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2012 IL App (3d) 110011-U

Order filed January 19, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

In the Matter of the FOID)	Appeal from the Circuit Court
Card Application of JAMES R.)	of the 9 th Judicial Circuit
HENSLEY, JR.,)	Knox County, Illinois
)	
Petitioner-Appellee,)	Appeal No. 3-11-0011
)	Circuit No. 10-MR-36
v.)	
)	
ILLINOIS STATE POLICE,)	Honorable
)	James B. Stewart
Respondent-Appellant.)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed motion to intervene filed by the Department of State Police (Department) after trial court ordered the Department to issue a firearm owners identification (FOID) card to petitioner even though he was prohibited under federal law from possessing a firearm.

¶ 2 Petitioner, James R. Hensley, applied to the Department for a FOID card. The Department denied Hensley's application because a battery conviction prohibited him from possessing a firearm under federal law. Hensley filed a petition with the circuit court for relief from the Department's

denial. The trial court granted Hensley's petition and ordered the Department to issue Hensley a FOID card. Thereafter, the Department filed a motion to intervene. Hensley filed a motion to strike or dismiss the Department's motion. The trial court granted Hensley's motion. We affirm.

¶ 3 In 2002, petitioner James R. Hensley, was charged with aggravated battery of a child and aggravated domestic battery for physically abusing the three-year son of his live-in girlfriend. In January 2003, Hensley pled guilty to battery. He was sentenced to 30 days imprisonment, a fine and two years conditional discharge.

¶ 4 In 2009, Hensley filed an application with the Department for a FOID card. The Department denied Hensley's application because his battery conviction involving domestic violence prohibited him from possessing a firearm under federal law.

¶ 5 In March 2010, Hensley filed a petition in the circuit court, pursuant to section 10 of the Firearm Owners Identification Card Act (Act) (430 ILCS 65/10 (West 2010)), for a hearing on the Department's denial. The petition stated in pertinent part:

"2. On or about January 23, 2003, Petitioner was convicted of Battery (Class A) in Knox County Case No. 02-CF-631. Petitioner was sentenced to two years conditional discharge.

3. Due to said conviction, Petitioner is currently prohibited from acquiring a Firearm Owner's Identification Card pursuant to 430 ILCS 65/8.

4. Petitioner has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within the last 20 years.

5. The underlying facts of Petitioner's conviction did not involve a firearm.

6. The circumstances surrounding Petitioner's conviction are unlikely to reoccur.

7. Petitioner has a reputation in his community as honest, hard working, law abiding and non-violent individual.

8. Petitioner desires to obtain a Firearm Owner's Identification Card so that he may legally acquire and possess a firearm for hunting purposes.

9. Granting the relief requested herein would not be contrary to the public interest."

Hensley served a copy of the petition on the Knox County State's Attorney.

¶ 6 A hearing on the petition was held on March 30, 2010. At the hearing, Hensley, his attorney and a Knox County Assistant State's Attorney were present. Following the hearing, the court entered an order finding, in part:

"5. Petitioner has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within the last 20 years.

6. The circumstances regarding Petitioner's 2003 criminal conviction and his reputation are such that the Petitioner is not likely to act in a manner dangerous to public safety.

7. Granting the relief requested in Petitioner's Petition would not be contrary to the public interest."

The court granted Hensley "relief from the prohibition from acquiring a Firearm Owner's Identification Card pursuant to 430 ILCS 65/8."

¶ 7 A copy of the order was served on the Department and received on May 24, 2010. On

August 2, 2010, the Department filed a motion to intervene for the limited purpose of moving to vacate the court's March 30, 2010 order. The motion alleged that the Department "has concerns regarding the Court's March 30, 2010 Order because Petitioner is prohibited from possessing firearms and ammunition pursuant to federal law."

¶ 8 Hensley filed a motion to strike or dismiss the Department's motion to intervene. The trial court held a hearing on both motions. At the hearing, the trial court found that "the State's Attorney adequately represents the People's interest and they did adequately represent the People's interests in this case." The court granted Hensley's motion to strike or dismiss and dismissed the Department's motion to intervene.

