2018 IL App (4th) 170395-U

NO. 4-17-0395

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 3, 2018
Carla Bender
4th District Appellate
Court, IL

JOSHUA D. MEYERS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
LEO P. SCHMITZ, Director of the Illinois State Police,	)	No. 15MR1066
	)	
Defendant-Appellee.	)	Honorable
	)	Rudolph M. Braud, Jr.,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the circuit court properly granted summary judgment in favor of defendant, after finding (1) plaintiff was not entitled to relief based on the cancellation of his resident concealed carry license, and (2) the Illinois State Police did not violate the Illinois Firearm Concealed Carry Act and the Illinois Administrative Procedure Act by refusing to accept plaintiff's application for a nonresident concealed carry license because Florida firearm laws are not "substantially similar" to Illinois firearm laws.

¶ 2 Plaintiff, Joshua D. Meyers, appeals the judgment of the circuit court denying his motion for summary judgment and granting summary judgment in favor of defendant, Leo P. Schmitz as Director of the Department of the Illinois State Police (Department). On appeal, plaintiff argues (1) he is entitled to relief because the Department improperly "cancelled" his resident concealed carry license (CCL) upon learning that he was no longer an Illinois resident and (2) the Department violated the Illinois Firearm Concealed Carry Act (Concealed Carry Act) and the Illinois Administrative Procedure Act (APA) by refusing to accept plaintiff's application

for a nonresident CCL because Florida firearm laws are "substantially similar" to Illinois firearm laws. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2013, the Department issued plaintiff an Illinois Firearm Owner's Identification (FOID) card. After obtaining a FOID card—a prerequisite for obtaining a CCL—plaintiff applied for and received a resident CCL in February 2014. See 430 ILCS 66/25(2) (West 2016). In June 2014, plaintiff moved to Florida but continued to spend a substantial amount of time in Illinois. In January 2015, plaintiff surrendered his Illinois driver's license to the State of Florida in order to obtain a Florida driver's license.

¶ 5 A. Cancellation of Plaintiff's Resident CCL

¶ 6 In May 2015, the Department, while conducting routine quarterly background checks, became aware plaintiff resided in Florida. The Department mailed to plaintiff's Florida residence a letter informing him of the "cancellation" of his resident CCL because he no longer held a valid Illinois driver's license as required under section 30(b)(2) of the Concealed Carry Act (430 ILCS 66/30(b)(2) (West 2016)). Subsequently, the Department "cancelled" plaintiff's FOID card under section 4(2)(xiv) of the FOID Card Act (430 ILCS 65/4(2)(xiv) (West 2016)). Going forward, when we discuss the cancellation or revocation of plaintiff's resident CCL, we are also referring to the Department cancelling or revoking plaintiff's FOID card.

¶ 7 Plaintiff contends he never received the cancellation letter and only learned of the Department's actions in June 2015 when he noticed that the Department's website reflected the status of his CCL as "cancelled." Upon learning his resident CCL had been "cancelled," plaintiff contacted the Department by email and initiated communications that lasted several days. On June 8, 2015, an unidentified Department administrator responded to plaintiff's initial email and

indicated that plaintiff was ineligible for a resident CCL because he resided in Florida. The administrator added that if plaintiff had moved to a state with "substantially similar" firearm laws—Florida was not such a state—he could have reapplied for a CCL as a nonresident.

¶ 8 Plaintiff asked for clarification on how Florida firearm laws were not "substantially similar" to Illinois firearm laws. In response, the administrator wrote that the Department did not consider Florida laws "substantially similar" to Illinois laws because Florida's licensing scheme did not prohibit the use or possession of firearms by those voluntarily admitted to a mental-health facility, which is one of the five points of comparison. The administrator declined to "debate" the issue with plaintiff and explained that the Department based its "substantially similar" determinations on a yearly survey sent to all states.

¶ 9 Plaintiff obtained the October 2013 concealed carry survey the Department sent to Florida and the May 2014 response it received. The survey requested responses to six questions. The questions derived from the Department's rules defining "substantially similar." See 20 Ill. Adm. Code 1231.10 (2014). Specifically, the questions were:

> "(1) Does your state issue a [CCL]? (2) Does your state participate in reporting [CCLs] via the National Law Enforcement Teletype System (NLETS)? (3) Does your state report all involuntary (or adjudicated) mental[-]health admissions to the National Instant Criminal Background Check System (NICS)? (4) Does your state prohibit the [']use or possession['] of firearms based on a voluntary mental[-]health admission within the last five years? (5) Does your state have a mechanism to track or report voluntary mental[-]health admissions for the purpose of revoking or approving a [CCL]? and

(6) If you answered 'No' to questions 4 and 5, is there pending legislation that addresses the concern of mental[-]health admissions with regards to possession of firearms?"

¶ 10 On June 11, 2015, plaintiff wrote a letter to the director asking for an administrative hearing on the cancellation of his resident CCL and for its "reinstatement" based on his claim that Florida firearm laws were "substantially similar" to Illinois firearm laws. Plaintiff also completed a paper application for "administrative review" of the "revocation" of his resident CCL. Plaintiff asked the Department for a receipt of his request for a hearing. Subsequently, a Department administrator informed plaintiff that he was not eligible for administrative review. The administrator explained that plaintiff was not entitled to a hearing under section 87(a) of the Concealed Carry Act (430 ILCS 66/87(a) (West 2016)) because his resident CCL was "not denied, revoked, or suspended."

¶ 11 Plaintiff then tried to apply for a nonresident CCL independently from his application for administrative review of the cancellation of his resident CCL. However, because the Department's website did not allow him to select Florida as his state of residence based on the prior determination that Florida firearm laws were not "substantially similar" to Illinois firearm laws, plaintiff was unable to get beyond the first page of the online application.

¶ 12 B. Initial Proceedings in the Circuit Court

¶ 13 In November 2015, plaintiff filed a complaint against the director in the circuit court of Sangamon County. Plaintiff sought a declaratory judgment that (1) the cancellation of his resident CCL was void because the Department's policy of canceling CCLs without a hearing violated the Concealed Carry Act and the APA and (2) the Department's policies governing the determination of whether an applicant lived in a "substantially similar" state for nonresident

purposes violated the APA. The plaintiff also sought reasonable attorney fees and costs. Director Schmitz moved to remand the case to the Department for further proceedings, noting that plaintiff's resident CCL should have been deemed "revoked" instead of "cancelled" for purposes of section 87 of the Concealed Carry Act, thereby entitling plaintiff to an administrative hearing on the revocation. Plaintiff objected, arguing remand was not the appropriate remedy because he did not bring a complaint under the Administrative Review Law and that any hearing before the Department would be "meaningless" because the Department had "already concluded that any resident of Florida would be prohibited" from applying for a nonresident CCL.

¶ 14 In March 2016, the circuit court determined that plaintiff's request for declaratory relief amounted to an improper collateral attack on a final administrative decision, that decision being the revocation of plaintiff's resident CCL. Specifically, the court held that plaintiff's complaint was a request for administrative review and that the appropriate remedy was to remand the case to allow plaintiff to receive an administrative hearing on the revocation of his resident CCL. The court also found the Department's actions did not invoke the "contested case" provisions of the APA and because plaintiff had a post-deprivation hearing available to him, no violation of plaintiff's right to due process occurred.

¶ 15 Subsequently, plaintiff filed a motion for default judgment, arguing Director Schmitz filed no responsive pleadings, and a motion to reconsider the order for remand. The court denied both motions.

¶ 16 C. Administrative Proceedings on Remand

¶ 17 In September 2016, an administrative law judge (ALJ) for the Department held an administrative hearing on the revocation of plaintiff's resident CCL. At the time of the hearing,

plaintiff testified that while he currently lived in both Illinois and Florida, he did not have a permanent residence in Illinois.

¶ 18 At the administrative hearing, plaintiff did not contest that the Concealed Carry Act allowed the Department to revoke a resident CCL when the licensee became a "properly identified resident of a different state[,]" but he wanted a chance to prove that he was entitled to a nonresident CCL. Plaintiff argued that he should have been allowed to complete a nonresident CCL application and the Department's refusal to provide him an administrative hearing denied him the chance to prove his eligibility for a nonresident CCL because Florida firearm laws were in fact "substantially similar" to Illinois firearm laws.

¶ 19 Director Schmitz argued that because plaintiff's resident CCL was no longer valid due to his move to Florida, he could not establish by a preponderance of the evidence that the revocation of his resident CCL was erroneous. In addition, the question of his eligibility for a nonresident CCL was "beyond the scope" of the hearing because the Concealed Carry Act does not contemplate a hearing when an application for a nonresident CCL is not accepted.

¶ 20 The ALJ found plaintiff ineligible for a resident CCL because as a resident of Florida, he was ineligible for an Illinois FOID card and as a person ineligible for an Illinois FOID card, he did not meet the Concealed Carry Act's qualifications for a resident CCL. See 430 ILCS 66/25(2), 70(a) (West 2016). Also, the ALJ concluded that plaintiff's argument that he was eligible for a nonresident CCL because Florida had "substantially similar" laws to Illinois was "beyond the scope" of the hearing. The ALJ determined that plaintiff failed to establish his eligibility for a resident CCL under the Concealed Carry Act and did not recommend reinstatement of his CCL. On September 29, 2016, Director Schmitz issued an order adopting the recommendation of the ALJ.

¶ 21 D. Continuation of Proceedings in the Circuit Court

¶ 22 Following the Department's final administrative decision, Director Schmitz filed a motion to dismiss plaintiff's complaint, which the circuit court denied.

¶ 23 In February 2017, plaintiff moved for summary judgment, arguing that the Department violated the Concealed Carry Act and the APA by not allowing him to complete a nonresident CCL application, thus denying him the right to seek an administrative hearing to establish his eligibility for a nonresident CCL. Specifically, plaintiff argued that the Department's policy of not accepting nonresident CCL applications from residents of states the department previously determined lacked substantially similar laws constituted an unwritten rule within the meaning of the APA. Plaintiff also argued the Department's process for determining which states have laws that are "substantially similar" to Illinois firearm laws was invalid. Plaintiff asserted that the rules the Department adopted violated the Concealed Carry Act because they failed to define the standards by which its "substantially similar" determinations would be made. Lastly, plaintiff argued that the Department's rules were invalid because its reliance on surveys as the basis of the "substantially similar" determinations violated both the APA's prohibition on *ex parte* communications and improperly relied on hearsay. Illinois Rule of Evidence 801 (eff. Oct. 15, 2015).

¶ 24 Director Schmitz filed a cross-motion for summary judgment and memorandum arguing that: (1) plaintiff demonstrated no clear right to a nonresident CCL because Florida firearm laws were not "substantially similar" to Illinois firearm laws; (2) plaintiff was not denied a hearing on the issue of his nonresident CCL eligibility because he was never entitled to a hearing; (3) the lack of a hearing on plaintiff's nonresident CCL eligibility did not violate the APA because the APA's contested cases provisions did not apply where the law did not require a

hearing prior to licensing; (4) the Department's policy of not accepting applications from residents of states it deemed not "substantially similar" was not an unwritten rule; (5) the Concealed Carry Act contained intelligible standards for the Department to follow in making "substantially similar" determinations, and the Department's adopted rules did not exceed its statutory authority because each of its components derived directly from provisions of the Concealed Carry Act and the FOID Card Act; (6) the surveys were not *ex parte* communications because they were not conducted in an adjudicatory context and the APA's *ex parte* provision did not apply to actions authorized by law; and (7) the responses to the survey were not hearsay because the Department's rules expressly authorized the Department to base its determinations on state surveys.

¶ 25 In April 2017, the circuit court issued a final judgment that characterized plaintiff's claims as giving rise to two actions: (1) an action for administrative review of the Department's decision to revoke plaintiff's resident CCL and (2) an action for declaratory judgment challenging the Department's refusal to accept his application for a nonresident CCL and its determination that Florida firearm laws were not "substantially similar" to Illinois firearm laws. The court affirmed the Department's final administrative decision upholding the revocation of plaintiff's resident CCL. With respect to the declaratory judgment action, the court granted Director Schmitz's motion for summary judgment and denied plaintiff's motion for summary judgment.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, plaintiff asserts the circuit court erred in denying his motion for summary judgment and granting Director Schmitz's motion for summary judgment. Specifically,

plaintiff argues (1) he is entitled to relief because the Department improperly "cancelled" his resident CCL upon learning that he was no longer an Illinois resident and (2) the Department violated the Concealed Carry Act and the APA in refusing to accept plaintiff's application for a nonresident CCL because Florida firearm laws are "substantially similar" to Illinois firearm laws. We address these issues below.

¶ 29 A. Standard of Review

¶ 30 In cases involving cross-motions for summary judgment, as here, the parties agree that no factual issues exist and that the disposition of the case turns only on resolution of purely legal issues. *Founders Insurance Co. v. Munoz,* 237 Ill. 2d 424, 432, 930 N.E.2d 999, 1003 (2010) (citing *Exelon Corp. v. Department of Revenue,* 234 Ill. 2d 266, 285, 917 N.E.2d 899, 911 (2009)). Accordingly, our review is *de novo*. *Id.* Having established the standard of review, we address the merits of this appeal.

¶ 31 B. Resident CCL

¶ 32 Plaintiff first argues he is entitled to relief because the Department improperly "cancelled" his resident CCL upon learning that he was no longer an Illinois resident, resulting in the denial of an administrative hearing until remand. Director Schmitz argues that to the extent plaintiff sought declaratory and injunctive relief to address the loss of his resident CCL, his claims are moot.

¶ 33 An issue on appeal is moot when it presents no actual controversy or where it has ceased to exist because intervening events have rendered it impossible for the appellate court to grant effectual relief. *Koshinski v. Trame*, 2017 IL App (5th) 150398, ¶ 18, 79 N.E.3d 659.

¶ 34 Here, the Department conceded in the circuit court that plaintiff's resident CCL should have been "revoked" for purposes of the Concealed Carry Act rather than "cancelled" and

that the issue should be remanded for an administrative hearing on plaintiff's resident CCL. Section 87(a) of the Concealed Carry Act provides as follows:

> "Whenever an application for a concealed carry license is denied, whenever the Department fails to act on an application within 90 days of its receipt, or whenever a license is revoked or suspended as provided in this Act, the aggrieved party may appeal to the Director for a hearing upon the denial, revocation, suspension, or failure to act on the application ***." 430 ILCS 66/87(a) (West 2016).

¶ 35 Ultimately, in September 2016, Plaintiff received an administrative hearing on the revocation of his resident CCL. However, plaintiff argues the denial of a hearing until remand harmed him because he lost certain protections under the "contested case" provisions of the APA. See 5 ILCS 100/10-25 (West 2016). Specifically, plaintiff contends he was entitled to notice and a hearing prior to the revocation of his resident CCL. See 5 ILCS 100/10-65(a) (West 2016). Here, we find the "contested case" provisions do not apply because the Concealed Carry Act does not require a hearing before revocation of a resident CCL. See 430 ILCS 66/87(a) (West 2016). In particular, the provision cited by plaintiff does not apply, as the provision explicitly applies only to licensing "required by law to be preceded by notice and an opportunity for a hearing." See 5 ILCS 100/10-65(a) (West 2016).

¶ 36 As to whether plaintiff was entitled to a hearing following the revocation of his resident CCL, we find the issue moot because plaintiff eventually received a hearing on his resident CCL. Accordingly, we cannot grant him meaningful relief.

¶ 37 To the extent that plaintiff seeks relief in the form of reasonable attorney fees and costs based on the theory that the Department's action in cancelling his resident CCL reflected an unwritten rule in violation of the APA's rulemaking provisions, his argument is forfeited. *Perez v. Illinois Concealed Carry Licensing Review Board*, 2016 IL App (1st) 152087, ¶ 29, 63 N.E.3d 1046. Even though plaintiff raised this claim in his complaint, plaintiff develops no argument concerning attorney fees in his opening brief. While plaintiff addressed this issue in his reply brief, he did so in the context of the Department's actions affecting a nonresident CCL. We find plaintiff's request for relief in the form of attorney fees and costs forfeited. *Id.*

¶ 38 C. Nonresident CCL

¶ 39 Plaintiff next argues (1) the Department violated the Concealed Carry Act and the APA by refusing plaintiff's request for a hearing on his eligibility for a nonresident CCL; (2) the Department's "substantially similar" determinations are invalid because the Department's reliance on state survey responses is improper and the Concealed Carry Act and the APA require the Department to promulgate rules announcing its determinations; and (3) the Department erroneously concluded that Florida firearm laws do not satisfy the "substantially similar" criteria established in the Department's rules. We address these nonresident CCL issues in turn.

¶ 40 1. *Administrative Hearing on a Nonresident CCL*

¶ 41 Plaintiff argues that the Department violated the Concealed Carry Act and the APA in refusing plaintiff's request for a hearing on his eligibility for a nonresident CCL. Director Schmitz disagrees and asserts that the Concealed Carry Act and the APA do not require that plaintiff be given a hearing on his eligibility for a nonresident CCL. We agree with the Director.

¶ 42 a. Administrative Hearing Under the Concealed Carry Act

¶ 43 Under section 87(a) of the Concealed Carry Act, a person may request an administrative hearing when an application for a CCL is denied, when the Department fails to act on an application within a certain time, when a license is suspended, and when a license is revoked. 430 ILCS 66/87(a) (West 2016).

¶ 44 The Department issues a resident CCL to a person meeting the requirements laid out in the Concealed Carry Act. See 430 ILCS 66/25, 30 (West 2016). Specifically, the Concealed Carry Act requires that a person be an Illinois resident in order to apply for and obtain a resident CCL. 430 ILCS 66/30(b)(2) (West 2016). However, the Concealed Carry Act provides for an exception to the residency requirement.

¶ 45 Under section 40 of the Concealed Carry Act, a nonresident may apply for and obtain a CCL if that person is from a state with "substantially similar" firearm laws. Section 40(b) provides as follows:

> "The Department shall by rule allow for [nonresident] license applications from any state or territory of the United States with laws related to firearm ownership, possession, and carrying, that are [']substantially similar['] to the requirements to obtain a license under this Act." 430 ILCS 66/40(b) (West 2016).

¶ 46 Pursuant to section 40(b), the Department promulgated a rule providing the definition of "substantially similar" as follows:

> "[T]he comparable state regulates who may carry firearms, concealed or otherwise, in public; prohibits all who have involuntary mental[-]health admissions, and those with voluntary admissions within the past 5 years, from carrying firearms,

concealed or otherwise, in public; reports denied persons to NICS; and participates in reporting persons authorized to carry firearms, concealed or otherwise, in public through NLETs." 20 Ill. Adm. Code 1231.10 (2014).

¶ 47 To determine whether plaintiff was entitled to a hearing on his eligibility for a nonresident CCL, this court looks to the language of the statutes as the most reliable indicator of legislative intent. *Merritt v. Department of State Police*, 2016 IL App (4th) 150661, ¶ 20, 56 N.E.3d 593. "Statutory language is to be given its plain, ordinary, and popularly understood meaning and afforded its fullest meaning." *Id.* Therefore, we must "read the statutory provisions in concert and harmonize them, avoiding an interpretation rendering part of the statute superfluous." *Id.*

¶ 48 Based on the plain language of the statutes, we find that under section 40(b) of the Concealed Carry Act, plaintiff could not complete an application for a nonresident CCL because Florida is not a "substantially similar" state. Therefore, we find under section 87(a) of the Concealed Carry Act, plaintiff is unable to establish the Department denied his application where, as a Florida resident, he failed to meet the basic requirement to apply—that he reside in a substantially similar state. When we harmonize section 40 and section 87(a) of the Concealed Carry Act, it is clear that nonresidents—from states without "substantially similar" firearm laws—have no right to a hearing.

¶ 49 Nevertheless, plaintiff reads section 87(a) as mandating that any adverse action by the Department affecting a CCL or application be accompanied by a right to appeal to the Director for an administrative hearing. Specifically, plaintiff asserts that the Department's refusal to accept his nonresident CCL application in the first place must be construed as a denial

thus entitling him to a hearing. See *Willie Pearl Burrell Trust v. City of Kankakee*, 2016 IL App (3d) 150655, ¶ 18, 56 N.E.3d 1067 (the court concluded a refusal to process rental license applications was essentially a denial by inaction).

¶ 50 We disagree and find that section 87(a) does not cover adverse action with respect to a resident of a non-"substantially similar" state. Plainly, a hearing under section 87(a) extends only to those eligible to apply for a CCL. Based on section 40(b), plaintiff was not eligible to apply for a nonresident CCL because Florida does not have "substantially similar" firearm laws.

¶ 51 On this question plaintiff cites to *Burrell*, we find *Burrell* distinguishable. In *Burrell*, the court agreed with the plaintiff that defendant's " 'refusal to process rental license applications [wa]s tantamount to a denial of said permits.' " *Burrell*, 2016 IL App (3d) 150655, ¶ 18. However, the refusal to process rental licenses and the refusal to accept applications when a person is not eligible to apply are two different scenarios. Moreover, the court in *Burrell* granted summary judgment in favor of the defendant because the plaintiff was unable to demonstrate that (1) it had a right to a rental license or (2) the defendant had the duty to issue the plaintiff a license. *Id.* ¶ 21.

¶ 52 Section 40(b) identifies the conditions under which a nonresident may apply for a CCL, and section 87(a) provides separately for the consequences when a valid application filed by an eligible applicant is denied. The Department refused to accept plaintiff's application because plaintiff was not eligible to apply for a nonresident CCL. Therefore, section 87(a) was not applicable and plaintiff was not entitled to a hearing. Based on the plain language, we find the legislature did not intend to allow hearings for nonresidents who are not eligible to apply for CCLs because they are from a state without "substantially similar" laws. Therefore, we conclude

the Department did not violate the Concealed Carry Act in refusing plaintiff's request for a hearing on his eligibility for a nonresident CCL.

¶ 53 b. Administrative Hearing Under the APA

¶ 54 Plaintiff next argues that the APA guaranteed him a hearing under section 10-65(b) of the APA. Section 10-65(b) provides that, unless a court has ordered otherwise, when a licensee has timely applied "for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made." 5 ILCS 100/10-65(b) (West 2016). However, section 10-65(b) does not mention anything about a hearing; rather it allows a licensee to keep their existing license until a final agency decision is made on renewal or a new license with reference to a continuing activity. Our case does not involve the renewal of a CCL or a continuing right to a license. Rather, plaintiff lost his resident CCL when the Department learned that he moved out of state. As a result, he attempted to apply for a nonresident CCL—a different kind of license—and the Department declined to accept plaintiff's application because it previously determined Florida did not meet the "substantially similar" requirements for a nonresident CCL.

¶ 55 Plaintiff also contends that he is entitled to a hearing under the "contested case" provisions of the APA. See 5 ILCS 100/10-65(a) (West 2016). As discussed above, the "contested case" provisions do not apply to plaintiff's situation. Applying the "contested case" provisions would make even less sense in the nonresident CCL context because people from states that do not have "substantially similar" laws have no right to a hearing because they cannot complete the nonresident CCL application. There is not a provision in the APA that requires all persons desirous of a nonresident CCL to be given a hearing on their claims. Therefore, the

Department did not violate the APA in refusing plaintiff's request for a hearing on his eligibility for a nonresident CCL.

¶ 56 2. *Substantially Similar Determinations*

¶ 57 Plaintiff asserts the Department's "substantially similar" determinations are invalid because the Department's reliance on state survey responses is improper and the Concealed Carry Act and the APA require the Department to promulgate rules announcing its determinations. We examine both arguments below.

¶ 58 a. State Surveys

¶ 59 Plaintiff challenges the Department's reliance on state survey responses on four grounds. However, Director Schmitz argues that the four grounds should be deemed forfeited because plaintiff did not raise them in the circuit court. *In re Estate of Chaney*, 2013 IL App (3d) 120565, ¶ 8, 1 N.E.3d 1231. Rather, in the circuit court plaintiff only objected to the Department's use of surveys on the theory that the surveys represented *ex parte* communications that met the definition of hearsay. Nevertheless, this court is not constrained by forfeiture. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05, 771 N.E.2d 357, 371 (2002). Therefore, we examine the merits of the four grounds below.

¶ 60 First, Plaintiff argues that the survey questions "go beyond" the regulatory definition of "substantially similar" because they asked whether other states (1) prohibited the "use or possession" of firearms by those with voluntary mental-health admissions within the past five years and (2) had a mechanism for reporting voluntary mental-health admissions. The Department argues that phrasing the survey question more narrowly could result in errors in the Department's "substantially similar" determinations.

¶ 61 While plaintiff is correct that absent from section 1231.10 of the Department's rules are the words "use or possession," the rules are promulgated from section 40(b) of the Concealed Carry Act, and the Concealed Carry Act states that "substantially similar" determinations are based on "laws related to firearm ownership, possession, and carrying." 430 ILCS 66/40(b) (West 2016). The Department asks not only about "carrying" but also about "use and possession" because important criteria could be contained in statutes other than a state's designated concealed carry statute. For example, the Concealed Carry Act incorporates requirements of the FOID Card Act. See 430 ILCS 66/25(2) (West 2016) (stating the concealed carry licensee must have a currently valid FOID card and meet the requirements for issuance of a FOID card). We agree with the state that phrasing the survey question more narrowly could result in errors to the Department's "substantially similar" determinations.

¶ 62 Section 1231.10 of the Department's rules states that a factor for determining whether a state's laws are "substantially similar" is whether a state requires reporting voluntary mental-health admissions within the last five years. 20 Ill. Adm. Code 1231.10 (2014). We find based on the plain language of section 1231.10 that the survey asking states whether they have a mechanism for determining whether their state reports voluntary admissions does not "go beyond" the Department's rules. Clearly, if there is no reporting requirement, tracking such information becomes difficult. The inclusion of this information increases the Department's ability to accurately identify a state that prohibits those with voluntary admissions from carrying weapons.

¶ 63 Second, plaintiff argues that the Department's legislative grant of authority did not include the use of surveys. We disagree with the plaintiff where we find it is well established that the General Assembly may invest administrative agencies with discretion to implement

legislation and the General Assembly need not articulate in the statute every detail that will be necessary for its enforcement as long as it provides intelligible standards to guide the agency's use of discretion. *Chicagoland Chamber of Commerce v. Pappas*, 378 Ill. App. 3d 334, 348-49, 880 N.E.2d 1105, 1119-20 (2007); *East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 423, 687 N.E.2d 1050, 1063-64 (1997). An administrative agency " 'may validly exercise discretion to accomplish in detail what is legislatively authorized in general terms,' " and it has the power to do what is reasonably necessary to fulfill its duties. *R.L. Polk & Co. v. Ryan*, 296 Ill. App 3d 132, 140-41, 694 N.E.2d 1027, 1033 (1998) (quoting *Lake County Board of Review v. Property Tax Appeal Board*, 119 Ill. 2d 419, 428, 519 N.E.2d 459, 463 (1988)).

¶ 64 Here, the Concealed Carry Act does not specifically provide for the Department to make use of surveys. However, the Department needed to collect information from all of the states to make its "substantially similar" determinations, and under the foregoing authority, the General Assembly may give the Department the discretion to identify the best way to accomplish that task. The Concealed Carry Act provided intelligible standards to guide the Department's use of its discretion where the statute instructed the Department to look for substantial similarity between the firearms laws of other states and the specific requirements of the Concealed Carry Act and the FOID Card Act.

¶ 65 In implementing the Concealed Carry Act, the Department also complied with the APA's provision on "implementing discretionary powers." The APA requires that a "rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly

as practicable under the conditions to inform fully those persons affected." 5 ILCS 100/5-20 (West 2016). The Department satisfied this requirement when it promulgated a rule stating that (1) applications for a nonresident CCL "will only be accepted from persons licensed or permitted to carry firearms, concealed or otherwise, in public, in a [']substantially similar['] state[;]" (2) "[t]he Department shall determine which states are [']substantially similar,['] as defined in Section 1231.10, *** by surveying all other states[;]" and (3) "[t]he Department shall post on its website a list of all states determined to be [']substantially similar.['] " 20 Ill. Adm. Code 1231.110(a), (b), (c) (2014).

¶ 66 The Department must account for constantly changing firearm laws in dozens of states, and the need for flexibility is crucial. We conclude these standards are sufficiently clear as practicable to inform those persons affected while providing the needed flexibility. See *Escalona v. Board of Trustees, State Employees Retirement System, et al.*, 127 Ill. App. 3d 357, 362, 469 N.E.2d 297, 301 (1984) (rejecting challenge to specificity of standards required for agency's disability determinations due to the need for flexibility).

¶ 67 Third, plaintiff argues that it is unreasonable for the Department to rely on survey responses from government officials of unverified authority instead of analyzing the other states' laws itself. Plaintiff points to the fact that the survey at issue in this case was sent to Florida's Department of Agriculture.

¶ 68 We find no concern in relying on other states' responses to the survey questions. Initially it may seem strange that a Department of Agriculture is dealing with CCLs, but in Florida, the Department of Agriculture and Consumer Services is charged with issuing CCLs. See Fla. Stat. § 790.06(1) (West 2016). Also, the Department does not blindly rely on the survey responses but interprets them in light of the relevant statutes.

¶ 69 Finally, plaintiff criticizes the Department for failing to take a "mechanical approach" to interpreting the survey responses. However, there is no reason to think a "mechanical approach" would produce more accurate results where the question is whether another state's firearm laws are "substantially similar." "Substantially similar" language itself suggests that the analysis is not mechanical but involves a level of interpretation and discretion.

¶ 70 We find that plaintiff failed to prove on the merits that the Department's "substantially similar" determinations were invalid because the Department properly relied on state surveys.

¶ 71 b. Promulgation of Rules

¶ 72 Plaintiff next argues that the Department failed to promulgate as rules the "substantially similar" determinations where the Concealed Carry Act qualifies the determinations as rules that trigger the APA's rulemaking requirements. Director Schmitz again argues forfeiture but we choose to address the issue on the merits. See *Dillon*, 199 Ill. 2d at 504-05.

¶ 73 Section 40(b) of the Concealed Carry Act provides that that Department shall by rule allow for nonresident license applications from any state with firearm laws that are "substantially similar" to the requirements to obtain a CCL under this Act. 430 ILCS 66/40(b) (West 2016). Plaintiff construes section 40(b) as a mandate for the Department to promulgate rules containing its "substantially similar" determinations of the particular states found to have "substantially similar" laws.

¶ 74 Plaintiff argues that the Department did not promulgate rules containing the "substantially similar" determinations and therefore the determinations are not effective. A rule

is promulgated when it conforms to the public notice and comment requirements of the APA and is filed with the Secretary of State. See 5 ILCS 100/5-10(c) (West 2016).

¶ 75 Plaintiff cites *Windy City Promotions, LLC v. Illinois Gaming Board,* 2017 IL App (3d) 150434, 87 N.E.3d 915, to support his argument that the Department did not promulgate rules containing the "substantially similar" determinations. In *Windy City*, the Gaming Board interpreted a law concerning certain devices—that can be used for gambling—to apply to a particular category of video kiosk machines, and it then posted its determination on its website and relied on it to enforce the law. *Id.* ¶ 5. Specifically, the website document explained how the law would be applied. *Id.* The court found the determinations invalid because the Illinois Gaming Board failed to comply with the APA's rulemaking requirements. *Id.* ¶ 27-28.

¶ 76 We find *Windy City* distinguishable by looking at the plain language of the Concealed Carry Act. The Concealed Carry Act indicates that the rules that the General Assembly wanted promulgated were procedural. Section 40(c) provides that the approved states would be "approved by the Department under subsection (b) of this Section." 430 ILCS 66/40(c) (West 2016). The Department fulfilled that directive by promulgating rules that thoroughly prescribed the procedures through which it makes its "substantially similar" determinations. See 20 Ill. Adm. Code 1231.110(a), (b), (c) (2014); 20 Ill. Adm. Code 1231.10 (2014).

¶ 77 Plaintiff has not demonstrated that the Department's "substantially similar" determinations qualify as rules within the meaning of the APA. The APA defines a rule as an "agency statement of general applicability that implements, applies, interprets, or prescribes law or policy." 5 ILCS 100/1-70 (West 2016). However, a rule does not include an agency determination concerning its internal management that does not affect private rights and

procedures available to persons or entities outside the agency. *Alternate Fuels, Inc. v. Director of Illinois Environmental Protection Agency.*, 215 Ill. 2d 219, 247, 830 N.E.2d 444, 459 (2004).

