

SUPREME COURT OF NEW HAMPSHIRE

DeVere v. Attorney General

146 N.H. 762 (2001) · Decided September 20, 2001

SUMMARY

The New Hampshire Supreme Court held that RSA 260:14, III, the Driver Privacy Act provision governing disclosure for official business, does not generally permit a private citizen to obtain motor vehicle records merely by obtaining a court order and asserting a governmental purpose. The court concluded that section III applies to requests from governmental entities, while private parties must satisfy the requirements of section V, subject to its limitations and opt-out provisions. The court reversed and remanded for further proceedings concerning the plaintiff's alternative section V claims.

OPINION

DUGGAN, J.

DUGGAN, j. The State appeals from a Superior Court (McGuire, J.) order interpreting RSA 260:14, III (Supp. 2000) of the Driver Privacy Act to require disclosure of certain motor vehicle records to the plaintiff, Peter DeVere.

We reverse and remand. In August 1997, the plaintiff, a principal organizer of NH DWI Volunteers and an advocate of drunk driving related legislation, submitted a request to the New Hampshire Division of Motor Vehicles (division) under the Right-to-Know Law, see RSA ch. 91-A (1990 & Supp. 2000), seeking the names, home towns and license plate numbers for all one, two, three and four digit plates issued by the division from November 1, 1996, through December 15, 1997.

The division denied his request as being inconsistent with the requirements of RSA 260:14. The plaintiff then filed a petition in superior court seeking disclosure of the information under RSA 260:14, III. In his petition, the plaintiff stated that he was seeking release of the information to cross-reference the names of persons who had been issued low-digit plates with the names of persons who had contributed to the Governor's campaign.

The plaintiff asserted "that the public has the right to be informed as to whether or not the *764Governor is violating the Constitution by giving out low digit license plates to campaign contributors, which is against the law, and that certain individuals are being treated differently than the ordinary citizen, and are receiving special treatment in the form of low digit plates." The plaintiff later amended his petition to seek relief under RSA 260:14, V (a)(2), V (a)(4) and VIII.

At the hearing, the plaintiff testified that he needed the motor vehicle records in order to provide testimony regarding his findings to the senate transportation committee, which was considering

legislation related to the issuance of low-digit license plates.

The superior court granted the petition, finding that the plaintiff's request for the records was "for the purpose of legislative research" and ruling that "such research is 'official business' for purposes of RSA 260:14, III." The State filed a motion for reconsideration, arguing that RSA 260:14, III was intended to apply solely to government officials.

The court denied the motion, but amended its prior order to restrict the plaintiff's use of the motor vehicle information to the official business described in his request, i.e., legislative research related to the pending legislation, and prohibiting disclosure to any unauthorized person.

On appeal, the State argues that the superior court's decision is at odds with the language and the purpose of the Driver Privacy Act. We agree. In recent years both the State and federal governments have enacted laws aimed at protecting the privacy of personal information contained in motor vehicle records. See RSA 260:14; 18 U.S.C. §§ 2721-2725 (1994 & Supp. IV 1999).

In enacting the federal legislation, Congress was concerned that many States were selling information contained in motor vehicle records to individuals and businesses producing "significant revenues for the States." *Reno v. Condon*, 528 U.S. 141, 143-44 (2000).

The sponsor of this State's legislation was also concerned that access to personal information contained in motor vehicle records made domestic violence and stalking victims vulnerable to their assailants. See SENATE COMM. on Transportation, hearing on hb 1508-FN (April 3, 1996).

In 1994, Congress passed the Driver's Privacy Protection Act (DPPA), which regulates the authority of state motor vehicle departments to disclose information contained in their records. The DPPA establishes a general rule prohibiting any State from disclosing personal information in a driver's motor vehicle records without the driver's "affirmative consent." *Reno*, 528 U.S. at 145 (citing 18 U.S.C. § 2721 as amended in 1999).

The DPPA permits nonconsensual disclosure to governmental entities and in limited circumstances to private individuals. 18 U.S.C. § 2721 (b). The DPPA subjects both private parties and state agencies that violate the statute to substantial fines. 18 U.S.C. § 2728 (b).

In 1996, the State legislature enacted the Driver Privacy Act to comply with the DPPA. See Laws 1996, ch. 295; see also SENATE Comm, on Transportation, Hearing on hb 1508-FN, *supra*. The statute purports to conform with the DPPA by setting forth a general rule that motor vehicle "records shall not be public records or open to the inspection of any person." RSA 260:14, II (a). "Person" under the statute is defined to include any "individual, organization or entity but shall not include this state or an agency thereof." RSA 260:14, 1(b).

In construing a statute, we begin with an examination of the statutory language. *Atwood v. Owens*, 142 N.H. 396, 398 (1997). As we examine the language, we do not merely look at isolated words

or phrases, but instead we consider the statute as a whole. See *Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 341 (1996).

In so doing, we are better able to discern the legislature's intent, and therefore better able to understand the statutory language "in light of the policy sought to be advanced by the entire statutory scheme." *Appeal of Mascoma Valley Reg. School Dist.*, 141 N.H. 98, 100 (1996) (citation omitted). RSA 260:14, III provides: Motor vehicle records may be made available in response to a request from a state, a political subdivision of a state, pursuant to a court order, the federal government, or a law enforcement agency for use in official business.

The request shall be made on a case-by-case basis. In ruling that the plaintiff was entitled to the motor vehicle records under RSA 260:14, III, the superior court did not interpret "pursuant to court order... for use in official business" as limiting disclosure to governmental officials. Instead, the court looked to the plaintiff's intended use of the information.

Because the plaintiff sought the information to prepare testimony for a legislative hearing, a function of government, the court determined it constituted "official business." Accordingly, the superior court concluded that the plaintiff was entitled to "a court order" instructing the department to release the motor vehicle records under RSA 260:14, III.

We do not read section III of the statute as allowing disclosure to a private party "pursuant to a court order" whenever *766the private party asserts such disclosure is related to a governmental function. Here, the plaintiff sought the information to provide testimony to the senate transportation committee.

In providing such testimony, the plaintiff was not acting as a governmental official, but as a private citizen. Cf. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1567 (unabridged ed. 1961) (defining "official" as "derived from the proper office, officer or authority").

In contrast, it is the senate's official business to gather information and conduct hearings relative to proposed legislation. Therefore, under section III the senate may obtain information for use in considering legislation.

In fact, the record reveals that Senator Deborah Pignatelli requested and the division provided a list of the names, hometowns, and license plate numbers of persons holding registration numbers one through one thousand when considering legislation in 1998. Our reading of the statute as a whole leads us to conclude that this is the kind of official business envisioned by section III.

On the other hand, section V of RSA 260:14 permits disclosure for private use by nongovernmental entities. When disclosure is made under section V "the use of the records [is] strictly limited to [the permitted use] as specified in the request." RSA 260:14, V (a). Section V

further provides that a person may elect to prevent disclosure to these nongovernmental entities of his own personal information at any time.

RSA 260:14, V (b)(1). The structure of the statute as a whole indicates that the legislature intended section III and section V to operate independently. Section III of the statute applies when the request for information comes from a governmental entity, including a court, and section V applies when the request comes from a nongovernmental entity, such as the plaintiff.

An examination of the entire statutory scheme compels this conclusion because the statute provides: (1) the segregation of different entities listed in sections III and V; (2) the different levels of disclosure of personal information under sections III and V; and (3) the opt-out procedure available only under section V. First, by its plain language section III is limited to governmental agencies.

It specifically covers requests made by a State, a political subdivision of a State, the federal government and law enforcement agencies, as well as pursuant to a court order. By contrast, section V of RSA 260:14 permits access for private nongovernmental entities, including a legitimate business, RSA 260:14, V (a)(1), (4), a bank, RSA 260:14, V (a)(3), an employer, RSA 260:14, V (a)(7), an insurer, RSA 260:14, V (a)(7), and a public utility, RSA 260:14, V (a)(9).

On its face, each section permits disclosure to different types of entities seeking access to motor vehicle records. Second, in sections I, II and V of RSA 260:14, the legislature specifically provided different levels of access to motor vehicle records depending on the type of entity seeking disclosure. Disclosure under section III includes all personal information contained in the record including a driver's photograph, computerized image and social security number.

Disclosure under section V excludes these items of personal information. Clearly, the additional information available under section III is information that could be critical for a governmental agency to have in performing its official function, for example, in investigating criminal activity.

Because the purpose of section III is to allow governmental entities access to driver records, disclosure of personal information under section III is unrestricted. In contrast, since the purpose of section V is to allow private entities limited access to personal information, access under this section is restricted.

Finally, the restriction on disclosure to private parties under section V is further limited by an "opt out" provision. Section V provides that even if the department allows access to motor vehicles records under section V, a driver can choose to prevent public access to his or her records. There is no comparable opt out provision under section III. Section III provides for nonconsensual disclosure of personal information.

If section III were routinely available to private individuals as a way of gaining access to motor vehicles records, the purpose of the statute would be undermined. Viewing the statute as a whole, we conclude that the legislature intended that private parties satisfy the requirements of section V before obtaining access to motor vehicle records.

The plaintiff argues that by including the phrase “pursuant to a court order” the legislature intended section III to apply to a private party. According to legislative history, section III as originally drafted only included the word “court.” During a legislative hearing, a concern was raised about whether a person who had been involved in an accident could get access to the other driver’s motor vehicle record.

See SENATE COMM. ON TRANSPORTATION, HEARING ON HB 1508-FN, *supra*. The bill’s sponsor pointed out that subsection V (a)(2) would allow a private party to request the motor vehicle record from the department of safety “in connection with any civil, criminal, administrative or arbitral proceeding in any court or government agency.” *Id.* The sponsor acknowledged that the ‘opt’ out provision could prevent disclosure under this section so that, in some cases, the nonconsensual disclosure provision in section III would have to be used.

Id. In an attempt to clarify this distinction, the sponsor agreed to change the wording of section III from “court” to “pursuant to a court order.” *Id.* We agree with the plaintiff that the statute’s legislative history shows that in certain circumstances, a court can issue an order requesting disclosure of a motor vehicle record for the benefit of a private party, but this change in wording does not evidence an intent to effectuate a wholesale change in the statutory scheme.

In light of the statute’s general prohibition against disclosure, this procedure that allows a private party limited access to motor vehicle records cannot be read to provide a general right of access to private parties simply by invoking the court’s status as a governmental agency. Rather, section III is intended to allow a court to request a motor vehicle record for a litigant in connection with other pending litigation.

Were we to adopt the plaintiff’s reading of section III, that section would not only swallow up section V it would make the limitations on consent and the scope of disclosure meaningless. Despite the superior court’s ruling that the plaintiff’s intended use was for official business, the plaintiff argues in his brief that the phrase “official business” in section III does not modify the phrase “pursuant to a court order.” He contends a court can order disclosure of motor vehicle records under section III even if the records are not for official business.

In support of this argument, the plaintiff cites “[t]he general rule of grammar and law... that the relative terms refer to the next preceding antecedent, unless it is clear from the context that a different one was intended.” *Piper v. Railroad*, 75 N.H. 435, 442 (1910). Based on this rule, the plaintiff asks us to conclude that the absence of a comma after law enforcement means that

“official business” only modifies “law enforcement.” When examining statutory language, however, we do not merely look at isolated phrases, but construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd result.

See Appeal of Ashland Elec. Dept., 141 N.H. at 340. Adopting the plaintiff’s interpretation of section III would mean that federal, state and local officials could obtain access to motor vehicle records for other than official business.

In light of our analysis of the statutory scheme above, we do not agree that the legislature intended such a result. *769Finally, the plaintiff urges us to rule that even if he was not entitled to access under section III, he was entitled to access under RSA 260:14, V (a)(2) and (4).

The plaintiff first raised the section V claim in the superior court. He did not request access from the division as required by section V See RSA 260:14, V (a). The State, however, asserted at the hearing that the division would not provide the records under section V because the division’s regulations define “legitimate business” in section Y to include only businesses that receive compensation in connection with their work.

See N.H. ADMIN. RULES, Saf-C 5601.08. In response, the plaintiff argues that this definition of legitimate business is statutorily and constitutionally infirm. The superior court did not determine whether the records were available to the plaintiff under section Y As such, the superior court did not consider what effect, if any, the federal DPPA would have on disclosure pursuant to section Y Compare 18 U.S.C. § 2721 (b)(5) (permitting disclosure for use in “research activities” but restricting use of personal information) and 18 U.S.C. § 2721 (b)(11) (permitting disclosure for any use in response to request for individual motor vehicle records if State has obtained express consent from individual to whom such personal information pertains) with RSA 260:14, V (b)(1) (permitting disclosure to legitimate business for use connected with motor vehicles or driver safety but limiting use to that specified in request and implying consent unless individuals elect not to have personal information available).

In deciding whether the plaintiff is entitled to the records under section Y the superior court would also have to consider the applicability of the federal statute to such a request, and therefore we cannot say, based on this record, that the superior court would have reached the same result if it had addressed the section V issues. But cf. Appeal of Sturm, Ruger & Co., 124 N.H.

506, 508-09 (1984) (holding use of different standard not ground for reversal if same result reached under correct standard). Accordingly, we reverse and remand to the superior court for further proceedings consistent with this opinion. Reversed and remanded. HOLLMAN, GROFF and FAUVER, JJ., superior court justices, specially assigned under RSA 490:3, concurred; LYNN, J., superior court justice, specially assigned under RSA 490:3, dissented.

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