IN THE SUPERIOR COURT OF DOUGLAS COUNTY
STATE OF GEORGIA

HUGH MEYERS,	)	
Plaintiff,	)	
	)	Civil Action No. 14 CV 1370 DTE
v.	)	
	)	
STEFANIE COSPER[1],	)	
in her official capacity	)	
As Principal of Beulah Elementary School,	)	
Defendant	)	

PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR INTERLOCUTORY INJUNCTION

Plaintiff commenced this action when a dispute arose between him and the principal of Beulah Elementary School in the Douglas County School District. The dispute is centered on an interpretation of a statute to facts which cannot reasonably be disputed. Plaintiff seeks an interlocutory injunction during the pendency of this case.

Background

Plaintiff is a resident of Douglas County and has a daughter that attends the Beulah Elementary School, a public school owned and operated by the Douglas County School District. Plaintiff visits Beulah in support of his daughter's educational process.

Plaintiff has a Georgia weapons carry license ("GWL"). Plaintiff generally carries a firearm, in case of confrontation, as permitted by the GWL and as guaranteed by the Second Amendment to the Constitutional of the United States and Article 1, Section 1, Paragraph 8 of the Constitution of Georgia.

[1] Plaintiff notes that Stefanie Cosper has succeeded Sheila J. Miller as principal of Beulah Elementary School. Cosper therefore is substituted as the Defendant in this action by operation of law. O.C.G.A. § 9-11-25(d)(1). The caption of the Complaint inadvertently listed Miller as a Defendant individually and in her official capacity. Plaintiff intended to sue her in her official capacity only, so no claims remain against Miller that are not now against Cosper in Cosper's official capacity.

Prior to July 1, 2014, it generally was a crime to carry a firearm in a school, even for people with GWLs. *See* O.C.G.A. § 16-11-127.1. In the 2013-2014 legislative session, House Bill 826 was passed and signed by the governor as Act 575. Act 575, *inter alia*, decriminalized carrying firearms in schools for people with GWLs. Act 575 became effective on July 1, 2014.

On or about May 19, 2014, Plaintiff emailed Defendant[2], referencing Act 575 and the decriminalization provisions. The purpose of the email was to confirm with Defendant that the change in law would allow Plaintiff, as a GWL holder, to visit Beulah while armed without fear of prosecution for carrying a firearm in a school.

On or about May 21, 2014, Defendant responded via email, saying that it still would be a crime for Plaintiff to carry a firearm at Beulah after July 1, 2014. Because there now is an actual dispute and controversy between Plaintiff and Defendant, Defendant seeks to resolve that dispute in the civil courts rather than as a criminal defendant.

Argument

A plaintiff may obtain an interlocutory injunction if he would be irreparably harmed if it were not granted and if it would not operate oppressively on the defendant's rights to grant it. The court may consider the likelihood of success on the merits, but that issue is not dispositive. *Garden Hills Civic Assoc. v. MARTA*, 273 Ga. 280, 282, 539 S.E.2d 811, 813 (2000). An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication. There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy. *Haygood v. Tilley*, 295 Ga.App. 90, 92 (2008).

[2] For the purposes of this Motion, Plaintiff will not distinguish between the original and the successor Defendants, because this case is against them in their official capacities.

In the present case, Plaintiff will be irreparably harmed if the Motion is not granted. School resumed from the summer break in the Douglas County School District on August 6, 2014. Since that date, Plaintiff again visits Beulah in support of his daughter's educational activities. While doing so, he desires to carry a firearm in case of confrontation as the law now permits. He would do so, however, under threat of arrest and prosecution from Defendant and the School District.

Because Plaintiff has a statutory right to carry a firearm as permitted by his GWL, Defendant has no authority to prevent Plaintiff from exercising that right. If Defendant is permitted to hold the threat of prosecution over Plaintiff's head, she may effectively chill his exercise of the right he seeks to exercise. Of course, if he is dissuaded from exercising the right, he will have been damaged with no adequate remedy. A right not exercised is a right lost. It is therefore vital that this Court issued the interlocutory injunction to prevent Defendant from hurting Plaintiff "whilst their rights are being litigated."

Although the likelihood of success on the merits is not a mandatory consideration, in the present case it is important for the Court to understand the nature of the controversy and the development of the underlying law.

Prior to July 1, 2014, a "school safety zone" was defined to include "in or on any real property owned or leased to any public or private elementary school…." O.C.G.A. § 16-11-127.1(a)(1) (2013). A "weapon" was defined to mean "any pistol, revolver…." O.C.G.A. § 16-11-127.1(a)(2) (2013). It was unlawful "for any person to carry to or to possess … while within a school safety zone … any weapon…." O.C.G.A. § 16-11-127.1(b)(1) (2013). Violations by GWL holders are misdemeanors and by non GWL holders are felonies. O.C.G.A. § 16-11-

127.1(b)(2) (2013). There was an exception for GWL holders "when such person carries or picks up a student at a school building…." O.C.G.A. § 16-11-127.1(c)(7) (2013).

It is clear, therefore, that prior to July 1, 2014, it was a misdemeanor for Plaintiff, a GWL holder, to carry a handgun in Beulah, except when he was carrying or picking up his daughter. The *status quo ante* changed, however, with Act 575[3]. A copy of Act 575 is filed contemporaneously for the Court's convenience. The changes from Act 575 are described below.

Act 575 made some definitional changes, though they do not directly drive the result of this case. In the interest of completeness, though, they will be presented here. First, Act 575 changes the definition of "school safety zone: to be "real property or building owned by or leased to any school…." This change is not substantive compared to the former definition, because "school" is defined to mean a "public or private … institution instructing children at any level, pre-kindergarten through twelfth grade." Act 575, Section 1-1, Lines 42-48.

Next, Act 575 deletes the definition of weapon. Section 1-1, Lines 49-60. This change also does not drive the outcome of the present case, because the crime definition has been changed to say, "it shall be unlawful for any person to carry to or to possess …while within a school safety zone … any firearm…." Section 1-1, Lines 61-65. So, the definitional changes and the description of the crime remain substantively the same: it generally is a crime to carry a firearm in a school.

[3] Plaintiff acknowledges that the 2014 version of the O.C.G.A. has been published, so one might naturally look to those volumes to glean the changes from the 2014 session. That methodology presumes, however, that the Code Revision Commission accurately and faithfully implemented the acts of the General Assembly. Plaintiff posits that it did not, and in fact that failure no doubt contributes to the present controversy. For that reason, it is necessary to work from the actual act of the General Assembly, Act 575, and not the 2014 Code volumes.

The part of Act 575 that makes all the difference for the present case is a modification to the exception described above as part of the *status quo ante.* Act 575 renumbered O.C.G.A. § 16-11-127.1(c)(7) to be 16-11-127.1(c)(6). Section 1-1, Line 108. The substantive change is that the exception no longer just applies when carrying or a picking up a student. Now, the exception states that Code section 16-11-127.1 does not apply to a GWL holder "***when he or she is within a school safety zone***…." [Emphasis supplied]. That is, it no longer is a crime for a GWL holder to carry a firearm in a school safety zone, which is defined to include all schools, including Beulah.

Moreover, Defendant is independently preempted by state law from enacting her own policy regulating carrying guns at schools. O.C.G.A. § 16-11-173(b)(1)(B) states that no county … shall regulate in any manner … [t]he possession, ownership, transport, carrying… of firearms…." The Court of Appeals has construed § 16-11-173(b) quite broadly against cities and counties. *GeorgiaCarry.Org, Inc. v. City of Roswell,* 298 Ga.App. 686 (2009); *GeorgiaCarry.Org, Inc. v. Coweta County,* 288 Ga.App. 748 (2007); *Sturm Ruger v. City of Atlanta,* 253 Ga.App. 713 (2002).

Now that it no longer is a state crime for a GWL holder to carry a firearm in schools, and that schools cannot independently regulate carrying weapons, including firearms, there simply is no basis for Defendant to threaten Plaintiff with prosecution if he carries a firearm at Beulah.

Because Plaintiff has a clearly-established right to carry a firearm at Beulah, he will be irreparably harmed if he is prevented from doing so. Obviously Plaintiff suffers harm by not being able to exercise his right to carry a firearm. The question becomes is the harm irreparable. There is no way to quantify damages to Plaintiff for the loss of his right. The loss of a right to

bear arms is similar in nature to the loss of the right of free speech. Once a person has been deprived of the right to speak, the harm is irreparable because the lost opportunity cannot be regained.

Lastly, it is impossible for the Court to conclude that an injunction would operate oppressively on Defendant. Defendant is preempted by state law from imposing a ban on Plaintiff from carrying a firearm. An injunction cannot operate oppressively when it orders a person not to do that which she has no legal right to do.

John R. Monroe,
Attorney for Plaintiff
9640 Coleman Road
Roswell, GA 30075
678-362-7650
770-552-9318 (fax)
jrm@johnmonroelaw.com
State Bar No. 516193

CERTIFICATE OF SERVICE

I certify that on August 21, 2014, a served a copy of the foregoing via U.S. mail upon:

Hieu M. Nguyen
Harben, Hartley & Hawkins, LLP
340 Jesse Jewell Parkway, Suite 750
Gainesville, GA 30501

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John R. Monroe