¶ 78 The Department used "substantially similar" criteria to determine from which states persons may apply for a nonresident CCL. The "substantially similar" determinations or results of the survey are merely a guide for the Department to ascertain who may apply for a nonresident CCL. See *Donnelly v. Edgar*, 117 Ill. 2d 59, 65, 509 N.E.2d 1015, 1018 (1987) (document not rule because merely prescribed internal method for maintaining consistency in agency's decisions); *Walk v. Department of Children and Family Services*, 399 Ill. App. 3d 1174, 1185-86, 926 N.E.2d 773, 783 (2010) (police guide was not a rule for purposes of APA because it merely guided agency employees in how to asses cases and did not expand agency's authority).

¶ 79 The Department's "substantially similar" determinations also do not constitute a rule for purposes of the APA because the determinations are not an independent rule. See *People v. Carpenter*, 385 Ill. App. 3d 156, 165-66, 895 N.E.2d 24, 32-33 (2008). Rather, the determinations are the result of the application of an existing Department rule. See *Id.* Therefore, the APA does not require the Department to promulgate its "substantially similar" determinations, especially where the Department already promulgated the criteria for determining whether another state's laws are "substantially similar."

¶ 80 We find plaintiff's reliance on *Windy City* misplaced and in doing so conclude that neither the Concealed Carry Act nor the APA require the Department to promulgate rules announcing its "substantially similar" determinations.

¶ 81 3. *Florida Firearm Laws*

¶ 82 Plaintiff lastly argues that the Department erroneously concluded that Florida firearm laws do not satisfy the "substantially similar" criteria established in the Department's

rules. Specifically, plaintiff asserts the Department erroneously determined Florida's firearm laws allowed persons who had voluntarily submitted to mental-health treatment to obtain a CCL.

¶ 83 The survey response that the Department received from Florida indicated that Florida does not "prohibit the 'use or possession' of firearms based on voluntary mental-health admission within the past five years." Plaintiff contends the Florida official who filled out the survey was misled into giving the wrong response because the survey asked whether the state prohibited "use or possession." Plaintiff claims that the official was unable to answer yes, even though Florida prohibits persons with voluntary admissions from "use or carrying" of firearms because Florida law does not prohibit "possession" of a firearm by such persons.

¶ 84 Director Schmitz argues that the Florida official was aware that issuance of a CCL was ultimately at stake because the cover letter sent with the survey explained its purpose. Also, the Florida official was unconstrained by the preformatted survey response sheet because the official went to the trouble to insert a footnote indicating one circumstance in which voluntary admission would result in a bar on "possession" of a firearm—where voluntary admission was allowed in lieu of involuntary placement.

¶ 85 Plaintiff asserts that Florida's concealed carry statute indicates that persons who have voluntary mental-health admissions are excluded from obtaining CCLs because the statute specifically excludes persons who have been "committed to a mental institution under chapter 394" and chapter 394, the Florida Mental Health Act (Fla. Stat. § 394 (West 2016)), includes a statute on voluntary admissions. Fla. Stat. § 790.06(2)(j) (West 2016). Plaintiff cites a Florida child custody case to support his argument that the Florida Mental Health Act governs all voluntary as well as involuntary mental-health admissions. *Critchlow v. Critchlow*, 347 So. 2d 453, 454-55 (1977).

¶ 86 We find that Florida's concealed carry statute demonstrates that Florida only regulates some voluntary mental-health admissions, specifically voluntary admissions that would have been involuntary if the person did not agree to accept the treatment willingly. Fla. Stat. § 790.06(2)(j) (West 2016). There is no indication in the statute that Florida prohibits all those with voluntary admissions within the past five years from carrying firearms. Fla. Stat. § 790.06(2)(j) (West 2016). Therefore, plaintiff's citation to *Critchlow* is unhelpful where the court was not interpreting Florida's concealed carry statute or any other statute related to firearms.

¶ 87 We also find that the Florida statute on "Sale and delivery of firearms" does not contain language "substantially similar" to Illinois firearm laws. See Fla. Stat. § 790.065 (West 2016). The statute provides for exclusion of a purchaser or transferee who "[h]as been adjudicated mentally defective or has been committed to a mental institution by a court *** and as a result is prohibited by state or federal law from purchasing a firearm." Fla. Stat. § 790.065(2)(a)(4) (West 2016). Specifically, the statute defines the phrase "committed to a mental institution" as *not* including "a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a *voluntary admission* to a mental institution." (Emphasis added.) Fla. Stat. § 790.065(2)(a)(4)(b)(I) (West 2016).

¶ 88 Based on the plain language of Florida's firearm statutes, we conclude that the Department did not erroneously determine that Florida firearm laws do not satisfy the "substantially similar" criteria established in the Department's rules.

¶ 89 III. CONCLUSION

¶ 90 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 91 Affirmed.