2018 IL App (3d) 160191-U

Order filed August 1, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THOMAS R. COPPENBARGER, Plaintiff-Appellee, v. DEPARTMENT OF ILLINOIS STATE POLICE, a division of the State of Illinois; HIRAM GRAU, solely in his official capacity as Director of the Illinois State Police; CONCEALED CARRY LICENSING REVIEW BOARD, an independent state authority created within the Department of Illinois State Police by the Firearm Concealed Carry Act; ROBINZINA BRYANT, solely in her capacity as Chair of the Concealed Carry Licensing Review Board; FIREARMS SERVICES BUREAU, a division of the Department of Illinois State Police; JESSICA TRAME, solely in her capacity as Firearms Services Bureau Chief within the Department of Illinois State Police; and UNKNOWN LAW ENFORCEMENT AGENCY, Defendants-Appellants.	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois, Appeal No. 3-16-0191 Circuit No. 14-MR-81 Honorable Michael D. Risinger, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The Board's final determination that the plaintiff posed a danger to himself or others or a threat to public safety was not clearly erroneous.

¶ 2 The plaintiff, Thomas R. Coppenbarger, filed an application with the defendant, the Department of Illinois State Police (Department), seeking a license to carry a concealed firearm in Illinois pursuant to the Firearm Concealed Carry Act (Act). 430 ILCS 66/1 *et seq.* (West 2014). The Washington Police Department objected to the plaintiff's application. The application was referred to the defendant, the Illinois Concealed Carry Licensing Review Board (Board), for administrative review. The Board denied the plaintiff's application because it determined that the plaintiff posed a danger to himself or others or a threat to public safety. See 430 ILCS 66/10(a)(4) (West 2014). The plaintiff sought review of the Board's decision before the circuit court of Tazewell County. The court reversed the Board's decision. The defendants appeal.

¶ 3 FACTS

¶ 4 On February 18, 2014, the plaintiff applied for a concealed carry license with the Department. The Department received an objection to the plaintiff's application by the Washington Police Department. The objection included materials detailing the plaintiff's convictions, arrests, and other contacts with law enforcement. The following provided the basis for the objection: (1) in 1997, the plaintiff was convicted of a city ordinance violation for possessing a pager on school property; (2) in 1998, the plaintiff was convicted of a city ordinance violation for disorderly conduct; (3) in 1999, the plaintiff was arrested for aggravated battery, but no charges were filed; (4) in 1999, the plaintiff was arrested for production of cannabis plants, but that charge was later dismissed after he underwent substance abuse treatment and completed community service; (5) in 2001 and 2002, the plaintiff failed to appear

in court for traffic tickets; (6) in 2004, the police encountered the plaintiff during a traffic stop and he stated that he was a gang member; (7) in 2005, the police encountered the plaintiff during a traffic stop and noted that he had a gun in his glove box; and (8) in 2011, the plaintiff was arrested for aggravated battery and damage to property, but those charges were dismissed.

¶ 5 A 1998 police incident report detailed that the plaintiff threatened to "kick [the] ass" of Donnie Hiland, and if jailed for it, the plaintiff said he would kill Hiland when he was released from jail. This threat occurred at the Kroger grocery store in Washington, Illinois, and was corroborated by an employee that overheard the encounter.

¶ 6 The details of the 2011 incident that led to the aggravated battery and damage to property charges were also part of the objection. Police reports indicated, that in July 2011, the plaintiff was driving a blue Chevrolet Blazer on Peoria Street and was waiting to make a left turn onto Tiezzi Lane in Washington, Illinois. Austin Dewalt, who was driving behind the plaintiff, observed that no oncoming traffic would have impeded the plaintiff from making the left turn, waited "a considerable amount of time," and then honked his horn. The plaintiff got out of the Blazer and ran toward Dewalt's car. The plaintiff bound himself into the air and landed with both feet on Dewalt's windshield, fracturing the glass and bowing it inward. Glass shards struck Dewalt's face and body. The plaintiff yelled at Dewalt to open his car door, which Dewalt complied with, because he feared that he would be further injured by the glass if he remained inside his car. The plaintiff then shut the car door on Dewalt's leg and punched Dewalt in the face, chipping the lenses of his glasses and bending the frames. The plaintiff and Dewalt wrestled in the street, and the plaintiff eventually ran back to the Blazer and drove away.

