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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1586-20**

**IN THE MATTER OF
JOHN O'FARRELL,
FIREARMS APPEAL.**

Submitted May 16, 2022 – Decided May 27, 2022

Before Judges Mayer and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Somerset County, Docket No. GPA-005-20.

Zohn & Zohn, LLP, attorneys for appellant (Edward J.
Zohn, on the brief).

Savo, Schalk, Corsini, Gillespie, O'Grodnick & Fisher,
PA, attorneys for respondent (Matthew R. Flynn, of
counsel and on the brief).

PER CURIAM

Petitioner John O'Farrell appeals from a January 6, 2021 order upholding a decision by respondent Bridgewater Township Police Department (Township), denying his application for a New Jersey Firearms Purchaser Identification Card (FPIC). We affirm for the written reasons expressed by Judge Peter J. Tober.

The facts are taken from the testimony during a hearing on O'Farrell's firearms appeal.

On June 3, 2020, O'Farrell filed an application for an FPIC with the Township. The Township's police chief denied the application in a July 31, 2020 letter, finding the issuance of an FPIC would not be in the best interests of the public health, safety, or welfare under N.J.S.A. 2C:58-3(c)(5).

O'Farrell appealed the police chief's denial of his application to the Law Division. Judge Tober conducted a de novo hearing on November 6, 2020. At the hearing, the judge considered O'Farrell's testimony and a certification submitted by the Township's police chief.

As part of the review for the FPIC application, the Township's police chief supervised a background check of O'Farrell. The Township's investigation revealed the following: two juvenile arrests, including an October 31, 2004 simple assault charge and a February 19, 2006 shoplifting charge; charges related to an incident on June 8, 2013 for disorderly conduct, public urination, and interfering with a public official; a January 1, 2012 incident of drunkenness at a New Years' Eve Party; an August 13, 2019 alleged assault incident at a pizza restaurant; and an October 9, 2019 incident involving a drunken altercation with another individual. After reviewing the results of the investigation, the

Township's police chief noted O'Farrell's involvement in "adversarial interactions with police and dangerous behavior in the community." The police chief found O'Farrell had a "pattern of dangerous, volatile behavior while having issues with [] intoxicants," presenting "a clear risk to the public safety."

During his testimony before Judge Tober, O'Farrell acknowledged his conduct led to several verbal and physical altercations, most of the incidents involved drinking, and the police were called to respond to the incidents. O'Farrell objected to the judge considering hearsay information contained in the police reports reviewed by the Township's police chief. However, O'Farrell did not object to the judge's consideration of the police chief's certification.¹

After hearing the testimony and reviewing the documentary evidence, including the certification submitted by the Township's police chief, Judge Tober denied O'Farrell's firearm appeal. In upholding the Township's denial of O'Farrell's FPIC application, the judge cited N.J.S.A. 2C:58-3(c)(5), concluding "the issuance [of the FPIC] would not be in the interest of the public health,

¹ For the first time on appeal, O'Farrell challenges the judge's consideration of the police chief's certification. Because this issue was never presented to Judge Tober, we need not to consider the argument. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Additionally, we note Judge Tober mostly premised his decision on O'Farrell's corroborating testimony during the November 6, 2020 hearing rather than the police chief's certification.

safety or welfare." Based on O'Farrell's corroborating testimony during cross-examination, Judge Tober detailed O'Farrell's history of incidents involving drunkenness, assaults, scuffles with other individuals while intoxicated, and disputes with police.

While the judge noted "that [the] majority of [the] charges against [O'Farrell] were dismissed," the dismissal of the charges did not preclude his "considering the underlying facts in deciding whether a person is entitled to purchase a firearm" The judge held:

it is undeniable that Mr. O'Farrell has a history of public intoxication and he involved himself in physical altercations. The [c]ourt acknowledges that there is no record of Mr. O'Farrell hitting anyone with a deadly weapon such as a vehicle or a bottle or a record of Mr. O'Farrell being arrested or convicted of driving while intoxicated or a record of domestic violence incidents However, most of the incidents that have been flagged in the Township's investigation . . . detail a narrative of Mr. O'Farrell being combative or aggressive. . . . Mr. O'Farrell has been violent and aggressive towards members of the community, thus the [c]ourt concludes it is not in the best interest of the public health, safety, or welfare to grant his appeal.

On appeal, O'Farrell raises the following arguments:

POINT I

MR. O'FARRELL'S POSSESSION OF FIREARMS IS NOT INIMICAL TO THE PUBLIC HEALTH, SAFETY OR WELFARE.

POINT II

THE TRIAL JUDGE BASED HIS DECISION TO UPHOLD THE BRIDGEWATER POLICE DEPARTMENT'S DECISION DENYING MR. O'FARRELL'S PERMITS PRIMARILY ON IMPERMISSIBLE HEARSAY.

POINT III

THE TRIAL JUDGE'S OPINION HAD OTHER PROCEDURAL, FACTUAL AND LEGAL DEFICIENCIES.

We reject O'Farrell's arguments and affirm for the reasons stated by Judge Tober.

A denial of an application for an FPIC by a police chief is subject to a de novo review in the Law Division. In re Osworth, 365 N.J. Super. 72, 77 (App. Div. 2003) (citing Weston v. State, 60 N.J. 36, 45 (1972)). The State "has the burden of proving the existence of good cause for the denial by a preponderance of the evidence." Ibid. Our review of "a trial court's legal conclusions regarding firearms licenses [is] de novo." In re N.J. Firearms Purchaser Identification Card by Z.K., 440 N.J. Super. 394, 397 (App. Div. 2015).

"[A] judicial declaration that a defendant poses a threat to the public health, safety or welfare involves, by necessity, a fact-sensitive analysis." State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004). In reviewing such

determinations, we accept the trial court's fact findings so long as they are supported by substantial credible evidence. In re Return of Weapons to J.W.D., 149 N.J. 108, 116 (1997).

The trial court may consider hearsay evidence, provided the court's findings are not entirely based upon hearsay evidence. Weston, 60 N.J. at 51. Evidence that ordinarily would be excludable as hearsay may be admissible in a gun permit hearing if it is "of a credible character – of the type which responsible persons are accustomed to rely upon in the conduct of their serious affairs" Ibid.; see also In re Dubov, 410 N.J. Super. 190, 202 (App. Div. 2009). Hearsay evidence must be corroborated by substantive and competent proof. Weston, 60 N.J. at 51; see also In re Z.L., 440 N.J. Super. 351, 358 (App. Div. 2015) (holding hearsay from a police report admissible where petitioner corroborated the content of the report with his or her in-court testimony).

An application for an FPIC is governed by N.J.S.A. 2C:58-3. The statute provides:

No handgun purchase permit or firearms purchaser identification card shall be issued:

. . . .

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare

[N.J.S.A. 2C:58-3(c)(5).]

Here, Judge Tober denied the FPIC application notwithstanding the dismissal of certain charges because O'Farrell admitted to his combative and aggressive behaviors during his testimony. See Osworth, 365 N.J. Super. at 78 (holding "the dismissal of criminal charges does not prevent a court from considering the underlying facts" of charge as it may related to a FPIC application). The judge properly determined the issuance of a FPIC to O'Farrell would not be in the interest of the public health, safety, or welfare. He based this finding on O'Farrell's own testimony regarding his past belligerent and volatile behaviors and not exclusively on the Township's police chief's certification.

Based on our review of the record, Judge Tober followed the procedures for reviewing the police chief's denial of O'Farrell's FPIC application. The judge's determination comported with statutory and decisional law. We are satisfied there is ample credible evidence supporting the judge's decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION