

STATE OF VERMONT

SUPERIOR COURT

Civil Division

Chittenden Unit

Case No. 22-CV-02108

ESTATE OF: ROBERT CHIABRANDY

Ruling on Motion for Summary Judgment

This is an appeal of a ruling by the Probate Division regarding an assignment of a bequest by a will beneficiary. As part of his will, the decedent made a bequest of his “firearms, accessories, ammo” (“firearms”) to Carl Page. Page, who was convicted of a felony in 1978, is precluded by 18 U.S.C. § 922(g)(1) from “possess[ing] in or affecting commerce, any firearm or ammunition.” Because Page is precluded from receiving the bequest, the executrix of the Estate of Robert Chiabrandy filed a motion seeking court approval for Page to assign the bequest of firearms to his son-in-law, Justin Kirk. The Probate Division denied the motion on the basis that allowing Page to assign his interest in the firearms would “initiate an ownership” of the firearms in contravention of the statute. Frances Neville, a niece and beneficiary of the decedent, appealed the Probate Division’s ruling, and she, together with Page, filed a motion for summary judgment. No opposition has been filed.

Analysis

Whether Page should be permitted to assign his bequest to Kirk depends on the meaning of the term “possess,” as that word is used in the statute. *See* 18 U.S.C. § 922(g). The United States Supreme Court addressed this issue in Henderson v. United States, 575

U.S. 622 (2015). In that case, a convicted felon sought to transfer guns he already owned to a third party. Henderson, 575 U.S. at 624. The government opposed the felon’s request, stating that allowing the transfer would place him in violation of § 922(g). Id. The Supreme Court addressed the meaning of the term “possess,” as that term is used in the statute, and distinguished “ownership” from “possession.” Id. at 626. The Court explained that § 922(g) does not prohibit a felon from *owning* firearms; it only prohibits a felon from *possessing* them, either through actual or constructive possession. Id. “Actual possession exists when a person has direct physical control over a thing.” Id. “Constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.” Id. Thus, the Supreme Court explained, “[a] felon cannot evade the strictures of § 922(g) by arranging a sham transfer that leaves him in effective control of his guns.” Id. at 627.

The Court rejected the government’s argument that the statute bars a felon from transferring his firearms to a third person, “no matter how independent of the felon’s influence.” Id. According to the Court, the statute does not affect a felon’s “right merely to sell or otherwise dispose of” firearms, which the Court described as “a naked right of alienation.” Id. at 628. To ensure that the requirements of § 922(g) are followed, the Court directed:

A court may . . . grant a felon’s request to transfer his guns to a person who expects to maintain custody of them, so long as the recipient will not allow the felon to exert any influence over their use. In considering such a motion, the court may properly seek certain assurances: for example, it may ask the proposed transferee to promise to keep the guns away from the felon, and to acknowledge that allowing him to use them would aid and abet a § 922(g) violation. . . . [W]hen a court is satisfied that a felon will not retain control over his guns, § 922(g) does not apply, and the court has equitable power to accommodate the felon’s request.

Id. at 630.


Page and Kirk, the purported assignee, executed a document titled “Assignment, Consent, and Acceptance of Bequest of Firearms” (the “Assignment”) that is dated March 19, 2022. Through this document, Page, who resides in Newburyport, Massachusetts, assigned to Kirk, who resides in Chapmanville, West Virginia, “all his right, title, and interest in the firearms” that the decedent left Page in his will. Page states in the Assignment that he “shall have no and claim no right, title, or interest in or to the firearms and shall have no control over, use of, access to or possession of the firearms at any time hereafter.” In support of their motion for summary judgment, Neville and Page submitted an affidavit from Kirk in which he stated that he will accept the firearms transfer by way of a federal firearms licensee, and that he “will not allow Page to possess or control the firearms at any time.” Kirk further stated that he “will make decisions regarding the control of the firearms without input or influence of Carl Page.”

The Probate Division’s denial of the executrix’s request for approval of the assignment was based on the belief that creating an ownership from which an assignment could occur would be violating the statute. As Henderson makes clear, however, § 922(g) does not preclude a felon’s ownership of firearms; it just precludes their possession. It is clear from the Assignment and Kirk’s affidavit that Page will not have actual or constructive possession of the firearms at any time. As a result, allowing Page to assign his bequest to Kirk will not violate § 922(g).

Order

The motion for summary judgment is granted. The Probate Division's ruling is reversed.

Electronically signed on November 22, 2022 pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Helen M. Toor", written in a cursive style.

Helen M. Toor
Superior Court Judge