¶ 9 Intervention may be permissive or as a matter of right. *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995). A party is allowed to intervene as of right when (1) a statute confers an unconditional right to intervene, (2) a party who will be bound by an order or judgment will not be adequately represented by existing parties, or (3) a party will be adversely affected by the disposition of property subject to the court's control. 735 ILCS 5/2-408(a) (West 2010). Permissive intervention may be allowed when a statute confers a conditional right to intervene or when an applicant's claim and the main cause concern a common question of law or fact. 735 ILCS 5/2-408(b) (West 2010).

¶ 10 The decision to allow or deny intervention is within the discretion of the court and will not be overturned on review absent an abuse of discretion. *Ramsey Emergency Services, Inc. v. Illinois Commerce Comm'n*, 367 Ill. App. 3d 351, 365 (2006). A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Hope clinic for Women Ltd. v. Adams*, 2011 IL App (1st) 101463 ¶ 65.

¶ 11 Section 5 of the Act (430 ILCS 65/5 (West 2010)) provides that the Department shall issue a FOID card to every applicant found qualified under section 8 of the Act (430 ILCS 65/8 (West 2010)). Section 8 of the Act authorizes the Department to deny certain applications for FOID cards, including an application filed by "[a] person who is prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois State statute or by federal law." 430 ILCS 65/8(n) (West 2010).

¶ 12 Section 10 of the Act provides, in pertinent part:

"(a) Whenever an application for a Firearm Owner's Identification Card is denied, *** the aggrieved party may appeal to the Director of the Department of State Police for a hearing upon such denial, *** unless the denial *** was based upon a *** domestic battery, *** in which case the aggrieved party may petition the circuit court in writing in the county of his or her residence for a hearing upon such denial ***.

(c) Any person prohibited from *** acquiring a Firearm Owner's Identification Card under Section 8 of this Act may *** petition the circuit court in the county where the petitioner resides *** requesting relief from such prohibition and the *** court may grant such relief if it is established by the applicant to the court's *** satisfaction that:

(0.05) ***** the State's Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present

evidence and object to the petition;

(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card ***;

(2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety; and

(3) granting relief would not be contrary to the public interest." 430 ILCS 65/10 (West 2010).

¶ 13 "Read together, sections 8 and 10 'indicate a legislative intent that the Department have authority, in extraordinary cases, to grant a license to persons who have established their fitness to possess a gun, even though belonging to one of the enumerated classes.'" *Hiland v. Trent*, 373 Ill. App. 3d 582, 585 (2007) (quoting *Rawlings v. Illinois Department of Law Enforcement*, 73 Ill. App. 3d 267, 276 (1979)).

¶ 14 Hensley argues that the Department is not entitled to intervene in a section 10 proceeding because the Act does not give the Department an absolute or conditional right to do so. We agree.

¶ 15 Section 10 of the Act requires that a petition be served only on the State's Attorney of the county where the applicant resides. 430 ILCS 65/10(c) (West 2010). Nowhere does the Act require the petitioner serve the Department or name the Department as a party. *Braglia v. McHenry County State's Attorney's Office*, 371 Ill. App. 3d 790, 792 (2007); *Williams v. Tazewell County State's Attorney's Office*, 348 Ill. App. 3d 655, 659 (2004). Because section 10 of the Act makes no

mention of the Department as a party who may participate in proceedings brought thereunder, the statute does not confer an absolute or conditional right on the Department to intervene.

¶ 16 Hensley further argues that the Department was not entitled to intervention as of right because its interests were adequately represented by the State's Attorney's office. In *Braglia*, the court rejected the Department's argument that it should be allowed to participate in a section 10 proceeding:

"We see no reason why, in general, the Department is any better suited than the State's Attorney to represent the public's interests in these matters. Certainly, the State's Attorney has access to a FOID-card applicant's criminal record. Indeed, in cases involving certain types of criminal convictions, the State's Attorney may very well be more familiar with the relevant circumstances bearing on considerations of public safety." *Braglia*, 371 Ill. App. 3d at 795.

Here, the trial court found that the State's Attorney "did adequately represent the People's interests in this case." That determination was within the discretion of the court and will not be overturned on review absent an abuse of discretion. See *Ramsey Emergency Services, Inc.*, 367 Ill. App. 3d at 365. The court did not abuse its discretion in denying the Department intervention as of right.

¶ 17 Hensley also argues that the Department was not entitled to permissive intervention because the Department's decision to deny a FOID card does not share a common question of law and fact with the trial court's decision to grant a FOID card. We agree.

¶ 18 Under the Act, the Department and the circuit court have separate statutory obligations. The Department's responsibility is to review FOID card applications and deny them if there is a clear statutory disqualification. *Braglia*, 371 Ill. App. 3d at 795. The purpose of a section 10 proceeding

in the circuit court is to determine whether justice requires granting the application despite the disqualification. *Id.* Different issues must be considered in each proceeding. The Department, pursuant to section 8, considers if the applicant is a person who belongs to a class of individuals who may be denied a FOID card. See 430 ILCS 65/8 (West 2010). The circuit court, in a section 10 proceeding, determines whether, despite the applicant's membership in a certain class, granting the applicant a FOID card would be in the public interest, considering the applicant's criminal history and reputation. See 430 ILCS 65/10(c) (West 2010). Since the Department's decision under section 8 involves different questions of law and fact than the trial court's decision under section 10, permissive intervention does not apply here.

¶ 19 Nevertheless, the Department argues that it should be allowed to intervene because the trial court exceeded its authority by requiring the Department to issue Hensley a FOID card when he is prohibited by federal law from possessing firearms. We disagree.

¶ 20 Subsection 922(g)(9) of Title 18 of the United States Code states:

"It shall be unlawful for any person – *** who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which as been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(9) (2007).

Because of Hensley's conviction for battery against a person with whom he had a domestic relationship, Hensley is prohibited by federal law from possessing a gun. See *United States v. Hayes*, 555 U.S. 415 (2009). As a result, Hensley was disqualified from obtaining a FOID card under section 8(n) of the Act. See 430 ILCS 65/8(n) (West 2010).

¶ 21 Section 8(n) of the Act gives the Department authority to deny Hensley's application for a FOID card. See 430 ILCS 65/8(n) (West 2010). The trial court, however, is not prohibited from ordering the Department to issue Hensley a FOID card. See *Braglia*, 371 Ill. App. 2d at 796. Section 10(c) which allows the trial court to grant a FOID card to a person who has established his fitness to possess a gun even though he belongs to one of the classes enumerated in section 8. *Hiland*, 373 Ill. App. 3d at 586.

¶ 22 A trial court has explicit statutory authority, under section 10 of the Act, to order the Department to issue a FOID card despite a section 8 disqualification. *Braglia*, 371 Ill. App. 2d at 796. Thus, the court's order directing the Department to issue a FOID card to Hensley despite his section 8(n) disqualification did not exceed the court's authority. See *Hiland*, 373 Ill. App. 3d at 586; *Braglia*, 371 Ill. App. 2d at 796.

¶ 23 Finally, the Department argues that the trial court exceeded its authority by ordering the Department to issue Hensley a FOID card without an evidentiary hearing.

¶ 24 Section 10(c) of the Act authorizes a court to order the Department to issue a FOID card despite a section 8 disqualification where the applicant establishes "to the court's *** satisfaction" that (1) he has not been convicted of a forcible felony within 20 years, (2) the circumstances regarding the applicant's criminal conviction, the applicant's criminal history and his reputation are such that he is not likely to act in a manner dangerous to the public, and (3) granting relief would not be contrary to the public interest. 430 ILCS 65/10(c)(1)-(3) (West 2010).

¶ 25 Here, Hensley filed a petition, asserting that he met each of the requirements set forth in section 10(c) of the Act. An Assistant State's Attorney attended the hearing on Hensley's petition and agreed that Hensley could establish all of the requirements of section 10(c). At the hearing on

the petition, the court adopted the agreement of the parties and found that Hensley satisfied all of the section 10(c) criteria. Since the court was satisfied with the stipulation that Hensley had met the requirements of section 10(c), the court complied with the Act and did not exceed its authority.

¶ 26 The order of the circuit court of Knox County is affirmed.

¶ 27 Affirmed.