

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM TATER,

Plaintiff-Appellant,

v

CONCEALED WEAPON LICENSING BOARD
OF MACOMB COUNTY,

Defendant-Appellee.

UNPUBLISHED

April 19, 2002

No. 228161

Macomb Circuit Court

LC No. 00-001130-AZ

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order granting defendant's motion for summary disposition and denying plaintiff's complaint for mandamus. We affirm.

In 1984, plaintiff was convicted of two separate drunk driving offenses. In 1996, plaintiff successfully completed a training course on basic handgun safety in preparation for applying for a concealed weapons permit. On January 14, 1997, plaintiff was issued a general nonrestricted permit by defendant to carry a concealed weapon with an expiration date of January 14, 2000. Prior to the expiration date, plaintiff filed an application to renew his concealed weapon permit. Defendant denied the renewal application. Plaintiff alleged that his two prior convictions for drunk driving were the basis of the denial of his renewal application¹ and filed this complaint for mandamus.

An appellate court reviews the grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Mandamus is an extraordinary remedy that will be granted only where there is no other legal or equitable remedy. *Radecki v Director*

¹ While it is undisputed that plaintiff's application for renewal was denied, we do not have written documentation evidencing the basis for the denial. Plaintiff's complaint alleged that the drunk driving convictions served as the basis for the denial. In its response to plaintiff's complaint for mandamus, defendant alleged that the basis of the denial was defendant's experience that misdemeanor convictions were indicative of potential problems. However, the discretionary authority afforded the licensing board governs this appeal, and the nature of the underlying convictions is not dispositive.

of Bureau of Worker's Disability Compensation, 208 Mich App 19, 22; 526 NW2d 611 (1994). The party seeking entitlement to the writ of mandamus bears the burden of proof. *Id.* The trial court's decision regarding a writ of mandamus is reviewed for an abuse of discretion. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999). A writ of mandamus will only be issued where: (1) the party seeking the writ has a clear legal right to performance of the specific duty sought; (2) the defendant has the clear legal duty to perform the act requested; (3) the act is ministerial and involves no exercise of discretion or judgment; and (4) no other remedy exists, legal or equitable, that might achieve the same result. *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). Where a central issue in the appeal entails statutory interpretation, and therefore a question of law, we conduct a review de novo. *MCI Telecommunications Complaint, supra* at 444. The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Id.* at 411. This determination is accomplished by reviewing the plain language of the statute itself. *Id.* If the statutory language is unambiguous, it is presumed that the Legislature intended the clearly expressed meaning, and judicial construction is neither required nor permitted. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

At the time of plaintiff's application for renewal, MCL 28.426(6)² provided, in relevant part, that the license shall not issue for a period of more than three years and renewal shall not be granted except upon the filing of a new application. MCL 28.426(1) provides that a license "shall not" be issued unless the applicant was eighteen years of age or older, a citizen of the United States, and a resident of the state for six months or more. However, the statute further provided that the license "shall not be issued" unless the applicant had good reason to fear injury to person or property, had other proper reasons, or was a suitable person to be licensed. MCL 28.426(1). "Each concealed licensing board must determine 'proper reason' and 'suitability' based upon consideration of local needs and an exercise of discretion." *Hanselman v Wayne County Concealed Weapon Licensing Board*, 419 Mich 168, 189; 351 NW2d 54 (1984). Furthermore, in *Bay County Concealed Weapons Licensing Board v Gasta*, 96 Mich App 784, 791; 293 NW2d 707 (1980), this Court stated:

In view of the inherent potential danger which accompanies the issuance of a permit to carry a concealed weapon, the licensing board as composed reflects the Legislature's intent that power to issue and revoke such licenses is properly placed with those professionals most able to assess community needs and problems in this area.

Plaintiff first argues that collateral estoppel precluded defendant from denying his application for a CCW permit. We disagree. Generally, collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior action. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996). However, three additional requirements must be satisfied to establish collateral estoppel based on an administrative decision. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995). Specifically, the administrative decision must have been adjudicatory in nature, the

² The statutory amendments, 2000 PA 381, effective July 1, 2001, are not at issue in this appeal.

decision must provide a right to appeal, and the Legislature must have intended to make the decision final absent an appeal. *Id.* Based on the plain language of the statute, *MCI Telecommunications Complaint, supra*, prior approval does not guarantee issuance of a subsequent permit. Rather, a renewal is obtained by filing a new application, and the licensing board is entitled to consider community needs and problems that have arisen in this area. MCL 28.426(6); *Gasta, supra*. The plain language of the statute reveals that these additional requirements for application of collateral estoppel have not been established. The Legislature did not intend that collateral estoppel would apply to licensing decisions by the board. Rather, renewal applications were reviewed every three years as new applications, and the licensing board was given discretion to consider local community factors in determining whether to issue an application. *Hanselman, supra*. Furthermore, there was no indication that proceedings before the concealed weapon board were adjudicatory in nature. Consequently, collateral estoppel does not bar the licensing board from reaching a different conclusion regarding a subsequent permit application.

Plaintiff next argues that defendant's unwritten policy of denying permits to individuals convicted of offenses without regard to the date of the offenses is contrary to MCL 28.426(1). We disagree. MCL 28.426(1) provides that a license "shall not be issued" to a person convicted of a felony during the eight year period immediately prior to the date of application. While plaintiff's offenses occurred sixteen years prior to his renewal application, the licensing board nonetheless had the discretion to consider other factors to ensure that permits issued reflect a local community's needs and problems. *Hanselman, supra*; *Gasta, supra*. See also *Pencak v Concealed Weapon Licensing Board for the County of St Clair*, 872 F Supp 410, 414-416 (ED Mich 1994) (a county's blanket policy of refusing to issue any concealed weapons permits did not deny the plaintiff due process even though he had been licensed to carry a concealed weapon in another county). Licensing for concealed weapons must be based on community standards for each county. *Id.* at 416.

The fact that defendant here has adopted an unwritten policy of denying concealed weapons permits to those convicted of drunk driving offenses or other prior convictions, regardless of the age of the conviction, is not contrary to MCL 28.426. Plaintiff has failed to meet his burden of demonstrating that defendant had a clear legal duty to issue a permit. Accordingly, the trial court properly granted defendant's motion for summary disposition and denied plaintiff's complaint for mandamus.

Affirmed.

/s/ Jessica R. Cooper

/s/ Harold Hood

/s/ Kirsten Frank Kelly