¶ 7 Officer Ryan Hunsinger responded to the scene and two witnesses corroborated Dewalt's account. Dewalt's passenger, Jarred Beckman, gave a description of the plaintiff and his vehicle

and provided the Blazer's license plate. Another witness, Nicholas Witmer, observed the incident take place as he was driving by and identified the plaintiff because they went to high school together. Officer Hunsinger determined that the license plate was registered to a Chevrolet belonging to the plaintiff and Christine Kullman at 209 Wilshire Drive in Washington, Illinois. Officer Hunsinger placed Dewalt and Beckman in the back of Officer Fussner's vehicle and drove them to the plaintiff's address. On arrival, they observed the Blazer exiting the driveway. Officer Hunsinger spoke to the driver, Kullman, and she stated that she was engaged to the plaintiff who was in Boston, Massachusetts. She stated that the Blazer had not been driven since 9:30 a.m. that day, about four hours earlier. Officer Hunsinger observed that the engine temperature was approximately 180 degrees Fahrenheit. Kullman refused to allow the officer's into her house to confirm that the plaintiff was not inside.

¶ 8 Three days later, Officer Steven Hinken filed a supplemental report stating that the plaintiff appeared at the Washington Police Department. The plaintiff was using a cane because he said that he had severe back pain due to ruptured discs. The police arrested the plaintiff for aggravated battery and felony damage to property. Two days later, Dewalt and Beckman went to the Washington Police Department to view a photo array. Dewalt and Beckman viewed the photographs individually and each identified the plaintiff as the perpetrator. In December 2012, nearly a year and half after the plaintiff's arrest, the charges against him were dismissed.

¶ 9 The Washington Police Department's objection was referred to the Board for a determination. The Board determined, by a preponderance of the evidence, that the plaintiff posed a danger to himself or others or a threat to public safety. Accordingly, the plaintiff was notified on April 10, 2014, that he was statutory ineligible for a concealed carry license.

¶ 10 On May 8, 2014, the plaintiff filed a *pro se* complaint for administrative review before

the circuit court of Tazewell County. The plaintiff challenged the Board's determination on three grounds: (1) he met all requirements under the Act for the license; (2) contrary to the Board's determination, he was not a threat to himself or others and did not otherwise present a threat to public safety; and (3) he was not given an opportunity to examine the materials relied on by the Board in making their determination, resulting in a due process violation.

¶ 11 On September 24, 2014, the defendants filed a motion to remand the case for further proceedings because the Illinois Administrative Code was amended on July 10, 2014. The defendants argued that the amendment provided, that whenever a law enforcement objection appeared sustainable on its face, the applicant would be given notice of the objection and an opportunity to submit any additional materials he would like the Board to consider in response to the objection. See 20 Ill. Adm. Code 1231.230 (2014), adopted at 39 Ill. Reg. 1518 (eff. Jan. 6, 2015) (adopting emergency rule at 38 Ill. Reg. 19571 (eff. Sept. 18, 2014)). The defendants requested that the circuit court remand the case to give the plaintiff notice of the law enforcement objection and an opportunity to submit materials for the Board's consideration. The plaintiff objected to this motion, arguing that it would subject him to a second violation of his due process rights. The court granted the defendants' motion to remand the case to the Board in accordance with the Administrative Code's July 2014 amendment.

¶ 12 On remand, the plaintiff argued, that because none of his arrests, except the ordinance violations, resulted in a conviction, he met the qualifications for a concealed carry license under section 25 of the Act (430 ILCS 66/25 (2014)). He disputed the allegation that he was a gang member. The Board issued its final administrative decision affirming the Washington Police Department's objection and denying his application for a concealed carry license.

