IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER PUCKETT, Plaintiff, v. KELLEY S. POWELL, in her official capacity as Probate Judge for Henry County, Georgia, Defendant.	CIVIL ACTION FILE NO. 1:06-CV-2382-BBM

O R D E R

This civil rights matter, alleging violations of state and federal law arising out of the administration of Georgia's gun licensing system, is before the court on the Brief in Support of Motion to Alter or Amend Judgment [Doc. No. 39] filed by Defendant, as well as the Motion for Summary Judgment [Doc. No. 32], Motion for Attorney's Fees and Costs [Doc. No. 37], and Amended Motion for Attorney's Fees and Costs [Doc. No. 38] filed by Plaintiff.

I. Factual and Procedural Background

With one exception that is not relevant to the issues in this Order, the parties have stipulated to the following facts for all purposes in this proceeding. On September 25, 2006, Plaintiff Christopher Puckett attempted to renew his Georgia Firearms License ("GFL") at the Henry County Probate Court. Lenora Harris-Land, a deputy clerk employed by the Court, attempted to assist him. She requested, and

Mr. Puckett provided, his social security number ("SSN"). Ms. Harris-Land did not provide him written notice, and he was never told by what statutory or other authority his SSN was requested or how it would be used. Mr. Puckett requested a temporary renewal GFL, but because of some confusion as to certain recent changes to the Georgia licensing statute, Ms. Harris-Land told him that such temporary licenses were no longer available from the Henry County Probate Court. Because of this misunderstanding, Mr. Puckett left the Probate Court's office without receiving his temporary GFL.

Almost immediately thereafter, on October 5, 2006, Mr. Puckett filed this action against Defendant Probate Judge Kelley S. Powell in her official capacity, complaining of violations of the Federal Privacy Act of 1974 and Georgia state law. Four days later, Defendant issued Mr. Puckett a temporary GFL, and wrote a letter to Mr. Puckett's counsel, informing him that his SSN had been redacted from his application. In January 2007, when Mr. Puckett's temporary GFL expired, Defendant issued him a renewal GFL. Defendant acknowledges that Mr. Puckett did not receive his permanent renewal GFL within sixty days as required by Georgia law, even though (1) Defendant never received a report from a law enforcement agency, within fifty days from the date of Plaintiff's renewal GFL application, indicating any derogatory information bearing on his eligibility, (2) Defendant was

never aware of any facts, within sixty days of Plaintiff's renewal GFL application, establishing his ineligibility, and (3) Plaintiff complied, within sixty days of his renewal GFL application, with all requirements of O.C.G.A. § 16-11-129 for obtaining the same.

On August 2, 2007, the court granted Mr. Puckett's Motion for Summary Judgment in part, and requested that his attorney submit evidence of the fees and costs incurred in this action. However, it reserved judgment on one issue regarding Mr. Puckett's SSN, as discussed in the following section.

II. Plaintiff's Motion for Summary Judgment

In its Order of August 2, the court granted Plaintiff's Motion for Summary Judgment in many respects, but reserved judgment on whether to order Defendant to expunge Plaintiff's SSN from the Probate Court's system and records. Because Defendant stated that she had already done so, but failed to provide any evidence of the same, the court allowed her fourteen days from the date of that Order to file an affidavit of a person with knowledge verifying that Mr. Puckett's SSN had indeed been expunged. As Defendant has since filed that affidavit, the request for an injunction requiring her to expunge Plaintiff's SSN is DENIED AS MOOT.

III. Defendant's Motion to Alter or Amend Judgment

A. Legal Standard

A motion to alter or amend judgment under Federal Rule of Civil Procedure 59 "shall be filed no later than 10 days after entry of the judgment." See Fed. R. Civ. P. 59(e). Rule 54 defines a judgment as "a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). Because in its last Order the court requested an affidavit from Defendant and an attorney's fees petition, it has technically not yet entered judgment. For this reason, Mr. Puckett argues that Defendant's Motion to Alter or Amend Judgment is premature and should not be considered. See Fed. R. Civ. P. 59(e). However, the court feels that to accept Plaintiff's argument and decline to decide this important issue now would be to elevate procedure over substance. Accordingly, the court will simply construe Defendant's Motion to Alter or Amend Judgment under 59(e) as a Motion for Reconsideration.

Under this court's Local Rules, "[m]otions for reconsideration shall not be filed as a matter of routine practice." L.R. 7.2E, N.D. Ga. As indicated by the language of this rule, motions for reconsideration are not to be filed as a matter of course, but only when "absolutely necessary." Id.; Pres. Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995) (O'Kelley, J.). Reconsideration is only "absolutely necessary" where there is:

(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact. Jersawitz v. People TV, 71 F. Supp. 2d 1330, 1344 (N.D. Ga. 1999) (Moye, J.); Paper Recycling, Inc. v. Amoco Oil Co., 856 F. Supp. 671, 678 (N.D. Ga. 1993) (Hall, J.). Given the narrow scope of motions for reconsideration in this court, there are a variety of circumstances under which a motion for reconsideration is inappropriate. Parties may not use a motion for reconsideration as an opportunity to show the court how it "could have done it better" the first time. Pres. Endangered Areas of Cobb's History, Inc., 916 F. Supp. at 1560. Similarly, motions for reconsideration may not be used to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind. Brogdon *ex rel.* Cline v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000) (Murphy, J.); Johnson v. United States, No. Civ. A. 1:96CV1757JOF, 1999 WL 691871, at *1 (N.D. Ga. July 14, 1999) (Forrester, J.). Also, a "reconsideration motion may not be used to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler v. Wallace Computer Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001) (Story,

J.) If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied.

B. Analysis

In its August 2 Order, this court determined that Defendant violated both federal and state law. Regarding the latter finding, the court held that Defendant committed a technical violation of the Georgia firearms licensing statute by failing to issue Mr. Puckett a renewal license within sixty days of his application. In the course of so holding, the court noted that although Defendant appeared to argue that she was not required to issue Plaintiff a license since she never received a report from a law enforcement agency within fifty days of his application, "no such report [was] required." (Aug. 2, 2007 Order 8 n.6 (citing O.C.G.A. § 16–11-129(d)(4)).) This court so held, because although the statute required a law enforcement agency conducting a background check to "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 . . . renewal license," it also provides that "[w]hen 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." O.C.G.A. § 16-11-129(d)(4).[1] The court construed the word "report" in the latter

[1]That code provision provides in full:

clause to be synonymous with the former clause's requirement that the law enforcement agency "notify the judge . . . by telephone and in writing." Id. As this court read the statute, if the law enforcement agency did not make "any findings relating to the applicant which may bear on his or her eligibility for a . . . renewal license," the agency was not required to "report" anything to the probate judge within fifty days at all. Id.

However, in her Brief in Support of Motion to Alter or Amend Judgment, Defendant argues that there has been an intervening change in the law since the court's August 2 Order.[2] Defendant brings to the court's attention a recent decision

> (4) 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. The law enforcement agency shall return the application and the blank license form with the fingerprint thereon directly to the judge of the probate court within such time period. 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.

O.C.G.A. § 16-11-129(d)(4).

[2]Although the case in question was handed down on May 25, 2007, several months prior to the court's August Order, Defendant presumably means that this case is "intervening" in the sense that it was handed down after the Motion for Summary Judgment was fully briefed.

of the Georgia Court of Appeals, Moore v. Cranford, No. A07A0316, 2007 WL 1518911 (Ga. App. May 25, 2007), which focused on the proper meaning of the word "report" in O.C.G.A. § 16-11-129. Although acknowledging that "the word 'report' in [that] context is ambiguous," it held as follows:

> [W]e construe 'report' as used here to mean an official, written evaluation of a candidate – the 'appropriate report' referenced in OCGA § 16-11-129(d)(1) and (d)(2). And we construe 'notify' to mean that the local law enforcement agency must advise the court in writing and by telephone that the requisite background checks were performed and that no disqualifying or derogatory information was discovered as a result of those background checks. *Only when such notification has been received may the probate court issue the license.*

Moore, 2007 WL 1518911, at *4 (emphasis added). In other words, and contrary to this court's holding in its previous Order, the Moore court read the statute to mean that independent of the duty of law enforcement agencies to issue a "report" in some circumstances, they are *always* required to "notify" the probate court of the results of the background investigation by telephone and in writing, and in fact a probate judge may not issue a renewal license until it receives that notification. Id. at *5 (holding that because the probate court may only issue a license if it discovers no derogatory information, "the 60-day period is implicitly extended by the statute itself when necessary to accommodate any delays that reasonably may be attributed to the investigative process").

Defendant now argues that Moore controls this case because it is "undisputed" that Defendant never "receive[d] any report" from a law enforcement agency within sixty days of Plaintiff's application. (Def.'s Br. in Supp. of Mot. to Alter or Amend J. 2 (citing Consent Order Stipulating to Facts ¶¶ 14-15).) However, this proposition misses the mark, for two reasons. First, the stipulated facts do not unequivocally support that proposition at all.[3] The fifteenth stipulated fact simply states that Defendant was never made aware of any facts establishing ineligibility for a GFL within 60 days – yet that is irrelevant to Moore's holding, which mandates that a probate judge receive notification from a law enforcement agency whether an applicant is found ineligible or not. Moore, 2007 WL 1518911, at *4. Similarly, the fourteenth stipulated fact provides only that "Defendant did not receive a report from a law enforcement agency, within 50 days following the date of Plaintiff's application for a renewal GFL, indicating any derogatory information bearing on

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[3]The stipulated facts Plaintiff cited are as follows:

> 14. Defendant did not receive a report from a law enforcement agency, within 50 days following the date of Plaintiff s application for a renewal GFL, indicating any derogatory information bearing on Plaintiff s eligibility for a GFL.
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> 15. Defendant was not made aware, within 60 days of the date of Plaintiff's application for a renewal GFL, of any facts establishing ineligibility for a GFL.

(Consent Order Stipulating to Facts ¶¶ 14-15.)

Plaintiff's eligibility for a GFL." (Consent Order Stipulating to Facts ¶ 14.) But, of course, whether the probate judge received a report indicating any derogatory information is different from whether he received a report at all. In sum, these stipulated facts are ambiguous insofar as they could mean that the probate judge either received a report free of derogatory information, or never received any report at all.

Second, and more problematic, even if the court assumes that the latter meaning of the stipulated fact was the one intended by the parties, the use of the word "report" itself is ambiguous in this stipulated fact, just as it was in the Georgia code provision that it mirrors. Compare Consent Order Stipulating to Facts ¶ 14 ("Defendant did not receive a report from a law enforcement agency . . . indicating any derogatory information bearing on Plaintiff's eligibility for a GFL.") with O.C.G.A. § 16-11-129(d)(4) ("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."). Thus, absent evidence to the contrary, the court is bound by the Moore court's holding in this context – namely, that the "report" that is required within fifty days, unless no derogatory information is found, is "an official, written evaluation of a candidate." Moore, 2007 WL 1518911, at *4. And Moore reaffirms that such an "official, written evaluation" was not required in this

case, because the Moore court explicitly discussed the Georgia code's exception to the "report" requirement when a background check revealed no derogatory information. Id. (citing O.C.G.A. § 16-11-129(d)(4)) (acknowledging that local law enforcement agency is not required to make a "report" on an applicant when no derogatory information is found bearing on the applicant's eligibility).

The holding in Moore was merely that the probate judge must be *notified* of the results of the background check before he may issue a license. Id. ("Only when such notification has been received may the probate court issue the license."). Based on this holding, the only fact that would save Defendant from liability under Moore would be that the law enforcement agency failed to "notify" her of any relevant background check findings within the sixty day period – including the fact that it did not discover any derogatory information. Id. (holding that a probate judge may not issue a GFL unless he or she possesses all relevant information on the applicant, which includes "[t]he fact that the agency found no derogatory information"). Unfortunately, the parties at summary judgment failed to stipulate as to whether the law enforcement agency ever specifically "notified" the probate judge of any of its findings, including that no derogatory information was found.[4] Id. Although it is

[4]If the law enforcement agency failed to so notify the probate judge, then Plaintiff is correct that Moore not only controls the interpretation of this case but would also likely mandate an amendment of the court's judgment to reflect that Defendant did not violate the Georgia code provision. But if the law enforcement agency notified the probate judge

undisputed here that the judge was never notified of any derogatory or disqualifying information within the time period, there are no facts before the court indicating the inverse: that the probate judge *was* notified by law enforcement that it found *no* such information. Based upon the stipulation of the parties, the court has no way of knowing whether the probate judge missed the sixty-day limit to "accommodate any delays that reasonably may be attributed to the investigative process," or for some other reason that the Georgia courts would not consider an exception under this statute. Id. at 5. In the absence of such facts, the court feels that to reconsider its judgment now would simply be to allow Defendant "to offer new legal theories [and] evidence that could have been presented in conjunction with the previously filed motion or response." Adler, 202 F.R.D. at 675 (citation omitted). Accordingly, the court declines to reconsider or amend its August 2 Order.

C. Counsel's Failure to Inform Court

At the conclusion of her Motion to Alter or Amend, Defendant somewhat ominously mentions that Plaintiff's counsel, John R. Monroe, also represented the Moore plaintiff, and "despite being aware of the issuance of the Georgia Court's decision [in that case], failed to apprise this Court of such ruling." (Def.'s Br. in Supp. of Mot. to Alter or Amend J. 3 n.2.) However, Mr. Monroe filed Mr. Puckett's

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that it found no derogatory information, and the probate judge nevertheless failed to issue the renewal license within that time period, the court would not disturb its judgment.

Motion for Summary Judgment in the instant case on March 27, 2007, while Moore was not decided until about two months later, on May 25, 2007. It is true that Mr. Monroe failed to inform the court of the Moore holding when it was handed down, and the court, being unaware of its existence, assigned the word "report" a different interpretation than the Georgia Court of Appeals did. Given that Moore is clearly relevant to the facts of this case, it would have been helpful if Mr. Monroe had brought it to the court's attention at the time it was handed down. Nevertheless, the court does not find Mr. Monroe's conduct sanctionable here. First, a writ of certiorari is currently pending before the Georgia Supreme Court in that case. Second, as explained above, because there are no stipulated facts here directly discussing whether Defendant was notified of the results of the background check, Moore is not controlling, and therefore, Mr. Monroe was under no mandatory obligation to apprise the court of that decision.[5]

[5]Of course, the situation would have been different if the Moore holding had been directly on point, or if it had been handed down prior to when Mr. Monroe filed Mr. Puckett's summary judgment motion. See Jorgenson v. County of Volusia, 846 F.2d 1350, 1352 (11th Cir. 1988) (affirming award of sanctions when appellants, "[w]ith apparently studied care . . . withheld the fact that the long-awaited decision by the Supreme Court of Florida [that one of appellants' lawyers was involved with] had been handed down"; despite appellants' *post hoc* arguments that decision was not controlling, they "had a duty to refrain from affirmatively misleading the court as to the state of the law").

IV. Plaintiff's Motion and Amended Motion for Attorney's Fees and Costs

In its August 2 Order, the court gave Plaintiff fourteen days "to file a proper application for his reasonable expenses and attorney's fees, including all information required by Eleventh Circuit precedent for such applications." (Aug. 2, 2007 Order 12-13.) The attorney's fee determination is left to the sound discretion of this court. Weeks v. S. Bell Tel. & Tel. Co., 467 F.2d 95, 97 (5th Cir. 1972).[6] The district judge is required to undertake a so-called "lodestar" analysis in determining the reasonableness of attorney's fees requested. Natco Ltd. P'ship v. Moran Towing of Fla., Inc., 267 F.3d 1190, 1196 (11th Cir. 2001) (affirming award of attorney's fees pursuant to a contract). The court should first determine the lodestar, which is the number of hours reasonably worked by a lawyer at a reasonable hourly rate. The court "is itself an expert on the question [of attorney's fees] and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to value." Norman v. Hous. Auth. of Montgomery, 836 F.2d 1292, 1303 (11th Cir. 1988) (citation and internal quotations omitted). The party seeking attorney's fees "is responsible for submitting satisfactory evidence to establish both that the requested

[6] In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

rate is in accord with the prevailing market rate and that the hours are reasonable." Duckworth v. Whisenant, 97 F.3d 1393, 1396 (11th Cir. 1996). "After determining the lodestar, the court may adjust the amount depending upon a number of factors, including the quality of the results and representation of the litigation." Id.; see also Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) (noting that "[t]here is no precise rule or formula for making these determinations."). Moreover, the court is mindful that "[a] request for attorney's fees should not result in a second major litigation." Hensley, 461 U.S. at 437.

Here, Plaintiff's counsel, Mr. Monroe, filed an affidavit stating that he spent 30.9 hours working on the case, at an hourly rate of $250. That total, combined with postage expenses of $2.31, is $7,727.31. First, the court considers whether Plaintiff has requested a reasonable hourly rate. Reasonable hourly rates are to be measured by the "prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. 886, 895 (1984). The applicant attorney's customary billing rate is ordinarily the best evidence of his market rate, although that information is not necessarily conclusive. Dillard v. City of Greensboro, 213 F.3d 1347, 1354-55 (11th Cir. 2000). Counsel for Plaintiff has provided an affidavit to support the reasonableness of his requested hourly rate, and the defendant has not contested the reasonableness of the

$250.00 hourly rate. Based on the court's own knowledge of prevailing market rates, the court finds it to be reasonable.

Next, the court must determine whether a reasonable number of hours were expended on the legal work done for Plaintiff. The court "should exclude from this initial fee calculation hours that were not 'reasonably expended,'" including "excessive, redundant, or otherwise unnecessary" work. Hensley, 461 U.S. at 434. Defendant argues that the attorney's fees award should be reduced because Plaintiff was not successful on all of the claims asserted. Defendant anticipates that this court would reconsider its ruling on Plaintiff's claim made pursuant to O.C.G.A. §16-11-129(d)(4), and has asked this court to deduct from an attorney's fee award for time spent on that claim. However, because the court has not changed its ruling on that claim, Defendant's argument in that regard cannot prevail.

Defendant also points out that Plaintiff was not successful on his claim made pursuant to the Georgia Constitution, and presumably seeks a reduction of the fee award on that basis. However, Plaintiff states that he abandoned his Georgia Constitutional claim, and did not devote "more than a *de minimus* amount of time to that claim." (Pl.'s Mem. of Law in Supp. of Mot. for Att'ys Fees & Costs 4.) Plaintiff's filings support this contention, and the court finds that no deduction is called for due to work allocated to this claim.

Defense counsel has provided a fee schedule that is capable of being reviewed item-by-item. An examination of the exhibit submitted by Plaintiff's counsel demonstrates that he spent a reasonable amount of time researching, writing, and completing legal tasks. The court cannot point to any specific tasks or activities that were unnecessary or redundant. As such, the court finds the number of hours worked reasonable, especially considering the amount of time spent on the case and the degree of success achieved. Finally, the court finds no reason to adjust the amount from that requested. Accordingly, the court awards Plaintiff's counsel the full amount of $7,727.31.

V. Summary

For the foregoing reasons, the last outstanding issue in Plaintiff's Motion for Summary Judgment [Doc. No. 32] is DENIED AS MOOT. Plaintiff's Motion for Attorney's Fees and Costs [Doc. No. 37] and Amended Motion for Attorney's Fees and Costs [Doc. No. 38] are GRANTED, and Plaintiff's counsel is hereby AWARDED $7,727.31 in attorney's fees. Defendant's Motion to Alter or Amend Judgment [Doc. No. 39] is DENIED. Finding no outstanding issues remaining, this case is DISMISSED.

IT IS SO ORDERED, this 21st day of August, 2007.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE