

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

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

**DEFENDANT’S BRIEF IN SUPPORT OF MOTION TO
ALTER OR AMEND JUDGMENT**

COMES NOW, the Defendant and shows the Court as follows:

Plaintiff Was Not Entitled To Summary Judgment On The Ground That Defendant Failed To Issue Him A Renewal Firearms License Within 60 Days Of His Application Therefor.

This Court has determined that Defendant violated O.C.G.A. §16-11-129(d)(4)¹, as a matter of law, when she failed to issue Plaintiff a renewal firearms license within 60 days of his application made on September 25, 2006. (Order, pp.6-9 at [Doc. No. 36]). Accordingly, this Court granted summary judgment to Plaintiff as to this issue. However, the Georgia Court of Appeals has recently issued a decision which directly addresses this Court’s ruling.

In Moore v. Cranford, 2007 WL 1518911 (decided May 25, 2007), the Georgia Court of Appeals held that a probate court judge cannot be compelled to issue a

¹ O.C.G.A. §16-11-129(d)(4) provides in relevant part that “[n]ot later than 60 days after the date of 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 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 in this Code Section.”

firearms license within 60 days where the judge has failed to receive a report from the local law enforcement agency that the applicant has no criminal background that would bar the issuance of the license. The Court reasoned that the very purpose of having such background test conducted is:

[T]o protect the citizens of Georgia from a very wide range of potentially dangerous individuals, including convicted felons, fugitives from justice, illegal aliens, drug dealers, stalkers, addicts, the underage, the mentally defective, and those who have renounced their citizenship...[hence] the Legislature made it the *duty* of the probate court to see that none of these people obtained a license to carry a handgun. (Emphasis in original).

In Moore v. Cranford, the probate judge failed to issue the plaintiff a firearms license to the plaintiff within 60 days because the results of the plaintiff's criminal background check had not been received from law enforcement. The plaintiff argued that the probate court had no discretion not to issue the license even in the absence of a report from law enforcement; the Court of Appeals disagreed. In fact, the Court found that "[i]ssuing a license under such circumstances would be a gross dereliction of the probate court's statutory duty and would put the public at risk." Id. **In other words, the Court determined that the Probate Court's obligation to receive the results of the statutorily mandated background check served to override the 60-day time limit.**

In the instant case, it is undisputed that Defendant did not receive any report from law enforcement concerning the result of Plaintiff's criminal background check within 60 days of the date of Plaintiff's application. (¶14 thru ¶15, Stipulated Material Facts). Under these circumstances, this Defendant did not violate applicable Georgia

law as interpreted by the Georgia Court. Accordingly, this Defendant cannot be compelled to issue Plaintiff a firearms license within this time frame. Accord Moore v. Cranford, supra. Therefore, Plaintiff is not entitled to summary judgment as to this claim and this Court's Order should be amended pursuant to Fed.R.Civ.P. 59(e). See Prevatte v. French, WL 2128195 (N.D. Ga. July 24, 2007) (recognizing that Fed.R.Civ.P. 59(e) has been interpreted to allow for relief in situations "where the judgment is called into question by an intervening change in the controlling law.>").

In the instant case, Defendant respectfully submits that this Court's Order be amended in a manner as to be consistent with the Georgia Court of Appeals' ruling in Moore v. Cranford. Indeed, this Court's Order states that "Defendant fails to cite any case law for why she should not be liable for an admitted violation of [this] statute" (Order, p.9). The recent ruling of the Georgia Court of Appeals clearly constitutes an "intervening change in the controlling law" with respect to the interpretation of O.C.G.A. §16-11-129(d)(4).² Prior to this decision, there was no Georgia case interpreting this statute.

CONCLUSION

For all of the foregoing reasons, the instant Motion To Alter Or Amend should be granted.

This 6th day of August, 2007.

/s Patrick D. Jaugstetter
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² Interestingly, the plaintiff in Moore v. Cranford is represented by the same counsel as the instant Plaintiff. Plaintiff's counsel, despite being aware of the issuance of the Georgia Court's decision, failed to apprise this Court of such ruling.

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CERTIFICATE OF SERVICE

I certify that on the date shown below, I electronically filed **Defendant's Brief In Support Of Motion To Alter Or Amend Judgment** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

John R. Monroe, Esq.
Attorney for Plaintiff
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This 6th day of August, 2007.

/s Patrick D. Jaugstetter
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