FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-91

T. DOZIER, individually and on behalf of his minor child, M.D.; D. PHILLIPS, individually and on behalf of his minor child, B.P.; N. KAVANAUGH, individually and on behalf of her minor child, T.S.; THE LEAGUE OF WOMEN VOTERS OF FLORIDA, INC.,

Appellants,

v.

DUVAL COUNTY SCHOOL BOARD,

Appellee.

On appeal from the Circuit Court for Duval County.
Robert M. Dees, Judge.

February 18, 2021

M.K. THOMAS, J.

Appellants, students in Duval County schools, and the League of Women's Voters of Florida, Inc., challenge a final order dismissing their complaint for declaratory and injunctive relief against the Duval County School Board (the Board). Appellants claim that the Board's School Safety Assistants (SSA) program is unlawful because "school guardians" are not law enforcement

officers and, thus, are prohibited from carrying firearms on school campuses pursuant to section 790.115, Florida Statutes. Because we find the plain language of sections 790.115, 1006.12(3), and 30.15(1)(k), Florida Statutes (2019), authorizes school guardians to carry concealed firearms on school campuses, we affirm.

I.

Following the 2018 tragic mass shooting at Marjory Stoneman Douglas High School in Parkland, the Florida Legislature passed Senate Bill 7026 (the Marjory Stoneman Douglas High School Public Safety Act). This comprehensive legislation mandated that one or more "safe-school officers" be present at every school in each district. *See* § 1006.12, Fla. Stat. (2018). Pursuant to the Act, school boards and superintendents are required to "partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility" "[f]or the protection and safety of school personnel, property, students, and visitors." *Id.* Originally, the Act offered three options for fulfilling the safe-school officer obligation—two options related to use of law enforcement officers and a third using school employees to serve as "school guardians." *Id.* The Legislature also amended section 30.15(1)(k) (2018) to establish a category of school guardians under the "Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises." Under this program, any school employees who volunteered to participate and who met certain criteria may be appointed as school guardians. *See* § 1006.12(3), Fla. Stat. (2018).

In response to the enactment of section 1006.12 requiring a school-safety officer in every school, the Board created an SSA program. However, due to budgetary constraints, the Board was unable to hire school resource officers (law enforcement officers) to fulfill its obligations under the Act.[1] Accordingly, the Board utilized the school guardian option to implement an SSA program.

[1] The Board estimated the cost of hiring school safety officers (certified law enforcement officers) in every elementary school to be nearly $10.8 million. The Legislature appropriated $3.6 million for the Board to fulfill the requirement.

Thereafter, Appellants initiated litigation claiming the Board's SSA program utilizing school guardians under the authority of section 1006.12(3) (2018), was unlawful because section 790.115 (2018) prohibited anyone other than law enforcement officers from carrying firearms on school campuses.

In 2019 and while this case was pending below, the Legislature responded to recommendations from the Marjory Stoneman Douglas High School Public Safety Commission and further amended section 1006.12(3) to redefine who may serve as a "school guardian." Classroom teachers, who were previously excluded from eligibility, were permitted to serve as school guardians, provided they complete the required training and met other criteria. § 1006.12(3)(a), Fla. Stat. (2019). The Legislature also amended the applicable statutes to effect the following changes: to make it mandatory, rather than optional, for sheriffs to establish a guardian program, § 30.15(1)(k), Fla. Stat. (2019); to expressly permit school boards to hire employees for the specific purpose of serving as school guardians, § 1006.12(3)(b), Fla. Stat. (2019); and to create a fourth category of safe-school officers—school security guards. § 1006.12(4), Fla. Stat. (2019).

