

CLERK'S OFFICE
SUPERIOR COURT
GWINNETT COUNTY, GA

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

2015 FEB -5 PM 3:17

RICHARD ALEXANDER, CLERK

PHILLIP EVANS,)
)
Plaintiff,)
)
v.)
)
GWINNETT COUNTY PUBLIC)
SCHOOLS,)
)
Defendant.)

Civil Action File No. 14-A-07948-10

ORDER

The Plaintiff filed this Declaratory Judgment Action and Motion for Interlocutory Injunction against the Gwinnett County Public Schools (hereinafter "the District") on September 2, 2014. Plaintiff seeks a Declaration that he and other licensed firearms owners would not violate the criminal law of the State of Georgia (O.C.G.A. § 16-11-127.1) if they were to carry their firearms into a school safety zone. The Plaintiff also seeks to enjoin the District from pursuing any criminal action against him if he does bring his firearm onto a school safety zone.

A declaratory judgment action is an improper mechanism to test whether a proposed plan of action violates a criminal statute. Butler v. Ellis, 203 Ga. 683, 47 S.E. 2d 861 (1948), Martin v. Slaton, 125 Ga. App. 710, 188 S.E.2d 926 (1972). Declaratory Judgment actions seeking interpretation of criminal statutes lack an "actual controversy" as required by O.C.G.A. § 9-4-2 (a). Id. Therefore, the Plaintiff's Declaratory Judgment action is improper and must be dismissed.

It is also well settled that equity shall not take part in the administration of the criminal law and that it is improper to enjoin prosecution through an injunction. Arnold v. Matthews, 226 Ga. 809, 177 S.E.2d 691 (1970), Sarrio v. Gwinnett County, 273 Ga. 404, 542 S.E.2d 485

(2001). Consequently, the Plaintiff's motion for an interlocutory injunction in this case is improper and is denied. Further, all equitable claims seeking to enjoin the District are dismissed.

Independently and in addition to the foregoing, dismissal of the Plaintiff's claims in this case is required by sovereign immunity. The District is a political subdivision of the State of Georgia and is entitled to sovereign immunity absent an express waiver of that immunity by the legislature. See Thigpen v. McDuffie Co. Bd. of Educ., 255 Ga. 59 (1985); Hunt v. City of Atlanta, 245 Ga. App. 229 (2000); Davis v. Dublin City Bd. of Educ., 219 Ga. App. 121, (1995); Hennessy v. Webb, 245 Ga. 329 (1980); Sheley v. Bd. of Pub. Educ. for City of Savannah, 233 Ga. 487 (1975); DeKalb Cnty. Sch. Dist. v. Gold, 318 Ga. App. 633 (2012.) Plaintiff has failed to plead any valid waiver of sovereign immunity for his claims under O.C.G.A. §16-11-173, his declaratory judgment action, or for his equitable claims seeking an injunction. Therefore, all of these claims are barred and this Court lacks subject matter jurisdiction to consider them. Dep't of Transp. v. Dupree, 256 Ga. App. 668, 671 (2002), Georgia Dept. of Natural Res. v. Ctr. For a Sustainable Coast, 294 Ga. 593, 755 S.E.2d 184 (2014).

While the Plaintiff's remaining claim against the District under 42 U.S.C. § 1983 alleging a violation of his Fourth Amendment Rights is not barred by sovereign immunity, Plaintiff does not state a cognizable claim under 42 U.S.C. § 1983 and this claim must also be dismissed. Owen v. City of Independence, 445 U.S. 622, 647, 100 S. Ct. 1398, 1414 (1979). The District is only liable under 42 U.S.C. § 1983 where its policy, practice or training results in the violation of a plaintiff's constitutional rights. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 98 S. Ct. 2018 (1978). The facts set forth in Plaintiff's amended complaint establish that there has been no constitutional violation suffered by Plaintiff. Plaintiff alleges that he is in fear of arrest and prosecution for carrying a weapon at Centerville Elementary School after being

informed via email by Jorge Gomez, Defendant's Executive Director of Administrator and Policy, that it remained a crime to carry a firearm at Defendant's schools and that "if Plaintiff carried a firearm at a Defendant school, Defendant would seek to have Plaintiff prosecuted." (Amended Complaint ¶ 15-17.) The Defendant's statement that it would seek to have the Plaintiff prosecuted does not violate the Plaintiff's Fourth Amendment rights.

Britton v. Maloney, 196 F.3d 24, 30 (1st Cir. 1999.)

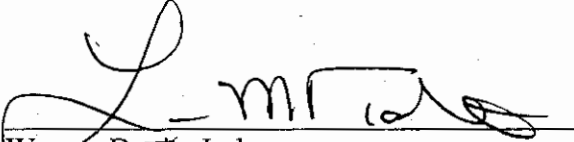
Generally, the mere threat of an arrest, without more, does not give rise to a "seizure" under the Fourth Amendment. The Fourth Amendment prohibits "police seizures of persons for custodial interrogation-even brief detentions falling short of arrest-without probable cause." Cerrone v. Brown, 246 F.3d 194, 199 (2d Cir.2001), "[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" Florida v. Bostick, 501 U.S. 429, 437 (1991) (quoting Michigan v. Chesternut, 486 U.S. 567, 569 (1988)).

Bodek v. Bunis, No. 06-CV-6022L, 2007 WL 1526423, at *9 (W.D.N.Y. May 23, 2007.)

To state a cognizable claim for a 4th Amendment violation the Plaintiff must show that he suffered some loss of liberty. The Plaintiff's pleading makes clear that he the circumstances in this case do not satisfy the "seizure" requirements necessary to set forth a valid claim that his Fourth Amendment Rights have been violated. The statement by the Defendant's representative alleged by the Plaintiff does not constitute a constitutional injury under the Fourth Amendment and Plaintiff's § 1983 must therefore be dismissed.

Having heard and considered the Defendant Gwinnett County School District's Motion to Dismiss it is hereby ordered that the Motion is GRANTED and all claims against the Gwinnett County School District in the above-styled case are DISMISSED without prejudice.

SO ORDERED this 5 day of February, 2015.



Warren Davis, Judge
Gwinnett County Superior Court

Prepared by:

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Judge, Superior Court
by designation

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