

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between August 6, 2016, and August 12, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

CIVIL PRACTICE

Shoenthal v. Shoenthal

Georgia Court of Appeals
August 11, 2016; A16A0398

A member of a county retirement system filled out a form changing the beneficiary of his retirement benefits but failed to mail or deliver the form to the retirement board. The member died from complications following surgery. The designated new beneficiaries sued the board and the previously designated beneficiary. The trial court granted judgment of the pleadings to the board and the previously designated beneficiary. The Court of Appeals affirmed. The regulations of the pension board and the provisions of the county pension code ordinance clearly require the delivery of a change of beneficiary form. In the absence of delivery, the rights of a previously designated beneficiary do not cease. The employee left the form on his desk for days while he did other things. The Court distinguished cases such as *Greater Georgia Life* and *Westmoreland*. Here there was no question of fact about non-delivery and here there member failed to do 'substantially' all that was required of him in order to change the beneficiary.

IMMUNITY

City of Tybee Island v. Harrod

Georgia Court of Appeals
August 9, 2016; A16A0572

The plaintiff was arrested for public intoxication and disorderly conduct and sued the city for assault and battery and emotional distress. The city moved for summary judgement based upon sovereign immunity. The trial court denied the motion because the city had purchased a GIRMA insurance policy and let the jury decide the issue of sovereign immunity. The Court of Appeals reversed. A GIRMA policy constitutes a

waiver of sovereign immunity to the extent of liability insurance purchased. However, the plaintiff must still prove and the trial court must still determine if the facts underlying the action fall within the scope of coverage. Determination of sovereign immunity is a legal jurisdictional question that must be determined by the trial court.

White v. Georgia Department of Transportation

Georgia Court of Appeals
August 12, 2016; A16A0346

A property owner adjacent to a highway notified DOT of diseased trees that could fall into the highway. DOT sent out an inspector who determined the trees were in the right-of-way but that the trees would not be cared for or removed until they fell. Subsequently, a motorist was killed by a branch which fell from one of the trees. The estate of the deceased sued arguing the state had waived sovereign immunity under O.C.G.A. 50-21-24(8) {negligent inspection waiver}. The trial court granted DOT's motion to dismiss because the trees were not actually in the DOT right-of-way but were on private land. The Court of Appeals affirmed. A title search clearly showed the trees were located on private land so DOT could not be guilty of negligent inspection or refusal to remove the trees.

Stone Mountain Memorial Association v. Amestoy

Georgia Court of Appeals
August 9, 2016; A16A0056

A bicyclist participating in a ride at the park was killed after an accident while attempting to negotiate some traffic control barricades. The park was sued by the widow for premises liability and wrongful death. The trial court denied the park's motion for summary judgment but the Court of Appeals reversed. Under O.C.G.A. 51-3-22, a landowner owes no duty of care for premises safety for recreational purposes unless the owner willfully or maliciously failed to guard or warn against a dangerous condition. There was evidence showing actual knowledge that the barricades were not apparent to those using the property. Witnesses observed other cyclists negotiate the barricades without incident. The road was straight and open and photos showed the barricades were highly visible.

NEGLIGENCE

McConnell v. Department of Labor

Georgia Court of Appeals
August 11, 2016; A16A0655

A DOL employee created a spreadsheet showing the names, social security numbers, and other personal information of 4000 people who had filed for unemployment benefits. The spreadsheet was inadvertently emailed to 1000 persons on the list. A class action was filed against DOT alleging negligent disclosure of personal information. The trial court dismissed for failure to state a claim for which relief can be granted and the Court of Appeals affirmed. There is no legal duty under Georgia law applicable to DOL which requires it to safeguard personal information. No invasion of privacy occurred because the facts at issue were not embarrassing facts.