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

GEORGIACARRY.ORG, INC., and REGIS GOYKE, Plaintiffs, vs. PINKIE TOOMER, in her official capacity as Judge of the Probate Court of Fulton County, Georgia, and all others similarly situated, Defendants.	:	CIVIL ACTION NO. 1:08-CV-2141-CC

ORDER

This matter is before the Court on Plaintiffs' Motion for Reconsideration [Doc. No. 29]. For the reasons stated below, the Court **DENIES** the Motion for Reconsideration.

I. PROCEDURAL HISTORY

On June 27, 2008, Plaintiffs GeorgiaCarry.Org, Inc. ("GCO") and Regis Goyke (collectively referred to herein as "Plaintiffs") commenced the above-styled action with the filing of their Complaint. On July 29, 2008, Plaintiffs filed an Amended Complaint, as they were permitted to do as matter of course pursuant to Federal Rule of Civil Procedure 15(a). On August 12, 2008, Defendant Pinkie Toomer ("Defendant"), in her official capacity as Judge of the Probate Court of Fulton County, Georgia, moved the Court to dismiss Plaintiffs' Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Following briefing by the parties, the Court held oral argument on Defendant's motion. On March 13, 2009, the Court entered an Order granting Defendant's motion. Plaintiffs now move the Court to reconsider that ruling.

II. STANDARD OF REVIEW

A motion for reconsideration is not a form of relief explicitly recognized by

the Federal Rules of Civil Procedure. While not specifically mentioned in the Rules, motions seeking to have the court reconsider an earlier ruling typically are considered pursuant to Federal Rule of Civil Procedure 59(e), which authorizes a motion to alter or amend a judgment after its entry. A motion for reconsideration is appropriate only where there is: (1) newly discovered evidence that was not previously available to the parties at the time the original order was entered; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact. Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003). A motion for reconsideration is not an opportunity to present arguments already heard and dismissed or to offer new legal theories or evidence that could have been presented previously. Id. at 1259. Moreover, a "motion for reconsideration is not an opportunity for the moving party and their counsel to instruct the court on how the court 'could have done it better' the first time." Preserved Endangered Areas of Cobb's History, Inc. (P.E.A.C.H.) v. United States Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga.1995). As the Local Rules of this Court instruct, "[m]otions for reconsideration shall not be filed as a matter of routine practice." LR 7.2E, NDGa. The decision whether to alter or amend a judgment pursuant to Rule 59(e) is "committed to the sound discretion of the district judge." Mincey v. Head, 206 F.3d 1106, 1137 (11th Cir. 2000) (citation omitted).

III. DISCUSSION

Plaintiffs make several arguments in support of their Motion for Reconsideration. While they do not specify on what ground they bring the motion, Plaintiffs appear to contend that reconsideration is necessary to correct clear errors of law and fact. Plaintiffs first argue that the Court erred by not accepting as true the facts alleged in the Amended Complaint. Plaintiffs next argue that the Court erroneously concluded that Defendant Pinkie Toomer, Judge of the Probate Court of Fulton County, is not authorized by law to delegate her authority to issue Georgia firearms licenses ("GFLs") to the Clerk of the Probate Court of Fulton County.

Plaintiffs' third argument is that the Court erroneously concluded that Plaintiffs could ripen their claim with Defendant Toomer by applying for a GFL in another county. Finally, Plaintiffs argue that because they seek only to be allowed to have their applications processed on the merits without regard to their residency, the Court erroneously concluded that Plaintiffs failed to establish a substantial likelihood that the primary injuries they allege in this action would be redressed by a favorable decision.

While many of Plaintiffs' arguments are well-taken, Plaintiffs ignore critical findings included in this Court's Order that still make this Court's decision to dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(1) the correct one. Specifically, the Court stated the following:

> Here, the Court finds that Plaintiffs have failed to present a ripe controversy because, according to the facts alleged in the Amended Complaint, neither Mr. Goyke nor any member of GCO has actually requested an application for a GFL, applied for a GFL, or received a final determination on such an application.

(Order at 6.) The Court further found:

> [T]he opinion allegedly given by Mr. Brock that Mr. Goyke would not be able to apply for a GFL was nothing more than a hypothetical opinion, as neither Mr. Goyke nor any other member of GCO, at the time that this action was commenced, actually requested or submitted an application.

