

IN THE SUPREME COURT OF IOWA
No. 23-0970

IN RE: N.S.
Petitioner/Appellant.

APPEAL IN A
CIVIL CASE

POTTAWATTAMIE COUNTY,
No. MHMH024891

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT

HONORABLE JUDGE MARGARET REYES

FINAL REPLY BRIEF FOR APPELLANT

Eric D. Puryear, AT0010498
P U R Y E A R L A W P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
eric@puryearlaw.com

Eric S. Mail, AT0011435
P U R Y E A R L A W P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
mail@puryearlaw.com

ATTORNEYS FOR THE PETITIONER-APPELLANT

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CERTIFICATE OF SERVICE

I, Eric S. Mail, filed and served the foregoing **Final Reply Brief of the Appellant** on **December 14, 2023** by filing it on EDMS, which will provide a copy of it to the following:

Sarah Jennings
Assistant Attorney General
Iowa Attorney General
Hoover Building,
1305 E Walnut St
Des Moines, IA 50319

N.S.
via MyCase

Assistant County Attorney
Pottawattamie County Attorney's Office
Pottawattamie County Courthouse
Fifth Floor
227 S 6th St
Council Bluffs, IA 51501

ERIC WESSAN
Solicitor General
Iowa Department of Justice
Hoover State Office Building
Des Moines, Iowa 50319

/s/ Eric S. Mail
Eric S. Mail, AT0011435
PURYEAR LAW P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
mail@puryearlaw.com

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STATUTES

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RULES

None

**STATEMENT OF ISSUES
PRESENTED FOR REVIEW**

Issue I. Whether the district court erred in denying the requested relief where the Appellant provided the required evidence that showed by a preponderance of the evidence that he would not be a threat to himself or others and where the record did not show evidence that he posed any risk?

AUTHORITIES

In the Matter of A.M. 908 N.W.2d 280 (Iowa 2018)

Iowa Code § 724.31

Issue II. Whether the district court erred in failing to determine that a strict scrutiny analysis required granting the request for relief where no evidence in the record showed the Appellant to be a risk to himself or others?

AUTHORITIES

Iowa Constitution Amend. 1A

ARGUMENT

- I. **The district court erred in denying the requested relief where the Appellant provided the required evidence that showed by a preponderance of the evidence that he would not be a threat to himself or others and where the record did not show evidence that he posed any risk.**

Discussion

The state, in its Brief, argues that N.S. failed to prove each required element in establishing his case for relief from disabilities. The state is incorrect. As to mental health records, N.S. provided mental health records that were as current as possible. The court had access to the previous case files to show the concerns that existed 16 years prior when the Petitioner was committed. From these records, the court had ample information available to it about what the concerns were, and what the needs were for the Petitioner in the intervening years.

Importantly, the district court had the Petitioner's original commitment files, the more recent mental health examination, and the criminal history records of the Petitioner. These confirm that the Petitioner is not a threat to harm himself or others. The drug tests submitted by the Petitioner demonstrate that the Petitioner does not have ongoing substance abuse issues.

As for character witness letters, the state's complaints are not well-founded in the language of section 724.31. Indeed, 724.31(3)(c) calls for "witness statements" but does not indicate that those statements must be notarized. The state argues that the letters are analogous to the letters provided by the petitioner in *In the Matter of A.M.*, 908 N.W.2d 280 (Iowa App. Ct. 2018) because they were only individuals close to him. That is incorrect. Indeed, N.S. provided a letter from a co-worker of over 4 years, others who knew him for 2 and 2.5 years, and his wife, which provides a range of interpersonal relationships. It is difficult to imagine how a petitioner could find individuals to provide witness statements that would, at once, not be close to the petitioner and also know the petitioner well enough to provide a credible statement as to the petitioner's character.

The Petitioner further demonstrated changed circumstances since his commitment. Sixteen years had passed and during that time the Petitioner has demonstrated he no longer has a substance abuse problem. He further demonstrated that he has maintained stable employment, and that he has a stable family situation. He is far removed from the circumstances that led him to the initial commitments --- whether the state finds his denial as to the claimed basis for those commitments credible or not.

One aspect that the state argues is that the Petitioner illegally owned firearms. The Petitioner did not hide from the fact that he had obtained firearms not knowing of the restriction. Upon learning of the restriction, he took appropriate legal actions to transfer the firearms. The fact remains that he has already demonstrated through his years of safe ownership that he can be trusted with firearms. That, too, constitutes a change in circumstances from the time of his commitment.

Contrary to the state's arguments, N.S. has shown by a preponderance of the evidence that he will not be likely to act in a manner dangerous to the public safety.

For these reasons the Appellant would respectfully request that this Honorable Court would reverse the district court and grant his requested relief.

II. The district court erred in failing to determine that a strict scrutiny analysis required granting the request for relief where no evidence in the record showed the Appellant to be a risk to himself or others.

Discussion

The state argues that this Honorable Court should not apply the strict scrutiny test because the language of Constitutional Amendment 1A did not

indicate that it was to be applied retroactively. However, this misses the point about the restriction that is being addressed by this analysis. The state contends that because the commitments occurred long before the passage of Amendment 1A, the language does not apply to the restrictions, because the Amendment was not designed to address past conduct. But the restriction being addressed is the present restriction of the petitioner's gun rights. His application, which calls on the district court to address that restriction, was heard after the passage of Amendment 1A. Accordingly, the Petitioner is only seeking prospective application of the language of the Amendment.

The state argues that Iowa has a compelling state interest in preventing a narrow class of historically excluded individuals from owning firearms. But that is not what is happening here. In this case, the state is applying a restriction in an overly broad manner to prevent the ownership of firearms by an individual where there is no evidence that the individual presents a threat to himself or the community in owning firearms.

As noted previously, where the record contains no reason to believe that a person will act in a manner contrary to public safety, and where an individual, such as N.S., has made the statutorily required production, it is improper --- under the strict scrutiny analysis --- to deny the petition without

any evidence tending to show a continuing disability or risk of harm to the community. The state simply does not have a compelling interest in preventing law-abiding and responsible individuals from owning firearms.

CONCLUSION

For all these reasons, the Appellant respectfully requests that this Honorable Court reverse the district court and grant his request for relief in this matter.

REQUEST FOR ORAL ARGUMENT

The Petitioner-Appellant requests the opportunity to be heard in oral argument.

Respectfully submitted,
N.S., the Petitioner-Appellant

By: /s/ *Eric S. Mail*
Eric S. Mail AT0011435
PURYEAR LAW P.C.
3719 Bridge Ave, Suite 6
Davenport, IA 52807
(P): 563.265.8344
mail@puryearlaw.com
eric@puryearlaw.com

ATTORNEY'S COST CERTIFICATE

The undersigned certifies that the true costs of duplicating this document was \$ 0.

/s/ Eric S. Mail
Eric S. Mail

Attorney for the Petitioner-Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Reply Brief complies with the type- volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because: this brief contains **1062** words, exempting the parts of the brief excluded by Iowa R. App. P. 6.903(1)(g)(1).

The undersigned certifies that this brief satisfies the type-style requirements of Iowa R. App. P. 6.903(1)(e) because: I used LibreOffice (Version 5.1) for Linux, Times New Roman, proportionally spaced face, 14-point size, in preparation of the main body of this document.

/s/ Eric S. Mail

Eric S. Mail

Attorney for the Petitioner-Appellant