IN THE COURT OF APPEALS OF GEORGIA

CRAIG MOORE, Appellant, v. MARY T. CRANFORD, Judge of the Coweta County Probate Court, Appellee	)	Appeal No. A07A0316

APPELLANT'S BRIEF

Appellant Craig Moore states the following as his Brief.

Part One – Statement of Facts and Proceedings Below

A – Introduction

Appellant Craig Moore appeals from the order of the court below granting summary judgment to Defendant-Appellee and denying summary judgment to Moore. In the order, the court ruled erroneously that Georgia is a "may issue" state and not a "shall issue" state for Georgia firearms licenses, and that a probate court judge can delay indefinitely the grant of a license. Moore seeks reversal of that order, a grant of his motion for summary judgment, and a denial of Appellee's motion for summary judgment.

B – Background

On December 13, 2005, Appellant Craig Moore (Plaintiff below) applied to Appellee Mary Cranford, in her capacity as the Coweta County Probate Judge, for a Georgia firearms license ("GFL"). (R 46). A GFL exempts the holder from certain criminal prohibitions against 1) carrying a concealed firearm; 2) some provisions regarding carrying a firearm in a school safety zone; and 3) carrying a pistol without a license. O.C.G.A. §§ 16-11-126 through 16-11-129.

Because O.C.G.A. § 16-11-129 requires issuance of a GFL to qualified applicants within 60 days of the application, Moore expected to receive a GFL by February 11, 2006. (R 46). While he was waiting for his GFL to be issued however, Cranford's staff told Moore that Cranford would not be obeying the 60-day requirement of O.C.G.A. 16-11-129(d). Id. In fact, Cranford's staff told Moore that they routinely tell applicants for GFLs that it may take several months to receive a GFL, despite the plain wording of the statute. Id. Cranford also admitted that she routinely fails to issue licenses to qualified applicants within the 60 day period mandated by law. (R 17).

After 125 days elapsed from the date of his application, more than twice the delay allowed to Cranford under state law, Moore commenced an action in Coweta County Superior Court to declare that Cranford must issue GFLs within 60 days of application as required under O.C.G.A. § 16-11-129(d)(4), to order her to comply with the 60-day requirement in the future, and to order her to issue a GFL to Moore. (R 3-7). While the complaint was in the mail on its way to the Superior Court clerk's office, Cranford issued a GFL to Moore. (R 53). Moore therefore dropped his request for mandamus to issue him a GFL, but continued the action below for declaratory and injunctive relief. (R 28).

C – The Proceedings Below

After brief discovery, the parties filed cross motions for summary judgment. (R 9, 21). In an August 4, 2006 memorandum opinion and Order, the Superior Court of Coweta County, the Hon. Allen B. Keeble, granted Cranford's motion and denied Moore's motion. (R 175-178). Moore appeals from that Order.

D – Preservation of Issues on Appeal

Moore preserved each issue on appeal by raising it in his motion for summary judgment or in his opposition to Cranford's

motion for summary judgment, or both, and by obtaining a ruling on the cross motions for summary judgment from the court. The order from which Moore appeals was filed on August 14, 2006 (R 175-178), and Moore filed his Notice of Appeal on August 14, 2006 (R 179-180) (and filed an amended notice of appeal on August 18, 2006 (R 1-2)).

Part Two – Enumerations of Error

1. The trial court erred by relying in part on a statute that has been repealed.
2. The trial court erred by finding that Georgia law does not require issuance of GFLs within 60 days of application by qualified applicants.
3. The trial court erred in finding that probate courts must wait to receive a report directly from the FBI before issuing a GFL.
4. The trial court erred by ruling that costs of litigation cannot be taxed against Cranford on the grounds of judicial immunity.

Statement on Jurisdiction

The Court of Appeals, rather than the Supreme Court, has jurisdiction of this appeal because the issue involved is one of

statutory construction related to the issuance of firearms licenses, and appeals of such cases are not reserved to the Supreme Court of Georgia pursuant to Article VI, Section VI, Paragraphs II and III of the Constitution of the State of Georgia.

Part Three – Argument and Citations of Authority

1 – The Trial Court Relied on a Repealed Statute

In its Order, the trial court relied in part on O.C.G.A. § 16-11-129(c)(2). (R 176). That code section was repealed by 2006 HB 1032, effective July 1, 2006. In HB 1032, the General Assembly revised several parts of O.C.G.A. § 129. Because the only relief sought by Moore at the time the case was submitted to the trial court on summary judgment was prospective, there is no need to analyze the former statute (which would apply only in a case seeking redress for past wrongs). Only the law in effect at the time the court ruled on the motion should have been applied. The application of current law to the facts of this case is discussed more fully below.

