

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

GEORGIA CARRY.ORG, INC.,)	
and REGIS GOYKE,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION FILE
)	
PINKIE TOOMER, in her)	NO. 1:08-CV-2141-CC
official capacity as Judge)	
of the Probate Court of)	
Fulton county, Georgia, and)	
all others similarly situated,)	
)	
Defendants.)	

DEFENDANT PINKIE TOOMER'S RESPONSE
TO PLAINTIFFS' MOTION FOR RECONSIDERATION

COMES NOW the Honorable Pinkie Toomer, Fulton County Probate Judge (hereinafter "Judge Toomer"), by and through her undersigned counsel and without submitting to the jurisdiction of the Court, and files this response in opposition to Plaintiffs' motion for reconsideration. Plaintiffs' motion is without merit and itself subject to Fed. R. Civ. P. 11 sanctions.

FACTUAL BACKGROUND

On March 13 2009, this court entered an order granting the Defendant's motion to dismiss Plaintiffs' Amended Complaint. On March 26, 2009, Plaintiffs filed their general motion for reconsideration, failing to identify whether the motion is

brought pursuant to Fed. R. Civ. P. 59 or 60. This does not matter, however, because the motion for reconsideration is wholly without merit, and simply raises legal arguments which could and should have been made before the judgment was issued.

ARGUMENT AND CITATION TO AUTHORITY

I. PLAINTIFFS FAIL TO MEET THE STANDARD TO OBTAIN RECONSIDERATION OF THE MARCH 13, 2009 ORDER.

The Northern District of Georgia does not routinely grant motions for reconsideration. LR 7.2E. A motion for reconsideration is appropriate only where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact. Jersawitz v. People TV, 71 F.Supp.2d 1330, 1344 (N.D. Ga. 1999); P.E.A.C.H., Inc. v. U.S. Army Corps of Eng'r, 916 F. Supp. 1577, 1560 (N.D. Ga. 1995). Further, a motion for reconsideration should not be used to present the Court with arguments already heard and dismissed, or to offer new legal theories or evidence that could have been presented in the previously-filed motion. Bryan v. Murphy, 246 F.Supp.2d 1256, 1259 (N.D. Ga. 2003). Moreover, a "motion for reconsideration is not an opportunity for the moving party and their counsel to instruct the court on how the court 'could have done it better' the first time." P.E.A.C.H., 916 F. Supp. at 1560. A motion

for reconsideration is an extraordinary remedy and should only be granted when there is discovery of new evidence, an intervening change in controlling law, or a need to correct clear error. Deerskin Trading Post, Inc. v. United Parcel Serv., 972 F. Supp. 665, 674 (N.D. Ga. 1997).

Regardless of whether Plaintiffs brought this motion for reconsideration under Fed. R. Civ. P. 59 or 60, they wholly fail to: (1) discuss newly discovered evidence; (2) identify an intervening development or change in controlling law; or (3) establish a need to correct a clear error of law or fact. Plaintiffs simply argue now, for the first time, that Georgia law permits Judge Toomer to delegate her authority to a clerk. Even these arguments miss the point.

For example, O.C.G.A. § 15-9-13 sets forth the procedure where the probate judge is disqualified or unable to act because of sickness, absence or another reason. An attorney may be appointed or another judge of the city or state court shall exercise the jurisdiction of the judge of the probate court under § 15-9-13(a). In the case where no such judge is available, then, *and only then*, shall the clerk of the judge of the probate court exercise all the jurisdiction of the probate

judge. The Complaint set forth no facts that would make these Georgia laws applicable to this case.

Similarly, while O.C.G.A. § 15-9-36(c) permits the probate chief clerk, or if there is no chief clerk, a clerk designated by the judge to exercise "all the jurisdiction of the judge of the probate court concerning uncontested matters in the probate court," that statute is inapplicable in this case. Nothing in the Amended Complaint alleges that a clerk actually processed and denied Plaintiffs' applications for a GFL. Here, "according to the facts alleged in the Amended Complaint, neither Mr. Goyke nor any member of GCO has actually requested an application for a GFL, applied for a GFL, or received a final determination on such an application." Order, p. 6. Nothing in the motion for reconsideration impacts this important "element" of the Amended Complaint, that "Plaintiffs did not pursue their claims with requisite diligence to show that a mature claim or controversy exists for which they have standing to bring." Order, p. 9. Thus, Plaintiffs still have failed to present a ripe controversy. Digital Props. V. City of Plantation, 121 F.3d 586 (11th Cir. 1997).

Plaintiffs simply add a new spin to their old arguments, thus suggesting that the court could have done it better. This

is improper. P.E.A.C.H., 916 F. Supp. at 1560. None of Plaintiffs' arguments - (1) "the Court did not accept as true the facts alleged in the Complaint," (2) "Plaintiffs cannot ripen their case with Defendant by applying in another county" and (3) "Plaintiffs seek different relief from that presumed by the court" - present newly discovered evidence, point to an intervening development or change in controlling law or set forth a need to correct a clear error of law or fact. Deerskin, 972 F. Supp. at 674.

II. THE CONTENTIONS SET FORTH IN PLAINTIFFS' MOTION FOR RECONSIDERATION ARE NOT WARRANTED BY EXISTING LAW, AND THEREFORE VIOLATE FED. R. CIV. P. 11(b).

Plaintiffs set forth no legal basis for this court to evaluate and grant their motion for reconsideration. The legal contentions put forth in this motion violate Fed. R. Civ. P. 11(b), and this Court should expressly make that finding when it rules on this meritless motion.

CONCLUSION

The Motion for Reconsideration lacks merit. Plaintiffs simply attempt to rehash issues previously decided. For all the foregoing reasons, Judge Toomer requests that the motion for reconsideration be denied.

This 11th day of April, 2009.

Respectfully submitted,

Office of the County Attorney

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CERTIFICATE OF FONT TYPE, SIZE AND SERVICE

THIS IS TO CERTIFY that on the 11th day of April, 2009, I presented this document in Courier New, 12 point type in accordance with L.R. 5.1(C) and that I have served a copy of the foregoing DEFENDANT PINKIE TOOMER'S RESPONSE TO PLAINTIFFS' MOTION FOR RECONSIDERATION in accordance with this court's CM/ECF automated system which shall forward automatic e-mail notification of such filing to the following attorney's of record:

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