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 Plaintiff's Motion for Summary Judgment [Doc. No. 32].

I. Factual and Procedural Background

With one exception which 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.

Mr. Puckett filed an Amended Complaint with leave of this court on December 22, 2006, and now seeks declaratory and injunctive relief, as well as costs and attorney's fees, for violations of the Federal Privacy Act under 42 U.S.C. § 1983 and certain provisions of the Georgia code dealing with the carrying of firearms. See O.C.G.A. § 16-11-129.[1]

[1]In his Amended Complaint, Mr. Puckett also appears to reference a violation of certain rights protected by the federal and Georgia constitutions. (See Am. Compl. ¶¶ 1, 44.) Defendant argued in her response brief that these claims should be dismissed, but Mr. Puckett did not respond to these arguments. Regardless, given that Mr. Puckett does not

II. Motion for Summary Judgment Standard

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material if it "might affect the outcome of the suit under the governing law." Id. Here, because the parties agree that there are no genuine issues of material fact in dispute, the court will proceed to determine whether any federal or state statutory violations have occurred, and if so, whether to grant Plaintiff the relief he requests.

III. Analysis

A. Federal Privacy Act Claim

The Eleventh Circuit recently held that 42 U.S.C. § 1983 provides a private right of action for plaintiffs to sue for violations of the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 2194, 5 U.S.C. § 552a (note). See Schwier v. Cox, 340 F.3d 1284,

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discuss these alleged violations in the context of specific counts in his Amended Complaint, and fails to meaningfully address these counts in his briefs on summary judgment, the court deems them abandoned.

1292 (11th Cir. 2003).[2] Section 7(b) of the Privacy Act provides that "[a]ny Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."[3] 88 Stat. at 1909. Plaintiff does not,

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[2]For the Eleventh Circuit's brief discussion of the background of § 7 of the Privacy Act, and specifically why it is not located in the United States Code and yet remains binding law, see Schwier, 340 F.3d at 1288-89.

[3]Section 7 of the Privacy Act of 1974 provides in its entirety:

> (a)
>
> > (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.
> >
> > (2) the provisions of paragraph (1) of this subsection shall not apply with respect to--
> >
> > > (A) any disclosure which is required by Federal statute, or
> > >
> > > (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
>
> (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

88 Stat. at 1909.

however, assert a claim under § 7(a) of the Privacy Act, which forbids government entities from denying rights, benefits, or privileges to individuals based on their refusal to disclose their SSNs. Because of this, although Defendant acknowledges that she failed to provide Mr. Puckett proper § 7(b) notice at the time she requested his SSN, she protests that there can be no § 1983 liability since there was no substantive § 7(a) violation, and thus Mr. Puckett suffered no significant deprivation, detriment, or harm. (See Def.'s Resp. in Opp'n to Pl.'s Mot. for Summ. J. 10 ("If an individual suffers no deprivation under 7(a), then a single, isolated violation of 7(b), would not appear to warrant the imposition of injunctive relief.").)

However, Defendant fails to cite any convincing case law for this proposition. Defendant's most relevant case, Chambers v. Klein, 419 F. Supp. 569, 580 (D.N.J. 1976), is distinguishable on its facts. The Chambers court found that "[u]nder the circumstances of [that] case," there was no § 7(b) violation, and thus, no basis to enter a preliminary injunction, in part because the disclosure of the SSNs at issue was found to be within one of § 7(a)'s exceptions. Id. Even were it to find that a § 7(b) violation had occurred, the court wrote, it had no basis to enjoin the federal government from administering a federal program on the basis of a technical violation of the Privacy Act. Id. But nowhere did that court state the broad

proposition Defendant urges here – that a violation of § 7(a) is a prerequisite to a finding of a § 7(b) violation.[4]

In contrast, Mr. Puckett has cited several cases where a § 7(b) claim survived even in the absence of a separate claimed violation of § 7(a). See Greater Cleveland Welfare Rights Org. v. Bauer, 462 F. Supp. 1313, 1319-20 (N.D. Ohio 1978); see also Doe v. Sharp, 491 F. Supp. 346, 349-50 (D. Mass. 1980) (citing Greater Cleveland, 462 F. Supp. at 1319-20) (finding § 7(b) claim viable even after finding that there was no violation of § 7(a)). Even though it "would appear that the problem of improper use [of SSNs] was the prime moving force behind" the enactment of § 7 of the Privacy Act, see Greater Cleveland, 462 F. Supp. at 1320, and thus failure to comply with § 7(b) in the absence of § 7(a) can be regarded as only a "technical violation," see, e.g., Chambers, 419 F. Supp. at 580, Defendant cites no cases where the court declined to find a violation on the basis that the violation was only "technical." Indeed, despite also acknowledging that a violation of § 7(b) may only be

