

support of the motion was not filed until July 7, 2006. (doc-7). A hearing on the motion for temporary restraining order was scheduled for July 11, 2006

At the hearing, the court ordered that the Probate Court process Plaintiff's application for a firearm's license. (doc-13).

Subsequently, the Department of Public Safety revised the application form. (doc-14, Exhibit A). All counties have been advised of the revised form, and arrangements have been made to distribute the revised form State wide. (doc-14, Exhibit B, C).

Defendant Hitchens now submits the instant pre-answer motion to dismiss the instant action.

II. Statement of Relevant Facts

According to O.C.G.A. § 16-11-129(a), the Department of Public Safety furnishes application forms for firearms licenses. The Department has no other role in the licensure process, and does not maintain or even receive a copy of the completed application.

Prior to this action, the form developed contained a section for the applicant to fill in the applicant's social security number and a separate section for employment information. (doc-6, Attachment). There was no indication on the form as to whether the information requested was mandatory, or optional. Id.

Having previously completed the above mentioned form, Plaintiff James Camp, possessed a Georgia Firearms license which was set to expire June 20, 2006. (doc-6, ¶ 6). Plaintiff applied for a renewal license on June 14, 2006 at which time he refused to fill in that part of the application requesting his social security number. (doc-1, ¶ 16; doc-6, ¶ 4). The application was not processed. (doc-1, ¶ 16; doc-6, ¶ 5).

On June 19, Plaintiff's counsel wrote to Defendant Hitchens. (doc-1, ¶ 17). Contrary to the implication in the complaint (doc-1, ¶ 18), the Defendant took the issue seriously and responded that the application and the applicable laws would be reviewed to insure compliance with all laws and regulations. (Attachment 1).¹ Prior to completion of the review, Plaintiff filed the instant action.

In the Complaint, Plaintiff requests declaratory and injunctive relief. (doc-1, ¶ 43-46, 54). Specifically, Plaintiff requests that the Department be enjoined from requiring the disclosure of social security or employment information on the license application.

¹ Attachment 1, the letter from the Department to counsel for the Plaintiff was not attached to the Complaint. However, it was submitted to the Court at the hearing on the motion for a restraining order.

III. Argument and Citations of Authority

The basis for the complaint in this case, and the cornerstone of Plaintiff's request for injunctive relief, is his objection to that portion of the application for a firearms license which required his social security number and employment information. Plaintiff contends that the requirement that he provide this information violates the Privacy Act of 1974, and O.C.G.A. § 16-11-129.

Defendant Hitchens submits that the instant action is moot. Indeed, had Plaintiff allowed the Department to review the form and the applicable law, as was stated in the Department's letter to Plaintiff's counsel, there would have been no need to file the instant action. (Attachment 1).

"A case is moot when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief." Jews for Jesus v. Hillsborough County Aviation Auth., 162 F.3d 627, 629 (11th Cir. 1998). "A moot case is nonjusticiable and Article III courts lack jurisdiction to entertain it." Troiano v. Supervisor of Elections, 382 F.3d 1276, 1281 (11th Cir. 2004).

The Eleventh Circuit "has consistently held that a challenge to a government policy that has been unambiguously terminated will be moot in the absence of some reasonable basis to believe that the policy will be reinstated if the suit is

terminated. In the absence of any such evidence, there is simply no point in allowing the suit to continue and [the Court lacks the] power to allow it to do so.” Troiano, 382 F.3d at 1285.

In the instant case, after completing its review of the application and applicable laws, the Department revised the application. (doc 14, Exhibit A). As a social security number and employment information are no longer required, the relief requested by Plaintiff is now moot.² Further, Plaintiff can present no evidence to suggest to the Court that Defendant will reinstate the previous application after the dismissal of the instant action.

IV. CONCLUSION

As set forth above, Plaintiff’s request for injunctive relief is moot. Accordingly, Defendant Hitchens respectfully requests that the instant action be summarily dismissed.

² In addition to being moot because of the revision to the application form, counsel for Defendant understands that, in accordance with the Court’s Order, Plaintiff’s application was processed by the Probate Court and Plaintiff now has a temporary firearms license. Therefore, the case is also moot as Plaintiff has received the relief requested.

Respectfully Submitted, this 17th day of July, 2006.

THURBERT E. BAKER
Georgia Bar No. 033887
Attorney General

KATHLEEN M. PACIOUS
Georgia Bar No. 558555
Deputy Attorney General

JOHN C. JONES
Georgia Bar No. 401250
Senior Assistant Attorney General

s/ EDDIE SNELLING, JR.
Georgia Bar No. 665725
Senior Assistant Attorney General
Attorney for Defendant Bill Hitchens

Please Address All
Communications To:

EDDIE SNELLING, JR.
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
Telephone: (404) 463-8850
Facsimile: (404) 651-5304
eddie.snelling@law.state.ga.us

CERTIFICATION AS TO FONT

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

s/ Eddie Snelling, Jr.
Georgia Bar No. 665725

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2006, I electronically filed DEFENDANT HITCHENS' BRIEF IN SUPPORT OF PRE ANSWER MOTION TO DISMISS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

J. Ben Shapiro, Esq.
One Midtown Plaza
1360 Peachtree Street, N.E.
Suite 1200
Atlanta, Georgia 30309

John R. Monroe, Esq.
9640 Coleman Road
Roswell, Georgia 30075

David A. Basil, Esq.
Carroll County Legal Department
P.O. Box 338
Carrollton, GA 30117

s/EDDIE SNELLING, JR. _____
Georgia Bar No. 665725
Attorney for Defendant Bill Hitchens

State Law Department
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 463-8850
Email: eddie.snelling@law.state.ga.us