

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 27, 2016, and September 2, 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.

IMMUNITY

James v. Georgia Department of Public Safety

Georgia Court of Appeals
August 30, 2016; A16A0018

A suspect died from injuries sustained from a car crash while fleeing from the state patrol in a high speed chase. The family filed a wrongful death action alleging failure to comply with DPS pursuit policy. The trial court dismissed for lack of subject matter jurisdiction based on sovereign immunity grounds and the Court of Appeals affirmed. A challenge to subject matter jurisdiction is a matter of abatement under O.C.G.A. 9-11-12(b)(1). A trial court is not confined to the allegations of the complaint as it would be if considering a motion to dismiss for failure to state a claim under (b)(6) of that Code section. The court has broad discretion in conducting a preliminary hearing and can make relevant factual findings to decide the threshold issue of entitlement to sovereign immunity. The trial court concluded correctly that the claims against DPS fell within the law enforcement exception of the Tort Claims Act under O.C.G.A. 50-21-24(6).

NEGLIGENCE

Graham v. Wellstar Health System

Georgia Court of Appeals
September 1, 2016; A16A0640

An inmate in the custody of the sheriff died of liver failure following a DUI arrest. The family filed a wrongful death action. On a negligence per se ground, the family argued initially that Wellstar owed a duty of care under O.C.G.A. 42-5-2(a), 42-4-4(a)(2), and 42-4-32 because it had contracted with the sheriff to provide medical care for jail detainees. The third amended complaint however never pleaded any application of the last two Code sections and as to O.C.G.A. 42-5-2(a), it creates an obligation to

provide detainees with access to medical care but does not address the issue of proper medical care, hence there is no basis for a negligence per se claim. The trial court correctly found that the claims for ordinary negligence were actually claims for professional negligence and the expert affidavits specifically incorporated in the third amended complaint stated specific examples of duty and alleged breach that supported professional negligence.