

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHAWN GOWDER,) Docket No. 11 C 1304
)
Plaintiff,)
) Chicago, Illinois
vs.) April 14, 2011
) 9:00 o'clock a.m.
CITY OF CHICAGO, a municipal)
corporation, et al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE SAMUEL DER-YEGHIAYAN

APPEARANCES:

For the Plaintiff: BRENNER FORD MONROE & SCOTT, LTD.,
BY: MR. STEPHEN A. KOLODZIEJ
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For the Defendants: CITY OF CHICAGO
BY: MS. REBECCA ALFERT HIRSCH
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CITY OF CHICAGO, DEPARTMENT OF LAW
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1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 11 C 1304, Gowder versus City of
3 Chicago.

4 MR. KOLODZIEJ: Good morning, your Honor. Stephen
5 Kolodziej, K-o-l-o-d-z-i-e-j, for the plaintiff.

6 MS. GONNISSEN: Good morning, your Honor. Meghan
7 Gonnissen for the plaintiff.

8 THE COURT: Good morning.

9 MS. HIRSCH: Good morning, your Honor. Rebecca
10 Hirsch for defendants.

11 MS. NEREIM: Good morning, your Honor. Mardell
12 Nereim -- it's M-a-r-d-e-l-l and last name is N-e-r-e-i-m --
13 for the defendant.

14 THE COURT: Good morning.

15 Okay. Parties have a dispute relating to discovery?

16 MR. KOLODZIEJ: That's correct, Judge. This is a
17 somewhat unusual case and I find myself taking a somewhat
18 unusual position but I do honestly believe from looking at
19 the pleadings and the underlying record from the
20 administrative hearing upon which this case is based that
21 discovery is not appropriate in this case and I have talked
22 to counsel at some length about this including discussing
23 case law. But this case turns upon the denial of a firearm
24 permit application based on the admitted sole basis that the
25 plaintiff was -- had a misdemeanor conviction for carrying or

1 possessing a weapon in public.

2 THE COURT: What does the rule say?

3 MR. KOLODZIEJ: The rule says that a firearm permit
4 shall not be issued if the applicant has a conviction in any
5 jurisdiction of unlawful use of a weapon that is a firearm.

6 THE COURT: And his conviction was?

7 MR. KOLODZIEJ: Unlawful -- it was for possess,
8 slash, carry in public.

9 THE COURT: Okay.

10 MR. KOLODZIEJ: Under the Illinois criminal statute,
11 that offense falls under the general statute entitled
12 unlawful use of a weapon but --

13 THE COURT: Okay.

14 MR. KOLODZIEJ: -- because the factual basis of the
15 denial of the application is undisputed -- and that's
16 admitted in the answer -- it's my position that the sole
17 issue before the Court is a legal one, namely, can the
18 ordinance, that particular ordinance be construed to
19 encompass a misdemeanor conviction for possess slash carry as
20 opposed to employment to use.

21 THE COURT: Are you challenging the
22 constitutionality of the ordinance?

23 MR. KOLODZIEJ: I am, your Honor. However, that
24 constitutional challenge arises only if the ordinance is
25 construed in the manner -- this was the basis of the argument

1 in the administrative hearing was that the ordinance has to
2 be construed in a manner to avoid constitutional questions.

3 THE COURT: And who in the first instance construes
4 the ordinance, the hearing officers?

5 MR. KOLODZIEJ: Well, that was my argument was that
6 the -- if you construe the ordinance this way to encompass
7 this conviction when the term is not defined in the
8 ordinance, you will be raising constitutional question. And
9 I do understand that the hearing officer had no authority to
10 rule on a constitutional question but my position is that
11 this is purely a question of statutory construction if it is
12 construed in the manner I advocate, there will be no
13 constitutional question. If it is construed in the way that
14 the hearing officer did and the court concludes that was in
15 error, then the only question is was the city, based upon the
16 information it had -- namely, the mere fact of this
17 conviction -- justified in denying this application and my
18 submission is, Judge, that there is no facts -- there are no
19 facts to be developed that would go to that because no facts
20 were adduced at the hearing other than the mere fact of the
21 conviction.

