

SUPREME COURT OF NEW HAMPSHIRE

Petition of New Hampshire Division of State Police

Petition of New Hampshire Division of State Police · No. Merrimack No. 2020-0005 · Decided March 26, 2021

SUMMARY

The Supreme Court of New Hampshire reviewed a petition for original jurisdiction concerning an order requiring the New Hampshire Division of State Police, a nonparty, to produce a pre-employment background investigation file. The court held that although the trial court erred by ordering production without service of a subpoena, the error was not prejudicial because the Division received adequate notice and an opportunity to be heard. The court further held that RSA 516:36, II does not shield a pre-employment investigation file from discovery and affirmed the trial court's order.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Bassett, J.; Hicks, J.; Hantz Marconi, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	March 26, 2021
DOCKET	Merrimack No. 2020-0005
DISPOSITION	affirmed
PROCEDURAL POSTURE	The New Hampshire Division of State Police petitioned for original-jurisdiction certiorari under Supreme Court Rule 11, challenging a superior court order compelling the nonparty Division to produce Trottier's pre-employment background investigation file in litigation between Trottier and the Northfield Police Department.
STANDARD OF REVIEW	Certiorari review examines whether the lower court acted illegally regarding jurisdiction, authority, or observance of the law, or unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously. Discovery-management decisions are reviewed for an unsustainable exercise of discretion; statutory-construction issues are reviewed de novo. The court assumed, without deciding, that the unsustainable-exercise-of-discretion standard applied to the subpoena issue.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential value indicated by the opinion's publication notice and published status.

PARTIES

New Hampshire Division of State Police v. Douglas Trottier, Town of Northfield Police Department

TOPICS

discovery dispute

writ of certiorari

appellate procedure

statutory interpretation

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

statutory interpretation

evidence

municipal law

QUESTIONS PRESENTED

1. Whether the superior court had authority to compel a nonparty governmental agency to produce discovery without service of a subpoena and, if so, whether the absence of a subpoena prejudiced the Division.
2. Whether RSA 516:36, II shields a law-enforcement agency's pre-employment background investigation file from discovery.
3. Whether the motion to compel had to be analyzed under the Right-to-Know Law rather than ordinary civil-discovery rules.

HOLDINGS

1. A party seeking discovery from a nonparty must ordinarily serve a subpoena, and the superior court erred by compelling the Division to produce the file without one. The error did not warrant reversal because the Division received notice and an opportunity to be heard materially equivalent to those provided by the subpoena process and therefore suffered no prejudice.
2. RSA 516:36, II does not shield a pre-employment background investigation file from discovery because the statute applies to inquiries into the conduct of an officer, employee, or agent of the investigating law-enforcement agency, not an applicant or candidate for employment.
3. The superior court properly treated Trottier's motion as a civil-discovery request rather than a Right-to-Know Law petition. The Division's prior denial of Trottier's records request did not require the court to end its analysis under RSA chapter 91-A because Trottier had not brought a separate Right-to-Know action.

KEY QUOTATIONS

"Certiorari is an extraordinary remedy that is not granted as a matter of right, but rather at the court's discretion." (3)

"The proper procedure for doing so is for the party to serve the nonparty with a subpoena." (5)

"In sum, although the trial court erred when it compelled the Division to produce discovery without service of a subpoena, the ruling did not prejudice the Division because it was provided with the fundamental requirements of due process: "notice and opportunity to be heard."" (7)

“Accordingly, we interpret RSA 516:36, II as applying to documents relating to inquiries made into the conduct of an officer, employee, or agent of the investigating law enforcement agency.” (8-9)

FACTUAL BACKGROUND

Douglas Trottier formerly served as a Northfield police officer and later sought employment as a trooper with the New Hampshire Division of State Police. During the Division's pre-employment background investigation, Trottier alleged that Northfield falsely represented that it maintained a secret file about him, causing the Division not to hire him and damaging his reputation and employment prospects. Trottier sued Northfield and sought the Division's investigation file, which the Division had denied releasing under the Right-to-Know Law.

PROCEDURAL HISTORY

Trottier sued the Northfield Police Department in superior court. In that action, he and Northfield filed an assented-to motion to compel the Division, which was not a party, to produce its pre-employment investigation file, although no subpoena was served. The superior court ordered production subject to a protective order, denied reconsideration, and the Division sought certiorari. The Supreme Court of New Hampshire held that the lack of a subpoena was error but nonprejudicial, held that RSA 516:36, II did not shield the file from discovery, and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The opinion states that the Division will likely have the opportunity on remand to designate an individual to testify under Superior Court Rule 26(m). No separate remand directive is otherwise specified.

CASES CITED

- Petition of State of N.H. (State v. Lewandowski), 169 N.H. 340, 341 (2016)
- Petition of Stompor, 165 N.H. 735, 738 (2013)
- Robbins v. Kalwall Corp., 120 N.H. 451, 452-53 (1980)
- Therrien v. Company, 99 N.H. 197, 199-200 (1954)
- Jules Jordan Video, Inc. v. 144942 Canada Inc., 617 F.3d 1146, 1158 (9th Cir. 2010)
- Bueker v. Atchison, Topeka and Santa Fe Ry. Co., 175 F.R.D. 291, 292 (N.D. Ill. 1997)
- Yidi, L.L.C. v. JHB Hotel, L.L.C., 70 N.E.3d 1231, 1238 (Ohio Ct. App. 2016)
- In the Matter of Aube & Aube, 158 N.H. 459, 466 (2009)
- In re Grand Jury Proceedings (Gregory P. Violette), 183 F.3d 71, 73 (1st Cir. 1999)
- Giles v. Giles, 136 N.H. 540, 545 (1992)
- King v. Mosher, 137 N.H. 453, 456 (1993)
- Petition of N.H. Sec’y of State, 171 N.H. 728, 734 (2019)

- Petition of Carrier, 165 N.H. 719, 721 (2013)
- Lambert v. Belknap County Convention, 157 N.H. 375, 377 (2008)
- Clay v. City of Dover, 169 N.H. 681, 686-88 (2017)
- Reid v. New Hampshire Attorney General, 169 N.H. 509, 517, 522-26 (2016)
- Prof'l Firefighters of N.H. v. Local Gov't Ctr., 159 N.H. 699, 709 (2010)
- State v. Dor, 165 N.H. 198, 205-06 (2013)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-hampshire-supreme-court-of-new-hampshire/2021/petition-of-new-hampshire-division-of-state-police-lc8acbzz>