IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

JONATHAN FORRESTER,

Appellant,

v. Case No. 5D20-43

SCHOOL BOARD OF SUMTER COUNTY, FLORIDA,

Appellee.

_____/

Opinion filed April 23, 2021

Appeal from the Circuit Court for Sumter County, Mary Hatcher, Judge.

Cord Byrd, of Law Office of Cord Byrd, P.A., Atlantic Beach, and Paul M. Hawkes, Tallahassee, for Appellant.

Stephen W. Johnson, Elizabeth Turner, and Johnson Turner, of Johnson Turner, Leesburg, for Appellee.

SASSO, J.

Section 790.33, Florida Statutes (2017), preempts the field of firearm regulation and authorizes individuals "adversely affected" by a local policy enforced in violation of the statute to bring a civil action. Jonathan Forrester, a high school teacher, argues that he was adversely affected when his employer enforced a legally deficient policy against him, which prohibited him from possessing a firearm in his personal vehicle while parked on campus. Because we agree that Forrester was "adversely affected" as contemplated by section 790.33, we reverse the trial court's order that found to the contrary.

BACKGROUND AND FACTS

Since 1987, the State has preempted the field of firearm regulations "to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto." § 790.33(1), Fla. Stat. (1987). As part of this statutory scheme, the legislature generally prohibits the possession of firearms on school grounds, but there are exceptions. For one, section 790.25, Florida Statutes (2017), permits a person to carry a firearm in a private conveyance if it is securely encased. § 790.25(5), Fla. Stat. However, section 790.115, Florida Statutes (2017), contains a waiver provision permitting school districts to "adopt written and published policies that waive the exception . . . for purposes of student and campus parking

privileges." § 790.115(2)(a)3., Fla. Stat. This appeal concerns a policy of the Sumter County School Board, purportedly enacted pursuant to the waiver provision of section 790.115.

This case arose after Forrester was accused of possessing a firearm in his classroom desk. As a result, Forrester voluntarily consented to a search of his backpack, desk, classroom, and vehicle, and no firearm was found. Following the incident, Forrester inquired as to the school's firearm policy, expressing his desire to keep a firearm in his personal vehicle while traveling to and from work and while parked on campus.

The policy in question, rule 3.40, states: "No person except law enforcement and security officers may have in his/her possession any weapon, illegal substance, or dangerous substance." The school board informed Forrester that he would be subject to discipline, up to and including termination, if he violated school board policies. The record further reflects school administrators advised Forrester that he could either park on campus and refrain from carrying a firearm in his vehicle or park off campus and carry his firearm in his vehicle. Accordingly, Forrester told the principal that he would not bring his firearm to school until his inquiry into rule 3.40 was resolved.

A few months later, there was another anonymous accusation that Forrester had a firearm in his desk. Forrester again consented to a search of his classroom, and again, no firearm was found.

Following the second incident, Forrester made several attempts to clarify whether rule 3.40 was consistent with state law, utilizing a private attorney to both inquire of the school board and seek an advisory opinion from the Attorney General. Forrester believed that the school board's policy either did not legally prohibit him from carrying a firearm in his vehicle—because the policy only referenced "weapon" as opposed to "firearm"—and/or was legally deficient because it failed to include a statement citing the authority to adopt the "rule" and also failed to include a citation referencing the statute implemented by the rule.

Forrester's efforts proved unavailing, and on November 28, 2017, Forrester filed a one-count complaint against the school board seeking declaratory and injunctive relief. Forrester argued, pursuant to section 790.25(5), that he is permitted to possess a concealed firearm in his vehicle at school unless the school district adopts a written policy waiving the right to carry a firearm in the vehicle. He further argued that rule 3.40 violated section 790.33, Florida Statutes.

In the context of litigation, the school board admitted that its policy prohibits Forrester from carrying a firearm in his vehicle on school property and admitted the policy is enforced. The school board further admitted that if Forrester violated rule 3.40, he would be subject to discipline, including termination of employment.

Following a bench trial, the trial court agreed with Forrester that the school board policy did not conform with the section 790.115(2)(a)3. waiver provision and therefore was enforced in violation of section 790.33. The trial court then turned to the issue of whether Forrester had been "adversely affected" by the promulgation or enforcement of the policy, as required for Forrester to maintain the action. In analyzing the issue, the trial court determined Forrester had standing to bring the action but had failed to prove he was "adversely affected." In explaining its reasoning, the trial court determined that Forrester did not suffer any "actual damages" because there was no loss of pay or termination, nothing was taken from Forrester, and Forrester freely and voluntarily consented to the misguided enforcement of the school board policy. Accordingly, the trial court concluded Forrester had "consented to the 'adverse [e]ffect.'" The trial court then denied Forrester's claim.

ANALYSIS

The sole issue presented in this appeal is a narrow one: whether Forrester was "adversely affected by any . . . policy promulgated or caused to be enforced in violation" of section 790.33. If he was adversely affected as contemplated by section 790.33, the trial court erred in denying Forrester's requested relief. As a result, the issue presented is one of statutory interpretation that we review de novo. *See McCloud v. State*, 260 So. 3d 911, 914 (Fla. 2018).

"In interpreting the statute, we follow the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (citing Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012)).

Section 790.33(3)(f) provides, in pertinent part:

> A person or an organization whose membership is **adversely affected** by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section **may file suit** against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. . . .

§ 790.33(3)(f), Fla. Stat. (2017) (emphasis added). Viewed in context, subsection (f) is a standing provision, setting the standard for who may bring

a private cause of action against a local governmental entity. *See Fla. Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, 458 (Fla. 1st DCA 2017) (clarifying that section 790.33(3)(f) "does not by itself prohibit any specific act" but instead "only confers standing on a person(s) or organization(s) adversely affected by violations of section 790.33(3)(a)"). This contextual clue also sheds light on the meaning of the term "adversely affected."

Although undefined in section 790.33, "adversely affected," as a measure for who can challenge a government action, is a familiar term. For over a century, Florida law has dictated that a party cannot challenge the constitutionality of a statute unless it can be demonstrated that he has been, or definitely will be, adversely affected by its terms. *See, e.g.*, *State v. Philips*, 70 So. 367, 369 (Fla. 1915) ("The constitutionality of a provision of a statute cannot be tested by a party whose rights or duties are not affected by it . . ."); *Gill v. Wilder*, 116 So. 870, 874 (Fla. 1928) ("The constitutionality of a statutory provision will not be decided at the instance of a party who is not prejudiced, and whose rights are not affected by such provision . . . ."); *Cooper v. Sinclair*, 66 So. 2d 702, 703 (Fla. 1953) ("[I]n all instances when the constitutionality of a law is attacked, such an issue will not be ruled on except at the suit of a person affected adversely by the allegedly invalid aspect of the law."); *State v. Richard*, 197 So. 3d 1097, 1102 (Fla. 1st DCA

2016) ("[C]ourts will not declare an act of the legislature unconstitutional unless its constitutionality is challenged directly by one who demonstrates that he is, or assuredly will be, affected adversely by it. . . ." (quoting *Henderson v. Antonacci*, 62 So. 2d 5, 7 (Fla. 1952))).

In discerning the meaning of "adversely affected" as contemplated by section 790.33, we operate under the presumption that the legislature appreciated the significance of the term "adversely affected" and intentionally chose it. *See Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 115 (2011) (Thomas, J., concurring) ("'[W]here Congress borrows terms of art,' this Court presumes that Congress 'knows and adopts the cluster of ideas that were attached to each borrowed word . . . and the meaning its use will convey to the judicial mind.'" (citation omitted)). *Accord Fla. High. Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) ("[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947))).

And nothing from the context leads us to believe a different meaning applies. Although section 790.33(3)(f) creates a standard for who may challenge local policy as violating a state statute, it is not surprising that the legislature chose this particular term. Indeed, one stated purpose of section

790.33 is "to deter and prevent the . . . violation of rights protected under the constitution and laws of this state related to firearms." § 790.33(2)(b), Fla. Stat. (2017).

Even so, we acknowledge that "adversely affected," as applied in Florida case law, lacks a precise definition. But courts have favored a broad application of the standard. *Cf. Dougan v. Bradshaw*, 198 So. 3d 878, 881 (Fla. 4th DCA 2016) (noting party could maintain suit against sheriff pursuant to 790.33 "if the Sheriff had a policy regulating firearms which was not authorized by an existing statute and enforce the policy against Appellant"); *Freeman v. City of Tampa*, 8:15-CV-2262-T-30EAJ, 2015 WL 8270025, at *2 (M.D. Fla. Dec. 8, 2015) (noting members of civil rights organization were adversely affected when they feared arrest and prosecution if they engaged in the right to openly carry a firearm while fishing in a public location).

What is clear, and pertinent to this appeal, is that courts generally have not required individuals to subject themselves to penalties to establish an adverse effect. *See, e.g.*, *Tribune Co. v. Huffstetler*, 489 So. 2d 722, 724 (Fla. 1986) ("[T]he constitutionality of a criminal statute should be determined either in a proceeding wherein one is charged under the statute or in an action alleging an imminent threat of such prosecution."); *State v. Flowers*, 643 So. 2d 644, 645 (Fla. 1st DCA 1994) (noting party who is threatened for

prosecution for violation of the statute or that the "adjudication requested will otherwise affect his or her rights" may seek an adjudication as to the constitutionality of the statute); *McGee v. Martinez*, 555 So. 2d 914, 915 (Fla. 1st DCA 1990) (holding that party seeking declaration that statute under which warrant for his arrest had been issued was unconstitutional did not have to actually be arrested before he could assert challenge).

Here, the record makes clear that Forrester was an employee of the high school and subject to the challenged policy. Furthermore, Forrester actively sought to keep a firearm in his vehicle. However, Forrester refrained from doing so because his employer informed him that the policy was enforced and a violation of the policy would subject him to discipline, up to and including termination. Under these facts, Forrester was affected by rule 3.40, and adversely so. *Cf. Dep't of Rev. v. Kuhnlein*, 646 So. 2d 717, 720 (Fla. 1994) (finding that "facing penalties for failure to pay an allegedly unconstitutional tax is sufficient to create standing under Florida law").

We acknowledge that the plain language of section 790.33 requires an individual to be adversely affected by a policy "promulgated or caused to be enforced in violation of section 790.33." § 790.33(3)(f), Fla. Stat. Even so, we reject the school board's argument, and the trial court's finding, that Forrester was not adversely affected because he had not been terminated

and "freely and voluntarily consented to both searches, including the search of his vehicle." The fact that Forrester conformed his conduct to the school board's policy to avoid termination and potential criminal penalties does not undermine the fact that Forrester was adversely affected or that this adverse effect was due to the school board's enforcement of the policy. Indeed, the threatened discipline here was not a speculative threat or an unsubstantiated fear but instead due to the school board's unequivocal intent to enforce the policy which was clearly, and in concrete terms, communicated to Forrester.

CONCLUSION

In sum, Forrester was adversely affected by the school board's policy that was enforced in violation of section 790.33. As a result, the trial court erred in determining that he was prohibited from obtaining the declaratory and injunctive relief sought in his complaint. We therefore reverse the order on review and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

TRAVER, J., and NABERHAUS, M., Associate Judge, concur.