

IN THE SUPERIOR COURT OF RICHMOND COUNTY

STATE OF GEORGIA

GEORGIA CARRY.ORG, INC.,
and
KEVIN FOX,

Plaintiffs,

v.

RICHARD ROUNDTREE,
In his official capacity as Sheriff
of Richmond County, Georgia,

Defendant.

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CIVIL ACTION
FILE NUMBER 2014RCCV437

FINAL ORDER

The above-styled matter came on for final hearing via a bench trial on September 22, 2016. All parties were present, represented by counsel. After consideration of the evidence presented and arguments of counsel, it is hereby ORDERED as follows:

FINDINGS OF FACT

The Court finds that the Defendant is the Sheriff of Richmond County, Georgia. Plaintiff GeorgiaCarry.Org, Inc. (“Georgia Carry”) is an organization that is incorporated under the laws of Georgia and Plaintiff Kevin Fox (“Fox”) is an individual who is a resident of Georgia and is also a member of Georgia Carry. On May 21, 2013, the Augusta-Richmond County Commission passed Ordinance 7409 (“Ordinance”), a certified copy of which was admitted into evidence and marked at Plaintiff’s Exhibit 5. The Plaintiffs contend that the Ordinance conflicts with and is preempted by O.C.G.A. §16-11-173(b)(1) and that they are entitled to relief as set forth in O.C.G.A. §16-11-173(g).

FINAL ORDER

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Robert Lichty (“Lichty”) is the owner of a business known as Shooters in Augusta-Richmond County. Lichty testified that his business is an indoor gun range and also is engaged in selling guns and accessories associated with shooting firearms. Lichty is also a Federal Firearms Licensee (“FFL”) which allows him to handle the transfer of firearms in accordance with Federal law. Lichty is also a member of Georgia Carry. Lichty testified that in approximately August 2013, he inquired of the Sheriff’s Office for Augusta-Richmond County as to whether there was a procedure available whereby he could check the serial numbers of used firearms that he took into his business on trade or consignment to ensure those used firearms were not stolen. Lichty’s inquiry caused the Sheriff’s Office to realize for the first time that Shooters was regularly taking in used firearms for trade or consignment. He made contact with an investigator with the Sheriff’s Office who advised him that the new ordinance required him install a fingerprint reader and have each person seeking to sell or trade a used firearm to provide a fingerprint scan which would be uploaded to a computer program maintained by the Sheriff’s Office known as Leads Online. Further, Lichty testified that he was told that he had to hold any used firearm for a period of ten (10) days before transferring the firearm to any third person. He signed an agreement which was presented by the Sheriff’s Office on August 5, 2013. That agreement was admitted into evidence as Plaintiff’s Exhibit 1. It should be noted that the ten day “waiting period” is not set forth within the Ordinance.

Fox testified that he is a resident of Columbia County, Georgia and that his father is a resident of South Carolina. He testified that his father desired to transfer a firearm to Fox but that because they live in different states, that a FFL must receive the firearm and execute paperwork which would allow such a transfer to be legal. Fox allegedly became aware of the

Ordinance when he approached Lichty about handling the transfer of the firearm. He was told by Lichty that there would be a ten (10) day waiting period before the transfer could be completed due to the terms of the Ordinance. Fox contacted Georgia Carry and the instant lawsuit was the eventual result. Fox's father never attempted to transfer the firearm to Lichty as a FFL and the transfer between Fox and his father has never been completed. Fox has not sought the assistance of any other FFL in Georgia in attempting to complete the transfer, including any FFL in his home county.

Jerry Henry testified as the former Director of Georgia Carry. Counsel for Plaintiffs supplied the Court with testimony and an affidavit as to his attorney's fees and costs of litigation.

CONCLUSIONS OF LAW AND DISCUSSION

The Ordinance is the Commission's attempt to regulate pawnbrokers within the county and to eliminate the ability of people who steal the property of others from having an easy way to sell stolen property. The goals of the Ordinance are set forth in the preamble to the Ordinance. Lichty's business is not a traditional pawn shop and he is not a pawnbroker as that term is generally understood. However, based upon the definition of pawnbroker within the Ordinance, any time that Lichty takes in a used firearm for resale or consignment, he would be covered by the Ordinance.

It is clear that state law preempts local ordinances. *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga. App. 713, 717 (2002). The plain terms of O.C.G.A. §16-11-173 makes such preemption express and not merely implied. *Georgiacarry.org, Inc., v. Coweta County*, 288 Ga. App. 748 (2007). Under the facts of the present case, it is clear that O.C.G.A. §16-11-173 would preempt the Ordinance.

