, the ordinance would unfairly deprive one of property, would be unconstitutionally arbitrary and oppressive, and would constitute a violation of substantive due process. *See Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990) (noting that substantive due process protects individuals from governmental deprivations that are not based on a fair procedure).

Here, Sonbol complains that, as a practical matter, the wheelchair requirement is expensive and unworkable. He points out compliance costs of $15,000 per vehicle and an additional $15,000 per year for maintenance and that nothing in the record challenges these figures. We recognize that this is a significant expense.

Sonbol argues it is important for the courts to recognize the nature of taxicab regulation in Minneapolis. The ordinance licenses taxicab services at two levels. *See* MCO ch. 341, art. IV (vehicle licenses); art. VI (service company licenses). The first level is the vehicle—every taxicab is licensed and must meet certain requirements. MCO §§ 341.480-696. The second level is the service company; all taxicabs are required to be affiliated with or owned by a taxicab-service company which manages significant aspects of taxicab operations. *Id*. The service companies are separately licensed and regulated by the city. *Id.* §§ 341.900-.980. According to Sonbol's arguments, his B&W and ABC

service companies have limited control over vehicles because all B&W and most ABC taxicabs are owned by the drivers as independent contractors. As a result, according to Sonbol, the ordinance imposes on the service companies a logistically dysfunctional burden of finding vehicle owners willing to gratuitously bear the $15,000 upfront and $15,000 annual operating cost. He argues that the service companies cannot magically meet this burden.

But Sonbol does not provide a record that demonstrates any such inability to comply. We do not have copies of contracts between the service companies and the vehicle owners or evidence of legal impediments to a service company's arranging the composition of its taxicab fleet to include wheelchair-accessible or fuel-efficient vehicles. Similarly, we are not referred to any particular law or ordinance that precludes Sonbol's service companies from making arrangements with taxicab owners to meet the requirements. Minneapolis may well have concluded that applying the fuel-efficiency and wheelchair-accessibility requirements to service companies was logical. Nothing shows why the service companies cannot contract with and subsidize a certain number of vehicle owners to have fuel-efficient and wheelchair-accessible vehicles and adjust the division of fares with the other owner/drivers to spread the cost of compliance over a vehicle fleet.

It is also significant that the taxicab business is traditionally licensed and closely regulated. The ordinance imposes vehicle-age and -safety requirements on taxicabs within service-company fleets, MCO §§ 341.595, .597, and provides that service companies must "[t]ake affirmative measures to insure that all of its taxicab owners and

drivers comply with the terms of this chapter." MCO § 341.960(a). The ordinance allows service companies to meet the required targets as they see fit. We understand that compliance may impose costs and risks on Sonbol. But the record does not show that Minneapolis has refused to increase fares or that the market will not allow for a necessary fare increase to cover the costs of the amended ordinance. On this record, Sonbol has not made a "clear showing" that the ordinance's means are unconstitutionally arbitrary, capricious, or oppressive.[2] *See Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970) ("The problems of government are practical ones and may justify, if they do not require, rough accommodations . . . ." (quotation omitted)).

Finally, we note that Sonbol's brief alludes to the Supremacy and Takings Clauses of the United States Constitution. *See* U.S. Const art. VI, cl. 2 (supremacy); amend. V (takings). Sonbol's appeal is, however, entirely based on substantive due process. Sonbol does not explain or argue that the ordinance violates the Takings or Supremacy Clauses, nor does he request relief based on those clauses. We decline to address these matters sua sponte, considering the strong judicial reluctance to strike down legislative enactments, *Press*, 553 N.W.2d at 84, and the presumption that federal laws do not preempt local laws dealing with local matters, *Hillsborough County, Fla. v. Auto. Med. Labs., Inc.*, 471 U.S. 707, 715, 105 S. Ct. 2371, 2376 (1985). Accordingly, we do not consider additional constitutional issues in connection with the ordinance. *See State*

[2] When asked at oral argument what alternative the city should pursue to ensure more wheelchair-accessible vehicles, Sonbol's counsel suggested that requirements be imposed on individual taxicabs as opposed to the service companies to which they associate with. Given the apparent number of driver-owners who only own a single vehicle, this solution offers no cost-spreading opportunity and appears less realistic.

Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc., 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue in the absence of adequate briefing).

In sum, we conclude that MCO § 341.300(b), requiring taxicab-service companies to have a certain percentage of their fleets wheelchair accessible and fuel efficient, does not violate Sonbol's substantive-due-process rights under the United States or Minnesota Constitutions.

Affirmed.

Dated: