IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

GEORGIACARRY.ORG, INC., JAMES CHRENCIK, MICHAEL NYDEN and JEFFREY HUONG	)	
Appellants	)	Case No. S08A1911
v.	)	
CITY OF ATLANTA, GEORGIA, CITY OF ROSWELL, GEORGIA, and CITY OF SANDY SPRINGS, GEORGIA	)	
Appellees		

BRIEF OF APPELLEE CITY OF ROSWELL, GEORGIA

COMES NOW the City of Roswell, Georgia (hereinafter "Roswell"), one of the named appellees in the above-styled action, and files its Brief and shows the Court as follows:

Facts & Procedural History

In its original Complaint, filed on August 16, 2007, GeorgiaCarry brought suit against 6 cities and Fulton County, seeking declaratory and injunctive relief to prohibit the county and each city from enforcing ordinances GeorgiaCarry claimed were preempted by state law. (R. 4-13). The complaint sought no damages, but did ask for attorneys fees [illegible]

Roswell and the City of Milton pursuant to O.C.G.A § 13-6-11 for alleged stubborn litigiousness, bad faith and unnecessary expense. (R. 12). GeorgiaCarry did not make a claim for attorneys fess against any of the remaining 5 defendants. (Id.).

Specifically regarding Roswell, GeorgiaCarry alleged that O.C.G.A. § 16-11-173 (b) (1) preempted Roswell Code of Ordinances Section 14.2.4 (b), which stated:

"The following activities are prohibited in all City of Roswell public parks including the Roswell Trail System: (b) Weapons. Firearms, bows, crossbows, air guns, and other explosive substances are prohibited in any of the city parks or historic properties unless written permission for such has been authorized by the Director of Recreation and Parks or by his designee." (R. 9).

O.C.G.A. § 16-11-173 (b) (1) reads as follows:

"No county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows; the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components."

On December 4, 2007, the Court of Appeals decided *GeorgiaCarry.Org v. Coweta County*, 288 Ga. App. 748, 655 S.E.2d 346 (2007). In that case, filed before the current case, GeorgiaCarry raised substantially the same issues it raises in the present lawsuit. It was the first case to interpret whether O.C.G.A. § 16-11-173 (b) (1) preempts a city or county's ability to prohibit firearms in its parks. Coweta County raised many of the defenses upon which Roswell and the other defendants in this lawsuit relied upon. The Court of Appeals ruled in favor of GeorgiaCarry.

On December 31, 2007, GeorgiaCarry filed an amended complaint, attaching a copy of the *Coweta County* case. (R. 187-192). To its original claims, GeorgiaCarry added a claim for alleged violation of 42 U.S.C.A. § 1983 founded upon the 2nd Amendment to the United States Constitution (right to bear arms) (R. 189) (this claim was later dropped by GeorgiaCarry) (R.297), and upon the 14th Amendment to the United States Constitution (no deprivation of life, liberty or property by states without due process of law). (R. 189). GeorgiaCarry's contention was that the existence of the Roswell ordinance (and those of the other governments involved) denied its members their property right embodied in their individual Georgia Firearms License. (R. 188-189). GeorgiaCarry expanded its claims for attorneys fees to include all defendants. (R. 190).

Roswell filed its Answer to GeorgiaCarry's Amended Complaint on January 30, 2008. (R. 208-219). In its Amended Answer, in its First Defense, also citing the *Coweta* County case, Roswell set out that it was in the process of amending the ordinance about which GeorgiaCarry complained to remove the ban on carrying firearms in its public parks; stated that the first reading of the ordinance had occurred on January 23, 2008 (in a typographical error, the Roswell Answer had the date as January 23, 2007; however, the copy of the ordinance attached to the Answer as an exhibit, contained the correct date); stated that final passage of the revised ordinance would occur on February 4, 2007 (again, a typographical error; the actual date of final passage was February 4, 2008); and further stated that Roswell had informed counsel for GeorgiaCarry that it would not enforce the old ordinance during the period it took to finally enact the revised ordinance. (R. 208-209).

On February 29, 2008, Roswell filed with the trial court its Amended Answer to Plaintiffs' Verified Amended Complaint, including with it a certified copy of the new ordinance. (R. 274-281). The language of the new ordinance Section 14.2.4 (b) reads as follows:

" Weapons. It shall be unlawful for any person to possess any explosive substance (including fireworks) in any of the City parks, unless

written permission for such has been authorized by the Mayor & City Council. It shall further be unlawful for any person to discharge any firearm within City parks unless expressly allowed by Section 13.1.3 of the Roswell City Code. Pursuant to O.C.G.A. § 16-11-127, it is unlawful to carry a firearm to a public gathering within the City." (R. 278).

On January 30, 2008, Roswell filed its Motion To Dismiss, contending that the issues raised against Roswell were moot as a result of Roswell's amendment to its ordinance, accomplishing the object of GeorgiaCarry's complaint. (R. 200-207). At the April 4, 2008 hearing on the Motion To Dismiss, the trial court directed that Roswell's Motion To Dismiss be converted to a motion for summary judgment, that further briefs be submitted and scheduled a further hearing for May 9, 2008. (T. 6-7).

After hearing argument at the May 9, 2008 hearing, and after considering the briefs filed, the trial court announced that it would grant summary judgment to Roswell and to Sandy Springs, finding that the new ordinances enacted by those cities made moot the claims of GeorgiaCarry. (T. 54-55). The trial court also announced that it would grant summary judgment to GeorgiaCarry against the City of Atlanta. (Id.). The ruling was later made the subject of the written orders from which GeorgiaCarry

appeals. The order regarding Roswell is found in the record at pages 454 and 455.

Statement Regarding Jurisdiction

It appears to Roswell that the Court of Appeals, not the Supreme Court, has jurisdiction of this appeal. In its brief, GeorgiaCarry.Org, Inc. (hereinafter "GeorgiaCarry"), states that this Court has jurisdiction "because it is a case in equity and because it involves questions of the constitutionality of statutes and ordinances." (GeorgiaCarry Brief, p. 1).

The complaint filed by GeorgiaCarry and the remaining plaintiffs below was one for declaratory judgment that also sought injunctive relief. (R. 4-13). As set out above in the "Facts & Procedural History" section of this Brief, the trial court never ordered any type of injunctive relief. Therefore, this is but an appeal from an action for declaratory judgment, an action at law, not one in equity. *Vatacs Group, Inc. v. Homeside Lending, Inc.*, 281 Ga. 50, 635 S.E.2d 758 (2006) (declaratory judgment proceeding is an action at law).

In *Redfearn v. Huntcliff Homes Association, Inc.*, 271 Ga. 745, 524 S.E.2d 464 (1999), this Court discussed the test for its equity jurisdiction at length and said that "whether an action is an equity case for the purposes of appellate jurisdiction depends on the issue raised on appeal, not upon the

kinds of relief sought in the complaint." *Redfearn* at 748. In *Redfearn*, the appeal was from the trial court's grant of summary judgment and injunctive relief to a homeowners' association seeking to enforce restrictive covenants. Relying on *Pittman v. Harbin Clinic Professional Association*, 263 Ga. 66, 428 S.E.2d 328 (1993), this Court held that the primary issue on appeal in *Redfearn* was whether the trial court correctly construed the restrictive covenants arising from a contract and that the grant or denial of equitable relief was ancillary to the primary legal issue. Therefore, this Court concluded that it had no appellate jurisdiction.

In the present case, GeorgiaCarry appeals the trial court's grant of summary judgment to Roswell in its action for declaratory judgment to determine whether a Roswell ordinance was preempted by state law. Clearly, the primary issue is one of law. Although an equitable remedy was requested by GeorgiaCarry, none was granted by the trial court, and the equitable remedies sought were ancillary to the declaratory judgment. Nothing in the record supports invocation of this Court's exclusive appellate jurisdiction regarding equity

GeorgiaCarry also states that jurisdiction lies in this Court because there are constitutional issues. However, the record contains no ruling by the trial court upon any constitutional issue raised by GeorgiaCarry. "It is

well established that [the Supreme Court] does not ever pass upon the constitutionality of an Act of the General Assembly unless it clearly appears in the record that the point was directly and properly made in the court below and distinctly passed on by the trial judge." *Nathans v. Diamond*, 282 Ga. 804, 807-808, 654 S.E.2d 121 (2007)(punctuation and citations omitted). In *Nathans*, appellants had raised several constitutional objections to the requirements of O.C.G.A. § 24-9-67.1 in the trial court. However, the transcript of the summary judgment hearing showed that the trial court had only discussed one of those objections and made a ruling only on that one, which was also reflected in its written order regarding summary judgment. This Court held that only the one issue that was discussed and ruled upon was preserved for appeal, and that the remaining constitutional issues were not before it on appeal because there was no distinct ruling on them by the trial court.

The only constitutional issue argued by GeorgiaCarry in its Brief is that O.C.G.A. § 36-33-5 (Georgia's municipal *ante litem* statute) is unconstitutional, as applied to GeorgiaCarry. (GeorgiaCarry Brief, pp.17-20). Although GeorgiaCarry did raise this argument in the trial court (R. 367-368), the trial court made no ruling regarding the constitutional issue raised. (R. 454-455). After announcing its decision at the hearing and

directing counsel regarding what must be included in the written order to be signed, without any mention of the constitutional issue raised, the trial court inquired of counsel: "Anything else I failed to rule on today?" (T.55). To which counsel for GeorgiaCarry, Mr. Monroe, replied: "I think that's it for the motions for summary judgment, Your Honor." (T. 55-56). Given this record, *Nathans* controls and there is no constitutional issue raised to support jurisdiction in the Supreme Court.

Argument & Citation of Authority

1. Standard of Review

In an appeal from the grant of a motion for summary judgment, the standard of review is a *de novo* review of the record by the appellate court. *Carroll v. City of Carrollton*, 280 Ga. App. 172, 633 S.E.2d 591 (2006). Summary judgment is proper when there is no genuine issue of fact to be tried and the movant is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56.

2. The trial court correctly ruled that GeorgiaCarry's State Claims are moot

In granting summary judgment to Roswell, the trial court correctly held that GeorgiaCarry's claims against Roswell are moot in light of Roswell's action in amending its ordinance to remove its previous ban

against carrying firearms in Roswell parks. Further, because GeorgiaCarry did not give the notice required by O.C.G.A. § 36-33-5 (Georgia's municipal *ante litem* notice statute), it is not entitled to recover attorneys fees under state law.

"In *Chastain v. Baker*, 255 Ga. 432, 433, 339 S.E.2d 241 (1986), this Court explained the doctrine [of mootness], holding that a case is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights, and that mootness is a mandatory ground for dismissal." *Collins v. Lombard Corporation et al*, 270 Ga. 120, 121, 508 S.E.2d 653 (1998). The doctrine of mootness applies equally to actions for declaratory judgment. *Dean v. City of Jesup*, 249 Ga. App. 633 (1), 549 S.E.2d 466 (2001).

In *Collins*, plaintiff challenged the constitutionality of Georgia's intangible personal property tax statute, seeking a declaration that the statute was unconstitutional and a permanent injunction forbidding further assessments or collection. While the suit was pending, the General Assembly repealed the statute about which plaintiff complained, and an independent third party paid the $56.29 tax that plaintiff allegedly owed. The trial court, without ruling on the constitutionality of the statute, dismissed the lawsuit as moot. The Court of Appeals reversed, finding that

there was a public policy exception to the doctrine of mootness. The Supreme Court granted certiorari and reversed the Court of Appeals. The Supreme Court held that there was no public policy exception to the doctrine of mootness, and instead reiterated the rule that the only exception to the doctrine of mootness is in a case that contains an issue that is capable of repetition yet evades review. The Supreme Court held that under the facts in *Collins*, the "capable of repetition but evades judicial review" exception did not apply.

As in *Collins*, the current case involves plaintiffs who sought injunctive and declaratory relief against a specific ordinance. As in *Collins*, the current case involves a situation in which the law that was the subject of the complaint was repealed. The only thing at issue has been resolved. Without a doubt, GeorgiaCarry's case, at least as it exists against Roswell, is moot.

This conclusion is further buttressed by the facts of the case of *Dean v. City of Jesup*, 249 Ga. App. 633 (1), 549 S.E.2d 466 (2001). In *Dean*, plaintiff brought suit against the City of Jesup after Jesup granted certain property owners' requests to abandon easement rights in several streets and alleys in an area of the city, to allow the property owners to be able to sell a collective parcel to a developer. Jesup valued its easement rights at $20.

Dean's lawsuit for declaratory and injunctive relief alleged that the value placed on the easements was below fair market value and therefore constituted a gratuity to the adjacent property owners that is forbidden by the Georgia Constitution. Before the trial court could hold a hearing on the request for an injunction, Jesup officially abandoned the easements and issued quitclaim deeds, which were delivered, accepted and recorded. The City of Jesup then argued that Dean's claims were moot and the trial court agreed, dismissing his lawsuit. The Court of Appeals affirmed the dismissal for mootness.

In the current case, there is no justiciable controversy remaining. This case obviously fits within and is controlled by the holdings in *Collins*, supra, and *Dean*, supra. In those cases, plaintiffs sought injunctions and a declaration that the laws challenged did not conform to the Georgia Constitution. In *Collins*, the controversy disappeared when the offending law was repealed and the tax at issue was paid. In *Dean*, the actions described as being in violation of the state constitution were completed and done before the court could rule. In each case, the appellate court ruled that dismissal based upon the doctrine of mootness was correct. It is likewise correct in the present case.

GeorgiaCarry argues that the new Roswell ordinance is still illegal because it continues to regulate carrying of firearms by ordinance. This is mistaken. In its new ordinance, Roswell states that "[p]ursuant to O.C.G.A. § 16-11-127, it is unlawful to carry a firearm to a public gathering in the City." Obviously, this reference is to a still valid state law.

O.C.G.A. § 16-11-127 states in pertinent part:

"(a) Except as provided in Code Section 16-11-127.1, a person is guilty of a misdemeanor when he or she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose offense and defense"

(b) For the purpose of this Code section, "public gathering" shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings . . . ."

(Roswell notes that the gun bill recently passed by the General Assembly, HB 89, does not change the "public gathering" language cited above; it does make changes to areas not involved in the current litigation, such as restaurants and bars).

Counsel for GeorgiaCarry ridicules Roswell's position that the language citing O.C.G.A. § 16-11-127 does not create an ordinance offense.

GeorgiaCarry states that Roswell and Sandy Springs' ordinances are distinctions without a difference and cites a memorandum from Sandy Springs' city attorney stating that Sandy Springs' new ordinance creates an ordinance offense. However, GeorgiaCarry fails to note a crucial difference between Roswell's new ordinance and that of Sandy Springs. According to GeorgiaCarry, Sandy Springs ordinance makes it unlawful to carry a firearm to a "public gathering" as that term is defined in O.C.G.A. § 16-11-127." This may or may not create a separate ordinance offense. In contrast to Sandy Springs, Roswell's revised ordinance does not create any thing new. It simply states that "pursuant to O.C.G.A. § 16-11-127, it is unlawful to carry a firearm to a public gathering within the City". Why put that language in an ordinance relating to parks? Because in Roswell, as in many cities, parks are where baseball, softball and football fields are located, each having spectator stands, each of which, by definition of O.C.G.A. § 16-11-127, is a "public gathering place" at which firearms are still prohibited. Also within Roswell parks are picnic areas, reserved almost every weekend by church groups, families for reunions or community groups for cookouts. These are the areas with which Roswell was concerned.

Counsel for Roswell was not aware that the state "public gathering" prohibition is printed on every concealed firearm license, as stated by

GeorgiaCarry in one of its briefs. (R. 356). However, the fact that it is merely reinforces Roswell's position that its intent was to provide notice that, although state law now dictates that Roswell must permit people to carry firearms in Roswell parks, the right does not extend to all areas of Roswell's parks. The language of Roswell's new ordinance does not regulate the carrying of firearms; it merely mentions its intent to enforce state law in a particular situation, as it applies to "public gatherings."

The Georgia Constitution, Article 9, § 2, ¶ 3 (a) (1) specifically states that a city may provide police and fire service. Obviously, municipal law enforcement officers may make arrests for violations of state law committed within city limits. See, e.g., *Mullis v. State*, 196 Ga. 569, 27 SE2d 91 (1943) (municipal officer authorized to make warrentless arrest for state law violation committed in his presence); O.C.G.A. § 17-4-20 (authority of police to make arrests); O.C.G.A. § 35-8-2 (7) (term "law enforcement unit" includes municipal police force with authority to enforce criminal or traffic laws); O.C.G.A. § 35-8-2 (8) ("peace officer" defined to include agent or employee of municipality authorized to enforce criminal or traffic laws).

If the Roswell ordinance made no mention of the state law, would GeorgiaCarry argue that Roswell had no right to enforce that state law in its parks? If so, would GeorgiaCarry controvert the right of Roswell police

officers to enforce the provisions of O.C.G.A. § 16-5-1, which prohibits murder, in its parks? If not, what does the provision about which GeorgiaCarry so vehemently protests, the mention of O.C.G.A. § 16-11-127, add that state law does not already provide? The Court must keep in mind that violation of a city ordinance is not a crime, by definition. See *Turner v.* State, 233 Ga. 538, 212 SE2d 370 (1975) (only violations of state statutes, and not of municipal ordinances and administrative regulations are crimes); see also *Beamon v. City of Peachtree* City, 256 Ga. App. 62, 567 SE2d 715 (2002); and O.C.G.A. § 16-2-1.

GeorgiaCarry's argument that Roswell's new ordinance is not moot must therefore fail, as the trial court correctly ruled. Roswell's new ordinance does not now contravene O.C.G.A. § 16-11-173 (b) (1). It does not regulate by ordinance the carrying of firearms in its parks. Thus, the doctrine of mootness applies and the trial court was without jurisdiction to go further and properly granted summary judgment to Roswell.

3. GeorgiaCarry's claims pursuant to 42 U.S.C.A. § 1983 are also moot

Roswell incorporates all the arguments made heretofore regarding mootness, as those arguments apply equally to a § 1983 claim. "The voluntary cessation of allegedly illegal conduct usually will render a case

moot if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. Where, as here, the defendant is a government entity, some deference must be accorded to a legislative body's representations that certain conduct has been discontinued. Moreover, we have stated that constitutional challenges to statutes are routinely found moot when a statute is amended." *Lamar Advertising of Penn, LLC v. Town of Orchard Park, New York*, 356 F.3d 365, 375-376 (2004)(citations and punctuation omitted)(amendment of challenged ordinance related to signs mooted § 1983 claims).

The record before the Court shows that, as soon as practicable after the Court of Appeals rendered its decision in *GeorgiaCarry v. Coweta County*, Roswell amended its ordinance to remove the prohibition against carrying firearms in its parks, thus accomplishing the stated goal of GeorgiaCarry's amended complaint against Roswell. The record further shows that Roswell notified GeorgiaCarry and the Court of its actions to so amend its ordinance within the time it was allowed to answer the Amended Complaint. The record demonstrates without doubt that GeorgiaCarry's § 1983 claims against Roswell are moot.

4. *GeorgiaCarry is not entitled to recover attorneys fees under state law because it failed to give the requisite ante litem notice required by state law*

The record demonstrates that GeorgiaCarry gave no *ante litem* notice regarding attorneys fees and costs prior to filing the original complaint. (See Affidavit of John Monroe, Exhibit C, Page 1, R. 390). Further, the record shows that the *ante litem* notice that GeorgiaCarry says it gave Roswell was dated July 19, 2007 (R. 390). GeorgiaCarry filed this action on August 16, 2007. (R. 4). Thus, the record demonstrates that fewer than 30 days passed from the date of the *ante litem* notice to the date suit was filed. "The act [O.C.G.A. § 36-33-5] by its terms clearly prevents the filing of a suit against the municipality until after the expiration of thirty days from the filing of the claim in writing with the municipal authorities as required." *City of Atlanta v. Truitt*, 55 Ga. App. 365, 366, 190 S.E. 369 (1937). For this reason alone, GeorgiaCarry could not recover attorneys fees against Roswell.

In addition, state law requires that plaintiffs seeking recovery of attorneys fees and costs must comply with O.C.G.A. § 36-33-5 (*ante litem* notice) regarding those fees. With no prior notice regarding attorney fees and costs, a plaintiff may not recover them. *Dover v. City of Jackson*, 246 Ga. App. 524, 541 S.E.2d 92 (2000).

In *Dover*, the Court of Appeals stated: "It is true that a litigant seeking equitable relief is not bound by the ante litem notice requirement of OCGA §36-33-5. However, a claim for attorney fees and costs of litigation under OCGA § 13-6-11 is clearly a claim for damages and clearly seeks monetary, rather than equitable, relief. Even though Dover Realty's claim for attorney fees and costs of litigation is ancillary to its claim for equitable relief, it is nonetheless a claim for money damages. Thus, under a strict reading of the ante litem notice statute, Dover Realty's failure to comply with the notice requirement of OCGA § 36-33-5 precludes its ability under Georgia state law to sue for money damages in the form of attorney fees and costs of litigation." *Dover* at 526.

GeorgiaCarry attempts to evade the clear and unambiguous holding of *Dover* by arguing that the plaintiff in that case originally asked for damages and that this triggered the need for the *ante litem* notice and thus is different from the present case, in which GeorgiaCarry has not asked for damages. However, that position would require this Court to ignore the plain words of the Court of Appeals quoted above and to specifically overrule *Dover*. Clearly, the Court of Appeals applied the rule to all equity cases in which one seeks attorney fees, not just in ones that started as damages cases.

GeorgiaCarry further argues that it would be impossible to comply

with the *ante litem* notice statute because it could not quantify its attorney fees before filing suit. However, that is not required. Damages need not be set out in a specific amount in an O.C.G.A. § 36-33-5 ante litem notice. *Mayor of Waynesboro v. Hargrove*, 111Ga. App. 26, 140 SE2d 286 (1965). Neither in the trial court, nor in its Brief before this Court, has GeorgiaCarry addressed the *Hargrove* case. Instead, GeorgiaCarry argues that the *ante litem* statute, as applied to it, is unconstitutional. However, that argument, as an excuse for failure to comply with the plain language of the statute, is unavailing because GeorgiaCarry never got a ruling from the trial court on the issue, as discussed earlier in this brief.

Further, O.C.G.A. § 36-33-5 requires that suit cannot be filed until 30 days have passed from the giving of the *ante litem* notice. See also *City of Atlanta v. Truitt*, 55 Ga. App. 365, 190 SE2d 369 (1937). According to John Monroe's affidavit (R. 381), the *ante litem* notice sent to Roswell (that did not list attorney fees) is dated July 19, 2007. (R. 390-391). This lawsuit was filed on August 16, 2007 (R. 4), less than 30 days after the date of the *ante litem* notice.

There is yet another reason GeorgiaCarry cannot recover attorneys fees, even if it had prevailed in the trial court. Compliance with the *ante litem* notice statute must be set out in the complaint, or else it does not state

a claim. *City of Atlanta v. Frank*, 120 Ga. App. 273, 170 SE2d 265 (1969). Neither the Complaint nor the Amended Complaint contains any such allegation. *Ante litem* notice may not be given by amendment after the lawsuit has been filed. *Atlanta Taxicab Company Owners Association, Inc. v. City of Atlanta*, 281 Ga. 342, 351, 638 SE2d 307 (2006).

Each of these reasons precludes GeorgiaCarry recovering attorney fees and costs under state law regarding its Verified Amended Complaint, even though it states in its Verified Amended Complaint that it serves as *ante litem* notice regarding such fees and costs. Further, even if such notice were good, Roswell has complied with the demands made of it pursuant to such notice, i.e., it changed the ordinance of which GeorgiaCarry complains.

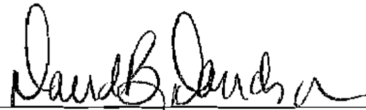
Any one of the reasons cited above provides an ample basis for the trial court to justify a decision not to award attorneys fees. However, the basic reason to support a ruling that does not award attorneys fees against Roswell is that GeorgiaCarry did not prevail below.

5. Conclusion

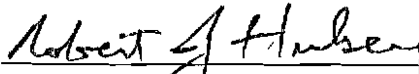
Roswell's amendment to its ordinance challenged by GeorgiaCarry removes the language GeorgiaCarry sought to enjoin or have declared null and void. This action renders the lawsuit against Roswell moot, including all claims for alleged violation of 42 U.S.C.A. § 1983 (including attorney

fees). Further, GeorgiaCarry cannot recover attorney fees for its state claims because it did not comply with Georgia's *ante litem* statute, O.C.G.A. § 36-33-5. For these reasons, the Court should affirm the trial court's grant of summary judgment to Roswell.

This 29th day of August, 2008.



David B. Davidson
Georgia Bar No. 206527
City Attorney
City of Roswell



Robert J. Hulsey
Georgia Bar No. 377625
Assistant City Attorney
City of Roswell

Attorneys for Defendant
City of Roswell, Georgia

38 Hill Street
Suite 110
Roswell, GA 30075
(770) 594-6185