Relevant here, section 1006.12(3) now expressly permits school guardians to serve "in support of school-sanctioned activities for purposes of s. 790.115." Additionally, the school districts are required to notify the local sheriff and the Department of Education's Office of Safe Schools when any safe school officer—including school guardians—"discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes." § 1006.12(5)(b), Fla. Stat. (2019). The Office of Safe Schools must "[a]nnually publish a list detailing . . . the number of incidents in which a safe-school officer discharged his or her firearm . . . in the exercise of his or her duties as a safe-school officer." § 1001.212, Fla. Stat. (2019). The training and documentation requirements of section 30.15(1)(k) remained unchanged.

In 2019, the Board filed a motion to dismiss Appellants' complaint which was ultimately granted by the trial court with leave for Appellants to amend to incorporate the 2019 statutory amendments. Appellants filed an amended complaint which the

trial court also dismissed, holding that the Legislature, by including the phrase "in support of school sanctioned activities for purposes of s. 790.115" in section 1006.12(3), created an exception for school guardians to the general prohibition of carrying firearms on school campuses. Appellants now appeal that order.

II.

Our analysis begins with review of the three statutes at the core of this dispute. Initially, section 790.115(2)(a) establishes the general prohibition against carrying firearms on school campuses. It provides, "[a] person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school . . . ." § 790.115(2)(a), Fla. Stat. (2019). The statute exempts from the prohibition "any law enforcement officer as defined in s. 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14)." § 790.115(3), Fla. Stat. (2019). The statute has remained unaltered since 2006.

Next, section 1006.12 (2019), entitled "Safe-school officers at each public school," now provides, in pertinent part, as follows:

> For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. . . . The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.
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> . . . .
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> (3) School guardian.—At the school district's or the charter school governing board's discretion, as applicable, pursuant to s. 30.15, a school district or charter school governing board may participate in the Coach Aaron Feis Guardian Program to meet the requirements of establishing a safe-school officer. The following

> individuals may serve as a school guardian, in support of school-sanctioned activities for purposes of s. 790.115, upon satisfactory completion of the requirements under s. 30.15(1)(k) and certification by a sheriff:
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> (a) A school district employee or personnel, as defined under s. 1012.01, or a charter school employee, as provided under s. 1002.33(12)(a), who volunteers to serve as a school guardian in addition to his or her official job duties; or
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> (b) An employee of a school district or charter school who is hired for the specific purpose of serving as a school guardian.

Pursuant to the plain language of the statute, each school district may satisfy its safe-school officer obligation through any combination of the following options: (1) School resource officer; (2) School safety officer; (3) School guardian; or (4) School security guard. *See* § 1006.12(1)–(4), Fla. Stat. (2019). Notably, the statute requires that the school district "shall notify the county sheriff and the Office of Safe Schools immediately after, but no later than 72 hours after . . . [a] safe-school officer discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes." § 1006.12(5), Fla. Stat. (2019).

Lastly, section 30.15 (2019) sets forth the powers, duties, and obligations of sheriffs. Applicable here is section 30.15(1)(k), which requires a sheriff, at minimum, to "provide access to a Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises . . . ." The statute further provides that "[p]ersons certified as school guardians . . . have no authority to act in any law enforcement capacity *except to the extent necessary to prevent or abate an active assailant incident*." *Id.* (emphasis added). To act as a school guardian, an individual must meet the following statutory requirements:

> a. Hold a valid license under s. 790.06.
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> b. Complete 144-hour training program, consisting of 12 hours of certified nationally recognized diversity training and 132 total hours of comprehensive firearm

safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:

(I) Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than academy training. Program participants must achieve an 85 percent pass rate on the firearms training.

(II) Sixteen hours of instruction in precision pistol.

(III) Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.

(IV) Eight hours of instruction in active shooter or assailant scenarios.

(V) Eight hours of instruction in defensive tactics.

(VI) Twelve hours of instruction in legal issues.

c. Pass a psychological evaluation administered by a psychologist licensed under chapter 490 and designated by the Department of Law Enforcement and submit the results of the evaluation to the sheriff's office. The Department of Law Enforcement is authorized to provide the sheriff's office with mental health and substance abuse data for compliance with this paragraph.

d. Submit to and pass an initial drug test and subsequent random drug tests in accordance with the requirements of s. 112.0455 and the sheriff's office.

e. Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.

§ 30.15(1)(k)2., Fla. Stat. (2019).

III.

Because this is a matter of statutory interpretation, the standard of review is *de novo*. *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018). "In interpreting the statutes, we follow the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *Ham v. Portfolio Recovery Assocs., LLC*, 46 Fla. L. Weekly S9, *4 (Fla. Dec. 31, 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). As instructed by the Florida Supreme Court, we further embrace Justice Joseph Story's view that "every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Id.* (quoting *Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020)).

The objective of statutory interpretation is to reach a "'fair reading' of the text by 'determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.'" *Id.* (quoting Scalia & Garner, *Reading Law* at 33). "This requires a methodical and consistent approach involving 'faithful reliance upon the natural or reasonable meanings of language' and 'choosing always a meaning that the text will sensibly bear by the fair use of language.'" *Id.* (quoting Frederick J. de Sloovère, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), quoted in Scalia & Garner, *Reading Law* at 34).

"A statute that is clear and unambiguous on its face requires no construction and should be applied in a manner consistent with its plain meaning." *Geico Indem. Co. v. Accident & Injury Clinic, Inc.*, 290 So. 3d 980, 983 (Fla. 5th DCA 2019). In other words, where the language of the statute is clear it should be given its plain meaning, and the court will not look behind the statute's plain meaning to determine legislative intent or resort to the rules of statutory construction. *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019); *Ganzemuller v. Omega Ins. Co.*, 244 So. 3d 1189, 1190 (Fla. 2d DCA 2018).

Here, the Board appointed school guardians under section 1006.12(3), to fulfill its school-safety officer obligations. Thusly, the specific question before this Court is whether school guardians, as referenced in section 1006.12(3), may carry firearms on school campuses. Appellants argue that a negative response is compelled by section 790.115, as school guardians are not included within the exceptions to the general prohibition of carrying firearms on school campuses. The Board argues that the Legislature, when it amended section 1006.12(3) to include the phrase "in support of school-sanctioned activities for purposes of s. 790.115," created an exception for school guardians which permits them to carry firearms on school campuses. *See* § 790.115(2)(a), Fla. Stat. (2019). Furthermore, the Board asserts that, pursuant to section 30.15(1)(k), school guardians act in a *law enforcement capacity* "to the extent necessary to prevent or abate an active assailant incident" and, thus, qualify for the law enforcement exception under section 790.115(3).

In support of its position, Appellants contend that in 1997 the Legislature added the phrase "school-sanctioned activities" to section 790.115(2)(a) while simultaneously adding "a razor blade or box cutter," indicating the Legislature's intent for the phrase "school-sanctioned activities" to only modify the phrase immediately preceding it—"a razor blade or box cutter." Appellants urge application of the doctrine of the last antecedent to this analysis. The doctrine holds that "relative and qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to, or including, others more remote." *Jacques v. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutual Wagering*, 15 So. 3d 793, 796 (Fla. 1st DCA 2009) (quoting *Kasischke v. State*, 991 So. 2d 803, 811 (Fla. 2008)).

Appellants next claim that the applicable statutes are ambiguous, and the trial court correctly conceded as much in finding, "the Legislature could have been more clear and direct" in permitting school guardians to carry firearms (such as including school guardians in a new sub-paragraph (4) under section 790.115(2)(a) or within the law enforcement exceptions in section 790.115(3)); thus, requiring application of the rules of statutory construction. We disagree as this argument cherry-picks a

segment of the trial court's considerations and then applies it out of context. The trial court clarified that regardless of sentence structure debate, the Legislature's reference in section 1006.12(3) to "school-sanctioned activities for purposes of s. 790.115" was sufficient to establish the Legislature's clear intent. Because we find that the statutes at issue here are clear and unambiguous, a resort to the rules of statutory construction is improper. *See Lieupo v. Simon's Trucking, Inc.*, 286 So. 3d 143, 145 (Fla. 2019).[2]

Lastly, Appellants argue that: 1) neither sections 790.115 nor 1006.12(3) explicitly authorize school guardians to carry firearms on campus; and 2) the trial court incorrectly determined that the Legislature impliedly amended section 790.115 to create an exception to the longstanding prohibition on carrying guns in schools. Specifically, Appellants assert that the court's finding of an "implicit amendment" violates established principles of statutory construction that guard against judicial legislation. Because we find that the plain language of the relevant statutes clearly excepts school guardians from the general prohibition of section 790.115, this is not a matter of judicial legislation but one of legislative action.

Given the question presented in this case and the arguments raised, consideration of section 1006.12(3) is necessary to determine whether it creates an ambiguity not otherwise apparent on the face of section 790.115. "Where possible, courts must give effect to all statutory provisions and construe related statutory provisions in harmony with one another." *State v. Peraza*, 259 So. 3d 728, 732 (Fla. 2018) (quoting *M.W. v. Davis*, 756 So. 2d 90, 101 (Fla. 2000)). Statutes may be read *in pari materia* when necessary to determine whether one statute "creates an ambiguity not

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[2] Even if we were to find the language of section 790.115(2)(a) ambiguous, application of the doctrine of last antecedent would support the Board's interpretation. The phrase in section 790.115(2)(a), "except as authorized in support of school-sanctioned activities" is proceeded by a comma. Evidence that a qualifying phrase is to apply to all antecedents instead of only to the immediately preceding one is found in its separation from the antecedents by a comma. *Jacques*, 15 So. 3d at 796.

apparent on the face of" an arguably related statute. *Id*. "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin,* 916 So. 2d 763, 768 (Fla. 2005). In other words, because both of these statutes, as well as section 30.15(1)(k), speak to the question whether school guardians may carry firearms on campus, we read them together following the "supremacy-of-text principle" to discern what the text means in view of the entire statutory context set forth by the Legislature. *See Ham*, 46 Fla. L. Weekly S9, *4.

Section 1006.12(3) states that school guardians act "in support of school-sanctioned activities for purposes of s. 790.115 . . . ." In turn, section 790.115(2)(a) creates an exception to the prohibition against the carrying of firearms on school campus where the act is "authorized in support of school-sanctioned activities." Section 1006.12(3) tracks the exact language of 790.115 in placing school guardians squarely within the exception permitting the carrying of firearms on school campuses.

The Legislature's decision to except school guardians from the prohibitions of section 790.115 is further supported by section 1006.12(5). Under section 1006.12(5), a school district is required to notify the county sheriff and the Office of Safe Schools after "[a] safe-school officer discharges his or her firearm." The Legislature did not limit this reporting requirement to law enforcement officers. Rather, it used the term "safe-school officers," which encompasses school guardians, thus, envisioning safe-school officers having to discharge firearms in the course of their duties.

Providing additional clarity, section 30.15(1)(k) declares that school guardians act in a *law enforcement capacity* "to the extent necessary to prevent or abate an active assailant incident." Aware of the enforcement exception to the prohibition of section 790.115, the Legislature specifically declared school guardians to be acting in a law enforcement capacity when responding to an active assailant emergency. Section 30.15(1)(k) also sets forth the numerous requirements individuals must meet to be appointed as a school guardian. These requirements include many hours of firearms training and possessing a permit to carry a concealed

firearm. Perhaps the most persuasive of the requirements is that a school guardian must have ongoing weapons inspections by the sheriff. § 30.15(1)(k)2.e., Fla. Stat. (2019). It is illogical that the Legislature would include such exhaustive firearm specific inspections and training if it intended to allow school guardians to carry only box cutters and razor blades as Appellant suggests. *See Ham*, 46 Fla. L. Weekly S9 *4 (indicating that we should always choose "a meaning that the text will sensibly bear by the fair use of language"); *Wakulla Cty. v. Davis*, 395 So. 2d 540, 543 (Fla. 1981) (recognizing that courts are duty-bound to avoid an absurd, illogical, or unreasonable construction of a statute).

Here, the plain language of the applicable statutes sets forth a clearly understandable, comprehensive scheme allowing school guardians to carry firearms on campus.

IV.

We find that the plain language of sections 790.115, 1006.12, and 30.15(1)(k), exempt school guardians from the general prohibition against carrying firearms on school campuses. Thus, we affirm the trial court's order granting the Board summary judgment and dismissing the claim with prejudice.

AFFIRMED.

OSTERHAUS, J., concurs; Makar, J., concurs with written opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., concurring with opinion.

No statute by itself definitively tells us whether school guardians—a legislatively created classification of safe school officers whose purpose is protecting campuses from violence—are entitled to possess firearms on school campuses. If we look only at section 790.115(2)(a), Florida Statutes, the answer appears to be

"no" because school guardians are not explicitly listed as persons excepted and thereby allowed to have firearms on school grounds. If we look only at section 30.15(1)(k), Florida Statutes, the answer appears to be "yes" because school guardians are required to: (a) have extensive firearms training, (b) possess a concealed weapons permit, (c) pass psychological and drug tests (including random testing), and (d) pass training, weapon inspection, and firearm qualifications annually. That same statute says that school guardians "are considered to be acting in a law enforcement capacity" when "necessary to prevent or abate an active assailant incident." *Id.*

The statutory interpretation conundrum is: which statute prevails? Solid legal arguments exist either way. On balance, however, a "fair reading"* of all the relevant statutes in tandem evinces a legislative purpose in favor of allowing school guardians to have firearms on campus, despite this category of school safety officers not explicitly appearing in section 790.115(2)(a), Florida Statutes, the exemption statute.

The reason, as Judge Thomas's opinion thoroughly discusses, is that the legislative purpose for creating school guardians—who must have concealed weapons permits, are extensively trained in firearms use, and are considered to be exercising law enforcement powers in active shooter situations—is that they be able to defend against violent force used on school campus that society, including Florida, has experienced in recent times. That's why they must be certified as having 132 hours of firearms-related training to

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* *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (1st Ed. 2012) ("The interpretive approach we endorse is that of the 'fair reading': determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued."). The "fair reading" approach "requires an ability to comprehend the *purpose* of the test, which is a vital part of its context. But the purpose is to be gathered only from the text itself, consistently with the other aspects of its context." *Id.*

include 80 hours of intensive firearms training, 16 hours of instruction in precise pistol, 8 hours of state-of-the-art simulator exercises, 8 hours of instruction in active shooter or assailant scenarios, 8 hours of instruction in defensive tactics, and 12 hours of training on legal issues; they must also successfully complete "training, weapon inspection, and firearm qualification" annually. § 30.15(1)(k), Fla. Stat. (2020). Beyond firearms and law enforcement training, certified school guardians must also have successful psychological evaluations, initial and random drug tests, and complete 12 hours of nationally recognized diversity training. *Id*.

It would be anomalous and thwart the legislative purpose for their existence, if certified school guardians with concealed weapons permits and such extensive firearms and related training and certifications, were prohibited from possessing a firearm while on campus attempting to maintain order. It would be akin to prohibiting tradespersons, technicians and other skilled members in the workforce from possessing the tools necessary to do their jobs, a result the Legislature could not have intended. The statutory pieces of the puzzle, when patched together, sharpen the focus of legislative intent and paint a clearer picture: a legislative judgment that school guardians be trained in the use and possession of firearms while performing their duties as first-line protectors of students, teachers and others on school campuses from violent acts.

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