IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Laurence Joseph Anderson, Scott Miller, Robert Reinhold Opdyke, and Michael A. Whitehouse	:	
v.	:	No. 1753 C.D. 2019
	:	Argued: October 14, 2020
City of Pittsburgh, William Peduto, in his official capacity as Mayor of the City of Pittsburgh, and Pittsburgh City Council, Appellants	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

CONCURRING AND DISSENTING OPINION
BY JUDGE CEISLER FILED: May 27, 2022

Though I am constrained to concur in part with the majority in this matter, due to the current state of preemption law in Pennsylvania regarding the field of firearms regulation, I am equally compelled to ultimately disagree with the majority's outcome in this matter. Accordingly, I dissent in part, because I believe that the scope of such preemption has been defined by our courts in an unjustifiably broad manner and, in addition, that the Court of Common Pleas of Allegheny County's (Common Pleas) grant of summary judgment in favor of Appellees Laurence Joseph Anderson, Scott Miller, Robert Reinhold Opdyke, and Michael A. Whitehouse (collectively Appellees) improperly went beyond the scope of the challenge posed by Appellees, as well as that of the relief which they had sought.

The genesis of this case occurred on April 9, 2019, when Appellant City of Pittsburgh (City) enacted a series of ordinances, including Ordinance 2018-1219 (Magazine Ordinance), which bars the use of armor penetrating ammunition, large capacity magazines, and rapid fire devices within the City's limits. City of Pittsburgh, Pa. Ordinances (2019), Magazine Ordinance §§ 1104.02-1104.04. The Magazine Ordinance also contains a dormant ban on ownership, possession, transfer, and transportation of large capacity magazines, one which will snap into place as enforceable law only in the event "action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the [dormant ban's] implementation and enforcement[.]" *Id.* §§ 1105.02, 1105.07.

Appellees responded by filing their Complaint for Declaratory and Injunctive Relief (Complaint), through which they challenged the large capacity magazine usage ban, but did not challenge the remainder of the Magazine Ordinance. *See* Reproduced Record (R.R.) at 5a-21a.[1] In doing so, Appellees sought a declaratory judgment that the large capacity magazine usage ban was preempted by state law, as well as an injunction permanently barring the City from enforcing that ban. *Id.* at 20a-21a. Appellees then reiterated this request in their subsequent Motion for Summary Judgment. *See id.* at 128a-29a, 148a-58a. Thereafter, Common Pleas granted summary judgment in Appellees' favor and, in doing so, awarded relief to Appellees that both preempted and enjoined the Magazine Ordinance in full. *See id.* at 299a-304a.

That decision by Common Pleas leads me to two conclusions. First, as I explained in my concurring and dissenting opinion in *Firearm Owners Against Crime v. City of Pittsburgh*, __ A.3d __ (Pa. Cmwlth., No. 1754 C.D. 2019, filed

[1] Appellees characterized this ban as a prohibition against "carrying loaded standard capacity magazines in public[.]" *See* R.R. at 14a, 16a-21a.

May 27, 2022) (*FOAC*), the companion case to this matter, our Supreme Court's decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), as well as the subsequent case law that has sprung forth as a result of that ruling, effectively forecloses on preemption grounds local regulation of ammunition, ammunition components, and firearms. *FOAC*, __ A.3d at __, slip op. at 2-7 (Ceisler, J., concurring in part and dissenting in part). Therefore, on this same basis, I reluctantly agree with the majority in this matter that Common Pleas did not erroneously grant summary judgment in favor of Appellees, insofar as Common Pleas deemed the Magazine Ordinance's large capacity magazine usage ban preempted under state law and permanently enjoined its enforcement.

I, however, reiterate my call for our Supreme Court

> to either overturn or rein in the reach of *Ortiz*[, because] the scope of [the relevant] preemption statutes . . . is more limited than understood through our extant corpus of case law. Specifically, they collectively preempt local regulation of ownership, possession, transfer, and transportation of three classes of items, *i.e.*, firearms, ammunition, and ammunition components, but extend no further than that.

Id. at __, slip op. at 7.

Second, I take great issue with the majority's wholesale affirmation of Common Pleas' decision, because that ruling violated a basic tenet of hornbook law: a court *cannot* grant a party relief beyond that which was specifically requested or "is agreeable to the case made in the [complaint.]" *See Meth v. Meth*, 62 A.2d 848, 849 (Pa. 1949) (citations omitted). As explained by our Supreme Court more than a century ago:

> The relief afforded by a decree in equity must conform to the case as made out by the pleadings as well as to the proofs. Every fact essential to entitle a plaintiff to the relief which he seeks must be averred in his [complaint]. Neither

> unproved allegations nor proof of matters not alleged can be made a basis for equitable relief. Relief cannot be granted for matters not alleged. . . . Neither allegations without proof nor proof without allegations, nor allegations and proof which do not substantially correspond, will entitle complainant to relief unless the defect be remedied by amendment. . . . A complainant can be afforded such relief only as he is entitled to under the allegations of the [complaint]. . . . The order or decree of a court of chancery[2] should conform to the prayer in the [complaint]. . . . Every averment necessary to entitle a plaintiff in equity to the relief sought must be contained in the stating part of the [complaint]. . . . Authorities need not be multiplied in support of the rule that the relief afforded by the decree must conform to the case as made out by the pleadings, and the decree must be consistent with the relief prayed for.

Luther v. Luther, 64 A. 868, 870 (Pa. 1906) (internal citations omitted). In this instance, and despite the limited scope of Appellees' legal challenge and the relief they had requested, Common Pleas inexplicably granted summary judgment in a manner that both deemed preempted and consequently enjoined the *entirety* of the Magazine Ordinance.

> What averment in [Appellees' Complaint] supports this decree? In answer to what prayer was it made? Proceedings in equity may be elastic, but there is a limit to their elasticity. They are not to be stretched to give relief from a specific wrong not averred in a . . . complaint, or to make a decree not in conformity to its prayers. This is just what was done in the case before us, and it was done in plain disregard of a rule of equity procedure laid down in

[2] "[T]he term 'chancery powers,' [encompasses] 'the jurisdiction, powers, practice and procedure in equity.'" *Penn Anthracite Mining Co. v. Anthracite Miners of Pa.*, 178 A. 291, 294 (Pa. 1935) (quoting *Morgan v. Reel*, 62 A. 253, 254 (Pa. 1905)). "For historical reasons having to do with our colonists' distrust of the English Chancery Courts, Pennsylvania maintains a unified court system whereby common pleas court judges also act as judges in equity but with only those equity powers and jurisdiction specifically granted by law." *Goodwin v. Rodriguez*, 554 A.2d 6, 8 (Pa. 1989).

> all the text-books and repeated time and again in chancery reports.

Spangler Brewing Co. v. McHenry, 89 A. 665, 666 (Pa. 1914). Accordingly, I dissent in part, due to the majority's decision to compound and sanction this error.[3]

ELLEN CEISLER, Judge

Judge Wojcik joins in this Concurring and Dissenting opinion.

[3] I recognize that the Magazine Ordinance was challenged, declared preempted, and enjoined, in full in *FOAC*. *See FOAC*, __ A.3d at __, slip op. at 7-8. However, that does not mean that it was appropriate for Common Pleas to award the aforementioned blanket relief or for our Court to affirm that broad grant in *this* case.