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24-P-1442

Appeals Court

BARBARA V. GUINANE vs. CHIEF OF POLICE OF MANCHESTER-BY-THE-SEA & others.¹

No. 24-P-1442.

Essex. October 3, 2025. - January 9, 2026.

Present: Massing, Sacks, & Allen, JJ.

Firearms. License. Police, Authority of police chief.
Practice, Civil, Judicial review of license to carry
firearms, Action in nature of certiorari, Judgment on the
pleadings.

Civil action commenced in the Superior Court Department on
March 9, 2023.

The case was heard by Janice W. Howe, J., on motions for
judgment on the pleadings.

Edward M. Gainor for the plaintiff.
Brian W. Riley for chief of police of Manchester-by-the-
Sea.

SACKS, J. In October 2022, Barbara Guinane applied to the
chief of police of Manchester-by-the-Sea (chief) for a license

¹ Justices of the Salem Division of the District Court
Department.

to carry firearms (LTC) under G. L. c. 140, § 131 (d). The chief found Guinane unsuitable and denied the application. The chief did so based on recent incidents in which Guinane's husband had acted aggressively and violently during disputes with neighbors, resulting in multiple police responses to the Guinanes' home, criminal charges, two G. L. c. 258E harassment prevention orders against the husband, and the suspension of his LTC. Guinane appealed the denial of her application to the District Court. After an evidentiary hearing, at which the chief expressed his concern that issuing a LTC to Guinane would allow her husband to have access to weapons, a District Court judge affirmed the chief's decision. Guinane then sought certiorari review in the Superior Court, which affirmed the District Court judge's decision, and Guinane appealed. We agree with Guinane that her husband's conduct did not, in these circumstances, furnish adequate statutory grounds for the chief to find her unsuitable. Therefore, without reaching any Second Amendment issue, we reverse.

Background. Because the applicable statutory standard is critical here, we set it forth at the outset. Under G. L. c. 140, § 131 (d), a firearms licensing authority (such as the chief here) must determine whether an LTC applicant is a prohibited person or, as most relevant here, is unsuitable to be

licensed. Until shortly before this case arose, a determination of unsuitability was required to be based on:

"(i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety" (emphasis added).

G. L. c. 140, § 131 (d), as amended by St. 2014, c. 284, § 48.

In 2022, however, in the wake of New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), the unsuitability standard was amended, with the emphasized clause being removed, so as to be based more narrowly on:

"reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others."

G. L. c. 140, § 131 (d), as amended by St. 2022, c. 175, § 11.

The amended version of § 131 (d) took effect on August 10, 2022.

See St. 2022, c. 175, emergency preamble. See also Chief of Police of Southborough v. Dwiggins, 105 Mass. App. Ct. 381, 384-385 (2025). Guinane applied for her LTC on October 12, 2022.

Accordingly, the 2022 version of § 131 (d) governs this case.²

² By St. 2024, c. 135, §§ 32, 49, the unsuitability standard was moved to G.L. c. 140, § 121F (k), and changed (in ways not relevant here) to read:

That version required that, after receiving an LTC application, the licensing authority "shall issue [the LTC] if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license."³

Against that backdrop, we recount the facts as developed at the District Court evidentiary hearing held under G. L. c. 140, § 131 (f). The chief testified that he found Guinane unsuitable based on the conduct of her husband. In May 2022, a neighbor had called 911 to report that, in connection with a property line dispute, the husband "came to [the neighbor's] property yelling about trash cans and was carrying a baseball bat and then smashed a light pole in a fit of rage." When police responded, they found the Guinanes sitting on their front porch, where the husband told them, "I know I smashed a light." He explained that he believed someone had broken into his shed and that he had lost his temper. The husband was criminally charged

"A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant has exhibited or engaged in behavior that suggests that, if issued a permit, card or license, the applicant may create a risk to public safety or a risk of danger to themselves or others."

³ By St. 2024, c. 135, § 49, a new version of G. L. c. 140, § 131 was adopted, so that § 131 (d) now provides in pertinent part that the licensing authority "shall issue [an LTC] as provided under section 121F only if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license as set forth in said section 121F" (emphasis added).

with vandalizing property, a charge that remained pending at the time of the hearing, and the neighbors obtained a G. L. c. 258E harassment prevention order against him, effective until June 2023. The chief suspended the husband's LTC, finding him both unsuitable, based on his "volatile behavior," and to be a prohibited person, based on the G. L. c. 258E order.⁴

Subsequently, the husband and a second neighbor had a "verbal altercation," leading to the husband's being charged with threatening to commit a crime ("to wit kill") and with "assault [with intent] to intimidate based on the victim's race, religion, color and/or disability." Those charges, too, remained pending at the time of the hearing, and the second neighbor also obtained a G. L. c. 258E order against the husband.

When Guinane applied for her own LTC, the chief found her unsuitable. The chief acknowledged that, unlike the typical unsuitability determination focusing on "behaviors or incidents involving the applicant him or herself," here he denied Guinane's application because of his concern that her husband, who was an unsuitable and prohibited person, lived with her and thus "would have access to the weapons." The chief acknowledged on cross-examination that Guinane herself had no criminal record

⁴ The husband appealed that LTC suspension to the District Court, which upheld it. That decision is not before us.

and had not been charged in any of the incidents involving the husband. The chief agreed that, if Guinane were not married to her husband, "she would be a suitable person." The chief nevertheless determined that "it may be a threat to public safety" to issue an LTC to Guinane.

Guinane, for her part, testified that she had taken a gun safety course in which she had learned "how to use guns safely and to keep them at home also safely." She had obtained a biometric gun safe and a biometric trigger lock, operable only with her fingerprints, so that "nobody else can use it." She submitted photographs of the safe and lock at the hearing. She was aware of the pending criminal charges against her husband but was "not connected with it." She was also aware that he did not have an LTC and that "a person that had a license would not be giving a gun to someone that did not have a license."

She further testified that she was a licensed manicurist who operated a nail salon out of their house; customers sometimes paid her in cash. Also, she provided care to and was "directly responsible" for her elderly mother and a niece who lived in the home with her and her husband. Guinane was not asked, however, and did not address, whether the timing of her

application was related to the recent suspension of her husband's LTC.⁵

The District Court judge concluded that the chief had:

"reasonable and legitimate safety concerns given the ongoing dispute between Ms. Guinane's family and her neighbors. Moreover, the timing of [her] application, shortly after her husband's [LTC] was suspended by [the chief], lends credence to the chief's belief that her application was a pretense to allow her husband to maintain access to firearms."

The judge thus ruled that "there are reliable, articulable, and credible facts to support the [c]hief's finding that Ms. Guinane is unsuitable and that issuing her [an LTC] would create a risk to public safety."

Guinane sought certiorari review in Superior Court, where a judge agreed that the chief's concerns were "reasonable and legitimate" and that "Guinane's claims about the purchase of biometric gun safes and trigger locks are not sufficient to

⁵ Later, at a nonevidentiary hearing held on certiorari review in Superior Court, Guinane, representing herself, asserted that despite claimed statements by the chief that she was getting the license to benefit her husband, "we're already registered for a gun license safety course months earlier." She stated that she "was supposed to get [an] inheritance in the form of guns that [her] husband's father left after his death. [Her] husband, his license is suspended and he is not able to . . . inherit it now." She denied any suggestion that her husband was "the one who [was] pushing" her to get a license. Rather, she stated, she had obtained her citizenship only in July 2022 and "was not able to apply for this license earlier." Counsel for the chief, in his argument to the judge, did not address any of these statements by Guinane.

eliminate these concerns entirely." The judge quoted the pre-August 2022 unsuitability standard, emphasizing the language allowing consideration of "existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety."⁶ This appeal followed.

Discussion. "On review of a denial of a LTC . . . a judge of the District Court, after an evidentiary hearing, may find facts and direct the licensing authority to issue a license if the judge finds that the licensing authority had 'no reasonable ground' for denying the license." Nichols v. Chief of Police of Natick, 94 Mass. App. Ct. 739, 743-744 (2019), quoting G. L. c. 140, § 131 (f), as then in effect. See now G. L. c. 140, § 121F (m), (v) (3). "A conclusion that the licensing authority lacked any reasonable ground to deny the license is warranted only upon a showing by the applicant that the licensing authority's refusal [to grant . . . the license] was arbitrary, capricious, or an abuse of discretion" (quotations and citations

⁶ In the Superior Court, as in their appellate briefs, the parties failed to cite the revised unsuitability standard of § 131 (d) that took effect in August 2022. The Superior Court judge acknowledged that the statute had been amended in August 2022 -- to remove the requirement that an applicant show "good reason" for possessing a firearm -- but was under the impression that the unsuitability language remained unchanged.

omitted).⁷ Nichols, supra at 744. Failure to apply proper legal standards is not only an error of law but an abuse of discretion. See Ceruolo v. Garcia, 92 Mass. App. Ct. 185, 188 (2017); Edwin R. Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). "On certiorari review a Superior Court judge may 'correct only a substantial error of law, evidenced by the record, which adversely affects a material right of the plaintiff'" (citation omitted). Nichols, supra. We "stand[] in the same position as" the Superior Court judge and conduct our review "under the same standard" (quotations and citation omitted). Id.

As noted at the outset, we apply the 2022 standard, under which a determination of unsuitability must be based on:

"reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others."

G. L. c. 140, § 131 (d), as amended by St. 2022, c. 175, § 11. See now G.L. c. 140, § 121F (k) (similar); note 2 supra. Under that standard, and considering the evidence at the District Court's evidentiary hearing, we conclude that the chief had no reasonable ground for denying Guinane's application and that it

⁷ The parties have not argued, and we need not decide, whether the August 2022 amendments to the unsuitability standard reduced the licensing authority's discretion or the deference to be afforded the licensing authority on judicial review.

was an error of law for the District Court judge to uphold the chief's decision. Although the chief was understandably concerned about public safety, there was no reliable information about behavior by the applicant suggesting that, if issued a license, she would create a risk to public safety or a risk of danger to herself or others. That is the focus of the standard. And we must "interpret statutory language to give [it] effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an absurd or illogical result" (quotations and citations omitted). Commonwealth v. Scott, 464 Mass. 355, 358 (2013).

Previously, as we have discussed, the unsuitability standard was broader, allowing consideration not only of the applicant's (or licensee's) behavior, but also of "existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety." In Chief of Police of Southborough, we recognized that the "existing factors" language did not make any reference to the behavior of the applicant, and we relied on that language to uphold a chief's denial of an LTC application, based largely on the

behavior of other members of the applicant's household.⁸ 105

Mass. App. Ct. at 386. There,

"the existing factors relevant to public safety aside from the applicant's conduct include the past domestic violence in [his] household and the serious mental health issues presented by the applicant's wife, who resides with him. Indeed, both the [applicant's] son and the wife separately threatened to do violence with a firearm if only they had one."

Id. at 386. We held that "[t]he chief was within his authority when he determined the applicant may create such a [safety] risk by bringing a firearm into the volatile, unstable, and violent environment of his residence." Id. at 386-387.

Now, however, shorn of the "existing factors" language, the unsuitability standard focuses more narrowly on the behavior of the applicant or licensee. And here the chief pointed to no behavior by Guinane suggesting that her licensure might create a safety risk. There is no evidence that she engaged in violent or aggressive behavior, or that she assisted or contributed to her husband's past violent and aggressive behavior, or that she

⁸ The only evidence of the applicant's own behavior was that, in a dispute with his son (which the applicant said the son initiated, and vice versa), his son pushed him and grabbed a kitchen knife, whereupon the applicant knocked the knife out of the son's hands. 105 Mass. App. Ct. at 382, 386. We declined to decide whether this constituted behavior of "the applicant" suggesting that, if licensed, he might create a risk to public safety. Id. at 386.

engaged in behavior suggesting that she might be negligent in securing her firearms as required by law.⁹

Nor was there reliable evidence that she intended to or might be forced to make firearms available to her husband or any other prohibited or unsuitable person. Although the District Court judge suggested that the timing of Guinane's application, shortly after her husband's LTC was suspended, "lends credence to the [c]hief's belief that her application was a pretense to allow her husband to maintain access to firearms," the chief himself never stated that he held such a belief. Nor did counsel for the chief, at the evidentiary hearing, elicit any evidence from Guinane, or ask her, about the possibility that she would give her husband unlawful access to firearms.

In short, although we do not second-guess the District Court judge's assessments of witness credibility, there was no reliable information, as required by § 131 (d), that Guinane would allow her husband to have access to firearms. The chief's natural concern that the husband might somehow obtain access was

⁹ Under G. L. c. 140, § 131L (a):

"It shall be unlawful to store or keep any firearm in any place unless such firearm is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such firearm inoperable by any person other than the owner or other lawfully authorized user."

certainly deserving of consideration. But ultimately it lacked the evidentiary basis statutorily required to support a determination of unsuitability. At oral argument before us, we asked both parties whether there was any reason to remand this case to consider additional evidence or for reconsideration by the chief or the District Court under the proper standard. Neither party asserted that a remand was warranted.

In upholding the District Court's decision on certiorari review, the Superior Court judge also erred, by relying on the pre-August 2022 unsuitability standard allowing consideration of "existing factors." The judge's adoption of the District Court judge's statement that the chief's concerns were "reasonable and legitimate," was not a finding of fact. See Police Comm'r of Boston v. Robinson, 47 Mass. App. Ct. 767, 770 (1999) (court's function on certiorari review is not to find facts but to correct errors of law). See also Macero v. MacDonald, 73 Mass. App. Ct. 360, 366 (2008) (on appeal of certiorari ruling, "[be]cause the judge's decision is a ruling of law, and not a finding of fact . . . we give it no special deference" [citation omitted]). Absent the evidentiary support required by § 131 (d), the chief's concerns, while plainly understandable, were not sufficiently "reasonable and legitimate" to warrant a determination of unsuitability. As the statute makes clear, denial of an LTC application cannot be based on speculation.

An application for an LTC shortly after a family member's LTC was suspended (or application was denied) might be considered some evidence that the applicant had "exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create" a safety risk by making firearms available to the unlicensed family member. But here it did not amount to the requisite "reliable, articulable and credible information" suggesting any appreciable risk that Guinane might do so and was therefore unsuitable. Any such information acquired by the chief after the District Court evidentiary hearing could, of course, still allow the chief to consider whether to suspend or revoke Guinane's LTC under the "subsequent determination of unsuitability" provision now appearing in G. L. c. 140, § 121F (u) (1).

We therefore reverse the Superior Court judgment. A new judgment shall enter that reverses the District Court's decision and orders the chief to grant Guinane's application.

So ordered.