COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between March 26, 2016, and April 1, 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.

ADMINISTRATIVE REMEDIES

GA Department of Behavioral Health & Development Disabilities v. United Cerebral Palsy of GA Inc.

Supreme Court of Georgia
March 31, 2016; S15G1183

Plaintiffs are providers and recipients of Medicaid services who alleged that several state administrative agencies failed to follow required procedures before reducing the reimbursement rates paid to the providers and limiting the services available to the recipients. The plaintiffs did not submit their claims for administrative review but instead filed suit. The trial court granted the agencies' motion to dismiss. The Court of Appeals reversed. The Supreme Court reversed the Court of Appeals and affirmed the trial court. The Court did not express an opinion on the merits of the claims, but, concluded that the plaintiffs were required to present those claims for proper administrative review and exhaust their administrative remedies before filing a lawsuit.

Gregory v. Sexual Offender Registration Review Board

Supreme Court of Georgia
March 28, 2016; S15A1718

An individual was classified by the board as a 'sexually dangerous predator' under O.C.G.A. 42-1-12. The individual requested that the board reevaluate the classification. The board refused. The individual sought judicial review of the classification. The trial court affirmed the decision of the board. The Supreme Court reversed the trial court. Classification as a sexually dangerous predator implicates liberty interests such frequent reporting to the sheriff, employment restrictions, and lifelong electronic monitoring. The danger of an erroneous classification without an evidentiary hearing is substantial and one was never conducted at any point in this case. The Court remanded to the trial court for a hearing to be conducted.

CONSERVATION & NATURAL RESOURCES

Georgia River Network v. Turner

Georgia Court of Appeals
March 29, 2016; A14A0215; A14A0272; A14A0273; A14A0274

This case deals with vegetative buffer variances. *For the Supreme Court opinion, see Counties and the Law 2015 Compilation Edition, p. 10.*

Here, the Court of Appeals adopts as its own the judgement of the Supreme Court.

CONSTITUTION

Kendrick v. State

Georgia Court of Appeals
March 29, 2016; A15A2111

This case involves consent to a breathalyzer test. A person accused of DUI argued that she felt coerced to agree to the test because of the language of the implied consent notice and that she was not informed of her 4th Amendment right against unreasonable search and seizures. The USSC has however rejected that here is a duty to inform suspects of that right. Here, handcuffs did not impede her ability to consent and she testified that her decision was in part based upon desiring to keep her license. This shows recognition of a choice to consent or to not consent.

IMMUNITY

Rivera v. Washington

Supreme Court of Georgia
March 31, 2016; S15G0887; S15G0912

This case involves two separate matters in which the Court of Appeals dismissed a direct appeal by a defendant from a trial court order which denied a motion to dismiss on the basis of quasi-judicial or sovereign immunity. In each case the defendant did not file an application for interlocutory appeal but instead asserted that under the *Canas* case, a direct appeal could be filed under the collateral order doctrine. In each case, the Court of Appeals, though accepting the collateral order doctrine of *Canas*, dismissed the direct appeal finding that the doctrine did not apply. The Supreme Court granted certiorari in both cases and affirmed the Court of Appeals. The Court found that the Court of Appeals reached the right result, but did so under flawed analyses. The Court determined that an interlocutory order rejecting

a claim of quasi-judicial or sovereign immunity is not directly appealable under the collateral order doctrine and must be pursued under the interlocutory procedures of O.C.G.A. 5-6-34(b). The Court overruled *Canas* to the extent it applies the collateral order doctrine to immunity claims.

Raw Properties, Inc. v. Lawson

Georgia Court of Appeals
April 1, 2016; A15A1747

A company's property was sold at a tax sale. Following redemption, the company sued the tax commissioner for failure of notice about the fi fa. The tax commissioner admitted that the records were outdated and that most notices were mailed to the wrong address, however, the company's CEO was contacted by telephone and had actual notice of the impending tax sale. The tax commissioner sought and was granted a dismissal based upon sovereign immunity. The Court of Appeals affirmed. The Supreme Court has directed that implied waivers of sovereign immunity are not favored, and, in this case, the company did not meet its burden of proof to establish a waiver of immunity.