2 – The 60-Day Requirement is Mandatory

O.C.G.A. § 16-11-129(d)(4) says, in pertinent part:

> Not later than 60 days after the date of the application the judge of the probate court ***shall issue*** the applicant a license or renewal license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained in this Code section.

(Emphasis supplied). Despite the General Assembly's use of the emphasized words "shall issue," the trial court held that the "statute's plain language gives probate judges the discretion to go beyond the 60 day time period..." (R 176).

The court's reading of the statute's "plain language" is contrary to established precedent in Georgia for interpreting the meaning of the word "shall." "[I]n its ordinary signification, 'shall' is a word of command, and the context ought to be very strongly persuasive before that word is softened into a mere permission." Termnet Merchant Services, Inc. v. Phillips, 277 Ga. 342, 344, 588 S.E.2d 745, 747 (2003).

"'Shall' is generally construed as a word of mandatory import." O'Donnell v. Durham, 275 Ga. 860, 861, 573 S.E.2d 23, 25 (2002).

Thus, the starting point when reading any statute with the word "shall" is to read it as a "word of command." Only by analyzing the "very strongly persuasive" context can one possibly conclude that "shall" is permissive. The trial court did not provide such an analysis, nor did Cranford supply one in her briefs below. In fact, Cranford does not address the wording of the statute at all, choosing instead to explain why she substitutes her own will in place of the General Assembly's. (R 96). The context is not even slightly persuasive that "shall" means anything other than a "word of command," so the statute must be viewed as mandatory.

Cranford stated that she must wait for a report from the FBI in order to issue a GFL. (R 96). Neither she nor the trial court, however, explained how the 60-day requirement ***that is contained in the statute*** is supplanted by Cranford's self-imposed requirement to wait for a report directly from the FBI ***that is not contained in the statute***.[1] Cranford's reading of the

[1] The proper procedure set forth in the statute is for the probate judge to request all reports from the local law

statute renders the 60-day requirement as surplusage. This interpretation cannot stand, as "[t]he rules of statutory construction require that we construe a statue according to its terms, give words their plain and ordinary meaning, and ***avoid a construction that makes some language mere surplusage***." In re J.K., 278 Ga. App. 564, 572, 626 S.E.2d 529, 534 (2006) (Emphasis supplied).

On the other hand, Appellant Moore's reading of the statute avoids this impermissible result. The statute gives the local law enforcement agency 50 days in which to conduct a background check of a GFL applicant, using multiple sources, and to report its findings to the probate judge. O.C.G.A. § 16-11-129(d)(4). No report at all is required if no derogatory information is found. Id. The probate judge then has at least ten days (more, if the report is received in fewer than 50 days from the law enforcement agency), in which to evaluate the applicant and issue the license if the eligibility requirements are met. Id. This reading of the plain language of the statute gives effect

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enforcement agency, see O.C.G.A. § 16-11-129(d)(1) and (2), which then reports to the probate court within 50 days only if there is anything negative to report. § 129(d)(4).

to every word in the statute, as will be discussed in more detail in the next section.

3 – Waiting for the FBI Report is Unnecessary

The trial court ruled that Cranford must wait for a report from the FBI before issuing a GFL (R 176), but this is not the law. In order to appreciate the wording of O.C.G.A. § 16-11-129, it is necessary to examine the history of the statute. In 1978, the statute (then codified as Code of Georgia § 26-2904) required a GFL applicant to take the completed application from the probate judge to a local law enforcement agency. There the applicant was to be fingerprinted. The local law enforcement agency then conducted a search of its records, and the records to which it had access, on the applicant's background. The agency was required to report the results of its search to the probate judge, and also to return the application to the probate judge, within 50 days. The probate judge was required to issue the license not later than 60 days from the application date. Code of Georgia § 26-2904(a)(3) and (b), 1978.

In 1983, the General Assembly amended the law, requiring the probate judge to direct the local law enforcement agency to send a set of fingerprints to the FBI. O.C.G.A. § 16-11-

129(c)(2), as enacted by Ga. L. 1983, pp. 1431-1436. In 1986, the law was amended again to require the probate judge to direct the local agency to send a copy of the fingerprints to the GCIC, for a check of FBI records. O.C.G.A. § 16-11-129(c)(1)&(2), O.C.G.A. § 16-11-129(d), as enacted by Ga. L. 1986 305.

