

NOTICE
Decision filed 12/23/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140363-U

NO. 5-14-0363

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

WAYNE WAKEFIELD,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Lawrence County.
)	
v.)	No. 05-MR-75
)	
THE DEPARTMENT OF STATE POLICE,)	
)	
Respondent-Appellant)	
)	Honorable
(Lawrence County State's Attorney Patrick Hahn,)	Robert M. Hopkins,
Respondent).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Schwarm and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court was without jurisdiction to adjudicate petition for issuance of a FOID card.

¶ 2 Respondent-appellant, the Illinois Department of State Police, appeals the judgment of the circuit court of Lawrence County granting the petition of petitioner-appellee, Wayne Wakefield, and ordering the issuance of a firearm owner's identification (FOID) card. Wakefield originally applied to the circuit court for the issuance of a FOID card in 2005 which the circuit court granted in 2006. In 2014, Wakefield filed a new

petition for issuance of a FOID card under the same 2005 circuit court number. The court again granted Wakefield's petition, "retroactive" to 2006. The State Police appeals this latest decision, contending the circuit court lacked jurisdiction to adjudicate Wakefield's 2014 petition for the issuance of a FOID card because the circuit court was never re-vested with jurisdiction from the 2006 proceedings. The State Police also argues that Wakefield failed to state a claim for relief because he did not apply to the State Police for the issuance of a FOID card, after his previously issued card expired in 2011, before asking the circuit court to order the issuance of a card in 2014. Lastly, the State Police asserts on appeal that the circuit court lacked authority to order the issuance of a FOID card to Wakefield because he is precluded from possessing firearms as a matter of federal law as a result of his prior conviction for domestic violence. We reverse on the basis of jurisdiction.

¶ 3 On November 16, 2005, Wakefield filed his initial petition for issuance of a FOID card asserting that he had applied to the State Police for a card and was denied because he had a prior conviction for domestic battery. On April 12, 2006, the circuit court ordered the State Police to issue Wakefield a FOID card. Pursuant to that order, the State Police issued Wakefield a card on October 23, 2006. The card issued contained the warning: "The individual shown on this card is prohibited from possessing firearms or ammunition under Federal Law." At that time, FOID cards were valid for five years. The card Wakefield received therefore was set to expire on November 1, 2011. Wakefield then filed a petition seeking to expunge his domestic battery conviction so that the warning language on the FOID card would be removed. The circuit court granted that relief. The

State Police subsequently moved to vacate the order as void. After the circuit court denied the motion, the State Police appealed to this court. On appeal, we determined that the circuit court lacked authority to expunge Wakefield's domestic battery conviction. See *Wakefield v. Department of State Police*, 2013 IL App (5th) 120303, 994 N.E.2d 722. Specifically, we held: "we reverse the judgment of the circuit court of Lawrence County denying the State Police's petition to vacate the expungement order, and we vacate the order of expungement." *Wakefield*, 2013 IL App (5th) 120303, ¶ 7, 994 N.E.2d 722. The mandate subsequently issued to the circuit court stated: "It is the decision of this court that the judgment on appeal be REVERSED; ORDER VACATED." Neither the opinion nor the mandate remanded the case to the circuit court for further proceedings.

¶ 4 On February 18, 2014, Wakefield filed a new petition in the 2005 case asking the circuit court to order the State Police to issue him another FOID card. Wakefield claimed that the Illinois Supreme Court's decision in *Coram v. State*, 2013 IL 113867, 996 N.E.2d 1057, gave the circuit court authority to grant relief from federal disabilities on firearm possession resulting from state criminal convictions. Wakefield believed the *Coram* decision provided the authority for the court to issue a FOID card "without any federal firearm disability arising from the misdemeanor domestic battery conviction." The State Police objected to and moved to dismiss Wakefield's petition. The State Police argued that Wakefield failed to state a claim because he had not applied for a new FOID card since his 2006 card expired in 2011. Accordingly, Wakefield was not denied a FOID card by the State Police and the circuit court could not grant him relief because applying for a card with the State Police is a condition precedent to a circuit court action.

Additionally, because Wakefield failed to apply for a FOID card as required, Wakefield failed to exhaust his administrative remedies. The State Police also objected to Wakefield's petition on the merits asserting the federal Gun Control Act (18 U.S.C. 922(g)(9)) prohibited Wakefield from possessing a firearm because of his prior domestic battery conviction. The State Police asserted that the majority of the justices in *Coram* determined that the circuit court lacked authority to remove the federal prohibition on firearm possession by such individuals. When an individual is prohibited by federal law from possessing guns by virtue of a prior conviction of a misdemeanor crime of domestic violence, relief may not be granted under the state statute.

¶ 5 On June 9, 2014, the circuit court denied the motion to dismiss and granted Wakefield's petition. The court specifically found that Wakefield had shown good cause that a FOID card should be issued to him without federal firearm disabilities. The court then ordered that Wakefield be issued a FOID card "retroactively" to 2006 with the federal firearm disability removed. The State Police appeals this latest order of the circuit court.

¶ 6 The State Police's first argument on appeal is dispositive. The State Police contends that the circuit court lacked jurisdiction to consider Wakefield's 2014 petition for the issuance of a FOID card because our decision in *Wakefield* reversed and vacated the circuit court's earlier judgment. The matter was not remanded back to the circuit court. With no remand, the circuit court lacked jurisdiction to conduct any further proceedings in the case, including resolving Wakefield's subsequently filed petition for another FOID card. See *Glens of Hanover Condominium Ass'n v. Carbide*, 2104 IL App

(2d) 130432, ¶ 4, 6 N.E.3d 856; *Dalan/Jupiter, Inc. v. Draper & Kramer, Inc.*, 372 Ill. App. 3d 362, 368, 865 N.E.2d 442, 448 (2007). We agree. Given that the circuit court was never revested with jurisdiction, the court necessarily lacked jurisdiction to consider Wakefield's petition for the issuance of a FOID card. The power to make a valid order cannot survive the loss of jurisdiction. *Glens of Hanover Condominium Ass'n*, 2014 IL App (2d) 130432, ¶ 5, 6 N.E.3d 856. Recognizing that the question of subject matter jurisdiction cannot be waived (see *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 427, 732 N.E.2d 488, 492 (2000)), the order requiring the State Police to issue the FOID card is, therefore, void (see *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38, 32 N.E.3d 553 (void judgment is one entered by a court without jurisdiction)).

¶ 7 For the aforementioned reasons, we reverse and vacate the decision of the circuit court of Lawrence County as being void.

¶ 8 Reversed and vacated.