

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN MARTIN HICKEL,

Plaintiff-Appellant,

v

KENT COUNTY CONCEALED WEAPON
LICENSING BOARD,

Defendant-Appellee.

UNPUBLISHED

January 31, 2003

No. 231199

Kent Circuit Court

LC No. 00-005186-AS

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right, in propria persona, from the circuit court's summary dismissal of his complaint for superintending control that plaintiff filed following defendant's denial of his request for an unrestricted license to carry a concealed weapon (CCW) and grant of a restricted license. We affirm.

On appeal, plaintiff claims that he was entitled to an unrestricted CCW license because he has a "full-time right to keep and bear arms for defense of himself and of the state," thus, the circuit court erred when it dismissed his claims. We disagree. Although plaintiff listed several issues in the "Statement of Questions Involved" section of his appellate brief, plaintiff only presented argument with regard to the first issue; accordingly, that is the only issue properly presented for this Court's review. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Ewing v Detroit*, 252 Mich App 149, 169; 651 NW2d 780 (2002); *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000).

This Court reviews a decision to grant or deny an order of superintending control for an abuse of discretion. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). The trial court dismissed plaintiff's action pursuant to MCR 2.116(I)(2), following review of plaintiff's five motions for summary disposition premised on MCR 2.116(C)(10). Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." See *Burns Clinic Medical Center, PC v Vorenkamp*, 165 Mich App 224, 228-229; 418 NW2d 393 (1987).

Plaintiff claims that he has a “full-time right to keep and bear arms for defense of himself and of the state.” This right allegedly derives from Const 1963, art 1, § 6, which provides that “[e]very person has a right to keep and bear arms for the defense of himself and the state.”¹ However, plaintiff has failed to establish that the constitutional right to “keep and bear arms” is synonymous with an absolute right to carry a concealed pistol. In fact, the plain language of the constitutional provision, read according to its natural, common, and most obvious meaning, does not support that conclusion. See *American Axle & Mfg, Inc v Hamtramck*, 461 Mich 352, 362; 604 NW2d 330 (2000); *People v Antkoviak*, 242 Mich App 424, 436; 619 NW2d 18 (2000). Further, the jurisprudence of this State has consistently held that the constitutional right to keep and bear arms is not absolute. See *People v Brown*, 253 Mich 537, 538, 541; 235 NW 245 (1931); *People v Swint*, 225 Mich App 353, 375; 572 NW2d 666 (1997); *Bay Co Concealed Weapons Licensing Board v Gasta*, 96 Mich App 784, 788; 293 NW2d 707 (1980); *People v McFadden*, 31 Mich App 512, 516; 188 NW2d 141 (1971). Accordingly, any alleged right to carry a concealed pistol, a right that plaintiff contends is derivative of the constitutional right to keep and bear arms, would not be absolute.

Plaintiff also argues that MCL 28.426² infringed on the exercise of his *fundamental* right to carry a concealed pistol. However, plaintiff has provided no legal authority in support of his assertion that he has such a *fundamental* right. Clearly, as repeatedly acknowledged in legal precedent, this State has a legitimate interest in limiting access to weapons particularly suited for criminal purposes; thus, the right to bear arms is subject to the reasonable exercise of police power. See *Swint, supra*; *Gasta, supra*; *McFadden, supra*

MCL 28.426 was a reasonable exercise of police power in that it included reasonable standards designed to guide each county concealed weapons licensing board in processing applications, thus negating the potential for arbitrary action. See *McFadden, supra*. In *Gasta, supra*, this Court held that “the Legislature has insured that an individual’s perceived need to carry a concealed weapon will be evaluated in light of the experience and knowledge of community needs possessed by these local officials [who comprise the licensing board].” *Id.* at 790. Our Supreme Court, in *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168; 351 NW2d 544 (1984), relied on the reasoning of *Gasta*, including that the issuance of a license is left to the discretion of county boards which are best able to assess the community and its needs. *Id.* at 189-190. Accordingly, under the statute as written, a right to carry a concealed pistol was dependent upon the circumstances presented by the applicant and the community. The requirements “that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons,” were properly designed to permit the licensing board to evaluate and respond to the circumstances specifically presented by the applicant and the community with maximum effectiveness.

¹ The Second Amendment of the federal constitution does not apply to the states. *People v Swint*, 225 Mich App 353, 359-360; 572 NW2d 666 (1997).

² MCL 28.426 was repealed by PA 2000, No 381, effective July 1, 2001. Nevertheless, the mootness doctrine is inapplicable because, pursuant to MCL 28.425h, plaintiff’s right to carry a concealed pistol derives from the restricted license that was previously issued under MCL 28.426 which, therefore, continues to impact his existing rights. See *East Grand Rapids School Dist v Kent Co Tax Allocation Bd*, 415 Mich 381, 390; 330 NW2d 7 (1982).

Further, MCL 28.426 was properly applied with regard to plaintiff. The issuance of a license was discretionary and dependent on the licensing board determining that the applicant had a “good reason” to fear injury or “other proper reasons,” considering the applicant’s and community’s needs and problems. See MCL 28.426(1). Here, plaintiff was issued a license that restricted his carrying of a concealed pistol to when he was engaged in hunting, target practice, banking, or business. These restrictions were cognizant of, and consistent with, the reasons plaintiff presented in his application for the license. See MCL 28.426(5). Consequently, as applied to plaintiff, MCL 28.426 constituted a reasonable exercise of police power.

In sum, plaintiff failed to establish that he had a constitutional, absolute, or fundamental right to carry a concealed pistol or that MCL 28.426 constituted an unreasonable exercise of police power either on its face or as applied to him. Therefore, the trial court properly dismissed plaintiff’s complaint for superintending control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh