

SUPREME COURT OF NEW HAMPSHIRE

Silverstein v. Town of Alexandria

150 N.H. 679 (2004) · Decided March 15, 2004

SUMMARY

The New Hampshire Supreme Court affirmed the denial of Cary Silverstein’s application for a concealed-weapons license by the Town of Alexandria. The court held that the district court properly upheld the denial based on lack of suitability and that the incomplete appellate record supported assuming the trial court’s findings were supported by the evidence. The court declined to reach separate issues concerning the licensing delay and residency evidence.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	March 15, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal pursuant to RSA 159:6-c from the Plymouth District Court's order upholding the Town of Alexandria police chief's denial of Silverstein's application for a license to carry a concealed weapon.
STANDARD OF REVIEW	Under RSA 159:6-c, the district court hears evidence and makes its own determination whether the petitioner is entitled to a license. When the appellate record is insufficient, the Supreme Court assumes that the evidence supports the trial court's findings and reviews the record for errors of law.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Cary Silverstein v. Town of Alexandria

TOPICS

- appellate procedure
- standard of review
- administrative law
- burden of proof
- municipal law

PRACTICE AREAS

- municipal law
- administrative law
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether Silverstein could challenge the chief's nearly ten-month delay in acting on his application in an appeal under RSA 159:6-c.
2. Whether the district court improperly considered evidence concerning Silverstein's residency and other after-acquired evidence when reviewing the license denial.
3. Whether the district court improperly shifted the ultimate burden of proof from the licensing authority to Silverstein.
4. Whether the incomplete appellate record required affirmance of the district court's decision upholding the license denial.

HOLDINGS

1. An appeal under RSA 159:6-c is limited to whether the petitioner is entitled to a concealed-weapons license; alleged violations of the licensing provisions by the licensing authority must be pursued through the separate statutory appeal avenue to superior court.
2. The district court must hear evidence and independently determine whether the petitioner is entitled to a license; on further appeal, an inadequate record requires the Supreme Court to presume that the evidence supports the district court's findings and to review only for errors of law.
3. Although the licensing authority bears the ultimate burden of proving that a license denial was justified at the district court hearing, the applicant bears the initial burden of establishing suitability before the licensing authority. Considering the applicant's failure to provide requested information does not impermissibly shift the ultimate burden of proof.
4. The Supreme Court found no error of law in the district court's decision upholding the license denial because the incomplete record contained evidence of a significant and unexplained arrest history and the applicant's failure to provide requested information.

KEY QUOTATIONS

“We first consider the standard of review for appeals pursuant to RSA 159:6-c. We have previously held that “the statute contemplates that the district court [will] hear evidence and make its own determination whether the petitioner is entitled to a license.”” (150 N.H. at 680)

“The moving party is responsible for presenting a sufficient record to enable the court to decide the issue presented on appeal.” (150 N.H. at 683)

“Given the lack of any record of the Town’s case in chief, it is impossible to reconstruct all the evidence supporting the license denial.” (150 N.H. at 683)

FACTUAL BACKGROUND

Silverstein applied to the Alexandria police chief for a license to carry a concealed weapon. The chief requested additional information concerning Silverstein's criminal history, but Silverstein did not provide the requested court transcripts or substitute certified dispositions before the chief denied the application for lack of suitability.

At the ensuing hearing, concerns about Silverstein's arrest history and failure to provide requested information supported the denial.

PROCEDURAL HISTORY

Silverstein applied to the Town police chief for a concealed-weapons license. The chief denied the application based on lack of suitability, and the Plymouth District Court upheld the denial, finding both a lack of suitability and that Silverstein was not a Town resident. The district court denied reconsideration, and Silverstein appealed to the Supreme Court of New Hampshire, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Kozerski v. Steere, 121 N.H. 469, 472 (1981)
- Rix v. Kinderworks, 136 N.H. 548, 553 (1992)
- Douglas v. Douglas, 143 N.H. 419, 427 (1999)
- Drucker's Case, 133 N.H. 326, 331 (1990)
- Murray v. Developmental Servs. of Sullivan County, 149 N.H. 264, 267-68 (2003)
- Town of Nottingham v. Bonser, 146 N.H. 418, 430 (2001)
- Vogel v. Vogel, 137 N.R 321, 322 (1993)