IN THE SUPREME COURT OF GEORGIA

GEORGIA CARRY.ORG, INC., and IZIAH SMITH, Appellants,	)	
Vs.	)	Case No.: S15A1901
HARRY B. JAMES, III, Appellee.	)	

BRIEF OF APPELLEE

Appellee states the following as his Brief of Appellee.

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PART I: STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about the 6th day of January, 2014, the Plaintiff/Appellant, Iziah Smith, ("Smith") applied for a renewal of his Georgia Weapons Carry License ("GWL") and requested a Temporary License as well. R8. Smith made his application at the Probate Court of Richmond County, Georgia. (R8). Mr. Theodore Jackson, ("Jackson") who was the marriage license clerk at the time of Smith's making of his application, waited on Smith. (R89, P5, L21). Jackson had been employed at the Probate Court of Richmond County, Georgia for 3 to 4 months prior to his waiting on Smith. (R89, P56, L11). Jackson told Smith that they did not issue temporary licenses. (R91, P13, L19). No one had applied for a temporary gun license since 1999 until Mr. Smith applied in 2014. (R151, P8, Line 18-20). Following such, Smith harassed the employees of the Probate Court office after lunch the day that he applied by calling numerous clerks in back to back phone calls and returned to the Probate Court office twice, all within only a few hours of his initial application submittal. Smith did not want to listen to anything that was told him by the clerks of this office. (R170, P6, L16-22). Smith is not even sure of whether he is an actual resident of the State of South Carolina or the State of Georgia. (R.214, L9).

The Judge of the Probate Court of Richmond County, Georgia, Harry B. James ("James") informed Smith that he could not have a temporary license because there were problems with his criminal record. (R108, P43, L2-3). Smith had been charged with sexual battery, in the Superior Court of Columbia County, Georgia, but the record of the Clerk of Superior Court of Columbia County did not reflect the disposition in the Georgia Criminal Information System. (R102, P21, L1-25). The record was changed to reflect the correct final disposition of a reduction in charges to simple battery, and following such, Smith was issued his GWL on January 27, 2014. Smith already had his GWL when he filed suit on February 18, 2014. (R.190, P24. L.12-21).

Following such, Appellee filed a Verified Answer and Counterclaim on March 13, 2014, with Appellee filing his Motion for Recusal on April 24, 2014. Said Motion was denied by an Order Denying Motion for Recusal on May 29, 2014. Appellant filed a Motion for Summary Judgment on November 25, 2014, with Appellee filing a Motion for Summary Judgment on December 23, 2014, which was granted on March 17, 2015 with an Order Granting Summary Judgment to the Defendant (Appellee), which constitutes the procedural history of the trial court.

PART II: ARGUMENT AND CITATION OF AUTHORITY

A. Judge Carl Brown did not err in not recusing himself, following the Plaintiff's Motion for Recusal.

Pursuant to Rule 25.1, "All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be timely filed in writing and all evidence thereon shall be presented by accompanying affidavit(s) which shall fully assert the facts upon which the motion is founded. Filing and presentation to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for disqualification." The Appellant filed his Motion to Recuse the trial court judge on April 24, 2014. This date of filing was 3 months after the initial filing of his Complaint, being February 18, 2014, well beyond the 5 day timeline required by the Rule. In *Mayor & Aldermen of Savannah v. Batson–Cook Co., 291 Ga. 114, 728 S.E.2d 189, 12 FCDR 1770 (Ga., 2012)* this Court set out the 3 prong test for the trial court to determine whether another judge should be assigned to hear the recusal Motion. The Judge must determine if the Motion was timely filed, the legal sufficiency of the affidavit, and assuming the facts to be true, the recusal would be warranted.

The Appellant further failed to file an affidavit with his Motion and conceded that there was no evidence of impartiality. In the case at bar, "Plaintiffs cannot point to any act or event that gives rise to a recusal. Plaintiffs have no reason to believe the current judge is not

impartial." (Brief in Support of Plaintiffs' Motion for Recusal, R.44). While *Wilson v. McNeely, 670 S.E.2d 846, 295 Ga. App. 41 (Ga. App., 2008)* may appear to define a bright line rule of recusal, the key reasoning of the rule is derived from "whether a reasonable mind might have perceived a conflict of interest in the performance of his official duties." *Georgia Transmission Corp. v. Dixon, 600 S.E.2d 381, 267 Ga.App. 575 (Ga. App., 2004)* The cases center on the confidential relationship between judges who must work together in the same or inferior courts from which an appeal to that court might lie. In *Hill v. Clarke., 310 Ga.App. 799, 714 S.E.2d 385, 11 FCDR 2340 (Ga. App., 2011)* the Superior Court ruled on an action for mandamus involving a Probate Court Judge. It is the nature of the case, rather than geographic location that should determine whether the Court should recuse itself. In the present case, the issue was whether a writ of mandamus should issue or not and had no personal effect on the judge. It should be noted that the Order in *Hill*, filed by the Appellant's attorney in this case, was signed by a Gwinnett County, Georgia Superior Court Judge, with the Defendant Hill being a Probate Judge of the same county and circuit. (R133). Additionally, the Appellant has filed cases in the Federal District of North Georgia, seeking relief against judicial officers in that district (circuit) which were ruled on by judges of the same district, without recusal. (*Camp v. Cason, United States District Court Northern District of Georgia Atlanta Division, 1:06-cv-1586-CAP*).

The Probate Court of Richmond County, Georgia is a court whose decisions are appealable to the Georgia Court of Appeals or the Supreme Court of Georgia, not to the Superior Court of Richmond County, Georgia, pursuant to O.C.G.A. §15-9-123. It seems that it is only logical that the possible conflict of interest or appearance thereof would arise from the relationship of the courts, rather than from geographical location. If the conflict is defined by "circuit", then this Court would have to recuse itself every time a judicial officer, whether part

time or retired, was represented by a party or was a party to any case in this Court, since its circuit consists of the entire judicial system of Georgia. That is a reasonable extension of that logic. No reasonable mind would expect that to occur because of an appearance of conflict.

If the Appellant's attorney felt it was so clear cut, he should have filed the Motion and his Affidavit along with his initial Complaint. Instead, he waited to see if he obtained a favorable result. He knew that he could try to have it voided if it was unfavorable, or he could remain silent if it was favorable. That is not reasonable, that is cynical.

B: It was not an error for the trial court to grant summary judgment to the Defendant (Appellee).

The Court does make findings of fact concerning the absence of counsel at the call of the case for a hearing on the duel motions for summary judgment. The Court granted the Motion for Summary Judgment for the Appellant.

O.C.G.A. § 9-11-56 requires that a hearing be held on a motion for summary judgment. The Court in its findings of fact indicated that the Plaintiff's attorney failed to timely appear at the hearing and therefore waived his opportunity to be heard. See *Hills v. First National Bank of Waynesboro, 309 S.E.2d 404, 168 Ga. App. 408 (1983).*

The trial court was correct in granting the Defendant's Motion for Summary Judgment. The request for a writ of Mandamus for the Plaintiff Appellant was moot. Smith had received his GWL prior to his previous license expiring, prior to his filing of suit against James, and within 30 days of his application for his license. The Appellant has conceded that Smith had received his license without the necessity of mandamus. The other party, GeorgiaCarry.org, Inc., was not an applicant for said license, like Smith, and therefore lacked standing to bring an action in Mandamus pursuant to O.C.G.A. § 16-11-129.

The Appellant, in his Brief, conceded that although mandamus was not necessary he argued that *Robinson v. Glass, 302 Ga.App. 742, 744, 691 S.E.2d 620 (2010)* should apply in his request for attorney's fees. However, in that case, the public official forced the Petitioner to file suit "in order to obtain what he was entitled to by law". Here, the Appellant had already obtained his gun license, prior to his filing suit. (R233, L12). Smith did not understand that he still had to qualify for a temporary license. (R233, L2-4). The Appellee James stated that his court "never had a policy of not issuing temporary licenses" and that "the last temporary license was issued over 16 years ago". (R107, P38, L11-20). "If someone would have asked for a temporary license and they were qualified for a temporary license… of course we would have issued a temporary license. No big deal." (R107, P38, L11-20) No one had asked for a temporary license except Smith, since he had been probate judge. (R107, P31-32). The basic objection of the Appellant's attorney is that the probate judge did not respond to his "unprofessional" letter by January 31 2014, as demanded by him. (R109, P43, L10-11). The issue was Smith's criminal record and whether he was qualified for a temporary license. (R103, P23, Line 15-20). When it was determined that he qualified, a license was issued to him, without the necessity of his filing suit in mandamus.

PART III: CONCLUSION

The Appellant has never offered a scintilla of evidence of bias or appearance of his bias for the recusal of the trial court Judge Carl Brown. He failed to raise it in a timely or proper manner. Judge Brown was correct in refusing to recuse himself in the case. The grant of summary judgment to the Appellee was proper because the writ of mandamus was moot prior to the filing of the case. Therefore, the judgment of the trial court should be affirmed.

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CERTIFICATE OF SERVICE

I do hereby certify that on the 29th day of September, 2015, I served a copy of the foregoing via United States Postal Service, with proper postage affixed to assure proper delivery, upon:

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