

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES CAMP,)
)
Plaintiff,)
v.)
)
BETTY B. CASON, in her official)
capacity as Probate Judge for Carroll)
County, Georgia and BILL)
HITCHENS in his official capacity)
as the Commissioner of the Georgia)
Department of Public Safety)
)
Defendants.)

CIVIL ACTION NO.
1:06-CV-1586-CAP

**DEFENDANT BETTY CASON’S RESPONSE IN OPPOSITION
TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
AND BRIEF IN SUPPORT**

COMES NOW Betty Cason, (“Cason”), by and through counsel, and respectfully submits her Response in Opposition to Plaintiff’s motion for summary judgment and brief in support. In support of his Response, Defendant Cason incorporates by reference her Response to Plaintiff’s Statement of Undisputed Facts. In further support of his Response, Defendant Cason shows the Court as follows:

I. Statement of the Case

The action was originally filed on July 5, 2006. (Doc. 1-1). After the district court issued an order for injunctive relief, both Defendants filed pre answer motions to dismiss. (Doc. 1-15; Doc. 1-16). The district court granted the motions to dismiss on September 11. (Doc. 1-47). Plaintiff appealed to the Eleventh Circuit. (Doc. 1-56).

Plaintiff filed his request for attorneys' fees. (Doc. 1-51). The district court denied the request for fees. (Doc. 1-63). Plaintiff then filed a second appeal to the Eleventh Circuit. (Doc. 1-64).

On March 23, 2007 the Eleventh Circuit reversed and remanded the dismissal of the case. Camp v. Cason, Case Nos. 06-15404 & 06-16425. (Doc. 1-77). This Court then ordered that Defendants respond to Plaintiff's motion for summary judgment by May 16, 2007. (Doc. 1-77). Defendant Cason submits her response to Plaintiff's motion for summary judgment.

II. Statement of Facts Relevant to Defendant Cason

On January 1, 1997, Cason assumed the duties of the office of the Probate Judge of Carroll County, Georgia. Since that time she has been reelected to two additional four year terms of office, the latest of which began on January 1, 2005. (Cason Aff., ¶ 2). Cason took the oath of office under O.C.G.A. § 15-9-6, which requires the faithful discharge of duties according to the law, to the best of her knowledge and ability, and without favor or affection to any party. (Cason Aff., ¶ 3). Cason serves as the President of the Council of Probate Court Judges of Georgia. (Cason Aff., ¶ 5).

On June 14, 2006, Plaintiff made an initial application for a renewal to his Georgia Firearms License (GFL). (Thornhill Aff., ¶ 4). Ms. Jean Thornhill is employed as a part-time assistant probate clerk under Defendant Cason and was on duty when Plaintiff his application for the GFL renewal. (Thornhill Aff., ¶ 4). Ms. Thornhill assists customers with questions relating to any standard probate forms, which are mandated under Uniform Probate Court Rule 21. (Thornhill Aff., ¶ 2). As part of the process of complete the GFL renewal application, Ms. Thornhill requested Plaintiff's SSN. (Thornhill Aff., ¶ 4).

Mr. Camp did not provide his social security, and Ms. Thornhill requested it from him. (Plaintiff's Undisputed Facts No. 7, Doc. 1-39). When Plaintiff refused

to disclose his SSN, Plaintiff said that he had a right to bear arms. (Thornhill Aff., ¶ 5). Plaintiff did not say or mention that the disclosure of his SSN was a violation of privacy or a violation of the federal Privacy Act. (Thornhill Aff., ¶ 5). Ms. Thornhill asked Plaintiff to see Judge Cason. (Thornhill Aff., ¶ 4). Plaintiff replied that he did not want to see Judge Cason, instead Plaintiff said he would sue. (Thornhill Aff., ¶ 6).

In his Complaint, Plaintiff alleged that the Defendants, by requiring disclosure of social security numbers and employment information, denied Plaintiff the right, benefit and privilege to obtain a GFL or renewal GFL. In addition to the Complaint, the Plaintiff filed a Motion for a Temporary Restraining Order. Plaintiff requested that prior to July 20, 2006, the Court direct the Defendants to accept and process Plaintiff's GFL renewal application without requiring him to provide his social security number or employment information and to issue him a temporary GFL. (Doc. 1-2, pp. 1-2; Doc. 1-7, pp. 11-12). After a hearing, this Court directed the Probate Court for Carroll County, to accept and process Plaintiff's GFL application without requiring him to disclose his social security number or his employment information. (Doc. 1-13; Affidavit Hitchens, ¶ 7 (Doc. 1-81-3); Affidavit O'Brien, ¶ 7, (Doc. 1-81-4)).

On July 12, 2006, Plaintiff applied for and received a temporary GFL,

without being required to provide his social security number or employment information. (Second Camp Aff. at ¶ 12, (Doc. 39), Cason Aff., ¶ 8, 9, 11). Plaintiff has received a renewal of his GFL without requiring his SSN and employment information. (Cason Aff., ¶ 10).

At the time of service of the Complaint, the Plaintiff's SSN was contained within the 2001 GFL application records in the Probate Court. (Cason Aff., ¶ 7). Plaintiff's SSN and employment information, however, were thereafter deleted and removed from all the records of the Probate Court. (Cason Aff., ¶ 10). During the time in which Plaintiff's SSN were contained in the records of the Probate Court, no uses of it were made, the SSN was not disseminated or disclosed for any purpose, and the information was kept in the vault of the Probate Court where no public access was allowed or provided. (Cason Aff., ¶ 7).

The revised GFL application form provided by Defendant Hitchens is in effect in Carroll County. (Cason Aff., ¶ 14). Pursuant to state statute, Plaintiff will not have to renew his license for another 5 years. O.C.G.A. § 16-11-129. If Defendant Hitchens modifies the revised GFL application form, it shall become immediately effective in the Carroll County Probate Court. (Cason Aff., ¶ 12, 13, 15, 16), and 17).

III. Argument and Citation of Authority

A. Plaintiff's Claims against Defendant Cason are Moot.

Article III of the Constitution, known as the case and controversies limitation, prevents federal courts from deciding moot questions because subject matter jurisdiction no longer exists. U.S.C.A. Const. Art. III. Mootness may occur due to a change in circumstances or a change in law. *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320 (11th Cir. 2004). A case is also moot when the issue presented is no longer "live," the parties lack a legally cognizable interest in its outcome, or a decision could no longer provide meaningful relief to a party. *Troiano v. Supervisor of Elections in Palm Beach County, Fla.*, 382 F.3d 1276 (11th Cir. 2004); *Christian Coalition of Ala. v. Cole*, 355 F. 3d 1288 (11th Cir. 2004); *Crown Media LLC v. Gwinnett County, GA*, 380 F.3d 1317 (11th Cir. 2004). Mootness is jurisdictional and any decision on the merits would be an impermissible advisory opinion." *Troiano*, 382 F.3d at 1282 (citing *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001)).

A challenge to governmental action is mooted when the alleged wrongdoer has ceased the allegedly illegal behavior and the Court can discern no reasonable chance that they will resume it upon termination of the suit. *Troiano*, 382 F.3d 1276, 1284 (11th Cir. 2004). A challenge to a government policy is mooted when it has been replaced by a new policy that "appears to have been the result of

substantial deliberation" on the part of the alleged wrongdoers and has "been consistently applied" in the recent past. *Jews for Jesus, Inc. v. Hillsborough County Aviation Auth.*, 162 F.3d 627, 629 (11th Cir.1998). Furthermore, the Plaintiff must show a requisite personal interest throughout the litigation. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997).

In his Complaint, Plaintiff sought the opportunity to submit a Georgia Firearms License to the Probate Court of Carroll County without a SSN.¹ Plaintiff has received this relief without disclosing his SSN or employment information. Cason has made the revised form, as provided by Defendant Hitchens, effective for the Probate Court of Carroll County. The revised GFL application form does not mandate the disclosure of information are optional. If the Plaintiff chooses to renew his GFL in the future, Cason will not require, ask, or demand a SSN or employment information from the Plaintiff. On this basis, Plaintiff is not entitled

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In its decision on appeal, the Eleventh Circuit read the Plaintiff's Complaint to request declaratory and prospective injunctive relief, including, *inter alia*, (1) an order directing defendants to process Camp's GFL application without his SSN; (2) a declaratory judgment that the GFL application form violates the Privacy Act and the defendants violated camp's rights under the Privacy Act, the Fourteenth Amendment, and the Georgia Constitution; (3) a declaratory judgment that employment information is neither pertinent nor relevant to a GFL application under O.C.G.A. § 16-11-129(a); an injunction prohibiting defendants from requiring an individual's SSN or an individual's employment information as a precondition to obtaining a GFL; (5) and injunction requiring defendants to conform the GFL application form to Section 7(b) of the Privacy Act; (6) expungement of Camp's SSN and employment information from all of defendants' records; and (7) costs and attorneys fees. Camp v. Cason, Case Nos. 06-15404 & 06-16425. (Doc. 1-77).

to any prospective relief from Defendant Cason relating to the future disclosure of his SSN or employment information.

Plaintiff's claims for expungement of his SSN and employment information are also moot. Cason has deleted and removed Plaintiff's SSN and employment information from all records in the Probate Court. Plaintiff can simply have no other meaningful relief from Defendant Cason. For example, Plaintiff can suffer no injury from a disclosure of any sensitive information² that no longer exists.

B. Defendant Cason is Entitled to Judicial Immunity as to Attorneys Fees and Costs.

Although the request for attorney fees is premature, Defendant Cason points to 42 U.S.C. §§ 1983 and 1988 that grant her judicial immunity from attorneys fees and costs. (Doc. 1-1, ¶ 43; Doc. 1-39-23). The Federal Courts Improvement Act of 1996³ amended 42 U.S.C. §§ 1983 and 1988 to prohibit the award of costs, including attorney's fees and injunctive relief against a judicial officer.

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held

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P.L. 104-317, Federal Courts Improvement Act of 1996.

liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction. 42 U.S.C. § 1988(b) (emphasis added)

This amendment restored the doctrine of judicial immunity from its erosion due to the Supreme Court's decision in *Pulliam v. Allen*, 466 U.S. 522 (1984).

Subsections 311(a) and 311(b) of the Federal Court Improvements Act codify the general prohibition against holding judicial officers liable for costs, including attorney's fees, for acts or omissions taken in their judicial capacity. The prevailing party test under *Buckhannon v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001) does not apply to a judicial officer for an act or omission taken in such officer's judicial capacity. Litigants may seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or otherwise unavailable. (See S. Rep. 104-366, 1996 U.S.C.C.A.N. 4202, 4217). Sections 1983 and 1988, however, preclude an award of costs and attorney's fees against judges for acts taken in their judicial capacity. (See S. Rep. 104-366, 1996 U.S.C.C.A.N. 4202, 4217). The legislation extends protection to federal as well as state judicial officers.

The congressional action makes the prohibition against cost and fees abundantly clear through the words of the statute and the intent of Congress. *TVA v. Hill*, 437 U.S. 153 (1978). This mandate is plainly stated in sections 1983 and

1988 (as emphasized above) and in the Senate Reports.⁴ Congress never intended under sections 1983 and 1988 to punish judicial officers using good faith. Judicial immunity, however, is not granted for any conduct “clearly in excess” of a judge’s jurisdiction, even if the act is taken in a judicial capacity.

Defendant Cason adopts by reference the Argument and Citation of Authority as set forth in the Brief of Defendant Hitchens.

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S. REP. 104-366, S. Rep. No. 366, 104TH Cong., 2ND Sess. 1996, 1996 U.S.C.C.A.N. 4202, 1996 WL 520492 (Leg.Hist.); see *Blanchard v. Bergeron*, 489 U.S. 87, 89 (1989) (favorably quoting committee reports for legislative intent and purpose).

IV. CONCLUSION

As set forth above, Plaintiff's claims for relief against Defendant Cason are moot. Finally, Plaintiff may not recover attorneys fees and costs against Defendant Cason under the doctrine of judicial immunity and the Plaintiff's contentions are premature. In light of the above, Defendant Cason respectfully requests that the Court **Deny** Plaintiff's Motion for Summary Judgment.

Respectfully Submitted, this 16th day of May, 2007.

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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).

Respectfully Submitted, this 16th day of May, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on May 16th, I electronically filed DEFENDANT BETTY CASON'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT 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:

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This 16th day of May, 2007.

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