

COPY

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

FILED IN OFFICE
MAY 19 2015
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

GEORGIACARRY.ORG, INC., and)
PHILLIP EVANS,)

Plaintiffs,)

v.)

THE ATLANTA BOTANICAL)
GARDEN, INC.,)

Defendant.)

Civil Action No.:

2014-CV-253810

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

On April 29, 2015, this Court held a hearing on the Motion to Dismiss filed by Defendant Atlanta Botanical Garden, Inc. (the “Garden”). Having considered arguments of counsel for both sides, the Court finds the following:

1.

Count One of Plaintiffs’ Complaint for declaratory judgment impermissibly asks this Court to interpret a criminal statute. Specifically, Plaintiff Evans seeks a declaration that his proposed course of action – carrying a gun at the Atlanta Botanical Garden despite being told by the Garden that he may not do so – does not violate O.C.G.A. § 16-11-127(c), a statute found in Georgia’s criminal code. Plaintiff GeorgiaCarry.Org, Inc. similarly seeks a declaration that other licensed gun owners may do the same without being arrested for violating the Georgia

statute. A declaratory judgment “will take no part in the administration of the criminal law. It will neither aid criminal courts in the exercise of their jurisdiction, nor will it restrain or obstruct them.” *Butler v. Ellis*, 203 Ga. 683, 47 S.E.2d 861 (1948). Put another way, a declaratory judgment “may not be resorted to for determination of whether or not [a practice] violates a penal statute.” *Id.*; *see also Martin v. Slaton*, 125 Ga. App. 710, 188 S.E.2d 926 (1972) (affirming dismissal of declaratory judgment action that a bookstore clerk brought against the district attorney for declaration as to whether certain materials were obscene, where the clerk feared being subject to criminal prosecution). Count One of the Complaint violates this longstanding rule and, therefore, must be dismissed for failure to state a claim.

2.

Count One of Plaintiffs’ Complaint for declaratory judgment also impermissibly asks this Court to declare how the Garden may or should act in response to Plaintiffs’ proposed action. Specifically, Plaintiffs seek a declaration that the Garden “may not ban the carrying of weapons at the botanical gardens by people” with a gun license. (Compl. ¶ 38). In doing so, the Complaint goes beyond a mere declaration of the Plaintiffs’ rights. Georgia’s declaratory judgment statute, however, only provides courts the power to “declare rights and other legal relations of any interested party petitioning for such declaration.” O.C.G.A. § 9-4-

2. A declaratory judgment action is not the proper vehicle for compelling a defendant to do or not do anything. *Barksdale v. DeKalb Cnty.*, 254 Ga. App. 7, 561 S.E.2d 163 (2002) (citing *Baker v. City of Marietta*, 271 Ga. 210, 213, 518 S.E.2d 879 (1999) (The Declaratory Judgment Act “provides a means by which a superior court simply declares the rights of the parties or expresses its opinion on a question of law, without ordering anything to be done.”)); *see also Gelfand v. Gelfand*, 281 Ga. 40, 635 S.E.2d 770 (2006) (explaining that a declaratory judgment may be used only to obtain a statement of a party’s rights, status, or legal relations, but cannot be used to force someone act in a certain manner); *Charles H. Wesley Educ. Found. Inc. v. State Election Bd.*, 282 Ga. 707, 654 S.E.2d 127 (2007) (finding that petition seeking a declaration to compel parties to take immediate action goes beyond the Declaratory Judgment Act). Because the Complaint in this case seeks to compel the Garden to act in a certain way rather than simply to declare Plaintiffs’ rights, the Complaint fails to state a claim under Georgia law.

3.

Counts Two and Three of Plaintiffs’ Complaint for injunctive relief and interlocutory injunction impermissibly ask this Court to restrain or obstruct the enforcement of criminal laws. Plaintiffs ask for an injunction “prohibiting Defendant from causing the arrest or prosecution of people with [gun licenses] for

carrying weapons at the botanical gardens.” (Compl. ¶ 39). Under Georgia law, a plaintiff cannot seek an injunction against the enforcement of a criminal law or for the enforcement of his interpretation of a criminal law. *See Holmes v. Bd. of Comm’rs.*, 271 Ga. 206, 517 S.E.2d 788 (1999) (holding that Georgia’s injunction statute “does not interfere with the administration of the criminal law”). The Georgia injunction statute expressly states that “[e]quity will take no part in the administration of the criminal law. It will neither aid criminal courts in the exercise of their jurisdiction, nor will it restrain or obstruct them.” O.C.G.A. § 9-5-2; *see also Arnold v. Mathews*, 226 Ga. 809, 810, 177 S.E.2d 691 (1970) (holding that “courts exercising equitable jurisdiction will not enjoin prosecutions”); *City of Eatonton v. Peck*, 207 Ga. 705, 706, 64 S.E.2d 61 (1951) (affirming dismissal of complaint for injunctive relief against current and future prosecutions because “equity will not intervene to enjoin arrests where the prosecutions do not illegally threaten irreparable injury or destruction to property”); *Staub v. Mayor, etc., of Baxley*, 211 Ga. 1, 2, 83 S.E.2d 606 (1954) (affirming dismissal of injunctive action seeking to “restrain the defendants from prosecuting the plaintiffs under a pending charge and from further prosecutions” on the grounds that “the court below had no authority to enjoin such prosecutions”); *City of Bainbridge v. Olan Mills, Inc.*, 207 Ga. 636, 63 S.E.2d 655 (1951) (defendant charged with violating criminal ordinance “can test the validity

of the ordinance by . . . defending the criminal prosecution in the courts having jurisdiction of criminal matters, and a court of equity will not invade their domain”). The Complaint also violates this rule regarding the permissible scope of injunctive relief and, therefore, fails to state a claim under Georgia law.

4.

Having found that Plaintiffs’ Complaint should be dismissed for failure to state a claim based on the reasoning above, the Court declines to address whether or not the Defendant is in legal control of private or public property.

It is therefore hereby **ORDERED** that The Atlanta Botanical Garden, Inc.’s Motion to Dismiss for Failure to State a Claim is **GRANTED**. Plaintiffs’ Complaint is **DISMISSED WITH PREJUDICE**. The Clerk is directed to mark this case as **CLOSED**.

This 19th day of May, 2015.


Gail S. Tusan, Chief Judge
Fulton County Superior Court

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