COUNTIES & THE LAW

A Newsletter of the Association County Commissioners of Georgia

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CIVIL PROCEDURE/ ARBITRATION

Bryan County v. Yates Paving & Grading Co.
Supreme Court of Georgia
November 30, 2006
281 Ga. 361

The underlying dispute in this case arises from a public works contract between Bryan County and Yates Paving & Grading Co., Inc. Pursuant to the contract, Yates agreed to construct and make improvements to public roads within a Bryan County subdivision. Bryan County thereafter ordered Yates to halt construction and hired a third party to complete the project. Yates filed a demand for arbitration and, after a full hearing, won an award of monetary damages, which was confirmed by the trial court and affirmed on appeal. In a second appeal, the Court of Appeals reversed the trial court, finding that Yates was entitled to further arbitration to determine attorney fees and costs resulting from the County's appeal.

Three years later, Yates filed another demand for arbitration under the contract, claiming the County's wrongful conduct rendered Yates unable to bid on other government contracts. Bryan County answered and asserted in a cross-claim that the new claims for damages were barred by the doctrine of res judicata because they were not raised in the first arbitration. Despite the existence of a valid arbitration agreement, a trial court must determine whether the claims covered by the agreement are actually arbitrable before submitting them to an arbitrator. Because the application of res judicata involves a matter that the parties did not expressly intend to be resolved only by an arbitrator, the Supreme Court of Georgia reversed the Court of Appeals in determining that an arbitrator, rather than a court, should determine the res judicata effect of a previous arbitration on a subsequent arbitration.

CIVIL PROCEDURE/ CLASS ACTIONS

Barnes v. City of Atlanta
Supreme Court of Georgia
October 16, 2006
281 Ga. 256

The plaintiffs filed a class action against the City, claiming that an occupation tax was an unconstitutional regulation of the practice of law. They sought a refund of the taxes that had already been paid. The trial court ruled in the plaintiffs' favor on the constitutional issue. On appeal, the Supreme Court held that the City's occupation tax was unconstitutional and that a class action for tax refunds was appropriate. On remand, the trial court held that all Class I members had to exhaust their administrative remedies, and that the lawyers who opted out of their class would not be responsible for the attorney's fees. The Court of Appeals affirmed the trial court's ruling. The case was then appealed to the Georgia Supreme Court.

The Supreme Court held that the class members who did not apply for a refund of the tax prior to the filing of the class action still qualified for the refund because the exhaustion of administrative remedies by the named plaintiffs satisfied the exhaustion requirements for all members of the class. Also, because of the administrative claims and the filing of the lawsuit by the named plaintiffs, the city had notice of its potential liability in the case. All class members can receive refunds for the taxes paid up to three years before the filing of the complaint in the case. The class representatives who filed the lawsuit benefited all of the class members. Therefore, awarding attorney fees from the common fund was warranted and does not unduly burden the right of class members to opt out. If the taxpayers benefiting from the class action were not required to pay attorney fees they would be unjustly enriched.

COMMERCE CLAUSE

Atlanta Taxicab Company Owners Association, Inc. v. City of Atlanta
Supreme Court of Georgia
Nov. 30, 2006
281 Ga. 342

The Taxicab Company Owners

This edition of Counties & The Law includes decisions of interest to county attorneys published between July 1, 2006 and December 31, 2006. The next issue will cover cases published between January 1, 2007 and April 30, 2007.

We welcome your suggestions and opinions regarding Counties & The Law. Please contact Jim Grubiak or Kem Kimbrough with your comments.

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Association brought this action against the city of Atlanta, requesting that the court declare that the statute requiring cab owners to obtain a certificate of public necessity and convenience (CPNC) to be unconstitutional. The trial court found in favor of the city and the Association appealed.

The Supreme Court held that no provision in the city's charter barred it from providing the Bureau of Taxicabs as an alternate form of adjudication for city code violations directed toward taxicabs.

The Supreme Court also determined that the ordinance requiring residency to obtain a CPNC was a violation of the Commerce Clause because it prohibits all non-citizens from participating in the city's taxi business. One state may not discriminate against the articles of commerce coming from outside that state unless it has a reason, other than origin, to treat them differently. Requiring taxi operators to be residents might be justified on public safety grounds, having that requirement for holding a CPNC and participating in the taxi business is not related to a valid governmental interest.

The Court held that the city ordinance that imposed civil sanctions on taxicab owners for the infractions committed by their drivers was not a due process violation. Civil penalties can be used for offenses committed by agents for which the punished individual was not morally blameworthy. Such penalties are distinct from the imposition of vicarious criminal liability.

The Court also held that the Association provided the city with the required ante-litem notice. There is no exact standard for determining substantial compliance with the ante-litem statute. If the information supplied puts the municipality on notice of the general character of the complaint and injury it will be deemed sufficient. This determination depends on the underlying facts and an appraisal of the notice itself, therefore the consideration of this question is best left to the trial court. In this case the trial court never determined if the ante-litem notice was sufficient so this was not an appropriate issue to be raised on appeal.

CONDEMNATION

Georgia Power Company v. Stowers
Georgia Court of Appeals
Dec. 1, 2006
282 Ga. App. 695

Georgia Power sought an easement across Stowers' property. They filed for condemnation and requested that a special master be appointed. The special master filed his findings and conclusions. Stower then filed exceptions to the award given by the special master asserting the special master erred in making the award because Georgia Power did not establish the value of the consequential damages or the benefit to the remainder of the property. Stowers also moved to dismiss the complaint for condemnation. The trial court denied Georgia Power's motion to dismiss Stowers appeal. Georgia Power then appealed.

The Court of Appeals held that Stowers' exception to the special master's award in the condemnation proceeding put Georgia Power on notice that he was dissatisfied with consequential damages awarded to him by the special master. Stowers exception in writing satisfied the statute providing that if a party is dissatisfied with the amount of value awarded, they may file an appeal within ten days of service of the award. The notice of appeal must also express the party's dissatisfaction with the compensation. The court held that the language used by Stowers in his exception could not be construed as anything other than an "expression of dissatisfaction" with the amount of compensation awarded.

CONTRACTS

Vakilzadeh Enters. v. Housing Authority of the County of DeKalb
Georgia Court of Appeals
August 18, 2006
281 Ga. App. 203

Affordable Housing Development Corporation of DeKalb entered into a construction contract with Vakilzadeh Enterprises, Inc. d/b/a Allstates Construction Company (Allstates), under which Allstates became the general contractor for the construction of a subdivision. The Housing Authority of the County of DeKalb later terminated the agreement on grounds that Allstates had breached the contract in several ways. Allstates then brought this suit against DeKalb for wrongful termination. The contract required Allstates to maintain various types of liability insurance. After the first phase of construction, Allstates was not asked to provide verification of insurance coverage. During a subsequent phase, a water line broke, after Allstate's insurance had lapsed. As a result, DeKalb terminated the contract and Allstates filed suit, arguing, pursuant to O.C.G.A. § 13-4-4, that the parties mutually departed from the requirement that the contractor maintain uninterrupted coverage and that the agency, thereby, waived its right to terminate the parties' agreement without giving the contractor reasonable notice of its intent to rely on the exact terms of the agreement. There was evidence that DeKalb required Allstates to provide verification of liability insurance coverage before proceeding with construction of Phase I but, with knowledge that the liability insurance that Allstates had previously had expired in November 2002, acquiesced in Allstates' proceeding with construction of Phases II and III in April 2003 without filing certificates of insurance. Therefore, the Court of Appeals reversed the trial court's grant of summary judgment in favor of DeKalb, because whether the parties moved away from the terms of the agreement and whether the agency then failed to provide notice of its intent to rely on the original terms was a question for the jury.

EMPLOYMENT

Cooper v. Fulton County
United States Court of Appeals for the Eleventh Circuit
August 7, 2006
458 F.3d 1282

Cooper brought suit against Fulton County, his former employer, for violations of the Family and Medical Leave Act (FMLA) after the County terminated him for failing to provide medical certification for an absence within six days of the County's written request. In late

June, Cooper went to the hospital complaining of chest pains. The County informed him that he would need to provide a doctor's note and that if he complied by July 8, he would be placed on 12 weeks FMLA leave. Cooper provided the requisite notes and returned to work on July 13, however he became ill that day and left work. On July 14, Cooper requested further medical leave. On August 4, the County informed Cooper that he had to provide medical certification for his absence by August 10. Cooper obtained a doctor's note dated August 7 but did not immediately deliver it, and on August 10, the County terminated him. The trial court found that the County had not complied with either the notice requirement or the allotted time period allowed for a medical certification response required by the statute. The Court of Appeals held that the County violated FMLA when it gave the employee only six days to provide documentation, rather than the fifteen days allowed. Cooper was awarded $248,828.41 in back pay and $58,031.59 in liquidated damages. FMLA requires that the employee receive written notice of the employer's medical certification requirements after an employee requests FMLA leave. Oral notice is acceptable if written notice was received by the employee within the preceding six months. Additionally, the employee is given 15 days to respond to any request for certification. Liquidated damages are presumptively awarded to an employee when the employer violates FMLA. The Court affirmed the ruling in favor of Cooper as well as the liquidated damages, finding that the award was not erroneous, although the County acted in good faith, it did not have a reasonable basis for believing its conduct was lawful where its employees did not read the FMLA or its regulations nor consulting an attorney before firing the employee.

Jones v. Fulton County
Georgia Court of Appeals
August 23, 2006
281 Ga. App. 254

Phillip Jones, Sr., appeals pro se from the dismissal of his lawsuit against Fulton County. Jones alleged that Fulton County had harassed, discriminated, and retaliated against him for filing grievances and a lawsuit. Fulton County filed a motion to dismiss Jones's claims, based on res judicata because Jones had already litigated his claims in federal court and before an arbitrator. The doctrine of res judicata prevents re-litigation of matters that were or could have been litigated in a previously-adjudicated action. In order for res judicata to bar a subsequent action, it must be established that an identity of parties and subject matter exists between the two actions, and that a court of competent jurisdiction entered an adjudication in the earlier action. In this case, however, the record shows that Jones initially filed claims against Fulton County in federal court on July 15, 2003, mainly alleging discrimination in the workplace. That court granted the County's motion to dismiss, and this dismissal was later affirmed by the Eleventh Circuit Court of Appeals. Jones also filed a grievance under Fulton County's internal procedures after a warning letter was put in his personnel file. Fulton County denied the grievance, and Jones appealed the decision to an arbitrator. The arbitrator sustained the grievance and ordered the warning letter removed from Jones's file. The warning letter was issued on May 12, 2004 and the arbitrator's decision was handed down on May 5, 2005. On September 15, 2004, while the appeal from the warning letter was ongoing, Fulton County sent Jones a letter notifying him that he had a mandatory appointment with the Fulton County Mental Health Department for a "Fitness-for-Duty" evaluation and also stating that he had been placed on official leave. Jones kept the appointment but said that he wanted legal counsel before submitting to the evaluation. Since Jones had not rescheduled the appointment as of October 19, 2004, he received a ten-day suspension. The Court of Appeals reversed the trial court's dismissal and held that because the claims concerning the "Fitness-for-Duty" evaluation and suspension were not part of the federal lawsuit and were not considered by the arbitrator, there was no identity of subject matter and therefore, the claims were not barred under the doctrine of res judicata.

Unified Government of Athens-Clarke County v. McCrary
Supreme Court of Georgia
September 18, 2006
280 Ga. 901

Appellee-plaintiffs are former employees of Appellant-defendant Unified Government of Athens-Clarke County (ACC). They began their careers before the city and county governments consolidated in 1991, and they retired after July 1, 2002. At the time of appellees' retirement, ACC provided its employees with two options for health insurance coverage. They could choose between a Preferred Provider Organization (PPO) form of managed health care or a Health Management Organization (HMO) plan. The PPO allowed greater freedom of choice, but required the employee to pay a premium for coverage. The HMO option was provided cost-free. While employed, appellees selected the PPO option and paid the premiums. After they retired, however, they sought to retain their PPO coverage without paying any premiums. ACC agreed to insure appellees and their dependents cost-free under the HMO plan, but refused to provide them with cost-free PPO coverage. Appellees brought suit, asserting that they were entitled to free PPO coverage as an element of their retirement benefits. After conducting a hearing, the trial court found in appellees' favor, concluding that they "have a vested right in free health insurance at whatever level they had at the time they retired, [and that] ACC has impaired that right by requiring them to pay for a portion of the PPO program after retirement." Based on that finding, the trial court ordered ACC "to provide [appellees] PPO coverage at no cost until death." ACC appeals from that order. The Supreme Court of Georgia found that requiring the appellees to elect the HMO option if they wished to receive cost-free coverage did not violate Ga. Const. art. I, § 1, para. X, since they never had a vested right to maintain in retirement the precise health-care delivery system by which they received their coverage while employed. Therefore, the trial court erred in ordering ACC to provide appellees with lifetime no-cost PPO coverage.

