

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1138**

Jeremy Michael Kilde,
Appellant,

vs.

Coon Rapids Chief of Police John Stahnke,
Respondent.

**Filed May 15, 2023
Reversed; writ of mandamus issued
Bjorkman, Judge**

Anoka County District Court
File No. 02-CV-21-5800

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(for appellant)

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Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the district court's partial denial of his petition for a writ of mandamus to require respondent to issue him a transferee permit to purchase a firearm. Because neither Minn. Stat. § 609.2242, subd. 3(e) (2020), nor Minn. Stat. § 624.713,

subd. 1(12) (2020), prohibit appellant from possessing a firearm, we reverse the district court and grant appellant's petition for a writ of mandamus.

FACTS

In June 2012, appellant Jeremy Kilde was convicted of domestic assault (harm) following an altercation with his brother. Seventeen months later, Kilde was convicted of domestic assault (fear) stemming from an incident involving his girlfriend. Both of Kilde's convictions were misdemeanors under Minn. Stat. § 609.2242, subd. 1 (2020). In November 2021—eight years after his second domestic-assault conviction—Kilde applied for a transferee permit. Respondent Coon Rapids Police Chief (the chief) denied his application, reasoning that Kilde is ineligible under 18 U.S.C. § 922(g)(9) (2018) because he has been convicted of domestic assault.

Kilde petitioned the district court for a writ of mandamus requiring the chief to issue him a transferee permit. He argued that 18 U.S.C. § 922(g)(9) does not apply when the victim is a sibling and does not apply to fear-based domestic-assault convictions. The chief opposed the petition, citing Minn. Stat. § 609.2242, subd. 3(e), which renders ineligible a person convicted of domestic assault “unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of” another domestic assault. The chief argued that, because Kilde was convicted of two domestic-assault offenses within three years, he is ineligible to possess a firearm for the rest of his life. Kilde responded that the Minnesota statute only rendered him ineligible for the three years following his latest conviction.

The district court granted Kilde’s petition in part and denied it in part. It agreed with Kilde that the federal prohibition does not apply to him under the circumstances of his two domestic-assault convictions. And it noted that because Kilde’s convictions occurred after August 1, 1992, and before August 1, 2014, Minn. Stat. § 609.2242, subd. 3(e), could only make him ineligible to possess a pistol—not any other firearm. But the district court concluded the statute did just that because Kilde had two domestic-assault convictions within three years.

Kilde appeals.

DECISION

Kilde is entitled to mandamus relief only if the chief had a duty clearly imposed by law to issue a transferee permit. *See, e.g., Spann v. Minneapolis City Council*, 979 N.W.2d 66, 78 (Minn. 2022). Whether the chief had such a duty turns on Kilde’s eligibility to possess a firearm¹—a question of statutory interpretation that we review de novo. *Tapia v. Leslie*, 950 N.W.2d 59, 61 (Minn. 2020). Our goal in interpreting a statute is to “ascertain and effectuate” the legislature’s intent. *State v. Bowen*, 921 NW.2d 763, 765 (Minn. 2019) (quotation omitted). The first step is to determine whether the language of the statute is ambiguous. *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). When determining whether statutory language is ambiguous, we construe words and phrases “according to their common and approved usage.” Minn. Stat. § 645.08(1) (2022). We consider the

¹ Although we acknowledge that Kilde could only be ineligible to possess a pistol under Minn. Stat. § 609.2242, subd. 3(e), because Minn. Stat. § 624.713 (2020) addresses eligibility for *any* firearm, we use the term “firearm” throughout for ease of reference.

whole statute, not simply the disputed language, giving effect to all its provisions and avoiding conflicting interpretations and absurd results. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277-78 (Minn. 2000). If the statute is susceptible to only one reasonable interpretation, it is unambiguous, and its plain language controls. *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010). But if a statute is subject to two reasonable interpretations, the next step is to “look to other tools to interpret its meaning.” *City of Circle Pines v. County of Anoka*, 977 N.W.2d 816, 823 (Minn. 2022).

We begin our analysis with an overview of the relevant statutory provisions. Minnesotans may apply for a transferee permit by submitting a written application to the “chief of police of an organized full time police department of the municipality” in which the applicant resides. Minn. Stat. § 624.7131, subd. 1 (2020). A police chief may only deny such an application if the applicant is ineligible under section 624.713. *Id.*, subd. 4 (2020).