¶ 13 The matter returned to the circuit court for review. The plaintiff filed a brief in support of

his complaint. He stated that his only encounter with law enforcement within the five years preceding his application was the 2011 aggravated battery and criminal damage to property incident and those charges were dismissed. He argued that (1) the Board violated his right to due process because information was presented to the Board without his knowledge or a chance to respond; (2) his mere possession of a Firearm Owner's Identification (FOID) card meant that he was not a "clear and present danger" and demonstrated that the Board did not consider his case on an individual basis; (3) the Board's vote tally indicated that a quorum was never present at any meeting when his case was considered, in violation of the Board's regulations; (4) the regulation allowing the Department's personnel to help the Board carry out its functions (20 Ill. Adm. Code 2900.100 (2014)) contradicted the Act because the Department could influence the Board's decision; and (5) allowing a law enforcement agency to object based upon its reasonable suspicion that an applicant posed a danger to himself or the public was too lenient of a standard.

¶ 14 The defendants responded that the Act has two requirements. First, the applicant must meet the minimum requirements of section 25 (430 ILCS 66/25 (West 2014)). Second, if a law enforcement agency has objected, the Department can only issue a license if the Board determines that the applicant is not a danger to himself or others or a threat to public safety (430 ILCS 66/10(a)(4) (2014)). The defendants stated that the record demonstrated that the plaintiff was informed of the objection, the identity of its sources, and he even responded to the objection. Therefore, they argued that this notice and opportunity to be heard satisfied due process. Additionally, the defendants argued that the plaintiff's remaining arguments lacked merit because there was no factual basis for his assertion that the Department's personnel influenced the Board's votes and the vote tally sheet was not used as an attendance record for any meeting.

¶ 15 The plaintiff responded that he did not receive a hearing to cross-examine adverse

witnesses or have an impartial ruling on the evidence. He also argued that the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (West 2014)) required in-person hearings for administrative cases. He argued that he received incomplete copies of the objection and the Board's votes. He again reasserted that no quorum was present and the record was insufficient to permit judicial review. Last, he argued that the evidence against him was hearsay.

¶ 16 In January 2016, the circuit court heard arguments on the aforementioned issues. In March 2016, the court issued an order reversing the Board's decision. In its order, the court found that the plaintiff was "never given a chance to testify" and viewed the Board's regulation authorizing a hearing solely at the Board's discretion "with a somewhat dubious eye." The court went on to note that the plaintiff met the qualifications of section 25 because he was over 21 years old, possessed a FOID card, had no warrants against him, had not been convicted of a misdemeanor involving the use or threat of force, had not been in residential or court-ordered treatment within the five years preceding his application, and he completed the requisite firearms training. The court noted the plaintiff's arrests and encounters with law enforcement and concluded that none resulted in a conviction or were not within the five-year period preceding his application. The court discussed the objection in detail, stating that the Washington Police Department lacked reasonable suspicion that the plaintiff posed a danger to himself or others or a threat to public safety. The court concluded that the Washington Police Department had no basis for its objection and the Board's decision was erroneous. The court ordered the Department to issue a concealed carry permit to the plaintiff. The defendants requested that the court stay its order pending appeal, which the court granted. The defendants appeal.

¶ 17 ANALYSIS

¶ 18 The defendants argue that (1) the Board's decision was not clearly erroneous because the

evidence demonstrated that the plaintiff was a danger to himself or others or a threat to public safety and (2) the circuit court erroneously reviewed the Washington Police Department's objection instead of the Board's decision and reweighed the evidence. The plaintiff, *pro* se, argues that the Board's decision was erroneous and the court's decision was proper.

¶ 19 I. Concealed and Carry Application Process

¶ 20 Section 25 of the Act (430 ILCS 66/25 (West 2014)) provides six qualifications for a concealed carry license. The applicant:

> "(1) is at least 21 years of age;
>
> (2) has a currently valid [FOID] card ***;
>
> (3) has not been convicted or found guilty in this State or in any other state of:
>
> (A) a misdemeanor involving the use or threat of physical force or violence to any person within the 5 years preceding the date of the license application; or
>
> (B) 2 or more violations related to driving while under the influence ***;
>
> (4) is not the subject of a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm;
>
> (5) has not been in residential or court-ordered treatment for alcoholism, alcohol detoxification, or drug treatment within the 5 years immediately preceding the date of the license application; and
>
> (6) has completed firearms training and any education component required under Section 75 of this Act." 430 ILCS 66/25 (West 2014).

¶ 21 The Act further provides that the Department "shall issue a license to carry a concealed firearm" to an applicant who:

"(1) meets the qualifications of Section 25 of this Act;

(2) has provided the application and documentation required in *** this Act;

(3) has submitted the requisite fees; and

(4) does not a pose a danger to himself, herself, or others, or a threat to public safety as determined by the *** Board in accordance with Section 20." 430 ILCS 66/10(a) (West 2014).

¶ 22 Upon receipt of an application, the Department shall conduct a background check of the applicant, which includes all available state and local criminal history records. 430 ILCS 66/35 (West 2014). The Department is also required, no later than 10 days after receiving an application, to enter the applicant's information into a database accessible by law enforcement agencies. 430 ILCS 66/10(j) (West 2014). Section 15(a) of the Act provides, that "[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 2014). If the Board makes a preliminary determination that the objection appears to be sustainable, the Board gives the applicant notice of the objection, basis of the objection, identity of the law enforcement agency that submitted it, and 15 days to respond with any information the applicant wishes the Board to consider in response to the objection. 20 Ill. Adm. Code 2900.140(e) (2014). If the Board determines, by a preponderance of the evidence, that the applicant poses a danger to himself or others or a threat to public safety, it must affirm the objection of the law enforcement agency and inform the Department that the applicant is ineligible for a license. 430 ILCS 66/20(g) (West 2014).

¶ 23 II. Administrative Review

¶ 24 Section 87(b) of the Act (430 ILCS 66/87(b) (West 2014)) subjects all final

administrative decisions of the Department and Board to judicial review under the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)). In administrative review cases, the appellate court reviews the decision of the administrative agency, not the determination of the circuit court. *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337 (2009). We review an administrative agency's conclusion on a question of law *de novo*, its factual findings to determine whether they are against the manifest weight of the evidence, and its conclusions of mixed questions of law and fact for clear error. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471-72 (2005).

¶ 25 We note that any issue that was not raised before the Board has been forfeited and may not be raised for the first time on administrative review. Our supreme court explained:

> "The rule of procedural default in judicial proceedings applies to administrative determinations, so as to preclude judicial review of issues that were not raised in the administrative proceedings. *** Additionally, raising an issue for the first time in the circuit court on administrative review is insufficient. The rule of procedural default specifically requires first raising an issue before the administrative tribunal rendering a decision from which an appeal is taken to the courts. Given that in administrative review cases the circuit courts act as the first-tier courts of review, the reason and logic behind that requirement are clear." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212-13 (2008).

¶ 26 III. The Board's Decision

¶ 27 The Board determined, by a preponderance of the evidence, that the plaintiff posed a danger to himself or others or a threat to public safety. Whether the plaintiff posed a danger to

himself or others or a threat to public safety is a mixed question of law and fact. Therefore, we review the Board's decision to determine whether it is clearly erroneous. See *Comprehensive Community Solutions*, 216 Ill. 2d at 472. "An administrative decision is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 273 (2009).

¶ 28 In reaching its decision, the Board considered the records included with the Washington Police Department's objection and the plaintiff's response to the objection. These records included convictions for possession of a pager on school property and disorderly conduct, an arrest for aggravated battery, an arrest for production of cannabis plants where charges were later dismissed after he underwent substance abuse treatment and completed community service, failure to appear in court for traffic tickets, various traffic stop encounters with the police, and an arrest and dismissed charges for aggravated battery and damage to property.