In the wisdom of the legislature, they passed a statute that prevents law enforcement officers from utilizing a legitimate method to deter criminals who steal personal property from having the ability to quickly and easily dispose of the stolen goods. There is no doubt that the Ordinance serves a compelling government interest. The purpose of the Ordinance is not designed to inhibit the sale or transfer of firearms but, because firearms are frequently stolen in burglaries, the Ordinance does have the effect of impacting the transfer of firearms. The victims of such thefts likely could include members of Georgia Carry and the Ordinance was intended to protect lawful gun owners from having their firearms stolen and then sold. However, it is not for this Court to substitute its own opinion of the law for the wisdom of the legislature. Therefore, the Court finds that under the facts of this case that state law preempts the Ordinance as it relates to firearms. The county may not:

- “ by rule or regulation or by any other means shall regulate in any manner:
- (A) Gun shows;
 - (B) The possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or other weapons or components of firearms or other weapons;
 - (C) Firearms dealers or dealers of other weapons; or
 - (D) Dealers in components of firearms or other weapons.”

O.C.G.A. §16-11-173(b)(1). The decision of the Court does not end there, however.

In evaluating the credibility of the witnesses that the Court had the opportunity to see and hear in, the courtroom, the Court finds that neither Fox nor Georgia Carry has standing in this case. As was noted in *Georgiacarry.org, Inc. v. Coweta County*, 288 Ga. App. 748, n. 1 at 749 (2007), plaintiffs seeking to enforce the provisions of O.C.G.A. §16-11-173 must also have standing to bring the lawsuit. The Court finds that the facts of this case show that shortly after Lichty was advised of his obligations under the Ordinance, that his friend and customer, Fox,

discussed the potential transfer of a firearm from Fox's father. There is no credible evidence that Fox's father ever attempted to deliver his firearm to Lichty for transfer. The Court finds that Fox testified that his father was "on the way" to Georgia to complete the transaction and that Fox called his father and told him not to come to Augusta to deliver the firearm because of the waiting period imposed by the Ordinance. The Court finds this portion of Fox's testimony to lack credibility after viewing the witness and his manner of testifying.

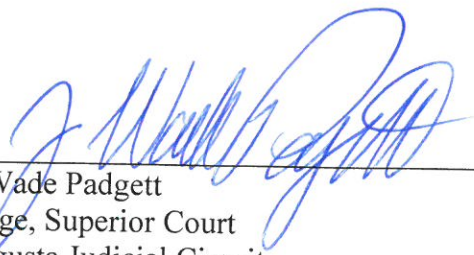
Lichty is not a party to this case. Lichty never testified that Georgia Carry was acting on his behalf in this case. Fox never attempted to perform an act which was blocked by the Ordinance. The Court finds that this entire case was based upon a factual scenario that never actually existed and that the Ordinance was not enforced in any manner that prevented the ability of Fox to engage in "the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms" as set forth in O.C.G.A. §16-11-173(b)(1). The Court finds that this entire case was brought without any actual harm being done to any named plaintiff. The Court finds that the factual scenario alleged to have occurred concerning Fox and his father never happened and, therefore, there has been no actionable violation of the statute by the Ordinance.

CONCLUSION AND ORDER

This Court cannot rule on any possible or potential factual scenario as it relates to damages. As to Georgia Carry's request for a declaratory judgment, the Court finds that none of the listed Plaintiffs have presented a justiciable controversy. "[I]f the action presents only a question of academic interest and not a justiciable controversy, 'the entry of declaratory judgment is not appropriate, because a court has not province to give advisory opinions.'"

Effingham County Bd. Of Commissioners v. Effingham County Indus. Development Authority,
286 Ga. App. 748, 750 (2007). Therefore, based upon the foregoing, the Court finds in favor of
the Defendant.

SO ORDERED, this 11 day of October, 2016.



J. Wade Padgett
Judge, Superior Court
Augusta Judicial Circuit

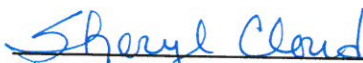
CERTIFICATE OF SERVICE

Prior to filing, the Court has caused copies of the foregoing **FINAL ORDER** to be served upon the parties, by depositing the same in the United States Postal Service, sufficient postage affixed, and addressed as follows:

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This 11 day of October, 2016.



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