Minn. Stat. § 624.713, subd. 1, provides 13 categories of persons who are ineligible to possess a firearm. One of these categories is

a person who has been convicted of a violation of section 609.224 [fifth-degree assault] if the court determined that the assault was against a family or household member in accordance with section 609.2242, subdivision 3 (domestic assault), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of section 609.224 or a violation of [other sections not at issue here].

Minn. Stat. § 624.713, subd. 1(12). The referenced domestic-assault statute contains almost identical language:

Except as otherwise provided in paragraph (c), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1992, or a firearm if a person has been convicted on or after August 1, 2014, of domestic assault under this section or assault in the fifth degree under section 609.224 and the assault victim was a family or household member as defined in section 518B.01, subdivision 2, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section or section 609.224.

Minn. Stat. § 609.2242, subd. 3(e).

These statutes also designate which categories of persons are subject to lifetime or indeterminate periods of ineligibility. One such category is persons who are convicted of assaulting a family or household member while using a firearm. Minn. Stat. § 609.2242, subd. 3(c) (2020). A court may, at its discretion, prohibit such persons “from possessing any type of firearm for any period longer than three years or for the remainder of the person’s life.” *Id.* Another category is persons “convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence.” Minn. Stat. § 624.713, subd. 1(2).² These persons are automatically subject to a “lifetime prohibition on possessing, receiving, shipping, or transporting firearms and ammunition.” Minn. Stat. § 624.713, subd. 1.

² A “crime of violence” is defined as a felony conviction for enumerated offenses and attempts to commit those felony offenses. Minn. Stat. § 624.712, subd. 5 (2020). It is undisputed that Kilde’s conviction offenses are not crimes of violence as defined in this statute.

Kilde argues that the district court erred by interpreting Minn. Stat. § 609.2242, subd. 3(e), to create another category of persons who are subject to lifetime ineligibility: persons who are convicted of two or more misdemeanor domestic assaults within three years.³ Kilde contends that this statute and companion statute Minn. Stat. § 624.713, subd. 1(12), impose a three-year ineligibility period that runs from the date of the last conviction. Under Kilde’s proposed interpretation, his three-year ineligibility period “started over” when he was convicted of his second domestic-assault offense in 2013 and expired long before he applied for a transferee permit. Kilde asserts that when the legislature intends either an automatic or discretionary lifetime prohibition it explicitly authorizes one, and when the legislature did not, it cannot be read into the statute. *See State v. C.W.N.*, 906 N.W.2d 549, 553 (Minn. App. 2018) (declining to read a lifetime prohibition into an expungement statute when the legislature did not use such “restrictive language”).

³ Kilde also asserts that the district court erred by denying his application under Minn. Stat. § 609.2242, subd. 3(e), because Minn. Stat. § 624.713 is the only valid basis for a police chief to deny a transferee permit. The express terms of section 624.713 defeat this argument. Subdivision 1 includes in its 13 categories of ineligible persons “a person who has been convicted of a violation of section 609.224 if the court determined that the assault was against a family or household member in accordance with section 609.2242, subdivision 3 (domestic assault).” Minn. Stat. § 624.713, subd. 1(12). Minn. Stat. § 609.2242, subd. 3 (2020), is incorporated into Minn. Stat. § 624.713, just as is 18 U.S.C. § 922(g) (2018).

The chief contends that Kilde’s eligibility to possess a pistol is governed by Minn. Stat. § 624.713, under which he is subject to a lifetime prohibition because he had two domestic-assault convictions within three years. He argues that all ineligible persons identified in subdivision 1 are subject to lifetime or indeterminate ineligibility “unless there is an enumerated mechanism to regain the ability to possess firearms.” He specifically points to subdivision 1(10) as creating lifetime ineligibility without expressly stating the intent to do so.

We note that the proper focus of our analysis is section 624.713, which provides the sole basis on which a transferee permit may be denied. Minn. Stat. § 624.7131, subd. 4. Section 624.713’s relevant provision, subdivision 1(12), mirrors the relevant language of Minn. Stat. § 609.2242, subd. 3(e). Construing the terms of subdivision 1(12) according to their common meaning supports Kilde’s interpretation. And reading subdivision 1(12) in the context of section 624.713 as a whole further persuades us that only Kilde’s interpretation—under which the three-year ineligibility period runs from his last conviction—is reasonable and effectuates the legislature’s intent for two reasons.

First, the language of subdivision 1(12) itself does not support a lifetime prohibition. A person is ineligible to possess a firearm “unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation.” Minn. Stat. § 624.713, subd. 1(12). This language does not distinguish between a first, second, or subsequent domestic-assault conviction. Rather, it establishes a three-year ineligibility period that begins when a conviction is entered. Adopting the chief’s assertion that a person who reoffends within three years of a conviction may never again be eligible

requires us to add words to the statute. We cannot add to a statute what “the legislature purposely omits or inadvertently overlooks.” *State v. Christensen*, 901 N.W.2d 648, 653 (Minn. App. 2017) (quotation omitted).

Second, reading the provisions of subdivision 1 as a whole supports Kilde’s interpretation. As noted above, only one of the 13 provisions creating categories of ineligible persons imposes—by its terms—an automatic lifetime period of ineligibility: Minn. Stat. § 624.713, subd. 1(2). The legislature expressly stated that this category of persons (those who committed a crime of violence) are subject to a “lifetime prohibition.” Minn. Stat. § 624.713, subd. 1. Eleven of the remaining provisions, including the provision at issue here, limit the person’s ineligibility to a particular period of time or until a particular set of circumstances occur.⁴ In other words, the legislature knew how to make a person ineligible to possess a firearm for the rest of their life but chose not to do so with respect to persons in Kilde’s position.

The chief’s attempts to convince us otherwise are unavailing. Adopting the chief’s interpretation would require us to ignore that the legislature knew how to authorize a

⁴ See Minn. Stat. § 624.713, subd. 1(1) (imposing conditions on eligibility until a person reaches the age of 18), 1(3) (providing for restoration of eligibility under subdivision 4), 1(4) (providing for restoration of eligibility after three years have elapsed, or under subdivision 4), 1(5) (providing for restoration of eligibility upon completion of treatment or under subdivision 4), 1(6) (providing for restoration of eligibility upon discharge or provisional discharge from treatment), 1(7) (providing for restoration of eligibility upon completion of diversion program and the dismissal of charges), 1(8) (providing for restoration of eligibility after three years have elapsed), 1(9) (providing for restoration of eligibility after a period determined by the sentencing court), 1(11) (providing for restoration of eligibility after three years have elapsed), 1(13) (providing for restoration of eligibility after an order for protection expires).

lifetime prohibition and did not do so in the context of persons who commit misdemeanor domestic assault without a firearm. The chief cites subdivision 1(10) for the proposition that silence as to the duration of ineligibility means the legislature intended a lifetime prohibition. But the clauses in subdivision 1(10) simply incorporate 18 U.S.C. § 922(g), which the legislature had no authority to change. And it is undisputed that 18 U.S.C. § 922(g), when it applies, imposes a lifetime prohibition.⁵

In sum, we conclude that Minn. Stat. § 624.713, subd. 1(12), is unambiguous and provides that a person convicted of misdemeanor domestic assault is ineligible to possess a firearm until three years has passed since their last conviction. It does not create a lifetime prohibition for a person who is convicted of two misdemeanor domestic assaults within a three-year period. Because Kilde did not have any such convictions after 2013, he was eligible for a transferee permit when he applied for it in 2021.⁶ Accordingly, we reverse

⁵ We note also that the chief’s interpretation appears inconsistent with the ability of persons convicted of a felony crime of violence to seek relief upon restoration of their civil rights. Under the chief’s interpretation, persons convicted of two *misdemeanor* domestic assaults within a three-year period would have no recourse by which to ever regain their eligibility to possess a firearm while persons convicted of *felony* crimes of violence—including first-degree murder—may petition a court to restore their eligibility under Minn. Stat. § 609.165, subd. 1d (2020).

⁶ The chief contends that the district court erred by concluding that 18 U.S.C. § 922(g)(9) does not prohibit Kilde from possessing a firearm. We disagree. Because Kilde’s 2013 domestic-assault (fear) conviction under Minn. Stat. § 609.2242, subd. 1(1), did not involve the use of physical force, the federal prohibition does not apply. *See United States v. Castleman*, 572 U.S. 157, 168-71 (2014) (holding that a conviction qualifies as a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9) when the use of physical force is an element of the conviction); *see also United States v. Larson*, 13 F. App’x 439, 439-40 (8th Cir. 2001) (“It is undisputed that only [domestic-assault (harm) under Minn. Stat. § 609.2242, subd. 1(2)] satisfies ‘the use or attempted use of physical force’ element required . . . under 18 U.S.C. § 922(g)(9).”).

the district court's partial denial and grant Kilde's petition for a writ of mandamus ordering the chief to issue him a transferee permit. *See Tapia*, 950 N.W.2d at 63-65 (granting petition for writ of mandamus to issue a permit to carry where petitioner was not ineligible).

Reversed; writ of mandamus issued.