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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
NOCV2013-00078

JOSEPH MCGUNIGLE

vs.

PAUL KEENAN¹ & another²

RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

7/7/14

MEMORANDUM OF DECISION AND ORDER ON THE PARTIES'
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Joseph McGunigle, is a former City of Quincy police officer who had his license to carry a firearm ("LTC") revoked by Quincy's designated licensing authority, Quincy's Chief of Police, defendant Paul Keenan. After Keenan revoked his license under G. L. c. 140, § 131, McGunigle appealed Keenan's decision to the Quincy District Court, which upheld Keenan's decision to revoke McGunigle's LTC. The case is now before this Court after McGunigle appealed the District Court decision under a complaint for certiorari pursuant to G.L. c. 249, § 4. Recognizing that this Court's review is limited to the record before the District Court, the parties have each filed cross-motions for judgment on pleadings under Mass. R. Civ. P. 12(c).³ After hearing arguments from both parties on May 15, 2014 and conducting a thorough review of the record before the District Court, I will **ALLOW** the defendant's motion for judgment on the pleadings and **DENY** the plaintiff's motion for judgment on the pleadings.

¹ In his official capacity as Chief of Police of the City of Quincy

² Quincy District Court Division of the Trial Court

³ See *Northboro Inn, LLC v. Treatment Plant Bd. of Westborough*, 58 Mass. App. Ct. 670, 673 n.5 (2003) (motion for judgment on the pleadings under Mass. R. Civ. P. 12(c) is the appropriate mechanism for the court to review a certiorari claim under G. L. c. 249, § 4).

BACKGROUND

McGunigle was formerly employed by Quincy as a police officer. Defendant Paul Keenan is Quincy's Chief of Police, McGunigle's former supervisor and the designated licensing authority for residents of Quincy who desire to obtain or hold a LTC. McGunigle lawfully held a LTC from 1983 until Keenan revoked it on March 12, 2012, under his authority granted by G. L. c. 140, §131. In the revocation letter, Keenan identified McGunigle as an unsuitable person to hold a gun license because of "threats" he had allegedly made. Under G. L. c. 140, §131(f), Keenan, as the licensing authority, could revoke McGunigle's LTC "if it appears that the holder is no longer a suitable person to possess such license." After receiving the revocation letter, McGunigle turned over his LTC and firearm to Keenan.

McGunigle filed a timely appeal of Keenan's revocation decision to the Quincy District Court, as was his right under G. L. c. 140, § 131. The District Court (Coven, J.) held a hearing on McGunigle's appeal on November 28, 2012 at which time the Court received evidence from both sides as to whether Keenan had reasonable grounds to revoke McGunigle's LTC. During this proceeding, McGunigle bore the burden of proving that Keenan had "no reasonable ground for ... revoking [McGunigle's] license." G. L. c. 140, § 131(f).

On December 4, 2012, Judge Coven issued Findings of Fact and Rulings of Law on McGunigle's appeal. In denying the appeal and affirming Keenan's decision, Judge Coven relied on three separate incidents involving McGunigle and members of the public. The three incidents, each of which is amply supported by the record before Judge Coven, involved situations in which McGunigle exhibited threatening or harassing behavior and indications of anger management problems. In one incident, neighbors allegedly observed McGunigle

“coddle” his service weapon as he removed what he, incorrectly, determined to be stolen property from a neighbor’s driveway.

After the “stolen” property incident, Keenan sought to have McGunigle terminated from the police force, but a hearing officer declined to terminate McGunigle’s employment after a hearing on the matter. However, McGunigle did receive a five-day suspension without pay and was ordered to attend anger management sessions.

At the District Court hearing, McGunigle’s attorney stressed that there was a five-month interval between the latest incident and Keenan’s decision to revoke the LTC. This, he suggested, demonstrated that the LTC revocation was a pretext because after McGunigle’s LTC was revoked, Keenan terminated his employment by the Quincy Police Department on the grounds that he could no longer lawfully carry a firearm.

DISCUSSION

This Court’s review under the certiorari statute is confined to the record of the District Court, and its inquiry is limited to the question of whether it is apparent from the record that the District Court committed substantial errors of law adversely affecting material rights. *Godfrey v. Chief of Police of Wellesley*, 35 Mass. App. Ct. 42, 47 (1993). Here, McGunigle argues that there was no evidence before the District Court from which that judge could find that Keenan had reasonable grounds for revoking McGunigle’s LTC. I disagree with McGunigle’s assessment of the evidence before the District Court.

“The goal of firearms control legislation in Massachusetts is to limit access to deadly weapons by irresponsible persons.” *Ruggiero v. Police Comm’r of Boston*, 18 Mass. App. Ct. 256, 258 (1984). The controlling statute here, G. L. c. 140, § 131(f), provides in pertinent part:

A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefore.

Any party aggrieved by a licensing authority's revocation determination may appeal the decision to the District Court, where a judge may reinstate the license if "there was no reasonable ground for ... revoking such license." *Id.*

"To warrant a finding that a chief of police had no reasonable ground for refusing to issue a license, it must be shown that the refusal was arbitrary, capricious, or an abuse of discretion." *Chief of Police of Shelburne v. Moyer*, 16 Mass. App. Ct. 543, 546 (1983). A decision is not arbitrary and capricious unless there is no ground which "reasonable men might deem proper" to support it. *T.D.J. Dev. Corp. v. Conservation Comm'n of North Andover*, 36 Mass. App. Ct. 124, 128 (1994), quoting *Cotter v. Chelsea*, 329 Mass. 314, 318 (1952).

Here, the District Court was presented with sufficient evidence from which it could find that Keenan had reasonable grounds for revoking McGunigle's LTC. Even if the numerous complaints in the record by neighbors and citizens about McGunigle's threatening and harassing behavior would not have been sufficient by themselves to support Keenan's revocation decision – a question I need not reach – the allegation that he "coddled" his firearm in order to further threaten a neighbor provides sufficient grounds for the revocation. Angry and unprofessional threats towards one's neighbors are untoward, but when a police officer's service weapon is used to give weight to these threats, then a licensing authority may reasonably find that the license holder is no longer a "suitable person" to hold a LTC.

I have carefully considered McGunigle's argument that Keenan's revocation decision was simply a pretext to allow Keenan to terminate McGunigle's employment with the Quincy

Police Department because McGunigle could no longer carry a weapon. However, McGunigle had contractual or statutory rights protecting him against a pretextual termination of his employment. See, e.g., *City Manager of Worcester v. New England Police Benevolent Ass'n, Local 911*, 85 Mass. App. Ct. 1119 (2014) (Rule 1:28) (upholding arbitrator's decision to return to duty a police officer who was terminated by a police chief after the chief had revoked the officer's license to carry a weapon). Indeed, McGunigle had already successfully asserted those rights once before, when he convinced a hearing officer that Keenan could not terminate him because of one of his confrontations with his neighbors.

More to the point, the validity of Keenan's termination of McGunigle was not before the District Court judge, and is not before me today. McGunigle's present request for relief only requires me to review the record before the District Court to determine whether that record contains sufficient support for the finding of the District Court judge that Keenan had reasonable grounds for revoking the LTC. Given the numerous complaints from neighbors and other citizens about McGunigle's threatening or harassing behavior and the allegation from a neighbor that he used his service weapon on at least one occasion to give further weight to a threat, I find support in the record below for the District Court's conclusion that Keenan had reasonable grounds for revoking McGunigle's LTC.⁴

⁴ While I have found that McGunigle's appeal must fail on the merits, the defendants also argue that McGunigle should be barred from pursuing this appeal because he did not comply with Superior Court Standing Order 1-96. Standing Order 1-96 requires an appellant such as McGunigle to serve a Rule 12(c) motion and supporting memorandum within thirty (30) days of the filing of the administrative record. The Court received the certified record in this case on March 5, 2013, and did not receive McGunigle's motion until January 6, 2014, when McGunigle apparently filed it in response to the defendants' own motion for judgment on the pleadings. Therefore, McGunigle's claim could equally be barred by his failure to prosecute this action.

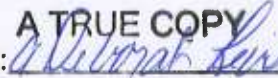
ORDER

For the foregoing reasons, the defendants' motion for judgment on the pleadings is **ALLOWED** and the plaintiff's motion for judgment on the pleadings is **DENIED**. The judgment of the District Court is **AFFIRMED**, and the clerk is directed to **ENTER JUDGMENT** in favor of Defendants.



Paul D. Wilson
Justice of the Superior Court

July 3, 2014

A TRUE COPY
Attest: 
Deputy Assistant Clerk
7/7/14