(Id.) Plaintiffs urge in their Motion for Reconsideration that the facts pled in the Amended Complaint establish the ripeness of this dispute, but Plaintiffs rely on facts not included in the Amended Complaint to support a finding of ripeness and to argue that the Clerk of the Probate Court of Fulton County and his subordinates actually refused to let Mr. Goyke apply for a GFL. In this regard, Plaintiffs state in the Motion for Reconsideration:

> Later that day, but after filing of the Complaint and service of the summons and complaint upon Defendant, Mr. Brock replied that the "only thing wrong [with the Complaint] is we would allow an applicant to file, but we would tell them they [sic] it would be denied if they did file." On October 23, 2008, Goyke attempted to apply for a GFL at Defendant's office. The clerk who waited on him refused to let him apply and would not even give him an application form, solely on

account of his lack of residency.

(Mem. of Law in Supp. of Pls.' Mot. for Reconsideration at 2) (alteration and mistake noted in original). Notably, these allegations do not appear anywhere in the Amended Complaint, whereas the Court's evaluation of Defendant's attack on the Amended Complaint was limited to the sufficiency of the allegations in the Amended Complaint. See Paterson v. Weinberger, 644 F.2d 521, 523 (5th Cir. 1981).[1]

The Court also remains of the opinion that Plaintiffs have not sufficiently established that the injuries alleged in this action would be redressed by a favorable decision, albeit for a different reason than that articulated in the Court's prior Order. The Court does agree with Plaintiffs that the Court erroneously dismissed this case on the grounds that, without a final determination on a GFL by Defendant Toomer or any other probate court judge, the Court has no way of knowing if Mr. Goyke might ultimately be denied a GFL on grounds other than residency. Plaintiffs aptly bring to the Court's attention that the injunction they request in the Amended Complaint is one "prohibiting Defendant from denying nonresidents of Georgia the right to apply for and obtain a GFL, solely on account of their nonresident status." (Am. Compl. at 15.) However, even if the Court were to award Plaintiffs relief in the form of this specific injunction and Defendant Toomer, and all others similarly situated, could not deny "nonresidents of Georgia the right to apply for and obtain a GFL, solely on account of their nonresident status," they could still deny nonresidents of the respective counties in which they preside the right to apply for and obtain a GFL, as it is the applicant's county of residence, not state of residence, that O.C.G.A. § 16-11-129 directs the probate judges to consider. See O.C.G.A. § 16-11-129 ("The judge of the probate court of each county may ... issue a license ... to any person whose domicile is in that county....'). Thus, the Court still finds that

[1] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit decided before October 1, 1981.

Plaintiffs have not sufficiently established that a favorable decision in this action would redress the injuries alleged.

Finally, upon further consideration of the issue of standing, the Court is not persuaded that the alleged actions of Defendant Toomer are the cause of Plaintiffs' alleged injuries. To demonstrate standing to bring a lawsuit, a party seeking to invoke federal jurisdiction must demonstrate, among other things, that the injury is fairly traceable to the challenged action of the defendant. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (citation omitted); see also Pittman v. Cole, 267 F.3d 1269, 1282-85 (11th Cir. 2001). As mentioned supra, O.C.G.A. § 16-11-129 permits the probate judge in each county to issue a license to carry a firearm "to any person whose domicile is in that county or who is on active duty with the United States armed forces and ... who either resides in that county or on a military reservation located in whole or in part in that county...." If Mr. Goyke or another member of GCO actually requested an application for a GFL or attempted to apply for a GFL and was not allowed to do so by Defendant Toomer, Defendant Toomer's actions arguably would be the cause of the prospective applicant's inability to apply for and obtain a GFL in Fulton County, the only county within Defendant Toomer's jurisdiction. However, Defendant Toomer's actions would not be the cause of the prospective applicant's inability to apply for and obtain a firearms license in the State of Georgia, which is at the heart of the alleged injuries for which Plaintiffs seek redress in this lawsuit.[2] Accordingly, for this reason as well, the Court finds that Plaintiffs have not demonstrated

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[2] The Court is aware that Plaintiffs seek in this action to have the Court certify a class defined to be every probate judge in Georgia and that certification of this class could resolve the standing issue raised above. However, insofar as Article III standing is a threshold jurisdictional question and generally must be present as of the commencement of suit, see Lujan, 504 U.S. at 570 n. 5, the Court finds it problematic that Article III standing appears in this case to depend on the certification of a defendant class, whose collective action would be the cause of Plaintiffs' injuries.

standing to bring this lawsuit.

IV. CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** Plaintiffs' Motion for Reconsideration [Doc. No. 29].

SO ORDERED this 29th day of March, 2010.

s/ CLARENCE COOPER

CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE