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 IN SUPPORT OF MOTION FOR RECONSIDERATION

Appellant Craig Moore submits the following Brief in Support of Motion for Reconsideration.

Background

Appellant commenced the action below against the judge of the Coweta County Probate Court, for Appellee judge's failure to issue Appellant a Georgia firearms license ("GFL") within the 60-day time required by statute. O.C.G.A. § 16-11-129(d)(4). The superior court granted Appellee's motion for summary judgment, and the superior court was affirmed by this Court in an Opinion issued May 25, 2007. Appellant seeks reconsideration of this Court's decision, for the reasons discussed below.

Timeliness and Jurisdiction

The Court issued its opinion in this case on May 25, 2007. Because this Brief (and the accompanying Motion for Reconsideration) is being filed within 10 days, as required by this Court's Rule 37, the Motion is timely and this Court retains jurisdiction.

Basis for Reconsideration

"A reconsideration will be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority." Rule 37(e). Appellant shows below that the Court erroneously construed a provision of law and overlooked a factual assertion of Appellee.

Argument

A Report is Not Required, and Neither is a Notification

The Court has inexplicably created two separate reporting mechanisms where only one existed for more than three decades. The structure of the first three sentences of O.C.G.A. § 16-11-

129(d)(4) is relatively simple. In sum, these three sentences state that: (1) the local sheriff that captured the fingerprints is to notify the judge of any findings bearing on the applicant's eligibility; (2) no report is required if there are no negative findings bearing on the applicant's eligibility; in which event (3) the local sheriff is simply to return the application and the license form to the probate judge. Both the first and the second sentence use nearly the ***exact*** same language to describe what is being reported. Somehow, "applicant which may bear on his or her eligibility for a license or renewal" in the first sentence of (d)(4) means one thing, but the very next sentence that contains "applicant bearing on his or her eligibility to obtain a license or renewal license" is deemed not to be talking about the same thing. The second sentence (which is being ignored even though it uses nearly the same language) must be talking about the ***same*** thing.

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

> The law enforcement agency shall notify the judge of the probate court within 50 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a license

> or renewal license under the terms of this code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, ***a report shall not be required.***

[emphasis supplied]. Despite the plain wording of the text in the statute, that "a report shall not be required," this Court ruled that a report from local law enforcement ***always is required.*** Speaking of the report that "shall not be required," this Court states, "The fact that the agency found no derogatory information on the applicant certainly bears on the applicant's eligibility; thus it is a finding that must be 'reported'." Opinion, p. 11.

The Court draws a distinction between "notify" in the first sentence of the quoted statute and "report" in the second sentence. Under the Court's construction, the "notification" in the first sentence always must occur, but the "report" in the second sentence refers to some separate communication to the probate judge that need not occur. *Id.* While the Court agrees with Appellant that the "report" is not required, the Court

found that "only when such notification has been received may the probate court issue the license." Opinion, p. 12.

Nothing in the statute gives the impression that the two sentences are not to be read together, and neither party raised this issue or suggested this previously unknown interpretation of thirty-one year old language in its briefs.

Local Law Enforcement's "Report" is its "Notification"

The "notification" that the Opinion says is required is the notification by local law enforcement of "any findings relating to the applicant which may bear on his or her eligibility." Opinion, p. 11, *citing* O.C.G.A. § 16-11-129(d)(4). The Court overlooks, however, that the only investigation conducted by local law enforcement is the check of the FBI's NICS system, as described in O.C.G.A. § 16-11-129(d)(2).[1] The Court later calls the "report" of information found in the NICS check under 129(d)(2) the "report" that may not be required. Opinion, p.11.

Thus, the Court incongruously holds that local law enforcement must "notify" the probate court, via telephone and in writing, of anything it finds (or even if it finds nothing) bearing on the applicant's eligibility, but that no report on

[1] The checks in 129(d)(1) are performed by other agencies.

the same topic is required if nothing is found. This absurd result is an erroneous construction of a clear, three-sentence statutory provision.

Appellee Was Not Waiting for "Notification"

The Court has also overlooked a crucial and material fact in the record. Even if the Court's interpretation of the statute regarding "reports" and "notifications" of facts bearing on the applicant's eligibility being distinct and separate items is upheld, the Court overlooks that local law enforcement's "notification" is ***not*** what Appellee claims she was waiting for, because ***she never directed that local law enforcement perform the checks***. Tr., p. 53. Appellee testified that she did not use the local law enforcement agency to conduct background checks. Instead, she conducted her own checks using a GCIC terminal in her own office. *Id*. Because she had her own terminal with which to conduct (instant) background checks, she can not now be heard to argue that she must wait for a "notification" from local law enforcement about the results of a check she never even directed them to perform.

Appellee argued solely that she was waiting for one of the "reports" that the Opinion says is not required. Appellee

claims she was waiting for the FBI report of 129(d)(1). Brief of Appellee, p. 5. This report, however, is one which the Court ruled is not required, and cannot be required (because a probate court cannot order a federal agency to do anything). Under the Court's analysis, Appellee should not have been permitted to wait for a report that was not required.

CONCLUSION

Because the Opinion overlooks Appellee's factual representations, and because the Opinion misconstrues the applicable statute, Appellant respectively requests that this Court reconsider its Opinion.

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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 in Support of Motion for Reconsideration by mailing a copy first class mail postage prepaid to him at 10 Brown Street; Newnan, Georgia 30264.

Dated May 31, 2007

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