

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT O.P. 65.37

IN RE: T.Z.M. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: BLAIR COUNTY :
DEPARTMENT OF SOCIAL SERVICES : No. 542 WDA 2023

Appeal from the Judgment Entered April 12, 2023
In the Court of Common Pleas of Blair County Civil Division at No(s):
No. 2021 GN 3941

BEFORE: BOWES, J., KUNSELMAN, J., and COLINS, J.*

MEMORANDUM BY KUNSELMAN, J.:

FILED: JANUARY 22, 2024

The Blair County Department of Social Services (“the Agency”) appeals from the order restoring the right of T.Z.M. (“the Petitioner”) to bear arms.¹ Because a petition to restore that right is a purely legal proceeding to which the equitable doctrine of clean hands does not apply, we affirm.

The trial court found the facts of this case to be as follows:

Petitioner [was] subject to a firearms prohibition as the result of a Section 302 commitment that occurred on March 5, 2021. [He] assert[ed] the Section 302 commitment was not supported with sufficient evidence, as required under Section 6111.1(g)(2) of Title 18 to warrant a firearms’ restriction. Additionally, [he sought] restoration of his firearms rights, pursuant to 18 Pa.C.S.A. § 6105(f) and presented the expert opinion of Dr. Spayd in support of said request.

* Retired Senior Judge assigned to the Superior Court.

¹ The Second Amendment to the Constitution of the United States dictates that “the right of the people to keep and bear arms shall not be infringed.” **See *District of Columbia v. Heller***, 554 U.S. 570 (2008) and ***McDonald v. City of Chicago***, 561 U.S. 742 (2010) (incorporating the right against the States under the Fourteenth Amendment). Similarly, the Constitution of the Commonwealth of Pennsylvania provides, “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Pa. Const. art. I § 21.

[In March of 2021,] the Greenfield Township Police . . . responded to the Petitioner's residence based upon the call of a concerned friend, who reported that Petitioner had made remarks of harming himself and referenced taking pills. Emergency medical services responded to the residence and transported the Petitioner to [] UPMC. Section 302 commitment was filled out by Officer Eastep. The physician's examination of Petitioner states "drank alcohol and took pills to kill himself. Conflict with girlfriend; increased depression." The doctor concluded that "inpatient psychiatric treatment, medication, and assessment to treat lethal ideations," was necessary. ([Agency's] Exhibit 1). The Petitioner . . . signed a voluntary consent to inpatient treatment on March 7, 2021. At the time of discharge, his medical diagnosis was adjustment disorder.

Petitioner testified [at the expungement/restoration-of-rights hearing.] According to the Petitioner, on or about March 5, 2021, he had recently learned that his young daughter was diagnosed with diabetes; his long time, live-in girlfriend and the mother of his child had moved out and was possibly involved with another person; and he lost his job. He [testified that] he was not, nor is a drinker, but bought a bottle of liquor and drank in an effort to relax. He also claimed that he had only taken eight ibuprofen pills for a headache and did not believe that he had told anyone it was a "bunch of pills" or "half bottle." Petitioner was unable to identify the "friend" who had called the police. He denied that he ha[d] been given an opportunity to sign the 201 commitment prior to the one executed on March 7, 2021. He denied being suicidal at the time of the commitment.

Petitioner denied abuse of alcohol currently. He is subject to random drug testing with his new position as a driver for US Foods. He request[ed] the restoration of firearms privileges, so that he can enjoy hunting . . .

The [trial court] posed several questions to the Petitioner about how he manages the past stresses now. He testified that he has a good working relationship with the co-parent of his daughter; that he has been educated on how to manage his daughter's diabetes, that he does not drink; and that he looks to his extended family to assist when problems arise in his life.

Dr. Spayd testified virtually at the proceeding without objection from Counsel. [The court qualified her as an expert, because she] is a licensed psychologist. According to Dr. Spayd,

Petitioner was tested twice, once on September 6 and then on September 13, 2022. She authored a report, which was admitted as an exhibit. Dr. Spayd administered the Minnesota Multiphasic Personality Inventory, Third Edition (MMPI-3) and conducted a clinical interview of the Petitioner. She also reviewed certain information about the Petitioner . . . Dr. Spayd opined that the Petitioner's response profile was "not suggestive of any clinical level of thought disorder, behavioral disturbance, or emotional distress."

[I]n her expert opinion the results of the testing did not reveal any current mental health problem. The results were not indicative of depression, suicidal tendencies, anti-social behaviors, or aggressiveness. The adjustment disorder diagnosis at the time of his discharge from inpatient care in March of 2021 could not be confirmed based upon the testing results since adjustment disorder is a short[-]term condition. Testing showed the Petitioner to have personality traits consistent with "high energy, impulsivity, compulsivity, cynicism, and assertiveness." **See** Petitioner's Exhibit 1.

She testified that such findings were not unusual for males. Dr. Spayd determined that Petitioner's prognosis was "good psychological functioning in the absence of significant life stressors" and "psychologically safe to carry and use firearms at this time." Petitioner's Exhibit 1, p. 5. She found no need for more extensive psychological evaluations, nor mental health evaluations.

Dr. Spayd had no follow up treatment recommendations for Petitioner in terms of treatment. She held all of her opinions to a reasonable degree of certainty. Dr. Spayd did not believe a follow up test was clinically necessary or that he was required to return for the optional feedback session with her. Furthermore, Petitioner's tests scores were supportive of Petitioner's self-reported denial of current suicidal inclinations.

However, Dr Spayd acknowledged that her report did not document the review of the Petitioner's history as set forth in the Section 302 petition. She did believe her conclusions took into account the 302 commitment.

Trial Court Opinion, 4/12/23, at 2-5 (some citations omitted).

At the close of the hearing, the trial court directed the parties to file briefs. Therein, the Agency contended that the Petitioner's testimony was incredible. In the Agency's view, he contradicted himself and offered a version of events "in a convoluted and quite disingenuous manner, denie[d] the key facts upon which the § 302 was based, and denie[d] knowing the name of the summoned friend who instigated the § 302." Agency's Trial Court Brief at 8.

Hence, the Agency claimed that Petitioner was perpetrating a fraud upon the trial court. As such, it thought he had unclean hands. ***See id.*** The Agency therefore argued that Petitioner could not secure restoration of his right to bear arms.

The trial court issued an Opinion and Order declining Petitioner's request to expunge his record of the § 302 commitment. However, based upon 18 Pa.C.S.A. § 6105(f), the trial court restored his right to bear arms.

Regarding the grant of that relief, the trial court opined:

the testimony of Dr Spayd [is] credible . . . [H]er expert opinion held to a reasonable degree of certainty that the Petitioner is not suffering from a mental disease or defect that would prevent him from safely having a firearm. Consistent with [the doctor's] opinion, the [trial c]ourt does not find that the [Petitioner] is a risk to himself or others as it relates to owning, possessing, or using a firearm.

[Further, the trial c]ourt does not find that the Petitioner has "unclean hands." While the [trial c]ourt appreciates the perspectives of the [Agency], [the trial c]ourt believes that the Petitioner can dispute the basis for the 302 commitment, as documented by the officer and the hospital staff, without concluding that he is lying to the [c]ourt. The [trial c]ourt was also satisfied with his responses, finding the Petitioner credible, about how he copes with stress currently, as well as his testimony that he would safely secure firearms if his privileges were restored

and that he does not regularly engage in the use of alcohol. The Petitioner's job also requires random drug/alcohol screens which provide an additional layer of protection relative to his continued abstinence from alcohol and drugs, which use was a factor on March 5, 2021.

Trial Court Opinion, 4/12/23, at 9-10.

This timely appeal followed.

The Agency raises one issue:

Whether the [trial] court erred as a matter of law or abused its discretion by refusing or failing to consider and apply the clean-hands doctrine to [Petitioner's] fabrication of evidence material to his request for equitable relief under 18 Pa.C.S.A. § 6105(f)(1) of the Uniform Firearms Act.

Agency's Brief at 4.

In support of this claim of error, the Agency repeats its argument from below. It asks this Court to reweigh the credibility of the Petitioner's testimony and determine that he lied to the trial court. The Agency would have us apply the equitable doctrine of clean hands to this statutory proceeding and reverse the trial court's order.

Noticeably absent from the Agency's argument is any case establishing that a petition to restore the right to bear arms is an equitable proceeding.

The case upon the Agency chiefly relies is ***Universal Builders Inc. v. Moon Motor Lodge***, 244 A.2d 10 (Pa. 1968), which involved an action to void a construction contract based on fraud. There, the Supreme Court of Pennsylvania did not apply the doctrine of clean hands, but said, in passing "although the manufacturing of evidence by a plaintiff certainly might bar

recovery under the clean hands doctrine, *see Gaudiosi v. Mellon*, 269 F.2d 873 (3rd Cir. 1959) and *Mas v. Coca Cola Co.*, 163 F.2d 505 (4th Cir. 1947), in the instant case the evidence was manufactured not by the plaintiff, but by an officer of the plaintiff corporation, now in bankruptcy.” *Id.* at 13. That case is clearly distinguishable as an entirely different cause of action than the one now before this Court.

More importantly, this case was not in equity, where the trial court was sitting as a court of conscience. Rather, the Petitioner’s requested relief was at law – *i.e.*, under a statute of the General Assembly. “It has been repeatedly stated by the Supreme Court . . . that equity has jurisdiction only in the absence of a full, complete, and adequate remedy at law.” *City of Philadelphia v. Armstrong*, 271 A.3d 555, 567 (Pa. Cmwlth. 2022).

Here, the law provided for the Section-302-commitment process. The law also provided the manner in which those records are expunged, and firearm rights are restored. According to the relevant statute:

Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.

18 Pa.C.S.A. § 6105(f).

Our research reveals no case – and the Agency sites none – indicating that the legislature intended Section 6105(f) to confer equitable jurisdiction upon the courts of common pleas. Thus, we conclude that the restoration of

the right to bear arms under Section 6105(f) is a legal matter to which the equitable doctrine of clean hands does not apply.

The courts of this Commonwealth have long held that a party “who comes **into a court of equity** must come with clean hands.” **Lee v. Lee**, 978 A.2d 380, 387 (Pa. Super. 2009) (emphasis added). “Application of the unclean-hands doctrine is confined to willful misconduct which concerns the particular matter in litigation. It does not apply to collateral matters not directly affecting the **equitable relations** which exist between the parties.” **Shapiro v. Shapiro**, 204 A.2d 266, 268 (Pa. 1964) (emphasis added).

This case presents no equitable relationship between the Petitioner and the Agency. Nor did the Petitioner come into a court of equity when he filed his petition to restore his rights to bear arms. He initiated a purely legal case, under the statutes of the legislature, to which the doctrine of clean hands does not apply.²

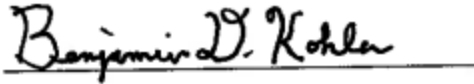
The Agency’s appellate issue is meritless.

² To the extent the Agency claims Petitioner should be denied relief because it thinks his testimony was incredible, we remind the Agency “the trial judge, as finder of fact, [was] free to believe all, part, or none of the evidence, and this Court will not disturb [her] credibility determinations.” **Williams v. Taylor**, 188 A.3d 447, 450 (Pa. Super. 2018). An appellate court, which did not have the opportunity to see or to hear the witnesses first hand, may not reweigh the credibility of witnesses. “While [the Agency] believes Petitioner intentionally lied in his testimony, the [trial court found] the testimony credible.” Trial Court Opinion, 6/13/23, at 4. That finding is not reviewable on appeal. In addition, the trial court found Petitioner’s expert psychologist to be credible, who clinically tested Petitioner and determined that he was free of mental illness such that he may safely possess firearms.

Order affirmed. The outstanding Application for Relief to be Excused from Oral Argument is now denied as moot.

Judge Bowes and Judge Colins concur in result.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 1/22/2024