

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

**COPY**

GEORGIACARRY.ORG, INC., and )  
 RYAN GILL, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 WILLIAM O'BRIEN, in his official capacity )  
 of Chief of Police of DeKalb County, )  
 Georgia, )  
 )  
 Defendants. )

CIVIL ACTION FILE NO.:

11-CV-7100-6

**Final order**

2013 DEC -6 PM 3:35  
 CLERK OF SUPERIOR COURT  
 DEKALB COUNTY, GA

**FILED**

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before this Court on Defendant's Motion for Summary Judgment, filed on August 13, 2013. The Plaintiffs filed a response to the motion on September 17, 2013. After reviewing the pleadings, and applicable case law, this Court finds that appointments are no longer required for weapons carry license applicants, therefore, this Court finds that the allegations contained in the Plaintiffs' Complaint are moot. Therefore, this Court HEREBY GRANTS the Defendant's Motion for Summary Judgment. This Court specifically finds as follows:

*Findings of Fact*

On or about May 4, 2011, Plaintiff Gill applied for a Georgia Weapons Carry License (hereinafter "GWCL") with the DeKalb County Probate Court. See Verified Complaint, ¶ 8. The Probate Court directed Plaintiff Gill to contact the DeKalb County Police Department (hereinafter "DCPD") to arrange for the fingerprinting portion of the background check as

required as O.C.G.A. § 16-11-129. *Id.* Plaintiff Gill alleges that when he contact the DCPD, he was informed that they require GWCL applicants to make appointments to be fingerprinted. *Id.* at ¶ 11-12. Plaintiff Gill alleges that he was informed that earliest appointment he could receive was on June 20, 2011. *Id.* at ¶ 14. On or about June 21, 2011, counsel for the Plaintiffs contacted an official within the DCPD complaining about the failure to comply with O.C.G.A. § 16-11-129(d)(4) in not allowing the fingerprinting to be completed within 30 days of applying for the GWCL.

On June 28, 2011, Plaintiffs filed a Verified Complaint seeking a Writ of Mandamus ordering the Defendant to comply with the provisions of O.C.G.A. § 16-11-129, and a declaration that Defendant, and thereby DCPD, must complete fingerprinting and background reports on GWCL applicants within 30 days of being requested. On September 12, 2011, the Defendant filed his Answer and Defenses to the Complaint. On August 13, 2013, the Defendant filed a Motion for Summary Judgment claiming that the Plaintiffs' claims are now moot. The Defendant argues that since the DCPD no longer requires appointments for fingerprinting for the background check of the weapons carry license, there is no longer a controversy for this Court to decide. See Affidavit of Major Karen Anderson, ¶4. The Plaintiffs' filed a response to the motion on September 17, 2013 and argued that the motion should be denied because the Defendant can return to the actions alleged in the Complaint.

#### *Conclusions of Law*

The purpose of summary judgment is to eliminate the need for trial by jury and to expeditiously dispose of litigation. The movant in a motion for summary judgment carries the burden of proving that there exists no genuine issue of material fact that Once the movant has

carried that burden, the burden shifts to the non-movant to present evidence that shows a genuine issue as to a material fact exists. Id. The nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue. See Dews v. Ratteree et al., 246 Ga. App. 324 (2000). Pursuant to O.C.G.A. § 9-11-56(c), if the evidence shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law, the motion should be granted and the judgment should be rendered.

The Defendant argues that since the DCPD no longer requires weapons carry license applicants to schedule fingerprinting appointments in order to complete the required background check, therefore, the allegations in Plaintiffs' Complaint are moot. A case is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights. See Scarborough Grp. v. Worley, 290 Ga. 234, 236 (2011) citing Collins v. Lombard Corp., 270 Ga. 120(1) (19981). However, a narrow exception to the doctrine of mootness exists when the issue is capable of repetition and yet evades review. See Hopkins v. Hamby Corp., 273 Ga. 19 (2000). The Plaintiffs argues that without allowing this case to continue to completion, the Defendant is not prevent from returning to the conduct as alleged in the Complaint.

This Court finds that the there has been no evidence presented to rebut the Affidavit of Major Karen Anderson. This Court finds that the DCPD no longer requires weapons carry license applicants to schedule fingerprinting appointments in order to complete the required background check. Therefore, this Court finds that the allegations contained in the Plaintiffs' Complaint are moot. With the allegation in the Complaint being rendered moot, this Court finds that the Defendant has demonstrated that there is no evidence to support essential elements of the

Plaintiffs' case. *See* Dodds v. Dabbs, Hickman, Hill and Cannon, LLP, A13A1273, 2013 WL 5763214 (Ga. Ct. App. Oct. 25, 2013). This Court also finds that the conduct alleged in the Plaintiffs' Complaint is not of the nature that, if resumed, would escape review. Therefore, this Court declines to issue an advisory opinion on the matter.

Based on the foregoing, this Court HEREBY GRANTS the Defendant's Motion for Summary Judgment.

IT IS SO ORDERED, this 6 day of December, 2013.



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CYNTHIA J. BECKER, Judge  
Superior Court of DeKalb County  
Stone Mountain Judicial Circuit

cc:

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