

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES CAMP,

Plaintiff,

v.

BETTY B. CASON, in her official
capacity as Probate Judge of
Carroll County, Georgia; and
BILL HITCHENS, in his official
capacity as the Commissioner of
the Georgia Department of
Public Safety,

Defendants.

CIVIL ACTION

NO. 1:06-CV-1586-CAP

O R D E R

This is a civil rights action commenced under 42 U.S.C. § 1983 for violations of the plaintiff's privacy rights. The plaintiff alleges that the Georgia Department of Public Safety and the Carroll County Probate Court violated federal law when they required the plaintiff to disclose his social security number in order to receive a firearms license.

This matter is before the court on the plaintiff's motion for a temporary restraining order or preliminary injunction [Doc. No. 2], defendant Betty Cason's motion to dismiss [Doc. No. 16], and defendant Bill Hitchens's motion to dismiss [Doc. No. 15].

Factual Background

The plaintiff possessed a Georgia Firearms License ("GFL") that was scheduled to expire on June 20, 2006. On June 14, 2006,

the plaintiff submitted a renewal application for a GFL to defendant Betty Cason, the Probate Judge of Carroll County, Georgia. The renewal application was created by the Department of Public Safety ("Department") pursuant to O.C.G.A. § 16-11-129(a). The Department has no other role in the licensure process and does not maintain or receive a copy of the completed application.

The renewal application asked the plaintiff to provide his social security number ("SSN") and information about his employment. The form failed to state, however, whether the disclosure of the plaintiff's SSN and employment information was mandatory or optional.

When the plaintiff declined to provide his SSN, Cason allegedly refused to process the plaintiff's renewal application.¹ The plaintiff then filed this action claiming that the renewal application provided by the Department violated the Privacy Act of 1974, which states, "It shall be unlawful for any . . . state, or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose [his] Social Security Number." The Privacy Act further provides that any state or local government agency asking an

¹ Although the plaintiff alleges that Cason refused to process his application, it is not clear to the court that the plaintiff completed each step necessary in the application process before leaving Cason's office.

individual to disclose his SSN must inform the individual whether the disclosure is mandatory or voluntary, by which statutory or other authority the number is solicited, and what use will be made of the SSN.

As relief for the defendants' alleged violation of the Privacy Act, the plaintiff asks the court for declaratory and injunctive relief. For example, the plaintiff asks the court to enjoin the defendants from requiring the disclosure of an individual's SSN as a precondition to obtaining a GFL and to declare that employment information is not relevant to eligibility for a GFL under O.C.G.A. § 16-11-129. The plaintiff also asks the court to order the defendants to expunge any references to his employment information and SSN in records maintained by the defendants.

Contemporaneous with the filing of his complaint, the plaintiff filed a motion for a temporary restraining order or a preliminary injunction [Doc. No. 2]. The plaintiff asked the court to issue an order compelling the defendants to accept his application for a renewal GFL and issue him a temporary GFL without demanding his SSN and employment information.

On August 11, 2006, the court granted the plaintiff's motion for a temporary restraining order [Doc. No. 13] and ordered Cason to accept and process the plaintiff's renewal GFL application even though the application did not contain the plaintiff's SSN. It is

undisputed that Cason processed the plaintiff's renewal application and issued him a temporary GFL pursuant to O.C.G.A. § 16-11-129(i) without requiring him to provide his SSN.

Approximately one week after the court granted the plaintiff's motion for a temporary restraining order, defendant Hitchens notified the court that the Department had revised the GFL application. The revised application asks the applicant for his or her SSN and employment information, but states that the information is optional. It also states that providing a SSN will help prevent misidentification, while providing employment information will help the county contact the applicant.

Because the Department revised its form and the plaintiff now has a temporary GFL, the defendants argue that the case is moot and should be dismissed. The plaintiff disagrees claiming that other applicants in other counties are still being required to disclose their SSN and employment information. The plaintiff further claims that the revised form still violates the Privacy Act because it fails to warn applicants of all the uses contemplated for their SSN and fails to inform applicants by what statutory or other authority their SSN is requested. Furthermore, even if the revised form did comply with the Privacy Act, the plaintiff argues that the court has not yet granted all of the relief he requested.

Legal Analysis

As an initial matter, the court granted the plaintiff's motion for a temporary restraining order on August 11, 2006 [Doc. No. 13]. Thus, the clerk is DIRECTED to remove the plaintiff's motion for a temporary restraining order or preliminary injunction [Doc. No. 2] as a pending motion from the court's docket.

Turning next to the defendants' motions to dismiss, it is well-settled that the exercise of federal court jurisdiction depends on the existence of a "case or controversy," and a federal court has no authority to give opinions on moot questions or abstract propositions. John Roe, Inc. v. United States, 142 F.3d 1416, 1420-21 (11th Cir. 1998) (citing North Carolina v. Rice, 404 U.S. 244, 246, 92 S. Ct. 402, 404 (1971), and Church of Scientology v. United States, 506 U.S. 9, 12, 113 S. Ct. 447, 449 (1992)). The Constitution's "'case or controversy' requirement mandates that the case be viable at all stages of the litigation; 'it is not sufficient that the controversy was live only at its inception.'" Brooks v. Georgia State Board of Elections, 59 F.3d 1114, 1119 (11th Cir. 1995) (citing C&C Products, Inc. v. Messick, 700 F.2d 635, 636 (11th Cir. 1983)). A case is rendered moot when events occurring after the commencement of a lawsuit "create a situation in which the court can no longer give the plaintiff meaningful relief." Jews For Jesus, Inc. v. Hillsborough County Aviation

Authority, 162 F.3d 627, 629 (11th Cir. 1998). In other words, "a case becomes moot when the issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome." Atlanta Gas Light Co. v. FERC, 140 F.3d 1392, 1401 (11th Cir. 1998) (citing Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944 (1969)). For example, in Johnson v. Florida High School Activities Association, Inc., 102 F.3d 1172 (11th Cir. 1997), the plaintiff brought suit alleging that his high school athletic association's eligibility requirements violated the ADA and the Rehabilitation Act. However, based on subsequent events (i.e., the close of the football season), the plaintiff's claim was rendered moot and dismissed. Id. at 1173.

Here, the claims in the plaintiff's complaint, like the claims in Johnson, have been rendered moot by events occurring after the commencement of this lawsuit. As set forth in detail above, after the plaintiff commenced this action, Cason processed the plaintiff's renewal application and issued the plaintiff a temporary GFL without requiring him to submit his SSN and employment information. Accordingly, the plaintiff's claims are no longer "live" and this court cannot offer meaningful relief to the plaintiff.

Although the plaintiff has received the primary benefit sought in the complaint, the plaintiff still argues that the case is not

moot. Focusing on the Department's decision to amend the GFL application and relying on cases decided under the voluntary cessation exception to mootness, the plaintiff first argues that the case is not moot because the Department's amended GFL application still violates the Privacy Act. Even if the Department's amended GFL application complied with the Privacy Act, the plaintiff submits that in reality, certain counties, other than Carroll County, are still requiring applicants to submit their SSN and employment information.

It is true that the voluntary cessation of a challenged practice does not render a case moot unless there is no reasonable expectation that the challenged practice will resume after the lawsuit is dismissed. DeFunis v. Odegaard, 416 U.S. 312, 318, 94 S. Ct. 1704, 1706 (1974). "Otherwise, a party could moot a challenge to a practice simply by changing the practice during the course of the lawsuit, and then reinstate the practice as soon as the litigation was brought to a close." Jews for Jesus, 162 F.3d at 629.

The voluntary cessation doctrine would be quite relevant if the question of mootness here had arisen solely by reason of a unilateral change in the GFL application by the Department. But mootness in the present case does not depend upon the Department's decision to amend the GFL application that was the subject of this

litigation. It depends, instead, upon the fact that Probate Court of Carroll County processed the plaintiff's renewal application and issued the plaintiff a temporary GFL without requiring him to submit his SSN or employment information. Thus, there is no meaningful relief left for the court to give the plaintiff.²

The plaintiff, nevertheless, claims that additional relief remains to be granted by the court. For example, the plaintiff points out that his request for attorney's fees and cost remains pending. "An interest in attorney's fees, [however], is insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." Lewis v. Continental Bank Corp., 494 U.S. 472, 480, 110 S. Ct. 1249, 1255 (1990). Thus, the mere fact that the plaintiff has requested attorney's fees and costs as the prevailing party does not preserve the plaintiff's claims.

Similarly, the plaintiff argues his request that the court order the defendants to expunge his SSN and employment information from their records remains pending. The court disagrees because there is no basis in the complaint for providing the plaintiff with the relief he seeks. Nothing in the complaint indicates that the

² The court, moreover, cannot find that there is any reasonable expectation that the GFL provided to the plaintiff will be revoked at the conclusion of the case.

plaintiff ever provided this information to the defendants. In fact, the basis of the complaint is that the defendants refused to process his renewal application for a GFL because the plaintiff declined to provide the defendants with his SSN and employment information. Furthermore, it is undisputed that the defendants issued the plaintiff his GFL without requiring him to provide his SSN and employment information as required by the court.

Conclusion

For the reasons discussed above, the clerk is DIRECTED to remove the plaintiff's motion for a temporary restraining order or preliminary injunction [Doc. No. 2] as a pending motion from the docket. The court, moreover, GRANTS defendant Betty Cason's motion to dismiss [Doc. No. 16] and defendant Bill Hitchens's motion to dismiss [Doc. No. 15]. The case is DISMISSED as moot and the clerk is DIRECTED to close the file.

SO ORDERED, this 11th day of September, 2006.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge