

[J-126-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CONNIE J. TRITT,	:	No. 274 MAP 2003
	:	
Appellant	:	
	:	Appeal from the Order of the
	:	Commonwealth Court entered on 11/18/03
v.	:	at No. 427 MD 2003
	:	
	:	
PEDRO A. CORTES, SECRETARY OF	:	
THE COMMONWEALTH,	:	
	:	
Appellee	:	SUBMITTED: March 15, 2004

OPINION

MR. JUSTICE SAYLOR

Decided: June 22, 2004

This direct appeal requires that we consider the scope of the notary public education requirement.

On December 9, 2002, the General Assembly substantially revised the Notary Public Law,¹ per the Act of December 9, 2002, P.L. 1269, No. 151, effective July 1, 2003. As part of the amendments, the provision governing the requirements for becoming a notary public was altered, inter alia, to impose an educational requirement as follows:

(c) As a condition for the Secretary of the Commonwealth's issuance of a notary commission to an applicant not appointed to the office of notary public as of the effective date of this subsection, a notary applicant must complete at

¹ Act of Aug. 21, 1953, P.L. 1323, §§1-23 (as amended, 57 P.S. §§147-169) (the "Act").

least three (3) hours of approved notary education within the six (6) month period immediately preceding their application.

57 P.S. §151(c). In addition, the section respecting reappointment was amended to clarify eligibility along the following lines:

Applications for reappointment to the office of notary public shall be filed at least two months prior to the expiration of the commission under which the notary is acting. Persons seeking reappointment must continue to meet the requirements set forth in section 5 in order to be reappointed.

57 P.S. §152 (footnote omitted).

Appellant, Connie J. Tritt, a notary public whose commission is set to expire on October 5, 2004, filed an application for reappointment on May 5, 2003, with Appellee, Pedro A. Cortes, the Secretary of the Commonwealth (“the Secretary”). Although Ms. Tritt’s filing fee was retained, the Secretary refused her application, returning it with a note indicating that she must satisfy the educational requirement six months prior to October 5, 2004, and that she could re-submit her application in August of 2004. In response, Ms. Tritt filed a Petition for Declaratory Judgment and Writ of Mandamus in the Commonwealth Court, naming the Secretary as respondent and averring, in pertinent part, that her application was properly completed, and that the educational prerequisite in Section 5(c) of the Act, 57 P.S. §151(c), did not apply to her.² In particular, Ms. Tritt emphasized that subsection (c) specifically excluded notaries who had been appointed prior to its effective date, and that the requirements referred to in Section 6 of the Act, 57 P.S. §152, for reappointment could not be read as nullifying such exclusion. According to Ms. Tritt, therefore, the Secretary was obligated to reappoint her as a notary public.

² The Commonwealth Court has original jurisdiction over actions against officers of the Commonwealth acting in their official capacity. See 42 Pa.C.S. §761(a)(1).

The Secretary filed preliminary objections, requesting that Ms. Tritt's petition be dismissed for, inter alia, failing to state a claim upon which relief could be granted. In support, the Secretary noted that he administers and enforces the Notary Public Law and maintained that his interpretation of Sections 5 and 6 of the Act was reasonable and, thus, entitled to deference. Furthermore, the Secretary offered that the application of the rules of statutory construction confirm his interpretation.

The Commonwealth Court sustained the Secretary's preliminary objection for failure to state a claim and dismissed the petition. See Tritt v. Cortes, 836 A.2d 173, 178 (Pa. Cmwlth. 2003). In so holding, the court emphasized that it would not disturb the Secretary's interpretation of the statute in the absence of fraud, bad faith, abuse of discretion, or clearly arbitrary action. See id. at 177. After reciting various rules of statutory construction, including the principle that the General Assembly does not intend a result that is absurd or unreasonable, the court explained that the underlying purpose of the amendments to the Notary Public Law was to introduce mandatory notary public education. See id. at 178. Interpreting the statute as exempting from such requirement those with a notary commission prior to the amendments, the court reasoned, would diminish the educational purpose and yield an unreasonable result, namely, obligating some notaries to meet the education mandate, while exempting others. See id. Addressing the exclusion in Section 5(c) of the Act, the court viewed it as merely treating notaries who were appointed prior to the effective date of the subsection as "grandfathered" until their commissions expire on or after July 1, 2003." Id.

In general, the interpretation of a statute is a question of law, see Borough of Pottstown v. Pennsylvania Mun. Ret. Bd., 551 Pa. 605, 611, 712 A.2d 741, 744 (1998), with the objective being to ascertain and effectuate the intent of the General Assembly. See 1 Pa.C.S. §1921(a). In this regard, the plain language of a statute is the foremost

indication of legislative intent. See Commonwealth v. Gilmour Mfg. Co., 573 Pa. 143, 148, 822 A.2d 676, 679 (2003). While, as emphasized by the Secretary, an interpretation of a statute by those charged with its administration and enforcement is entitled to deference, see id. at 149, 822 A.2d at 679, such consideration most appropriately pertains to circumstances in which the provision is not explicit or is ambiguous. See 1 Pa.C.S. §1921(c)(8); Pennsylvania Fin. Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 430, 664 A.2d 84, 87 (1995).

Here, Section 5(c) of the Act explicitly limits the educational requirement to “applicant[s] not appointed to the office of notary public as of the effective date of this subsection[.]” 57 P.S. §151(c).³ The language in Section 6 of the Act, providing for reappointment and stating that “[p]ersons seeking reappointment must continue to meet the requirements set forth in section 5 in order to be reappointed[.]” is neither to the contrary nor inconsistent with this limitation. Rather, Section 5 of the Act includes a number of requirements in addition to the educational obligation; for example, an applicant must be of good moral character, familiar with the duties of a notary public, not have been convicted of a felony offense or an offense incompatible with the duties of a notary, and not have had his/her commission revoked. See 57 P.S. §151(b)(1), (2). While a notary seeking reappointment must, nevertheless, continue to meet these requirements, the statute expressly exempts those appointed prior to July 1, 2003, from completing a course in notary education.

Nor do we view the fact that the General Assembly chose to add a requirement of notary education for more recent appointees while exempting those already commissioned as necessarily unreasonable or absurd; indeed, the exemption may

³ Notably, the limitation was added immediately prior to the final vote on the legislation in the House of Representatives. See Legis. J. -- House at 1226-27 (June 5, 2001).

simply reflect an acknowledgment that those individuals satisfied the then existing requirements for appointment and, presumably, attained some degree of practical experience.⁴ Moreover, the Commonwealth Court's reading of the limitation in Section 5(c) of the Act as a form of grandfather clause, which merely exempts previously appointed notaries until their commissions expire, would render the language superfluous. See 1 Pa.C.S. §1921(a) (requiring a statute to be construed so as to give effect to all its provisions). Obviously, a grandfather clause would not be necessary to allow those with notary commissions preexisting the effective date of the education requirement to complete their terms before being subject to such condition.

While the terms of Section 5 of the Act except Ms. Tritt from the education obligation, we do not suggest here that mandamus relief is necessarily implicated. Mandamus is appropriate to compel the performance of a ministerial act or mandatory duty; however, it may not be employed to compel a particular exercise of discretion. See Coady v. Vaughn, 564 Pa. 604, 607-08, 770 A.2d 287, 289-90 (2001). As stressed by Ms. Tritt, Section 6 of the Act does not prohibit an early application for reappointment, stating only that such requests "shall be filed at least two months prior to the expiration of the commission[.]" 57 P.S. §152. In this case, however, Ms. Tritt filed her application for reappointment approximately sixteen months before her current term was to expire. As noted, pursuant to Section 6 of the Act, applicants for reappointment

⁴ The Secretary characterizes the education requirement as one of a continuing nature, similar to that imposed in professional occupations, for instance, accountants, 63 P.S. §9.8b(b), and attorneys, Pa.R.C.L.E. 105(a). Although the question of whether the education requirement is an ongoing obligation is not presently before the Court, we would note that other jurisdictions have specifically addressed this issue in their respective statutory schemes. Compare, e.g., CAL. GOV'T CODE §8201(b)(2) (1992) (providing that notaries who have completed a course of study need only complete a refresher course prior to reappointment) with N.C. GEN. STAT. §10A-6 (1995) (exempting notaries seeking to be re-commissioned from the course study requirement).

must continue to satisfy the requirements of Section 5, and the Secretary is charged with ensuring that applicants are in compliance. See 57 P.S. §151(b). Certain of these requirements may be affected by the timing of the application, for instance, the Secretary must be satisfied that an applicant has not been convicted of a felony offense or an offense incompatible with the duties of a notary during the five year period preceding the date of application. See 57 P.S. §151(b)(1). Of additional import, the Secretary is vested with discretion to reject an application based upon good cause. See 57 P.S. §151(b). Given the statutory obligations of the Secretary and the discretion with which he is vested, it may have been within his prerogative to treat the application under review as premature.⁵

Accordingly, the present appeal is taken as submitted on the briefs, the order of the Commonwealth Court is reversed, and the matter is remanded for further proceedings in accordance with this opinion.

Mr. Chief Justice Cappy files a dissenting opinion in which Mr. Justice Castille and Mr. Justice Baer join.

⁵ It seems questionable, however, whether under this justification, Ms. Tritt's filing fee should be treated as forfeit.