

IN THE COURT OF APPEALS OF IOWA

No. 6-727 / 96-319

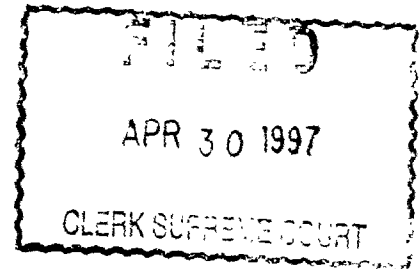
JANE HENNING,

Plaintiff-Appellant,

vs.

JOHN GRIFFIN, As Sheriff of Poweshiek County,

Respondent-Appellee.



Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Henning appeals the decision of the district court denying her petition for writ of certiorari claiming the sheriff acted illegally in denying her application for a permit to acquire a handgun. **AFFIRMED.**

William D. Olson of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P.,
Grinnell, for appellant.

No appearance for appellee.

Considered by Sackett, P.J., Cady, and Vogel, JJ.

PER CURIAM

This is an appeal by a petitioner claiming the district court should have granted her petition for writ of certiorari and required respondent sheriff to issue her a permit to carry a weapon. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jane Henning is a resident of Poweshiek County. She filed an application in Poweshiek County for an annual permit to acquire a handgun. She did not answer the question on the application, "Do you have a history of mental illness?" Henning has been diagnosed as having recurrent major depression, and has been treated for this disease since 1990. She did orally inform the sheriff of her mental illness. On November 14, 1995, the sheriff denied the application.

Henning filed a petition for writ of certiorari, claiming the sheriff acted in excess of his authority by denying the application. The district court annulled the writ. The court found Henning had never completed the application. The court determined the denial was not based on the sheriff's personal opinion, and that the sheriff had just cause for the denial. Henning appealed.

Henning claims the district court should have sustained her petition for writ of certiorari. She believes the sheriff abused his discretion by denying her application. An illegality is established if a sheriff has not acted in accordance with a statute, if a sheriff's decision was not supported by substantial evidence, or if a sheriff's actions were unreasonable, arbitrary, or capricious. *McIntyre v. Page County Sheriff's Office*,

538 N.W.2d 305, 307 (Iowa App. 1995). The plaintiff bears the burden to prove the illegality. *Id.*

A sheriff has some discretion in the issuance of a permit. The sheriff may deny a permit because of certain conduct, but the conduct must have a rational connection to the denial. *Id.* at 308.

The pertinent portion of section 724.11 provides:

[T]he issuance of the permit shall be by and at the discretion of the sheriff or commissioner, who shall, before issuing the permit, determine that the requirements of sections 724.6 to 724.10 have been satisfied.

Section 724.10 requires:

A person shall not be issued a permit to carry weapons unless the person has completed and signed an application on a form to be prescribed and published by the commissioner of public safety. The application shall state the full name, social security number (optional), residence, and age of the applicant, and shall state whether the applicant has ever been convicted of a felony, whether the person is addicted to the use of alcohol or any controlled substance, and whether the person has any history of mental illness or repeated acts of violence.

The evidence in the present case shows Henning did not complete the application because she did not answer the question asking whether she had a history of mental illness. Henning admitted she was unsure whether she had answered the question concerning mental illness. The sheriff testified Henning did not answer the one question on mental illness. The sheriff stated he would not issue a permit unless all questions on the application had been answered.

We conclude the sheriff did not abuse his discretion in denying the application because Henning had not completed the application process. Section 724.10 requires that the application be completed. We affirm the decision of the district court.

AFFIRMED.