22 THE COURT: Okay. Defense counsel has been
23 patiently nodding her head in opposition.

24 MS. HIRSCH: Yes.

25 THE COURT: Let me hear you.

1 MS. HIRSCH: Yes. With all due respect to
2 plaintiff, we are a bit confounded by his position that no
3 discovery is allowed on a separate stand-alone Section 1983
4 claim and a state constitutional claim.

5 As plaintiff acknowledged, the ALA judge had no
6 jurisdiction and did not decide these claims. She decided
7 solely an issue of statutory construction.

8 Now plaintiff is correct that part of his
9 constitutional challenge is an as-applied challenge to how
10 the administrative law judge applied it in this case.
11 However, even in as-applied challenges, the Seventh Circuit
12 is clear that in those situations when you're challenging an
13 administrative review decision in a separate 1983 claim, the
14 court is not bound by the record. It is a separate claim.

15 Furthermore, plaintiff has also brought a facial
16 challenge in this 1983 claim that had nothing to do with the
17 facts as applied to this plaintiff. He is challenging that
18 the ordinance itself and the term any unlawful use would be
19 unconstitutional. Now that may be carry and possess; that
20 may be somebody doing something different with the weapon.
21 And frankly, your Honor, as we've submitted in our joint
22 status report, we do not anticipate that there will be
23 protracted discovery. However --

24 THE COURT: Now what dates are you suggesting? Like
25 you had 90 days for fact discovery, then another 90 days

1 for --

2 MS. HIRSCH: For expert discovery, which in this
3 case is going to be --

4 THE COURT: What would the expert discovery entail
5 in this case?

6 MS. HIRSCH: The very new law on --

7 THE COURT: Whether the gun was recharged or charged
8 or what?

9 MS. HIRSCH: No. In order to defend our ordinance
10 as constitutional, we are going to establish the relatedness
11 to that provision and why it justifies the government's
12 position that it's going to help prevent crime and --

13 THE COURT: Now that provision came the day after
14 the Supreme Court decision, right?

15 MS. HIRSCH: I'm sorry?

16 MS. NEREIM: Yes.

17 THE COURT: That ordinance came --

18 MS. HIRSCH: Yes, yes.

19 THE COURT: -- basically the day after Supreme Court
20 decision.

21 MS. HIRSCH: And very least, we would want to get
22 into the record our legislative history on this issue.

23 THE COURT: You know, I am of the opinion that
24 discovery would be beneficial to both sides. Maybe plaintiff
25 wants to do discovery also relating to how it came about the

1 day after a Supreme Court ruling an ordinance being passed.

2 So I think discovery is appropriate in this case.

3 The question is how much discovery and if the parties are in
4 disagreement, now that I've said discovery should take place,
5 then I'll decide.

6 Is there any issue relating to what defense
7 suggests, plaintiff, on the dates?

8 MR. KOLODZIEJ: Well, I guess part of the problem,
9 Judge, is that I'm not sure exactly how much discovery
10 they're contemplating.

11 THE COURT: That's what I'm asking.

12 MR. KOLODZIEJ: And in my discussions with counsel,
13 one of the issues that she did mention and she mentioned in
14 the status report is that they want to depose the plaintiff
15 regarding the facts and circumstances of his arrest.

16 Now that's what kind of led into this dispute is
17 that that was not germane in the administrative hearing and I
18 fail to see why discover on the facts underlying the arrest
19 have any bearing on the decision that was made to deny his
20 application, so.

21 THE COURT: Okay. So let me ask the question to
22 counsel for defendants: What difference does it make what
23 the facts were if there was a conviction, shouldn't you stand
24 on the conviction?

25 MS. HIRSCH: Well, I think that with the -- with the

1 as-applied challenge, what he was doing during this arrest
2 because -- you know, whether he was yielding the weapon or
3 just --

4 THE COURT: Okay. Time-out, time-out. Does your
5 ordinance say conviction or does it say if somebody used a
6 gun and did something with the gun?

7 MS. HIRSCH: It's conviction.

8 THE COURT: Conviction. So the administrative
9 hearing officer only looked at the conviction. So you cannot
10 just now say I'm going to look at the facts what did this
11 person do unless you have an ordinance that authorizes you to
12 deny on that basis and then that ordinance could be
13 challenged if somebody wants to challenge it.

14 MS. NEREIM: Your Honor, if I may --

15 THE COURT: Yes.

16 MS. NEREIM: -- the plaintiff has made both an
17 as-applied and a facial challenge -- and, yes, we know he was
18 convicted -- but his argument is that he was merely in
19 possession and not using and we have no -- have no
20 discovery.

21 THE COURT: Well, maybe his argument is a very bad
22 argument.

23 MS. NEREIM: We should have the opportunity to
24 question him to find out what the underlying facts are
25 that -- there was no discovery in the administrative

1 review.

2 THE COURT: Okay. Plaintiff, are you bringing facts
3 outside the conviction in this case?

4 MR. KOLODZIEJ: No, no.

5 THE COURT: Okay. One says no; one says yes.

6 MS. NEREIM: Your Honor, he's alleged facts about
7 his conviction and we have had no opportunity to test in
8 discovery.

9 MR. KOLODZIEJ: I have alleged that he was -- has a
10 misdemeanor conviction for carry slash possess in public and
11 that allegation is admitted. That's the sole basis of my
12 claim here.

13 THE COURT: Okay. I'll set 90 days fact discovery
14 from today.

15 MR. KOLODZIEJ: Your Honor, I put a suggestion in
16 the status report and I'm not sure if the court is agreeable
17 to it, but I do envision in light of this dispute that we
18 would be back here in a motion for a protective order at some
19 point.

20 THE COURT: That's fine.

21 MR. KOLODZIEJ: I had suggested it might save time
22 to brief what scope of permissible discovery would be.

23 THE COURT: Yeah, you said that. I don't waste time
24 in filing papers about discovery. I'll set discovery
25 deadlines. I don't do it in other cases, so.

1 Right now, April 14th is today. By July 15th, fact
2 discovery should be completed. And if there's any expert
3 discovery needed, I'll give two months for that.

4 MS. HIRSCH: Thank you.

5 THE COURT: By September 16th.

6 Dispositive motions, October 14th. Answers to
7 dispositive motions, November 4th. Replies, November 18th.
8 I'm giving three weeks for the answer, two weeks for the
9 reply more than in other cases usually.

10 So I'll set a status hearing for September 22nd to
11 see if you want to resolve your dispute after discovery
12 completed. If not, then I'll expect dispositive motions and
13 we'll go from there.

14 If during your discussions there's need to do a
15 protective order, try to resolve it between you and the
16 agreed protective order. I'm always inclined to protect what
17 needs to be protected if I see that there is something
18 relating to an issue that needs to be protected, I'll go
19 along with it so -- and you don't have to notice it up. I'll
20 give you the, you know, opportunity to submit a joint
21 proposed protective order to my courtroom deputy. I'll
22 review it. If it's appropriate, I'll issue it. Okay?

23 MS. HIRSCH: Thank you, your Honor.

24 MS. NEREIM: Thank you.

25 MR. KOLODZIEJ: Thank you, your Honor.

1 MS. GONNISSEN: Thank you.

2 THE COURT: Thank you, all.

3 (Which concluded the proceedings in the above-entitled
4 matter.)

5 C E R T I F I C A T E

6 I hereby certify that the foregoing is a transcript
7 of proceedings before the Honorable Samuel Der-Yeghiayan on
8 April 14, 2011.

9

10 /s/Laura LaCien

11 _____
12 Laura LaCien
13 Official Court Reporter

April 20, 2011
Date

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