RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1235-16T2

IN THE MATTER OF THE APPEAL FROM
THE DENIAL OF AN APPLICATION
FOR A CHANGE OF ADDRESS ON A
NEW JERSEY FIREARMS PURCHASER
IDENTIFICATION CARD AND SIX
PERMITS TO PURCHASE HANDGUNS
IN THE NAME OF C.R.[1]

Argued November 28, 2017 – Decided December 26, 2017

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Morris County.

Frank Pisano, III, argued the cause for appellant C.R. (Needleman and Pisano, attorneys; Frank Pisano, III, on the briefs).

Paula Jordao, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Fredric M. Knapp, Morris County Prosecutor, attorney; Erin Smith Wisloff, Assistant Prosecutor, on the brief).

PER CURIAM

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[1] We use initials to protect the privacy of C.R. and his former wife.

Petitioner C.R. appeals from an October 12, 2016 Law Division order denying an application to update the address on his 2002 Firearms Purchaser Identification Card, and for six new purchase permits. We affirm.

The following facts are taken from the record. The Bloomingdale Police Department issued a New Jersey Firearms Identification card to C.R. on August 5, 2002. C.R. later moved to Mendham, and in December 2015 submitted an application to change the address on his identification card to reflect his new residence. He also submitted a request for six handgun purchase permits. The Chief of Police of Mendham Township denied the application. C.R. filed a request for a hearing in the Law Division, pursuant to N.J.S.A. 2C:58-3(d).

The Law Division judge conducted a hearing and heard testimony from Detective James Arnesen of the Mendham Township Police who performed C.R.'s firearms applicant investigation. The judge also considered testimony from Lieutenant Ross Johnson, the acting Chief of Police for Mendham, who reviewed Det. Arnesen's report and denied C.R.'s application. C.R.'s application was denied because of "a pattern of poor judgment and disregard for the law."

Detective Arnesen's investigation included a review of C.R.'s criminal history, driver abstract, and a search of the Family Automated Case Tracking System. Detective Arnesen recommended

C.R.'s application be denied, due to an arrest for marijuana possession, C.R.'s driving history, three domestic violence incident reports obtained from the Bloomingdale Police Department, and the issuance of a temporary restraining order against C.R.

Detective Arnesen testified C.R. had a marijuana possession charge in 1998. It was amended to loitering and subsequently dismissed. The charge was not cited in Detective Arnesen's investigation report or in the denial letter sent to C.R.

According to Detective Arnesen, C.R.'s driver abstract disclosed he had been issued twenty-five summonses on twenty-four different dates since 1988. C.R. had been involved in eight separate motor vehicle accidents, and his driving privileges were suspended three times. C.R. was also convicted of driving while intoxicated in 1995 and 2013.

Detective Arnesen testified the domestic violence consisted of four incidents in 2005, which were reported to the Bloomingdale Police, and involved C.R.'s former wife. The first incident report stated C.R.'s then-wife went to the Bloomingdale Police Department and advised them that her husband was filing for divorce and subjecting her to "constant harassment." She alleged C.R. threw a portable telephone at her seven days prior, threatened "to take the house and dogs," and controlled her cellular telephone usage.

She declined a temporary restraining order (TRO), but did stay at her mother's house for the night.

The second incident occurred three months later. C.R.'s wife again went to the Bloomingdale Police Department "to report ongoing domestic problems" she was having with C.R. According to the Bloomingdale police report in evidence, she alleged "C.R. put a snow shovel under her vehicle's tire[,] which she ran over when she backed up." The report further stated C.R. allegedly "poured bleach on several articles of her clothing," and that she "believed that he had placed the muscle relaxing gel . . . 'Icy Hot' on her lipstick." According to the report, C.R.'s wife "wanted these incidents on file in case of future acts against her."

The third report occurred ten days later when C.R.'s wife again traveled to the Bloomingdale Police Department. She reported that two days earlier, C.R. returned to the residence at 12:30 a.m. in an "intoxicated state" and "threw a dog gate across the room when he entered the marital bedroom." When C.R.'s wife requested he leave the room, he replied "shut up you fucking piece of shit." Although C.R. did leave the room, he continued to call her a "piece of shit."

The following day, C.R.'s wife saw him enter the room carrying an item in a surreptitious manner. She later discovered a hammer

and washcloth in C.R.'s nightstand. C.R.'s wife became concerned for her safety and obtained a TRO.

The TRO reported two additional incidents as prior history, namely, that C.R. had threatened to kill his wife and himself in 2004, and in 2005, he had slammed his wife's bedroom door "hard causing the door [jamb] to break."

According to the Bloomingdale police records, after the TRO was served, C.R.'s wife returned home to find the heat in her bedroom turned up to eighty-one degrees, an air/lung medical device on the floor, all telephones in the house removed, water over the garage floor and the bed, and a bag of assorted crafts removed from the home. Bloomingdale police advised C.R.'s wife to stay elsewhere or have someone stay with her at the home.

Ultimately C.R.'s wife voluntarily dismissed the TRO. In May 2006, the State withdrew its weapons forfeiture motion, and with the consent of C.R.'s wife, his weapons were returned.

Lieutenant Johnson testified about his decision to deny the application. He concluded: "Given a number of incidents between DWIs and the incidents of domestic violence back in 2005, there seems to be some question as to [C.R.'s] temper, and, obviously, decision making ability at certain times."

The trial judge denied C.R.'s application. The judge found C.R.'s conviction for two DWIs — one of which occurred after 2002,

specifically in 2013 — dispositive. The judge noted most of C.R.'s numerous automobile accidents occurred before 2002, except for two, which occurred in 2012. Relying on C.R.'s driver abstract, which had been admitted into evidence, the trial judge noted C.R. had been charged with "improper display/fictitious plates" six times. Three of those charges occurred after 2002. The judge noted that prior to 2002, C.R. was charged three times with driving on a suspended license.

The judge recounted the domestic violence allegations Detective Arnesen had testified to, and noted although the allegations were unproven "the TRO was granted and it was noted that the court . . . found sufficient grounds and exigent circumstances that an immediate danger of domestic violence exists and that an emergency restraining order is necessary to prevent the occurrence or reoccurrence of domestic violence." The judge also noted two additional incidents in 2004 and 2005, which were not mentioned in the police investigation report.

The trial judge noted although there was no adjudication of domestic violence, C.R. and his wife entered into a consent order for civil restraints. The judge stated: "That's a little different than just saying . . . there was no domestic violence, because if that [were the] case, why would there be a consent order for restraints[?]"

The judge concluded:

> So a number of things have occurred since 2002. . . . I'm going to deny the application, . . . because if I were satisfied that [C.R.'s] impulse, his lack of control, so to speak, his anger situation, and his drinking were no longer a problem, I might have a different view, but I don't have it right now.

This appeal followed. We begin by reciting our standard of review.

> Ordinarily, an appellate court should accept a trial court's findings of fact that are supported by substantial credible evidence. Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility. Thus, an appellate court should not disturb a trial court's fact-findings unless those findings would work an injustice. Consequently, "an appellate court should exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter."
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> [In re Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997)).]

Although our review of a trial court's fact-finding is limited, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995). Stated another way, an appellate court gives no deference to the legal

conclusions of a trial court, and instead reviews the legal issues de novo. See State v. Hubbard, 222 N.J. 249, 263 (2015).

C.R. argues the trial court determination was erroneous because there was insufficient evidence to support it. C.R. also argues the court misapplied and erroneously relied upon In re Z.L., 440 N.J. Super. 351 (App. Div. 2015), and In re the Forfeiture of Pers. Weapons & Firearms Identification Card Belonging to F.M., 225 N.J. 487, 510-11 (2016). He argues these cases are not applicable because the domestic violence allegations against him were not as "severe" as in those cases.

Specifically, he argues there was no evidence the police responded to C.R.'s home to resolve disputes between him and his wife. He asserts his wife's contact with the police was only for purposes of "making a record," but that she declined a TRO on two occasions. He argues there was no evidence he threatened his wife or anyone else with a weapon, or any evidence C.R. was negligent in the possession or use of his firearms. C.R. argues there have been no allegations of domestic violence against him since the return of his weapons in 2006.

N.J.S.A. 2C:58-3(c) states "no person of good character and good repute in the community in which he lives" shall be denied a permit to purchase a handgun or a firearms purchaser identification card, unless they are disqualified as defined by the statute. In

pertinent part, N.J.S.A. 2C:58-3(c)(5) states that "[n]o handgun purchase permit or firearms purchaser identification card shall be issued . . . [t]o any person where the issuance would not be in the interest of the public health, safety, or welfare[.]" This disqualifier "is 'intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest.'" In re Osworth, 365 N.J. Super. 72, 79 (App. Div. 2003) (quoting Burton v. Sills, 53 N.J. 86, 91 (1968).

"This broadly worded disqualification criterion eludes precise definition. We are satisfied, however, that it must be liberally construed." State v. Cordoma, 372 N.J. Super. 524, 534 (App. Div. 2004).

> Thus, a judicial declaration that a defendant poses a threat to the public health, safety or welfare involves, by necessity, a fact-sensitive analysis. It requires a careful consideration of both the individual history of defendant's interaction with the former plaintiff in the domestic violence matter, as well as an assessment of the threat a defendant may impose to the general public.
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> [Id. at 535.]

When a handgun purchase permit or a firearms purchaser identification card is denied, the burden is on the police chief to establish good cause for the denial by a preponderance of the

evidence. Weston v. State, 60 N.J. 36, 46 (1972). In "evaluating the facts presented by the Chief, and the reasons given for rejection of the application, the court should give appropriate consideration to the Chief's investigative experience and to any expertise he appears to have developed in administering the statute." Ibid.

Here, Lieutenant Johnson testified based on his experience that C.R.'s driving record, and his history of domestic violence incidents involving his former wife, demonstrated poor impulse control, questionable decision-making ability, and a general disregard for the law. Lieutenant Johnson's opinion was based on the report offered by Detective Arnesen, which detailed not only the domestic violence allegations, but also evidence of C.R.'s arrests and suspension of his driving privileges.

The trial judge found the totality of the circumstances and the credible evidence presented demonstrated the police met their burden to deny C.R.'s application even though he had obtained a firearms identification card in 2002. The judge acknowledged the accidents and charges that preceded 2002, but also noted the conduct continued after 2002. The pattern and duration of C.R.'s conduct provided adequate and credible evidence to support the judge's conclusion to deny the application. In particular, the judge focused on C.R.'s conviction for a second DWI in 2013, which

evidenced continuing poor judgment and disregard for the law, indicating issuance of a firearms card and six gun permits would not be in the interest of public health, safety, or welfare.

Furthermore, we are unpersuaded Z.L. is distinguishable from this case or that the judge misapplied the law. In Z.L., the applicant, like C.R., had never been convicted of a crime, a disorderly persons offense, nor found to have committed a domestic violence offense. However, Z.L. was arrested for domestic violence and police were summoned to his home on five occasions to resolve disputes between him and his wife.

As we noted, C.R. seeks to distinguish this matter from Z.L. First, he notes the police were not summoned to the home by his wife. Whether C.R.'s wife summoned the police or felt safer by going to the police department to "make a record" as C.R. argues, does not make Z.L. inapplicable. Furthermore, because C.R.'s wife declined a TRO twice does not distinguish this case from Z.L., as Z.L.'s wife had summoned the police to the home on numerous occasions and had been assaulted by Z.L. without obtaining a TRO.

We reject C.R.'s argument Z.L. is distinguishable because there were no allegations of negligent handling of firearms or threats made by C.R. In Z.L., firearms played no role in the underlying domestic violence allegations. Also, there were no

threats made by Z.L., whereas here, C.R. is alleged to have made threats in 2004.

Lastly, C.R.'s argument the trial judge misapplied F.M. misunderstands the judge's reliance on the case in the decision. The record demonstrates the trial judge relied upon F.M. to explain individual unfitness pursuant to N.J.S.A. 2C:58-3(c)(5) as a means to prove the "contrary to the public interest, safety, or welfare" grounds for denial of a firearms purchaser identification application. As the State notes in its brief, the trial judge did not compare the facts in F.M. with the facts of this case. Thus, the trial court did not misapply F.M.

For these reasons, we decline to disturb the trial judge's determination. The trial judge's decision to deny C.R.'s application was supported by adequate substantial and credible evidence.

Affirmed.