

Docket No. 10-11951-C

**The United States
Court of Appeals
For
The Eleventh Circuit**

**GeorgiaCarry.Org, Inc., *et.al.*, Appellants
v.
Pinkie Toomer, Appellee**

**Appeal from the United States District Court
For
The Northern District of Georgia
The Hon. Clarence Cooper, Senior Judge**

Reply Brief of Appellants

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Certificate of Interested Persons

Appellants certify that the Certificate of Interested Persons they filed in their opening Brief, together with the Certificate of Interested Persons filed by Appellees, are complete and accurate and require no additions.

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Argument and Citations of Authority

1. Appellee is Responsible for Her Delegated Authority

Appellee overlooks the fundamental issue in this case. The Court must accept as true all well-pled facts in the Amendment Complaint. Appellants alleged that Appellee had delegated to the Fulton County Probate Court Clerk, James Brock, the power to process GFL applications and to issue (or deny) GFLs. It was Mr. Brock who told Appellants' counsel that Appellate Goyke could not apply for a GFL on account of his non-residence in Georgia. Appellee has set up a system where she wants to have her cake and eat it, too. She delegated her authority to Mr. Brock, then defended herself saying she took no action. She did take action. She delegated her authority. She therefore assumed responsibility for the use of the authority she delegated.

Appellee attempts to minimize the effect of her delegation, saying she only delegated "her authority to make a decision as to the issuance or denial of such an application [for a GFL]." Brief of Appellee, p. 12. The problem is this particular fact is not in the record. The actual allegation in the Amended Complaint, R1-10-8, which this Court must take to be true, is "Defendant Toomer has largely delegated the authority *to receive* and

process GFL applications, and to make decisions regarding issuance and denial of GFLs, and even to sign GFLs, to the Clerk of the Probate Court of Fulton County and his staff.” Because Appellee delegated the entire process, including the receipt of applications, the Clerk’s statement to counsel that Appellant Goyke could not apply on account of his non-residency was properly taken by counsel to be a final decision on the matter.

Appellee makes no attempt to address the merits of the denial of Appellant Goyke’s right to apply for, and have processed, a GFL application. Appellants amply showed, in their opening Brief, how the denial violated Goyke’s fundamental constitutional rights. Appellee did not refute this.

2. The Right to Apply for a GFL and Have the Application Processed is the Relief Sought

In deciding a motion to dismiss for lack of standing, the trial court is not a fact finder, but the facts alleged in the complaint must be taken to be true. *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). Such facts must be viewed in a light most favorable to the plaintiffs. *Mega Life & Health Ins. Co. v. Pieniozek*, 516 F.3d 985, 989 (11th Cir 2008).

Appellee tries to obfuscate the real issue in this case by arguing that she has discretion to issue GFLs under Georgia law. While Appellants showed that issuing GFLs is ministerial and not discretionary, the truth is it

does not matter much for the purposes of this appeal whether issuance of GFLs is ministerial or not. Appellant Goyke was denied the right to *apply* for a GFL on account of his non-residency. All he seeks from the federal court system is a requirement that Appellee obey the Constitution and allow him to apply, and to have his application processed, without regard to his residency.

Appellee next attempts to show that the distinction between residency in a state versus a county is fatal to Appellants' case (Brief of Appellee, p. 18). She is wrong. Appellee is hung up on the specific wording of the Prayer for Relief in the Amended Complaint. Because, she says, the Amended Complaint asks that Appellants be permitted to apply and have processed their GFL applications without regard to their *state* of residency (i.e., not their *county* of residency), she must win. Appellee wrongly asserts that "a party must show that their injuries can be redressed by the specific relief requested, not by some hypothetical remedy that has not been sought." Brief of Appellee, p. 19. As support for this fallacious position, Appellee cites *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136=37 (1992).

The problem with Appellee's argument is two-fold. First, *Lujan* does not support Appellee's position, either on the pages Appellee cites or

anywhere else. Second, just the opposite is true. Courts “should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.” Fed.R.Civ.P. 54(c). *See also Driggers v. Business Mens’ Assurance Company*, 219 F.2d 292, 299 (5th Cir. 1982) (“[W]e do not thing that the plaintiff is limited to the ‘whole hog or none,’ for, as we heretofore noted, his complaint concludes with a prayer ‘for such other and further relief as plaintiff may show himself justly entitled to receive....’”) In the instant case, the Amended Complaint also includes in the Prayer for Relief, “Any other relief the court deems proper.” R1-10-15.

Finally, “The demand for relief does not constitute part of the pleader’s claim for relief, [so] a failure to demand the appropriate relief will not result in a dismissal. The question is not whether plaintiff has asked for the proper remedy but whether plaintiff is entitled to any remedy.” 10 Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, *Federal Practice and Procedure* § 2664 (3d ed. 1998).

Appellee, does not argue, however, that Appellants are not entitled to *any* remedy. Instead, she makes the frivolous argument that Appellant Goyke alleged only that he is not a resident of Georgia, but not that he is not a resident of Fulton County, **Georgia**. Somehow concluding that this Court might believe that a non-resident of Georgia might be a resident of Fulton

County, Georgia, Appellee tries to convince this Court that this subtle nuance destroys Appellants' case. It does not.

Conclusion

Appellants' open Brief adequately demonstrated the errors committed by the District Court. Appellee confuses those errors by attacking subtleties in Appellants' Prayer for Relief, but she does not address the heart of the issue. Appellee delegated her authority to Mr. Brock and Mr. Brock told counsel that Appellants could not apply. Because the statute supported Mr. Brock's position, Appellants had no reason to believe Mr. Brock (and Appellee) would not follow the statute. Appellants therefore had standing to sue and this case should be reversed and remanded to the District Court for further proceedings.

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Certificate of Compliance

I certify that this Reply Brief of Appellants complies with F.R.A.P. 32(a)(7)(B) length limitations, and that this Reply Brief of Appellants contains 1,395 words as determined by the word processing system used to create this Reply Brief of Appellants.

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Certificate of Service

I certify that I served a copy of the foregoing Reply Brief of Appellants via U.S. Mail on July 22, 2010 upon:

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I also certify that I filed the foregoing Reply Brief of Appellants by mailing it via Priority Mail to the Clerk on July 22, 2010.

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