¶ 29 A 1998 incident report indicated that the plaintiff threatened to "kick" Hiland's "ass" and kill him if the plaintiff were jailed for it. This encounter was witnessed and corroborated by a grocery store employee. In 2011, the plaintiff was provoked by stranger's mere honk while driving. The plaintiff exited his vehicle, jumped onto Dewalt's windshield, slammed the car door on Dewalt's leg, broke Dewalt's glasses, and wrestled with Dewalt in the street. Dewalt's description of the attack and perpetrator and his notation of the Blazer's license plate were corroborated by Beckman. A passerby, Witmer, observed the encounter and identified the plaintiff because he knew the plaintiff from high school. When officers went to the plaintiff's house, Kullman stated that the plaintiff was in Boston and that the vehicle had not been driven in four hours. The officers' observation of the engine's temperature revealed otherwise. A few days later, the plaintiff appeared at the police station with a cane and explained that he had ruptured

discs. Dewalt and Beckman later identified the plaintiff in a photo array as the perpetrator.

¶ 30 Although some of the incidents in the plaintiff's criminal record are more serious than others, they demonstrate the plaintiff's pattern of criminality and disregard for the law. The 1998 and 2011 incident reports contained corroborated statements regarding the plaintiff's propensity for violence with even the slightest provocation. It is also notable that the plaintiff did nothing to explain or refute these criminal acts. See *Jankovich v. Illinois State Police,* 2017 IL App (1st) 160706, ¶ 82. Accordingly, we cannot fault the Board for its determination that the plaintiff posed a danger to himself or others or a threat to public safety.

¶ 31 Nonetheless, the plaintiff argues, that because the violent criminal allegations did not result in a conviction, he qualified for a concealed carry license under section 25 of the Act. It is true that the plaintiff met the qualifications for a concealed carry license under section 25. *Supra* ¶ 20. However, his interpretation of the Act renders section 10 superfluous. It is well settled that words and phrases in a statute are not to be considered in a vacuum, and instead, they should be considered in light of the statute as a whole, with each provision construed in connection with every other section. See *Corbett v. County of Lake,* 2017 IL 121536, ¶ 27. Section 10, entitled "Issuance of licenses to carry a concealed firearm," details when the Department "shall issue a license." Among other things, section 10(a) requires the Department to issue a license if the applicant meets the qualifications under section 25 *and* does not pose a danger to himself or others or a threat to public safety. See 430 ILCS 66/10(a) (West 2014); *supra* ¶ 21. Thus, the Department need only issue a license when the applicant meets all criteria in section 10—merely meeting the qualifications under section 25 does not entitle an applicant to a license.

¶ 32 The plaintiff also takes issue Board's determination because the records it relied on contained hearsay. We disagree because "[t]he language of the Act establishes the intent to

permit the admission of hearsay evidence before the Board for considering a concealed carry license application." *Perez v. Illinois Concealed Carry Licensing Review Board*, 2016 IL App (1st) 152087, ¶ 24. The plaintiff also argues that the Washington Police Department's objection to his application was unwarranted and that the circuit court's decision in this case was proper. We decline to decide specifically whether the Washington Police Department's objection was proper or whether the circuit court properly applied the law because the scope of our review is limited to deciding whether the Board's final determination was clearly erroneous. See *Outcom*, 233 Ill. 2d at 337. We emphasize that we only review the Board's decision in administrative review cases and a circuit court's determination in such cases is inconsequential. See *id.* As a final matter, neither party briefs the others issues raised before the circuit court and they were never raised before the Board. *Supra* ¶¶ 13-14. Therefore, we need not consider them. See *Cinkus*, 228 Ill. 2d at 212-13 (issues not raised in administrative proceedings are precluded from judicial review); *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56 (a reviewing court is not simply a depository into which a party may dump the burden of argument and research).

¶ 33 For the foregoing reasons, we cannot say that we have a definite and firm conviction that the Board committed a mistake in this case. See *Exelon*, 234 Ill. 2d at 273. Accordingly, the Board's final determination was not clearly erroneous.

CONCLUSION

¶ 34 The judgment of the circuit court of Tazewell County is reversed.

¶ 35 Reversed.