[4]Another of Defendant's citations is even less applicable. Defendant cites United States v. Carrazana, 921 F.2d 1557, 1563 (11th Cir. 1991) for the proposition that "[i]t is beyond question that not every violation of a federal statute results in a deprivation sufficient to invoke 1983 liability. . . . especially . . . where there is no resulting harm or deprivation to the plaintiff." (See Def.'s Resp. in Opp'n to Pl.'s Mot. for Summ. J. 12.) Unfortunately for Defendant, that case does not involve or even mention 42 U.S.C. § 1983, but rather discussed only totally unrelated issues such as whether a federal court order was a prerequisite to the lawful interception of cell phone communications. See Carrazana, 921 F.2d at 1562.

"technical" in the absence of a § 7(a) violation, the Greater Cleveland court nevertheless found that § 7(b) did afford plaintiffs an implied right of action for prospective relief. Greater Cleveland, 462 F. Supp. at 1320-21. And in a factually similar unpublished opinion cited by both parties, the Eleventh Circuit held that in relation to the rights protected by § 7(b) (alleged violations of § 7(a) were not before the court on appeal), not only does a repeat applicant have a "concrete, legally cognizable interest in the GFL application process," but he can also show a "sufficient imminence of future harm" caused by § 7(b) violations, as a result of his need to apply for a new GFL every five years. Camp v. Cason, 220 Fed. Appx. 976, 981 (11th Cir. 2007) (unpublished).

Accordingly, in the absence of any persuasive case law suggesting otherwise, the court finds that because the Eleventh Circuit has held that violations of the Privacy Act of 1974 are actionable under 42 U.S.C. § 1983, and Defendant has acknowledged that she violated § 7(b) of that Act in her official interactions with Mr. Puckett, he is entitled to judgment as a matter of law on his Privacy Act claim.[5]

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[5]As a result of this finding, the court need not address Plaintiff's frivolous contention that he suffered a significant deprivation under § 7(b) because Defendant improperly "used" his SSN by publicly filing Mr. Puckett's renewal application – which is directly at issue in this case – on the court's public PACER system. (Pl.'s Reply in Supp. of his Mot. for Summ. J. 2-3 ("Defendant electronically filed Plaintiff's renewal GFL application in this case, complete with Plaintiff's SSN. . . . Thus, Defendant made Plaintiff's SSN publicly available.").) First, Mr. Puckett necessitated the filing of his GFL application when he brought this action. More to the point, the document which contains Mr. Puckett's SSN,

B. Georgia State Law Claim

Georgia law provides that "[n]ot later than" sixty days after an applicant applies to renew his firearms license, the probate court judge "shall issue" the renewal license, as long as the law enforcement agency performing a background check has not reported any facts establishing the applicant's ineligibility, and the judge determines that the applicant has met all qualifications, is of good moral character, and has complied with all statutory application requirements. See O.C.G.A. § 16-11-129(d)(4).[6] Defendant acknowledges that Mr. Puckett did not receive his renewal license within sixty days as required by the statute. However, she argues that because he was issued a temporary ninety-day license that was "valid in the same manner and for the same purposes as a five-year license," see O.C.G.A. § 16-11-129(i)(4) while waiting for his new GFL, Plaintiff was never deprived of a valid firearms license and thus that "[i]t would be incongruous to hold Defendant liable for providing Plaintiff with the very thing requested by him." (See

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although originally not filed under seal, was placed under seal as soon as the matter came to the attention of the court, and it is not now available to the public.

[6]Although Defendant appears to argue that she was not required to issue him a license because she never received a report from a law enforcement agency within fifty days of his application, no such report is required. See O.C.G.A. § 16–11-129(d)(4) (requiring law enforcement agency to notify probate judge with fifty days of any findings which bear on applicant's eligibility, but not requiring such a report if "no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license").

Def.'s Resp. in Opp'n to Pl.'s Mot. for Summ. J. 18.) Plaintiff responds that the stipulated facts demonstrate that he was entitled to a temporary GFL as of September 25, 2006 under Georgia law, but was refused the same on that date, and that this refusal was one of the reasons why he initiated his lawsuit in the first place. Only after Mr. Puckett moved for a temporary restraining order did he actually receive the temporary GFL on October 9, 2006, which was the day before a hearing on that motion.

As noted, Defendant admits that she did not issue a renewal GFL to Plaintiff within sixty days of his application, as he applied on September 25, 2006, but did not receive his five-year license until January 8, 2006. Though it is true that this again constitutes a mere technical violation – particularly in light of the fact that he was at no time deprived of a valid firearms license – it is, nevertheless, a violation. And besides arguing that finding a violation here would be "incongruous," Defendant fails to cite any case law for why she should not be liable for an admitted violation of the Georgia firearms licensing statute. Accordingly, the court finds judgment as a matter of law in favor of Plaintiff on his claim for violation of O.C.G.A. § 16-11-129(d)(4).

IV. <u>Requested Relief</u>

Having found actual, albeit technical, violations of both federal and state law,

the court turns to Mr. Puckett's specific requests for relief. He first requests a declaration that Defendant violated both § 7(b) of the Federal Privacy Act and Georgia code provision § 16-11-129(d)(4) – which, as noted, the court has found above. In addition, Defendant requests (1) a declaration that Defendant violated Article I, Section I, ¶ VIII of the Georgia Constitution; (2) an injunction requiring Defendant to provide the information required by § 7(b) of the Privacy Act, if Defendant chooses to ask GFL applicants for their SSNs; (3) an injunction ordering Defendant to issue GFLs to all eligible applicants within 60 days of the date of application; (4) an injunction requiring Defendant to expunge Plaintiff's SSN from her systems and records; and (5) attorney's fees and costs pursuant to 42 U.S.C. § 1988. The court will briefly address each in turn.

As to the first request, the court will not declare that Defendant violated Article I, Section I, ¶ VIII of the Georgia Constitution.[7] Not only is Plaintiff's assertion of this violation not fully stated,[8] he did not assert a violation of the

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[7]Article I, Section I, ¶ VIII of the Georgia Constitution provides: "The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne."

[8]This portion of Mr. Puckett's "Relief Requested" section reads, in part, as follows:

> Plaintiff requested the following substantive relief:
> . . .
> 4. A declaration that Defendant violated [sic]
> 5. [sic] Article I, Section I, ¶ VIII of the Georgia Constitution.
> . . .

Georgia Constitution as a separate count in the Amended Complaint, and has also not asserted any such violation in his Motion for Summary Judgment (except in his prayer for relief), as previously mentioned. (See supra note 1.) Accordingly, this request for relief is DENIED.

As to the second request, the court hereby DIRECTS Defendant to comply in the future with all federal law binding upon her, including § 7(b) of the Privacy Act, which provides that if she "requests an individual to disclose his social security account number[, she] shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." 88 Stat. at 1909.

As to the third request, the court hereby DIRECTS Defendant to comply with all applicable Georgia code provisions, including the following one related to firearm licensing:

> 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).

As to the fourth request, Defendant argues that she has already expunged

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(Pl.'s Mem. of Law in Supp. of his Mot. for Summ. J. 12.)

Plaintiff's SSN from the Probate Court's records, and that accordingly his request is moot and should be dismissed. Plaintiff points out that there is no evidence in the record that Defendant actually did this, besides this lone assertion in her response brief. Accordingly, Defendant has fourteen days to file an affidavit stating that Mr. Puckett's SSN has been expunged from the Probate Court's system and records. At that time, the court will deny this request as moot.

Finally, as to the fifth request, Plaintiff requests costs and attorney's fees pursuant to 42 U.S.C. § 1988. That section provides that "[i]n any action or proceeding to enforce a provision of . . . [§ 1983, among others,] the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs . . . ." 42 U.S.C. § 1988(b).[9] Because Mr. Puckett is a prevailing party, he is thus entitled to such reasonable fees. Plaintiff has fourteen days from the date of this Order to file a proper application for his reasonable expenses and attorney's fees, including all information required by Eleventh Circuit precedent for such

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[9]Section 1988(b) does except from the cases requiring payment of attorney's fees "any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity . . ., unless such action was clearly in excess of such officer's jurisdiction." 42 U.S.C. § 1988(b). However, since it appears that the Defendant's actions were taken in an administrative capacity, rather than a "judicial capacity," the exception would not seem to apply. Cf. Stump v. Sparkman, 435 U.S. 349, 362 (1978) (defining a "judicial capacity" action as one that "relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity").

applications. Defendant will then have fourteen days to respond to Plaintiff's petition.

V. Summary

For the foregoing reasons, Plaintiff's Motion for Summary Judgment [Doc. No. 32] is GRANTED IN PART and the court has RESERVED ITS RULING IN PART, as set forth above. Plaintiff has fourteen days from the date of this Order to file a proper petition for his reasonable costs and attorney's fees, and Defendant has fourteen days to respond to that petition. In addition, Defendant has fourteen days from the date of this Order to file an affidavit from a person with knowledge, stating that Mr. Puckett's SSN has been expunged from the Probate Court's system and records. If such an affidavit is filed, the court will rule on this remaining issue at that time, and deny Mr. Puckett's request for an injunction as moot.

IT IS SO ORDERED, this 2nd day of August, 2007.

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