

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140683-U

NO. 4-14-0683

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 15, 2015

Carla Bender

4th District Appellate

Court, IL

ANDREW JAMES STOLP,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Schuyler County
SCHUYLER COUNTY STATE'S ATTORNEY,)	No. 13MR10
Respondent,)	
and)	
THE DEPARTMENT OF STATE POLICE,)	Honorable
Intervenor-Appellant.)	Alan Tucker,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the circuit court's order denying the Department of State Police's petition to intervene and remanded for further proceedings.

¶ 2 The Department of State Police (Department) revoked petitioner Andrew James Stolp's firearm owner's identification (FOID) card. The Department sent Stolp a letter stating it revoked his FOID card based upon his conviction of battery resulting from an incident of domestic violence.

¶ 3 Stolp petitioned the circuit court for relief, naming the Schuyler County State's Attorney as respondent. The court ordered the Department to reissue Stolp's FOID card. The Department filed a petition to intervene and a motion to vacate the court's order, which the court denied. The Department appeals, claiming the court erred in (1) denying the petition to intervene and (2) failing to consider the motion to vacate. We reverse and remand for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 On January 4, 2008, the assistant bureau chief of the Department wrote Stolp a letter, informing him his FOID card had been revoked due to his August 8, 2007, conviction for a misdemeanor battery stemming from a domestic-violence incident. (The circumstances and proceedings related to that conviction are not in the record before us.) The letter stated: "This action is in accordance with the Federal Gun Control Act of 1968 [(18 U.S.C. [§]922(g)(9)(2006))]. This makes it unlawful for any person convicted of a 'misdemeanor crime of domestic violence' to ship, transport, possess or receive firearms or ammunition. You are ineligible for an Illinois [FOID] card as a result of your conviction."

¶ 6 On March 21, 2013, Stolp filed a petition for relief in the circuit court of Schuyler County, naming Schuyler County State's Attorney as respondent, seeking a court order directing the Department to reissue his FOID card. This procedure is governed by section 10 of the FOID Card Act (430 ILCS 65/10 (West 2012)).

¶ 7 On September 26, 2013, the circuit court conducted a hearing on the petition. Stolp testified he was 36 years old and employed as a welder for Ameren. He said he and his wife, Holly, have two children together, ages 10 and 14. He and his family live in Littleton, Illinois, where he is a member of the village counsel and volunteer fire department. He said he would use his FOID card to hunt and shoot targets, which he had been doing since he "was old enough to walk." He said he has had a FOID card since he was 18 years old. He further testified he has never been convicted of a felony or any crime involving the use of a weapon.

¶ 8 Without objection by the State's Attorney, the circuit court granted the petition, finding Stolp was "not likely to act in a manner dangerous to the public safety." The court entered a written order, which contained the following additional findings: (1) granting Stolp

relief will not be contrary to the public interest, (2) it would otherwise be unjust not to grant Stolp relief, (3) Stolp has not been convicted of a forcible felony within the past 20 years, and (4) granting Stolp relief will not be contrary to federal law. The court ordered the Department to issue Stolp a proper FOID card.

¶ 9 In January 2014, Stolp filed a petition for indirect civil contempt, claiming the Department has "willfully and contemptuously failed and refused to obey this court's order" by not issuing him a FOID card. The Illinois Attorney General appeared and filed a response, asserting the director's conduct was not willful and therefore contempt could not be pursued against him personally. Instead, the Attorney General, on behalf of the Department, had anticipated filing pleadings to challenge the circuit court's September 2013 order as erroneously entered. Contemporaneously, the Attorney General, on behalf of the Department, filed a petition to intervene as a matter of right, claiming section 10(b) of the FOID Card Act (430 ILCS 65/10(b) (West 2012)) prohibited the circuit court from ordering the issuance of a FOID card since Stolp was "otherwise prohibited from obtaining, possessing, or using a firearm under federal law." Thus, the Attorney General argued, the circuit court's order was void as contrary to law. The Attorney General also filed a motion to vacate the court's order pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)).

¶ 10 On June 6, 2014, the circuit court conducted a hearing on the Attorney General's petition to intervene and motion to vacate, as well as Stolp's petition for indirect civil contempt. No evidence was presented. After considering the parties' arguments, the court denied the Attorney General's motion to intervene, finding the State's Attorney's representation was "adequate in this matter" and that the supreme court's decision in *Coram* was dispositive of the issues presented. See *Coram v. State of Illinois*, 2013 IL 113867. The court noted, in an

advisory manner, that if it were to consider the Attorney General's motion to vacate on its merits, it "would certainly deny that also." Addressing Stolp's petition for indirect civil contempt, the court found the Department was not "willful and contumaciously refusing to issue the card." Rather, the court assumed the Attorney General believed the Department had a viable legal issue in the voidness claim, thereby delaying the issuance of the card. The court dismissed Stolp's petition for contempt without prejudice, noting he could again seek a rule to show cause if he did not receive his FOID card within a reasonable time.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 The Attorney General asks this court to review the merits of its section 2-1401 motion to vacate and, ultimately, the merits of the circuit court's underlying order directing the Department to issue petitioner a FOID card. We will not do so, as we find any requested relief beyond a review of the propriety of the court's order denying the Attorney General's petition to intervene is not ripe for review. The circuit court did not allow the Attorney General to intervene as a matter of right in this case, and therefore, neither the circuit court nor this court has jurisdiction to entertain any subsequent motions filed by the Attorney General until the motion to intervene has been adjudicated to finality.

¶ 14 Section 2-408(a) of the Code (735 ILCS 5/2-408(a) (West 2012)) sets forth three alternative situations whereby a person or agency is allowed to intervene as a matter of right. Those situations are as follows: "(1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition

of property in the custody or subject to the control or disposition of the court or a court officer."
735 ILCS 5/2-408(a) (West 2012).

¶ 15 Intervention is designed to expedite litigation by including all individuals and entities involved in the same controversy or cause of action to avoid a multiplicity of actions. *Bishop v. Village of Brookfield*, 99 Ill. App. 3d 483, 487 (1981). The statute setting forth the requirements for intervention is to be liberally construed. *Maiter v. Chicago Board of Education*, 82 Ill. 2d 373, 381 (1980). Accordingly, the intervenor does not need to show a direct interest in the action, but he must demonstrate that he has an enforceable or recognizable right and more than a mere general interest in the subject matter of the action. *Maiter*, 82 Ill. 2d at 382.

¶ 16 When discussing the amount of discretion afforded circuit courts in determining whether to allow intervention, the First District noted in *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 144 (1984):

"[I]ntervention as of right should be distinguished from permissive intervention insofar as the exercise of discretion is concerned. The statute establishes a minimal 'commonality' requirement for permissive intervention, and expressly commits the decision whether to allow intervention or not to 'the discretion of the court.' [Citation.] With respect to intervention as of right, *** [w]e believe that the trial court's discretion is limited to determining timeliness, inadequacy of representation and sufficiency of interest; once these threshold requirements have been met, the plain meaning of the statute directs that the petition be granted."

¶ 17 Despite the fact the Attorney General did not file a petition to intervene until four months after the circuit court entered its order, the court did not address timeliness as an issue in its order of denial. Instead, the court noted only the State's Attorney's representation in the matter was adequate as grounds for denial.

¶ 18 The issue of whether the circuit court has the authority under the FOID Card Act to direct the Department to issue a FOID card when a petitioner has had a conviction that acts as a disqualifying event under federal law has recently become a litigation hotbed. As such, it is apparent the Department has repeatedly objected to the circuit court exercising such authority. Therefore, we conclude the State's Attorney's concession to the merits of petitioner's request for a FOID card can be characterized as "inadequate representation" in light of the Department's interests of complying with federal firearm disqualification guidelines. Further, because the Department is an "applicant [who] will or may be bound by an order or judgment in the action," we conclude the Department had an enforceable right that satisfies any concept of standing so as to be an appropriate party for intervention. See 735 ILCS 5/2-408(a) (West 2012).

¶ 19 Based on this analysis, we reverse the circuit court's order denying the Department's petition to intervene and remand for further proceedings consistent with this ruling. As an aside, we note the Department was allowed to provide this court with supplemental authority on the merits of the underlying issues as they relate to the Attorney General's section 2-1401 motion to vacate (735 ILCS 5/2-1401 (West 2012)). As stated above, we do not reach the merits of the motion to vacate because, in our opinion, the same is not ripe for review. However, we encourage the circuit court to consider the authority provided by the Attorney General and determine whether that persuasive authority is dispositive of the issues presented in this case.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we reverse the circuit court's judgment and remand for further proceedings consistent with our disposition.

¶ 22 Reversed and remanded.