2019 IL App (1st) 181791-U

FOURTH DIVISION
June 27, 2019

No. 1-18-1791

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES WHITMORE, Plaintiff-Appellant, v. ILLINOIS STATE POLICE; FIREARMS SERVICES BUREAU; LEO P. SCHMITZ, DIRECTOR OF THE ILLINOIS STATE POLICE; and THE CONCEALED CARRY LICENSE REVIEW BOARD, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 17 CH 9724 Honorable Celia Gamrath, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The decision of the Illinois Concealed Carry License Review Board to deny plaintiff's application for a concealed-carry license was not clearly erroneous.

¶ 2 This matter arises from judicial review of a final administrative decision of the Illinois Concealed Carry License Review Board (Board) denying plaintiff James Whitmore a concealed-

carry license under the Firearm Concealed Carry Act (Act) (430 ILCS 66/1 *et seq*. (West 2016)). The Board denied plaintiff a license to carry a concealed firearm following its determination that plaintiff posed a danger to himself or others, or posed a threat to public safety. 430 ILCS 66/10(a), 20(g) (West 2016). Plaintiff appealed this decision to the circuit court, naming as defendants the Board; the Illinois State Police (State Police); Leo P. Schmitz, the director of the State Police; and the State Police Firearms Services Bureau, which notified plaintiff that his application for a concealed-carry license was denied. The circuit court affirmed the Board's decision. On appeal from this ruling, plaintiff, *pro se*, argues the Chicago police department (Chicago police) provided false police incident reports to the Board; the Board erred in denying his application because (1) he has not been arrested in the past 28 years and (2) he has never been convicted of a crime; and the Board's decision violated the second amendment. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In May 2016 plaintiff applied to the State Police for a license to carry a concealed firearm pursuant to the Act. 430 ILCS 66/1 *et seq*. (West 2016). After plaintiff submitted his application, the Chicago police objected based upon a reasonable suspicion that plaintiff was a danger to himself or others, or a threat to public safety. See 430 ILCS 66/15(a) (West 2016). The Chicago police supported its objection with two police incident reports and plaintiff's criminal history report.

¶ 5 The first incident report indicated that in June 2012, plaintiff was arguing with his father and two sisters, Pauline and Frankie, when plaintiff picked up a baseball bat and struck his father in the ear, Pauline on her wrist, and Frankie on her forearm. Plaintiff then fled the scene. According to the incident report, plaintiff's father was transported to a hospital. Pauline and

Frankie, however, did not sustain any noticeable injuries and therefore did not require medical attention. In addition, Pauline related to the Chicago police that plaintiff had "a history of mental disorders" and that he "becomes agitated when he does not take his medication." Pauline further disclosed that plaintiff left the family home and she intended to have plaintiff admitted to a psychiatric facility for treatment upon his return. The Chicago police suspended their investigation of the incident because plaintiff's family members declined to press charges against him.

¶ 6 The second incident report indicated that in August 2014, plaintiff became angry during an argument with Pauline and struck her about the face and body with his fist before fleeing the scene. Pauline sustained swelling in both arms and bruises to her forehead. The Chicago police suspended their investigation of the incident because plaintiff's sister declined to press charges against him.

¶ 7 Plaintiff's criminal history indicated he had been arrested for theft of service in 1987 and 1988, and for battery in 1990.[1]

¶ 8 The Board notified plaintiff by letter about the objection to his application and specifically referenced the incident reports in that they reflected he struck his sister in the face and body in 2014 and he struck his father and sisters with a baseball bat in 2012. The Board then provided plaintiff with an opportunity to respond and to submit additional evidence for the Board's consideration prior to its final decision.

¶ 9 Plaintiff replied by letter, alleging generally that the "law enforcement agency" violated his second amendment right to bear arms and that the superintendent of the Chicago police committed fraud and violated his civil rights. Plaintiff explained that the Chicago police

[1] "A person commits theft [of service] when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services." 720 ILCS 5/16-3(a) (West 1986).

produced "false" incident reports, he was actually the victim in the incidents, and he had never committed a crime. Plaintiff appended to his response: (1) his criminal history from the Illinois State Police, which listed his three arrests; (2) a copy of section 66/15 of the Act, which provides guidelines for when law enforcement agencies *may* object to an application (430 ILCS 66/15(a) (West 2016)) and circumstances under which the State Police *shall* object (430 ILCS 66/15(b) (West 2016)); and (3) an undated newspaper article indicating that the United States Supreme Court declined to review a Seventh Circuit decision upholding Illinois' requirements for obtaining a concealed-carry license.

¶ 10 After considering all the evidence, the Board issued its final order in which it determined by a preponderance of the evidence that plaintiff was a danger to himself or others, or posed a threat to public safety. Accordingly, the Board sustained the Chicago police's objection and directed the State Police to deny plaintiff's application for a concealed-carry license.

¶ 11 Plaintiff subsequently filed a complaint for administrative review in the circuit court of Cook County, arguing the Board's decision was contrary to the law. In support, plaintiff asserted that he met the requirements for obtaining a license under the Act (see 430 ILCS 66/10(a) (West 2016)) and he was not a danger to himself or others, nor did he pose a threat to public safety. Plaintiff then obtained counsel who filed a memorandum in support of the complaint. In his memorandum, plaintiff argued the Board's decision was against the manifest weight of the evidence where he was last arrested 28 years prior to submitting his application and he was not arrested or convicted in relation to the 2012 and 2014 incident reports. After the matter was fully briefed, the circuit court affirmed the Board's decision. Plaintiff filed a motion to reconsider, which the circuit court denied. Plaintiff then filed the instant appeal *pro se*.

¶ 12 ANALYSIS

¶ 13 Prior to addressing the merits of this appeal, we find it prudent to discuss the state of plaintiff's brief. Plaintiff's nine-page argument is disorganized, repetitive, and is predominantly comprised of incomplete and run-on sentences. He does not clearly set forth his arguments in a cohesive manner which can be understood. At best we can discern that plaintiff appears to challenge the Board's findings because he claims the Chicago police allegedly filed false incident reports, he has not been arrested in the past 28 years, he has never been convicted of a crime, and the decision to deny him a license violated his second amendment rights. We are unable to discern any coherent point beyond these basic contentions. Overall, we find that plaintiff's brief lacks developed arguments and otherwise fails to comply with the mandatory requirements of Illinois Supreme Court Rules 341 and 342. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; Ill. S. Ct. R. 341 (eff. May 25, 2018); Ill. S. Ct. R. 342 (eff. July 1, 2017).

¶ 14 First, plaintiff's brief lacks: "Points and Authorities" (Ill. S. Ct. R. 341(h)(1)); an introductory paragraph stating the nature of the action (Ill. S. Ct. R. 341(h)(2)); a statement of the issue or issues presented for review and the applicable standard of review for each issue (Ill. S. Ct. R. 341(h)(3)); a statement of jurisdiction (Ill. S. Ct. R. 341(h)(4)); a citation to the statute or constitutional provision involved (Ill. S. Ct. R. 341(h)(5)); a statement of facts (Ill. S. Ct. R. 341(h)(6)); and an appendix (Ill. S. Ct. R. 341(a)(9); Ill. S. Ct. R. 342).

¶ 15 Second, plaintiff's brief contains no citations to the record or to any authority in support of his position; he fails to "present reasoned argument." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15 ("Rule 341(h)(7) requires the appellant to present reasoned argument and citation to legal authority and to specific portions of the record in support of his claim of error"); Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). As our supreme court "has repeatedly held[,] *** the

failure to argue a point in the appellant's opening brief results in forfeiture of the issue." *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) (noting that "[p]oints not argued are waived").

