



2010)). We affirm on other grounds.

¶3 Coleman, a resident of Effingham County, submitted an application to the Department for issuance of a FOID card. The Department denied his application on September 15, 2008, based upon Coleman's March 14, 2006, conviction for battery involving physical contact of an insulting or provoking nature. The underlying facts of the conviction involved a dispute between Coleman and his live-in girlfriend of three years during which he allegedly threatened her with a .44-caliber revolver. Coleman was originally arrested and charged with domestic battery, in violation of section 12-3.2(a)(2) of the Criminal Code of 1961 (720 ILCS 5/12-3.2(a)(2) (West 2004)), and aggravated assault with a deadly weapon (720 ILCS 5/12-2(a)(1) (West 2004)). These charges were reduced to the battery charge, which led to Coleman's plea of guilty on March 14, 2006. Coleman, on one occasion prior, in April 2005, had been arrested and charged with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2004)). This charge had also been reduced to battery involving physical contact of an insulting or provoking nature to which Coleman had pleaded guilty in 2005. According to the Department, in accordance with the federal Gun Control Act of 1968 (18 U.S.C. § 922(g)(9) (2008)), the Department is prohibited from issuing a FOID card to anyone convicted of a crime involving domestic violence. Coleman requested review of the denial, claiming that his domestic battery charges had been amended to allege only "physical contact of an insulting or provoking nature" as opposed to "bodily harm." The Department again denied his application, categorizing his convictions as involving domestic battery. Coleman then petitioned the circuit court on March 20, 2009, for an order directing the Department to issue him a FOID card. The petition and notice were served on the Effingham County State's Attorney only, as required by section 10(b) of the Act (430 ILCS 65/10(b) (West 2010)). Although he was not required to do so under the statute, Coleman also served notice of the hearing on his petition on both the State's Attorney and the Department. The Department did

not file an appearance or attend the hearing. On June 2, 2009, the court granted Coleman's petition requiring issuance of a FOID card after concluding that Coleman was convicted of an amended charge of battery with no allegation of domestic violence. Given the circumstances regarding the conviction and his criminal history, as well as his reputation and character, the court further concluded that Coleman was not likely to act in a manner dangerous to the public safety. The court opined that granting the relief sought would not be contrary to the public interest. The June 2, 2009, order was not received by the Department until August 16, 2011.

¶ 4 On September 14, 2011, the Department filed its petition to vacate, under section 2-1401 of the Code, arguing correctly that the court erred in failing to consider that Coleman should be denied a FOID card based on federal law, as set forth in the Gun Control Act of 1968 (18 U.S.C. § 922(g)(9) (2008)). According to the Department, federal law is incorporated into Illinois law under section 8(n) of the Act (430 ILCS 65/8(n) (West 2010)) and expressly prohibits Coleman from possessing a firearm based on his conviction for a crime of domestic violence. The United States Supreme Court noted in *United States v. Hayes*, 555 U.S. 415 (2009), that Congress extended the Act's prohibition on possession of a firearm by convicted felons in 1996 to include persons convicted of "a misdemeanor crime of domestic violence." In defining "misdemeanor crime of domestic violence," the Court reasoned that excluding a domestic abuser convicted under a generic use-of-force statute would frustrate the manifest purpose of the Act to extend the federal firearm prohibition to persons convicted of misdemeanor domestic violence, given that most domestic abusers were routinely prosecuted under general assault and battery laws. As a result, the Court declared that the existence of a domestic relationship need not be a defining element of the predicate offense to support a conviction under the Act for possession of a firearm by a person convicted of a misdemeanor crime of domestic violence. *Id.* at 420-21. Given that a

domestic relationship is not a required element of the offense for the battery conviction to be a crime of domestic violence under the federal Gun Control Act of 1968, the Department correctly points out that Coleman was convicted of a "misdemeanor crime of domestic violence." Accordingly, Coleman should have been barred from possessing guns or ammunition, and the Department's denial of his FOID card application should have been sustained.