Finally, the law changed in 2006, to require the local law enforcement agency to conduct a check of the applicant using the FBI's National ***Instant*** Criminal Background Check System ("NICS") (emphasis supplied). O.C.G.A. § 16-11-129(d)(2). Throughout all the statute changes, however, one thing remained the same. The local law enforcement agency coordinated all criminal background checks and reported to the probate judge. With the 2006 changes, that is still the case. Now, however, the local law enforcement agency does a check of the FBI's records instantly, using the same system used by prospective purchasers of firearms in gun stores.

Despite the "shall issue" language contained in the statute, the trial court ruled that Cranford must wait for a report from the FBI directly to her before she can issue a GFL. (R 176). The trial court relied on the repealed portions of O.C.G.A. § 129 as authority for this wait. The court's reading

of the former statute also is incorrect. The amendment to the current statute clarified the point that Cranford is not to receive any reports from the FBI. HB 1032 changed the first word of § 129(d)(4) from "each" to "the." Inserting a definite article as a first word clarifies the point that there is only one law enforcement agency that reports to the probate judge.[2] Under the revisions made by HB 1032, only the local law enforcement agency provides any report to the probate judge. See O.C.G.A. § 16-11-129(d)(4).

In O.C.G.A. § 16-11-129(d)(1), the local law enforcement agency is to request a fingerprint based criminal background check from the Georgia Crime Information Center ("GCIC") and the

[2] The statute originally contained the word "each," but at the time there was only one law enforcement agency contemplated. Thus, the word meant "each" local law enforcement agency. After the General Assembly added references to the GBI and FBI to the language of the statute, the word "each" became confusing, so the General Assembly substituted the word "the" in § 129(d)(4), leaving only one possible interpretation – only the local law enforcement agency that captures the applicant's fingerprints reports to the probate court.

FBI, and send "an appropriate report to the judge of the probate court." In O.C.G.A. § 16-11-129(d)(2), the local law enforcement agency is to conduct a background check using the FBI's National Instant Criminal Background Check System, and send "an appropriate report to the probate judge." Finally, within 50 days of the application, the local law enforcement agency is to notify the probate judge, by telephone and in writing, "of any findings related to the applicant which may bear on his or her eligibility for a license," unless "no derogatory information is found on the applicant bearing on his or her eligibility," in which case "no report shall be required." O.C.G.A. § 16-11-129(d)(4). Thus, regardless of whether it sends one combined report or multiple reports, the statute clearly puts the requirement on only the local law enforcement agency to report all criminal background check matters to the probate judge. The statute does not contemplate the probate court requesting reports from any other person or entity, nor does it contemplate any delay associated with the probate court requesting them on its own and then awaiting the results for longer than 50 days, or 60 days, or 125 days (as had passed prior to Appellant filing his lawsuit).

The procedure set out in the statute is for the local law enforcement agency to process all reports, including an ***instant*** check of the FBI's records (the same check done for purchasers of guns in gun stores). The agency is to call the probate judge ***within 50 days*** if derogatory information is found. O.C.G.A. § 16-11-129(d)(4). If the probate judge does not hear from local law enforcement within 50 days, she can (and must) assume that no derogatory information has been found.

Cranford insisted, and the trial court ruled, that she must wait for a report directly from the FBI before issuing a GFL. The statute does not support her conclusion or the trial court's ruling. Even if the FBI's current practice is to send a report directly to her, there is no reason for her to assume the practice will continue. She fails to explain what she would do if a report from the FBI ***never*** came. Would she refuse, indefinitely, to issue a license in the face of a statute stating that she "shall issue" the license "[n]ot later than 60 days following the date of application?" The trial court's ruling is that she may wait forever, but the trial court never addressed the language in the statute stating that no report is required if no derogatory information is found.

Cranford, in her arguments to the trial court, ignored the fact that the current law requires the local agency to conduct a NICS check of the FBI's records, which provides an instantaneous criminal background report. See O.C.G.A. § 16-11-129(d)(2). To support her argument, she concocted a hypothetical situation that defies logic. (R 96). She posited that, if she did not wait as long as necessary to receive an FBI report (again, overlooking the fact that she could have the instantaneous FBI report in her hands well within the time set out in the statute), she could miss an out-of-state criminal murder record and inadvertently issue a GFL to a convicted murderer.[3] The

[3] Of course, this entire hypothetical is constructed on the circumstance that Appellee herself creates: She refuses to request the reports from the local law enforcement agency as the statute provides and instead relies upon the GCIC terminal in her office while requesting the fingerprint-based FBI check directly from the FBI (whenever she thinks she has enough applications waiting to make it worth the time to submit the request). There was no evidence presented below that the **instant** check of FBI records, mandated by the General Assembly,

hypothetical murderer might then commit a crime with a firearm. According to Cranford, this hypothetical "tragedy…might otherwise have been avoided" had she not issued the GFL.

In order to be concerned about the picture Cranford paints, one has to believe that:

1. People who do not obey the most serious of all criminal prohibitions (against murder) obey the relatively minor (misdemeanor) prohibition against carrying a pistol without a license, but do not obey the federal (felony) prohibition against convicted felons from even possessing firearms.
2. A convicted murderer would bother to apply for a GFL.
3. A convicted murderer's conviction would not show up in the FBI system used to run background checks on prospective gun purchasers, but it would show up in the FBI fingerprint system.
4. A person only will commit a "tragic" crime if allowed to carry a firearm legally.

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is **ever** performed while processing firearms applications in Coweta County.

We simply do not live in a fantasy world where felons scrupulously avoid committing misdemeanors while committing more felonies with abandon.

Cranford admitted in her brief that the only difference in the instant records and the FBI fingerprint system was that the instant check (NICS) was performed without fingerprints (as the statute dictates) while the later FBI report is based on an applicant's fingerprints. (R 159). Thus, the only difference between the two is the fingerprints.[4] There is no difference in the crimes reported based on whether crimes may have been

[4] While Cranford submitted an affidavit stating that she had access to GCIC records at a terminal in her office (a circumstance not contemplated at all in the statute) and that the FBI records might reveal a criminal record from out of state, her affidavit is pointing to the difference between state records (GCIC) and national records (NICS). (R 64-65). Both the *National* Instant Criminal Background Check System and the fingerprint-based criminal history from the FBI are national records, which both show records of out of state crimes. No argument to the contrary was made by any party below.

committed outside the state of Georgia. Both in-state and out-of-state crimes show up on the NICS check.

Accordingly, there is no basis for the public policy argument espoused by Cranford and adopted by the trial court in its ruling. Public policy is best determined with reference to the language of the statute passed by the General Assembly. The General Assembly's law *is* a declaration of the public policy of this state. That law, O.C.G.A. § 16-11-129, declares that the probate court "shall issue" an applicant's firearms license "[n]ot later than 60 days after the date of application," and further states that no report of any kind is required by the local law enforcement agency if no derogatory information is found. The statute even provides for revocation of a firearms license after the 60 day period expires if the probate court subsequently discovers any derogatory information, which clearly indicates that the General Assembly was aware of the potential for such information potential taking longer than the allowed 60 day period but wanted the license issued anyway. See O.C.G.A. § 16-11-129(e).

O.C.G.A. § 16-11-129(d)(4) states: "Not later than 60 days after the date of the application the judge of the probate court

shall issue the applicant a license or renewal license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained in this Code section." The trial court relied upon the language after the word "if" to declare, essentially, that the probate judge may wait however long she may determine is necessary to meet the requirements of the statute. (R 176). This interpretation erases the 60 day "shall issue" requirement from the statute, and this interpretation does not fit the language used in the statute.

The first phrase, "if no facts establishing ineligibility have been reported" simply restates the requirement of the previous provisions that *the* local law enforcement agency has 50 days to report any derogatory information but that no report is required if no derogatory information is found. Without this language, the "shall issue" language would require the probate judge to issue the firearms license even if the judge received derogatory information in a report! Thus, the "if" language does not modify the 60 day timeline set out in the same

sentence, but simply declares that the probate judge is only required to issue the license by the 60th day "if no facts establishing ineligibility have been reported." Obviously, if facts establishing ineligibility have been reported, then the probate judge is to ***deny*** the license not later than 60 days after the date of application. There is no permission in this phrase to wait beyond the 60 days allowed in the statute to issue licenses to qualified applicants.

The second phrase, "if the judge determines the applicant has met all the qualifications," is modified by the foregoing portion of the same sentence requiring her to issue the license within 60 days. Therefore, if the foregoing language is to be given any effect whatsoever, rather than simply disregarded by those who would substitute their own judgment for the legislative branch's judgment in matters of policy, the sentence must mean that the judge may refuse to issue the license if she determines that the applicant has **not** met all of the qualifications. Conversely, she must issue the license if the applicant has met all the qualifications, and she must issue it *not later than 60 days after the date of application*. There is simply no support in the statute for *routinely* refusing to issue

licenses to qualified applicants within the 60 day period allowed for in the statute, yet this is what Cranford insists that she has been doing and insists she will continue to do. In the name of public policy, the order below approves of the probate judge routinely waiting beyond the 60 days allowed in the statute to issue licenses to qualified applicants.

The "good moral character" phrase was not in issue at the trial court level. Neither party raised or argued it. Therefore, the Appellant submits that the probate judge has only 60 days from the date of application to make a determination as to the applicant's "good moral character."

The last phrase, mandating that the license shall be issued not later than 60 days "if . . . the applicant . . . has complied with all the requirements contained in this Code section," can only mean that the applicant has complied with the requirements spelled out for the applicant (i.e., applying, providing a fingerprint, and paying the statutorily required fees on application, renewal, or the request of a temporary license under subsection (i), which last fee is only $1.00). There was no dispute below over whether Appellant timely complied with all the requirements asked of him.

Cranford's argument below, accepted by the trial court, was that because she refuses to request the National Instant Criminal Background Check (NICS) from the local law enforcement agency, preferring instead to run a GCIC check at a terminal in her office, then she must wait for the national fingerprint based background check prior to issuing a license. Her reasoning was that the GCIC check she performs in her office sometimes does not reveal crimes committed outside the state of Georgia. (R 95). This is a self-created problem not contemplated by the statute, which requires the probate court to request checks only from the local law enforcement agency and also requires the probate to issue licenses within 60 days (assuming no derogatory information is reported). If Cranford simply followed the procedures laid out in the statute, she would ***have*** the national criminal background check in her hands on the date of application, or at least within the 50-day reporting period, because it is, after all, an "instant" check.

The trial court, in its Order below, relied on this reasoning, specifically pointing out that Cranford submitted an affidavit stating that she sometimes could not obtain out-of-state crime information on her own GCIC computer. (R 176). The

trial court did not address the fact that Cranford admits she refuses to request the report from the local law enforcement agency. As argued by Appellant below, the local law enforcement agency is to do a NICS check when the applicant is fingerprinted. O.C.G.A. § 16-11-129(d)(2). What Cranford can or cannot obtain on a GCIC terminal in her own office has no relevance to the procedure mandated by the Georgia General Assembly, and the requirement that the probate court request a NICS check, which Cranford admits she refuses to do, completely undercuts the reasoning that she cannot obtain out of state criminal information within the 60 day period. The legislature told her how to get such information, mandated that she obtain the information, and yet she prefers another method of operating that creates a self inflicted problem of not having such information available within 60 days simply because she refuses to request it from the Coweta County Sheriff's office. Appellee cannot be allowed to subvert the statute by deliberately adopting a policy of refusing to request the ***instant*** national criminal background check, and then complain that her own refusal means she must wait beyond the 60 days to obtain a national criminal background check as a matter of public safety.

This court should reverse the trial court's decision so that the procedure set out in plain language by the General Assembly can be followed and Cranford can perform her duties within the 60 day period allowed by law. Any other ruling would erase both the "shall issue" language and the 60-day requirement from the statute.

4 – Cranford is not Immune from Claims for Costs

Cranford contends that she is immune from liability "[t]o the extent [Moore] is seeking any monetary damages from … Cranford." (R 102). She raises this in response to Moore's request for costs if he is the prevailing party in the case. The trial court found that Cranford "is entitled to judicial immunity from monetary damages." (R 176).

Both Cranford and the trial court implicitly equate costs to a prevailing party with damages. Damages and court costs are not the same thing. Moore has made clear that he is not seeking damages in this case. (R 38). If he should prevail in the case, however, he is entitled to taxable costs pursuant to O.C.G.A. § 9-15-1.

It is important to note that Moore is not seeking expenses of litigation pursuant to O.C.G.A. § 13-6-11. Such expenses are

in the nature of damages, and, as provided by the statute, "are allowable by the jury." If Cranford were acting in a judicial capacity when issuing GFLs, it is entirely possible that she would be immune from liability for these expenses. But, Moore is not seeking such expenses and Cranford is not acting in a judicial capacity when she issues a GFL.

The doctrine of judicial immunity is well-established as protecting judges (acting in a judicial capacity) from liability for damage claims. Earl v. Mills, 275 Ga. 503, 570 S.E.2d 282 (2002). But, judicial immunity does not apply when a judge is not acting in a judicial capacity. Wilson v. Moore, 275 Ga. App. 493, 494, 621 S.E.2d 507, 508 (2006). A judicial act is one that is "normally performed by a judge" when the plaintiff "dealt with the judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107 (1978).

The issuance of licenses, especially licenses to carry firearms, is not "normally performed by a judge." In the five states bordering Georgia, licenses to carry concealed weapons are issued by sheriffs (Alabama[5] and North Carolina[6]), the state

[5] Alabama Code 13A-11-75

[6] North Carolina Statutes 14-415

Department of Safety (Tennessee[7]), the state Department of Agriculture (Florida[8]), and the state Law Enforcement Division (South Carolina[9]). In fact, of the 47 states that issue licenses to carry concealed firearms,[10] only New York and New Jersey have provisions for judges to be involved at all in the licensing process. No state besides Georgia actually requires that applicants apply for licenses from a judge.

The act of issuing a license is ***ministerial*** and not judicial. When what we now call a probate judge was referred to as the "county ordinary," the Supreme Court of Georgia noted that issuing licenses by probate judges is ***not*** a judicial act:

> The ordinary, under our laws, is an official charged with the performance of duties judicial, ministerial, and clerical. Not by his title, but only by his acts, can the exact capacity in which he appears ever be known upon any special occasion. In admitting a will to probate, he acts

[7] Tennessee Code 39-17-1351

[8] Florida Statues 790.06

[9] South Carolina Code 23-31-215

[10] Vermont does not issue licenses, but does not prohibit carrying a concealed firearm. Wisconsin and Illinois prohibit carrying concealed firearms and do not have a licensing system.

> as a judicial officer… In issuing a marriage license, he for the moment becomes a ministerial officer.

Comer v. Ross, 100 Ga. 652, 28 S.E. 387 (1897). Probate judges issue marriage licenses in addition to firearms licenses. O.C.G.A. § 15-9-30(b)(7). Cranford does not explain why she believes issuing a firearms license is a judicial function, when issuance of a marriage license is not. Rather, she asserts that any act done by a probate judge pursuant to statute is a judicial act, (R 102), despite the clear law that this is not the case. O.C.G.A. § 15-9-30(b)(11) provides that probate judges "[p]erform such other judicial ***and ministerial*** functions as may be provided by law." (Emphasis supplied).

In addition, none of the trappings of a judicial function are present in the issuance of GFLs by probate judges in Georgia. GFL applications are not adversarial proceedings (there is not even a mechanism by which a party could intervene). The probate judge does not hold a hearing, open a docket, take evidence, or issue any opinions, findings of fact, and conclusions of law, orders, or judgments. The GFL, when signed by the judge, does not have the effect of a court order, and is not enforceable by the contempt powers of the court.

The GFL statute itself, O.C.G.A. § 16-11-129, does not appear to confer any discretion upon the probate judges. This is one of the main distinctions between a "shall issue" state like Georgia and a "may issue" state like New Jersey. A probate judge is required to issue a GFL to all eligible applicants. Indeed, Cranford admitted in her Answer that Moore had a "clear legal right" to receive a GFL. (R 17).

Standard of Review

The standard of review with respect to all issues presented to the Court is *de novo*. Each issue presented is related to the trial court's grant of Cranford's motion for summary judgment (and denial of Moore's motion for summary judgment). On appeal of a grant of summary judgment, the appellate court must review the evidence de novo to determine whether the trial court erred in concluding that no genuine issue of material fact remains and that the party was entitled to judgment as a matter of law. Rubin v. Cello Corp., 235 Ga. App. 250, 510 S.E.2d 541 (1998).

CONCLUSION

Appellant Craig Moore has shown that the trial court erred in ruling that Georgia is a "may issue" state and not a "shall issue" state for firearms licenses, and in ruling that probate

judges are not required by statute to issue a firearms license within 60 days after the date of application. The court also erred in ruling that Moore, if he prevails, is not entitled to taxable costs. Accordingly, the decision of the trial court should be reversed, with instructions to grant summary judgment in favor of Moore and to deny summary judgment to Cranford.

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CERTIFICATE OF SERVICE

I certify that I have this day served Nathan T. Lee, Esq. with a copy of this Brief by mailing a copy first class mail postage prepaid to him at 10 Brown Street; Newnan, Georgia 30264.

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