¶ 16 We recognize that plaintiff is a *pro se* appellant. However, "[t]he fact that a party appears *pro se* does not relieve that party from complying as nearly as possible to the Illinois Supreme Court Rules for practice before this court." *Voris*, 2011 IL App (1st) 103814, ¶ 8. "This court is not a depository in which the burden of argument and research may be dumped." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80. "Although we seldom enter an order dismissing an appeal for failure to comply with supreme court rules, our sound discretion permits us to do so." *McCann*, 2015 IL App (1st) 141291, ¶ 20; *Holzrichter*, 2013 IL App (1st) 110287, ¶ 77 (stating that "[t]his court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341"); *Voris*, 2011 IL App (1st) 103814, ¶ 8 (noting that "[b]ased upon *** noncompliance, his appeal is subject to dismissal").

¶ 17 We observe, however, that defendants filed a response brief addressing plaintiff's "arguments." Therefore, to the extent that we are able to understand the issues he raises on appeal, we will consider their merits; those that are not sufficiently developed will be forfeited. *Vancura*, 238 Ill. 2d at 369; *Holzrichter*, 2013 IL App (1st) 110287, ¶ 77; *Voris*, 2011 IL App (1st) 103814, ¶ 8; Ill. S. Ct. R. 341 (eff. May 25, 2018).

¶ 18 Plaintiff appears to make three arguments: (1) the incident reports filed by the Chicago police were false; (2) the Board erred in denying his application because he has not been arrested in the past 28 years and he has never been convicted of a crime; and (3) the Board's decision violated his second amendment right to obtain a concealed-carry license.

¶ 19 We begin with a brief discussion of the concealed-carry licensing scheme created by the Act. 430 ILCS 66/1 *et seq.* (West 2016). The Act charges the State Police with issuing or

denying applications for a license to carry concealed firearms. 430 ILCS 66/10 (West 2016). Once an application is filed, the State Police must perform a background check on the applicant. 430 ILCS 66/35 (West 2016). In addition, "[a]ny law enforcement agency may submit an objection to a license applicant based upon a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety." 430 ILCS 66/15(a) (West 2016).

¶ 20 Sections 20(a) and 20(e) created the Board and tasked it with considering any law enforcement objections to the application. 430 ILCS 66/20(a), (e) (West 2016). Under section 20(g), the Board "shall affirm the objection of the law enforcement agency" and deny the applicant a license "[i]f the Board determines by a preponderance of the evidence that the applicant poses a danger to himself or herself or others, or is a threat to public safety." 430 ILCS 66/20(g) (West 2016).

¶ 21 If the Board denies an application, the applicant may petition the circuit court for a hearing on the denial. 430 ILCS 66/87(a) (West 2016). Judicial review of Board decisions is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2016)). 430 ILCS 66/87(b) (West 2016). Under the Administrative Review Law, we review the administrative agency's decision, not the decision of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009); *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶ 30.

¶ 22 The standard of review we apply to the Board's decision depends upon whether the question presented is one of fact, law, or a mixed question of fact and law. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005); *Jankovich*, 2017 IL App (1st) 160706, ¶ 30. We review an agency's conclusions of law *de novo*. *Jankovich*, 2017 IL App (1st) 160706, ¶ 31. Under a *de novo* standard, we perform the same analysis the administrative agency would perform. *Crittenden v. Cook County Comm'n on*

Human Rights, 2012 IL App (1st) 112437, ¶ 46. An agency's factual determinations are reviewed deferentially, and we reverse them only if they are against the manifest weight of the evidence. *Jankovich*, 2017 IL App (1st) 160706, ¶ 31. A factual finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Peach v. McGovern*, 2019 IL 123156, ¶ 50. When the issue involves a mixed question of law and fact, *i.e.*, the legal effect of a given set of facts, we apply a clearly erroneous standard. *Comprehensive Community Solutions, Inc.*, 216 Ill. 2d at 472. The resolution of a mixed question of law and fact is clearly erroneous only if the reviewing court is left with a "definite and firm conviction that a mistake has been committed." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 68. As the issues raised by plaintiff each invoke a different standard of review, we will address the appropriate standard in turn below.

¶ 23 Plaintiff first asserts the Chicago police fraudulently filed false incident reports against him. Plaintiff made the same argument before the Board, which declined to determine the incident reports submitted were falsified. The Board's finding was one of fact which we reverse only if it is against the manifest weight of the evidence, *i.e.*, if the opposite conclusion is apparent or if the finding appears to be unreasonable, arbitrary, or not based on the evidence. *Peach*, 2019 IL 123156, ¶ 50.

¶ 24 Here, the Board was presented with two incident reports indicating that in 2012 plaintiff struck his father and sisters with a baseball bat, and in 2014 he punched his sister Pauline about the face and body. Plaintiff responded with the unsupported assertion that the incident reports were "false." Moreover, plaintiff in his response acknowledged to the Board that the two incidents occurred by claiming he was the victim in both instances. Plaintiff was granted an

opportunity to present his version of events and demonstrate how he was the victim or how the incident reports were otherwise inaccurate, but he failed to do so. Given plaintiff's unsupported assertions and lack of any evidence, we conclude the Board's rejection of plaintiff's contention that the incident reports were false was not against the manifest weight of the evidence. See *id.*

¶ 25 Plaintiff next challenges the Board's decision because he has not been arrested in the past 28 years and he has never been convicted of a crime. The Board's decision to deny plaintiff's application was based on a finding that he is a danger to himself or others or a threat to public safety pursuant to the Act. Such a finding involves an examination of "the legal effect of a given set of facts" and will not be disturbed unless it is clearly erroneous. See *Comprehensive Community Solutions, Inc.*, 216 Ill. 2d at 472; *Jankovich*, 2017 IL App (1st) 160706, ¶ 31; *Perez v. Illinois Concealed Carry Licensing Review Board*, 2016 IL App (1st) 152087, ¶ 22. Given our holding that the Board did not err in relying on the incident reports, and based on the allegations in the reports of plaintiff's violent behavior coupled with plaintiff's failure to provide any meaningful explanation, we cannot say the Board's determination was clearly erroneous. See *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶ 68; *Perez*, 2016 IL App (1st) 152087, ¶ 22.

¶ 26 In reaching this conclusion, we observe that an objection from the Chicago police is not required to be based on a recent arrest or a prior conviction. 430 ILCS 66/15(a) (West 2016); *Perez*, 2016 IL App (1st) 152087, ¶ 19. The age of an offense is only relevant to an objection pursuant to section 15(b) of the Act, which requires the State Police to object if an applicant has five or more arrests within the seven years preceding the date of the application. 430 ILCS 66/15(b) (West 2016). Here, however, the objection was submitted pursuant to section 15(a) of the Act, which permits law enforcement agencies to object based upon a reasonable suspicion

that the applicant is a danger to himself or others, or a threat to public safety. 430 ILCS 66/15(a) (West 2016). Moreover, in rendering its decision, the Board is allowed "to consider all available state and local criminal history record information files." *Perez*, 2016 IL App (1st) 152087, ¶ 19. The Act was not intended to limit consideration for a concealed-carry license application to convictions. *Id*. ¶ 21. On the contrary, the Act intended to allow for a wide-ranging consideration of an applicant's criminal history. *Id*. The Board therefore properly considered the incident reports and arrest records submitted by the Chicago police, and its determination that plaintiff was danger to himself or others or a threat to public safety pursuant to the Act was not clearly erroneous. See 430 ILCS 66/10(a), 15(a), 20(g) (West 2016); *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶ 68; *Perez*, 2016 IL App (1st) 152087, ¶¶ 3-4, 14, 19, 21-22 (finding the Board properly considered a police report that did not lead to an arrest).

¶ 27 Finally, plaintiff contends the Board's decision violated the second amendment because he has a right to possess a concealed-carry license. Defendants maintain this contention is forfeited because plaintiff failed to develop his argument and provide citations to any authority or to the record. We agree. The entirety of plaintiff's argument is one sentence. His unsupported, one-sentence contention merits no discussion on appeal. See *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 205 ("The failure to cite any authority or to articulate an argument will result in forfeiture of that argument on appeal").

¶ 28 CONCLUSION

¶ 29 For the reasons stated above, we affirm the judgment of the circuit court of Cook County affirming the Board's order denying plaintiff's application for a concealed-carry license.

¶ 30 Affirmed.