

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC.,)
SHANE MONTGOMERY, and WILLIAM)
THEODORE MOORE, III,)
)
Plaintiffs,)
)
v.)
)
THOMAS C. BORDEAUX, JR.,)
Individually and as Judge of)
the Chatham County Probate Court)
)
Defendant.)
_____)

Civil Action No. SPCV 18-00523-BA

BRIEF IN SUPPORT OF MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Introduction

Plaintiffs Shane Montgomery, William Theodore Moore, III, and GeorgiaCarry.Org, Inc. (collectively, “GCO”) commenced this action for mandamus and other relief against Defendant Thomas C. Bordeaux, Jr., the judge of the Probate Court of Chatham County, (“Bordeaux”) for violating O.C.G.A. § 16-11-129(d)(4) by failing to process applications and issue Georgia weapons carry licenses (“GWLs”) within the time required by that statute. Bordeaux has filed an Answer in which he concedes sufficient facts for the Court to make a partial judgment against Chatham County. GCO therefore moves for a partial judgment on the pleadings, pursuant to O.C.G.A. § 9-11-12(c).

Legal Standard for Motions for Judgment on the Pleadings

Pursuant to O.C.G.A. § 9-11-12(c), a party may move for judgment on the pleadings “after the pleadings are closed by within such time as not to delay the trial.” In the present case, trial is

set for September 10, 2018 and motions and briefs are due July 26, 2018. The present Motion is timely.

Argument

A court may enter a partial judgment on the pleadings. *Goolsby v. Allstate Insurance Company*, 130 Ga.App. 881, 204 S.E.2d 789 (1974). In the present case, Plaintiffs sued Bordeaux in his individual capacity and also in his official capacity as the Judge of the Probate Court of Chatham County. A suit against a government official in his official capacity is in reality a suit against the government. *Calloway v. City of Warner Robbins*, 783 S.E.2d 175 (Ga.App. 2016). The claims against Bordeaux in his official capacity are therefore in reality claims against Chatham County. Bordeaux filed a single, combined Answer. Answer, p. 1 (“Now comes Thomas C. Bordeaux, Jr., Individually and as Judge of the Chatham County Probate Court”). In the Answer, he admitted that to the extent he fails to meet the statutory timelines for issuing GWLs, “he as Judge of the Probate Court of Chatham County is violating O.C.G.A. § 16-11-129(d)(4).” Answer, p. 10. He further “admits that it routinely takes longer than 35 days from the time of filing to the time of issuance to process some other Georgia Weapons Carry License applications.” Answer, p. 9. Finally, he admits that the Chatham County Board of Commissioners is “legally obligated to fund fully and properly” his office, but “The Board of Commissioners of Chatham County ... has failed and refused to do so.” Answer, p.3. Bordeaux concludes that, to the extent he has failed to follow the law regarding issuance GWLs on a timely basis, “his failure to do so is the result of the failure and refusal of the Board of Commissioners of Chatham County to provide full and properly funding, including for both personnel and space, for the operation of the [probate] Court.” *Id.*

We therefore have the somewhat unusual situation that the county as a defendant has confessed that the county has inadequately funded the probate court, that Bordeaux as probate

judge has sometimes failed to issue GWLs within the time allowed by law, and that the failure and refusal of the County to fund the probate court adequately has caused Bordeaux to fail to issue all GWLs within the time required by law.

At the time GCO commenced this action, it suspected there was a funding issue, but it did not have substantial evidence of such issue. Now Bordeaux has signed a Verification that the county has failed and refused to adequately fund his office. GCO therefore moves for partial judgment on the pleadings, for an injunction against the county to require it to fully fund Bordeaux's office, with such amount to be determined at trial.

The County has a duty "to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable [a constitutional officer] to perform his duties...." *Board of Commissioners of Dougherty County v. Saba*, 278 Ga. 176, 598 S.E.2d 437 (2004). A county's budget thus adopted is subject to judicial review for abuse of discretion. *Id.* In the present case, the county admits that it has failed to adequately fund the office of the probate judge. Because the county has knowingly done so, it has abused its discretion and judgment on the pleadings to that effect is appropriate.

/s/ John R. Monroe

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CERTIFICATE OF SERVICE

I certify that on July 14, 2018, I served a copy of the foregoing via U.S. Mail upon:

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/s/ John R. Monroe
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