¶ 5 The court, however, denied the Department's petition to vacate, asserting that the Department was not a party to the case. Even assuming that the Department's petition was properly before the court, the court further concluded that it had properly exercised its discretion under section 10(c) of the Act in ordering the Department to issue a FOID card to Coleman. The Department argues on appeal that the court erred in concluding the Department lacked standing to bring its section 2-1401 petition, that the Department was entitled to have the order granting Coleman a FOID card vacated under section 2-1401, and that the court exceeded its statutory authority and abused its discretion under section 10(c) of the Act by entering an order requiring the Department to issue Coleman a FOID card. While we agree with the State's position, we must affirm the decision of the trial court on other grounds.

¶ 6 The circuit court, in denying the Department's request for relief under section 2-1401, concluded that the Department lacked standing to bring the petition. The Department counters it has standing because it is intricately involved in the area of firearms regulation and in protecting the public from violations of the Act, given that its authority includes the exclusive right to grant, deny, or revoke FOID cards, except as provided by section 10 of the Act. See *People v. Pine*, 129 Ill. 2d 88, 542 N.E.2d 711 (1989) (nonparty Secretary of State had standing to appeal order directing issuance of judicial driving permit); see also *In re O.H.*, 329 Ill. App. 3d 254, 768 N.E.2d 799 (2002) (Department of Children and Family

Services had nonparty standing to appeal orders requiring it to place adjudicated delinquents in residential facilities); *People v. White*, 165 Ill. App. 3d 249, 518 N.E.2d 1262 (1988) (Department of Mental Health and Developmental Disabilities had standing to appeal conditional release order). Compare *Braglia v. McHenry County State's Attorney's Office*, 371 Ill. App. 3d 790, 863 N.E.2d 1150 (2007) (Department not required party to section 10 proceeding; therefore Department lacked standing to appeal order,) with *Hanson v. De Kalb County State's Attorney's Office*, 391 Ill. App. 3d 902, 909 N.E.2d 903 (2009) (Department had standing to appeal given that section 2-1401 petition is initial pleading in new cause of action). As the Department points out, it is the only entity interested in a statewide, uniform application of the Act. Following the reasoning of our supreme court as set forth in *Pine*, 129 Ill. 2d 88, 542 N.E.2d 711, we agree that the Department's overall role in the Act's statutory scheme constitutes a sufficient interest to confer standing to challenge the circuit court's order. This does not end the matter, however.

¶ 7 Section 2-1401 of the Code provides a statutory procedure for vacating a final judgment after 30 days from its entry. 735 ILCS 5/2-1401(a)(c) (West 2010). To be entitled to relief under section 2-1401, a petitioner must show by a preponderance of the evidence: specific factual allegations supporting the existence of a meritorious defense or claim; due diligence in discovering this defense or claim; the error of fact or valid claim or defense was not presented to the trial court during the original action through no fault of the petitioner; and due diligence in filing the section 2-1401 petition for relief. *Klose v. Mende*, 378 Ill. App. 3d 942, 946-47, 882 N.E.2d 703, 709 (2008); *Johnson v. Wal-Mart Stores, Inc.*, 324 Ill. App. 3d 543, 547, 755 N.E.2d 507, 511 (2001).

¶ 8 In this instance, the Department did not receive the June 2009 order requiring it to issue a FOID card to Coleman until August 16, 2011. Within 30 days of receiving notice of the order, the Department filed its petition to vacate. While the Department exercised due

diligence in filing its section 2-1401 petition once it received notice of the order, the Department still failed to timely file its petition. Section 2-1401(c) also states that the petition must be filed not later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2010). The Department did not file its petition until two years and two months after the order was entered, two months too late. As a consequence of this untimely filing, the circuit court no longer had jurisdiction to even consider the petition to vacate its prior judgment. The court, therefore, did not err in denying the Department's petition even if on the wrong basis.

¶ 9 The failure of the Department to monitor this case after receiving notice of the hearing, as well as the apparent lack of communication between the State's Attorney and the Department, has created a situation where Coleman will be allowed to receive a FOID card. Unfortunately, we have no choice but to affirm the judgment of the circuit court.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Effingham County denying the Department's petition to vacate a prior judgment.

¶ 11 Affirmed.