IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

PHILLIP EVANS,	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
GWINNETT COUNTY PUBLIC SCHOOLS,	)	
Defendant	)	

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

Plaintiff commenced this action when a dispute arose between Plaintiff and officials of the Gwinnett County PublicSchools. 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 Gwinnett County and has a child that attends Centerville Elementary School in Snellville, Georgia. Plaintiff visits Centerville in support of his children'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.

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.

In the Summer of 2014, after Act 575 was passed, Plaintiff contacted Defendant to inquire if, as a GWL holder, Plaintiff would be recognized by Defendant as lawfully permitted to carry a firearm in Defendant's schools. On or about July 28, 2014, Jorge Gomez, the Executive Director of Administration and Policy for Defendant respond to Plaintiff's inquiry via email. Gomez told Plaintiff it would be a crime for Plaintiff to carry a firearm in Defendant's schools, and that Defendant would seek to prosecute Plaintiff if Plaintiff were to be discovered carrying a firearm in a school. Gomez further told Plaintiff that Plaintiff would be given a trespass warning.

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).

In the present case, Plaintiff will be irreparably harmed if the Motion is not granted. School resumed from the summer break in the Gwinnett County School District on August 5, 2014. Since that date, Plaintiff again visits Centerville in support of his children'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.

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, it 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 Centerville, except when he was carrying or picking up his children. The *status quo ante* changed, however, with Act 575[1]. 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.

[1] 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 Centerville.

Moreover, Defendant is independently preempted by state law from enacting its 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 Centerville.

Because Plaintiff has a clearly-established right to carry a firearm at Centerville, 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 it has no legal right to do.

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