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DISTRICT II

May 17, 2023

To:

Hon. James K. Muehlbauer
Circuit Court Judge
Electronic Notice

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Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1958

Brian Lafferty v. Emilie Amundson (L.C. #2020CV346)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Brian and Katie Lafferty appeal from a circuit court order rejecting the Laffertys' constitutional challenges to the Department of Children and Families Rule, WIS. ADMIN. CODE § DCF 56.08(5) (June 2020), which imposes certain firearm storage requirements for foster parents, as well as the Department's prohibition on foster parents from carrying weapons while in the presence of foster children. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21

(2021-22).¹ We vacate the circuit court’s order and remand for further proceedings consistent with this order.

After briefing was completed in this case and while a decision was pending, the United States Supreme Court decided *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022), in which the Court rejected the means-end scrutiny framework the Respondents rely on in this case. Instead, *Bruen* said:

[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Id. at 2126 (citation omitted).

We vacate the circuit court’s order and remand for additional proceedings to allow the parties to address the Department’s rule in light of *Bruen* and to obtain the benefit of the circuit court’s decision applying the *Bruen* standard. On remand, the circuit court should allow the parties to engage in further discovery if necessary and permit additional briefing and/or motions addressing the framework set forth in *Bruen* and noted above. In doing so, the circuit court should consider the interaction of *Bruen* and the unconstitutional conditions doctrine. *See, e.g., Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 59 (2006); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *Frost v. Railroad Comm’n of Cal.*, 271 U.S. 583, 593-

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

94 (1926); *Milewski v. Town of Dover*, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303; *Madison Tchrs., Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337.

Additionally, upon remand, the circuit court should permit the parties to address whether the form the Laffertys were required to sign in this case as a condition of being foster parents, which specifically prohibits a foster parent from carrying a weapon in the presence of a foster child, constitutes an administrative rule that has not been promulgated through the rulemaking process.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily vacated, *see* WIS. STAT. RULE 809.21, and the cause is remanded for further proceedings consistent with this order.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals