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2016 IL App (3d) 150511-U

Order filed December 20, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

PATRICK G. SMITH,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellee,)	Will County, Illinois.
)	
v.)	Appeal No. 3-15-0511
)	Circuit No. 15-MR-398
THE DEPARTMENT OF STATE POLICE,)	
)	The Honorable
Respondent-Appellant.)	John Anderson,
)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting respondent's motion to dismiss petition for review of the denial of petitioner's Firearm Owners Identification card application because petitioner did not meet the requirements of section 10(c)(4) of the Firearm Owners Identification Card Act (430 ILCS 65/10(c)(4) (West 2014)).

¶ 2 Petitioner Patrick Smith applied for a Firearm Owners Identification (FOID) card. Respondent Illinois State Police (ISP) denied Smith's application because he had a domestic battery conviction in violation of section 10(c)(4) of the Firearm Owners Identification Card Act

(FOID Act) (430 ILCS 65/10(c)(4) (West 2014)). Smith filed a petition for administrative review in the circuit court. ISP filed a motion to dismiss the petition, which the trial court granted. Smith challenges the trial court's grant of ISP's motion to dismiss, arguing (1) his petition for administrative review should be reviewed under the FOID Act (see 430 ILCS 65/10(a) (West 2014)), not the Administrative Review Law (ARL) (see 735 ILCS 5/3-103 (West 2014)); (2) his application was in compliance with section 10(c) of the FOID Act (430 ILCS 65/10(c) (West 2014)); and (3) he did not intentionally provide a false answer on his application in violation of section 8(h) of the FOID Act (430 ILCS 65/8(h) (West 2014)). We affirm.

¶ 3

FACTS

¶ 4

On February 24, 1987, Smith was convicted of delivery of a controlled substance. Smith submitted an application to ISP for a FOID card on January 11, 2006. ISP denied his application because of his 1987 conviction. Smith did not appeal the denial.

¶ 5

On February 21, 1996, Smith was convicted of domestic battery. Smith applied for a FOID card on April 16, 2014. On Smith's application, he was asked, "Have you ever been convicted of domestic battery or a substantially similar offense (misdemeanor or felony)?" Smith answered, "No."

¶ 6

On November 29, 2014, ISP denied Smith's application. In its letter, ISP stated that Smith had been arrested for domestic battery, and as a result, it was prohibited from issuing Smith a FOID card pursuant to state and federal law. The letter further stated that Smith could petition the circuit court to review his denial.

¶ 7

Smith filed a petition for administrative review pursuant to section 10(a) of the FOID Act in the circuit court on February 20, 2015. ISP filed a section 2-619 motion to dismiss plaintiff's

petition. 735 ILCS 5/2-619(a)(5), (9) (West 2014). The trial court granted ISP’s motion and dismissed Smith’s petition with prejudice. This appeal followed.

¶ 8

ANALYSIS

¶ 9

To note, ISP challenges the sufficiency of Smith’s appellate brief under Illinois Supreme Court Rule 341(eff. Jan. 1, 2016) and argues that Smith’s claims should not be reviewed. Smith was given an opportunity to revise his brief and this court has chosen to review the merits of Smith’s claims. See *Eickmeyer v. Blietz Organization, Inc.*, 284 Ill. App. 3d 134, 144 (1996) (“[r]eviewing court is entitled to have issues clearly defined with pertinent authority cited, and cohesive legal argument presented”); *Schallau v. City of Northlake*, 82 Ill. App. 3d 456, 469 (1979) (“The rule [governing contents of appellant’s brief] is not a restriction on appellate jurisdiction, and may be overridden where necessary to reach a just result.”).

¶ 10

I. Timeliness

¶ 11

In its motion to dismiss, ISP claimed Smith’s petition was untimely because it failed to comply with the 35-day time limit under section 3-103 of the ARL (735 ILCS 5/3-103 (West 2014)). Smith argued that the 35-day time limit did not apply because he was not seeking review of a final administrative decision. Also, Smith claimed his petition was timely pursuant to section 10(a) of the FOID Act (430 ILCS 65/10(a) (West 2014)), which does not have a time limitation. On appeal, both parties agree that Smith’s petition should be reviewed under the FOID Act, not the ARL. For the reasons that follow, we agree with that conclusion.

¶ 12

A party cannot waive subject matter jurisdiction. *O’Neill v. Director of the Illinois Department of State Police*, 2015 IL App (3d) 140011, ¶ 16. “Therefore, a party can raise the issue at any time.” *Id.* The issue of subject matter jurisdiction is reviewed *de novo*. *Id.* “[W]here

a court lacks subject matter jurisdiction, it cannot be conferred by stipulation, consent, or waiver.” *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 761 (1997).

¶ 13 Section 10(a) describes a party’s right to petition the circuit for a hearing upon denial of his or her FOID card application. Section 10(a) states, in relevant part:

“Whenever an application for a Firearm Owner’s Identification Card is denied *** the aggrieved party may appeal to the Director 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 ***.”
430 ILCS 65/10(a) (West 2014).

¶ 14 Generally, final administrative decisions are reviewed in accordance with the ARL. Section 11(a) states:

“All final administrative decisions of the Department under this Act, except final administrative decisions of the Director of State Police to deny a person’s application for relief under subsection (f) of Section 10 of this Act, shall be subject to judicial review under the provisions of the Administrative Review Law ***.” 430 ILCS 65/11(a) (West 2014).

¶ 15 The 35-day time limitation to bring a complaint before the circuit court is addressed in section 3-103 of the ARL. Section 3-103 states:

“Every action to review a final administrative decision shall be commenced by the filling of a complaint and the issuance of

summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision ***.” 735 ILCS 5/3-103 (West 2014).

¶ 16 A similar issue was addressed by our court in *Williams v. Tazewell County State’s Attorney’s Office*, 384 Ill. App. 3d 655 (2004). In *Williams*, petitioner’s FOID card application was denied because of his domestic battery conviction. *Id.* at 656. This court addressed, among other things, the trial court’s subject matter jurisdiction to review the denial of petitioner’s application. *Id.* at 660. ISP claimed that *Williams* did not comply with the ARL in order for the trial court to review his claim under section 10 of the FOID Act. This court found that ISP’s denial letter was not a final administrative decision. *Id.* This court reasoned that the express language in section 10(a) does not state ISP’s denial is a final decision or subject to review under the ARL. *Id.* Furthermore, the language in the denial letter indicates a refusal to process more so than a denial of the application. *Id.* at 660-61. For these reasons, our court ruled that the petitioner’s petition was not subject to the ARL.

¶ 17 *Williams* correlates with the case at hand. ISP denied Smith’s FOID card application because of his domestic battery conviction, as was done in *Williams*. In the letter, it states, “The Illinois State Police is *prohibited*, under State and Federal law, from *issuing* a FOID card to anyone convicted of domestic battery.”(Emphases added.) Like *Williams*, the reasoning of ISP’s denial has more to do with ISP’s prohibition under state law from processing the application. In accordance with *Williams*, ISP’s denial letter was not a final administrative decision and, thus, was not subject to review under the ARL. Therefore, Smith’s petition was timely under section 10(a) of the FOID Act.

¶ 18 II. Section 10(c) of the FOID Act

¶ 19 ISP argued Smith did not meet the required elements under section 10(c) of the FOID Act because Smith’s domestic battery conviction violates section (10)(c)(4), which prohibits the possession of a FOID card if such possession violates federal law. Smith alleged he met the requirements of section 10(c) because according to *Coram v. State of Illinois*, 2013 IL 113867, section 921 of the Gun Control Act of 1968 (10 U.S.C. § 921 (2012)) provides relief from section 922 firearm disabilities (18 U.S.C. § 922 (2012)) and, therefore, the requirement of section 10(c)(4).

¶ 20 “Section 2-619 of the Code allows a defendant to file a motion for involuntary dismissal of an action or a claim based upon certain defects or defenses.” *Kolacki v. Verink*, 384 Ill. App. 3d 674, 677 (2008) (citing 735 ILCS 5/2–619 (West 2006)). A section 2-619 motion to dismiss is reviewed *de novo*. *Id.* “In conducting that review, the reviewing court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party.” *Id.*

¶ 21 Section 10(c) provides procedures for seeking relief from firearm prohibitions. Section 10(c) states, in pertinent part:

“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) when in the circuit court, 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, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

(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;

(3) granting relief would not be contrary to the public interest; and

(4) granting relief would not be contrary to federal law.”

430 ILCS 65/10(c) (West 2014).

¶ 22 Section 10(c)(4) states that a person is prohibited from owning a FOID card if ownership is contrary to federal law. Section 922(g)(2) of the Gun Control Act of 1968 states:

“It shall be unlawful for any person—

* * *

(9) 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 has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g)(9) (2012).

¶ 23 Section 921(a) defines a misdemeanor crime of domestic violence as “a misdemeanor under Federal, State, or Tribal law” and “has, as an element, the use or attempted use of physical force, or the threatened use of deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” 10 U.S.C. § 921(a) (2012).

¶ 24 Smith’s conviction for domestic battery fits the definition of a misdemeanor crime of domestic violence under section 921(a). Smith’s conviction is a misdemeanor under state law because he was convicted of a Class A misdemeanor of domestic battery pursuant to section 12-3.2 of the Criminal Code of 1961 (720 ILCS 5/12-3.2 (West 1996)). Also, section 12-3.2 correlates with the “use of force” element stated in section 921(a). For instance, under section 12-3.2, a person commits domestic battery when he or she “causes bodily harm” or “makes physical contact of an insulting or provoking nature.” 720 ILCS 5/12-3.2 (West 1996). Furthermore, this act must be upon “any family or household member.” *Id.* Thus, Smith was convicted of a misdemeanor crime of domestic violence as defined in section 921(a). Because Smith was convicted in Illinois of a misdemeanor crime of domestic battery, section 922(g)(9) prohibits Smith from possessing any firearm or ammunition. To accept Smith’s FOID card application would be contrary to the prohibition placed upon Smith in section 922(g)(9). Therefore, Smith did not meet the requirements of section 10(c)(4).

¶ 25 The parties dispute the supreme court’s reasoning in *Coram v. State of Illinois*, 2013 IL 113867, as to whether a trial court can grant relief from section 922 firearm disabilities after the 2013 amendment adding section 10(c)(4). Pub. Act 971150, § 545 (eff. Jan. 25, 2013). In *Coram*, our supreme court applied the prior version of section 10(c) that gave trial courts discretion to grant relief of a federal firearm disability because the 2013 amendment was not in effect at the time of *Coram*’s cause of action. *Coram*, 2013 IL 113867, ¶ 75. However, it noted that the 2013 amendment to the Act would continue to allow a trial court discretion to relieve a FOID card applicant from a federal firearm disability. *Id.* Two specially concurring justices and two dissenting justices disagreed with this reasoning and determined, in *dicta*, the 2013 amendment removes a trial court’s authority to grant relief from a firearm disability. *Coram*, 2013 IL 113867, ¶ 101 (Burke, J., specially concurring, joined by Freeman, J.) (Theis, J., dissenting, joined by Garman, J.).

¶ 26 *Coram*’s reasoning was later addressed by our court in *O’Neill v. Director of Illinois Department of State Police*, 2015 IL App (3d) 140011. In *O’Neill*, our court noted that there was no clear determination in *Coram* as to whether a trial court can grant relief from firearm disabilities. However, we found that, based on the express language of section 10(c)(4), the section “prohibits the court from granting relief where doing so would be contrary to federal law.” Therefore, we reversed the trial court’s reinstatement of plaintiff’s FOID card because it violated section 10(c)(4).

¶ 27 Based on the reasoning in *O’Neill*, the trial court was prohibited from relieving Smith’s firearm disability because Smith did not meet the requirements of section 10(c)(4). Accordingly, the trial court did not err in granting ISP’s motion to dismiss and, consequently, denying Smith’s petition for review of the denial of his FOID card application.

¶ 28 The issue of whether Smith's FOID card application complied with section 10(c)(4) resolves this appeal. Therefore, we will not address the issue of whether Smith provided a false answer on his application in violation of section 8(h) of the FOID Act (430 ILCS 65/8 (West 2014)).

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Will County is affirmed.

¶ 31 Affirmed.