ENVIRONMENTAL LAW

EarthResources, L.L.C. v. Morgan County
Supreme Court of Georgia
November 30, 2006
281 Ga. 396

EarthResources L.L.C. purchased property in Morgan County zoned for agriculture and sought a written verification of zoning compliance so it could pursue a state permit to build a landfill. EarthResources asserted its plans met zoning requirements because its landfill would be a public utility and public utility structures were permitted uses under the 1997 zoning ordinance, then in effect. When the Board of Commissioners denied the verification after a hearing, EarthResources filed a five-count complaint against Morgan County, its Board of Commissioners, the commissioners individually, and the official who initially denied the verification of zoning compliance. The trial court granted Morgan County's motion for summary judgment on all counts. Central to EarthResources' assertion that it was entitled to a written verification of zoning compliance were its claim that its landfill would be a public utility and the provision in the zoning ordinance in effect when this case began that public utility structures were permitted uses in areas zoned for agriculture. The trial court rejected that argument, holding that a privately-owned landfill is not a public utility, and the Supreme Court of Georgia affirmed. Absent a finding that its landfill would be a public utility, EarthResources' claim to entitlement to a verification of zoning compliance is without basis.

INVERSE CONDEMNATION/ REFUSAL TO ACCEPT ROADS

Rabun County v. Mountain Creek Estates, L.L.C.
Supreme Court of Georgia
July 6, 2006
280 Ga. 855

This appeal consolidates two cases relating to Mountain Creek Estate's action for monetary and mandamus relief in the form of an order requiring Rabun County to accept ownership of roads within Mountain Creek's subdivision. The trial court found that Mountain Creek had complied with Rabun County's subdivision requirements in the construction of roads and awarded $472,280 in favor of Mountain Creek for its claim of inverse condemnation. Additionally, it awarded Mountain Creek $15,000 in attorney fees under O.C.G.A. § 9-15-14. The Supreme Court of Georgia reversed in part and affirmed in part the trial court's ruling. It reversed the trial court's finding of inverse condemnation and associated damages. Inverse condemnation requires some action on the part of the government that causes the property owner to receive diminished utility and functionality in their land. Rabun County's refusal to accept the roads did not constitute inverse condemnation because no property was taken; the government's inaction created neither a nuisance nor trespass on Mountain Creek property; and the inaction had not diminished the utility or functionality of Mountain Creek's property. The County did not inversely condemn the property and is therefore entitled to sovereign immunity against Mountain Creek's claim of damages. The Supreme Court of Georgia affirmed the finding that Mountain Creek had complied with the road requirements and the mandamus relief. As for attorney fees, although the County acted in good faith, the Court found that the County's actions were not objectively reasonable because the County's expert recommendations, which were relied upon in litigation, contained recommendations that were not required by the ordinance.

LAW ENFORCEMENT/ SHERIFF

Hill v. Clayton County Board of Commissioners
Georgia Court of Appeals
November 29, 2006
283 Ga. App. 15

This dispute between the Clayton County Board of Commissioners and Victor Hill, the Clayton County Sheriff, arose after the Sheriff caused a number of county-owned motor vehicles assigned to his use to be repainted and remarked, and also caused portions of the Sheriff's offices within a county-owned facility to be repainted, all without the Board's approval. The Board sued the Sheriff seeking, among other things, a declaration that any modifications to the motor vehicles and the facility were subject to the Board's prior approval. The parties filed cross-motions for summary judgment, and the trial court granted summary judgment to the Board. The Sheriff also filed a motion for recusal, which the trial court denied. The Court of Appeals disagreed with the trial court's conclusions that the Sheriff had no independent authority to repaint and remark the vehicles assigned to his exclusive use, and that the Sheriff is required to obtain Board approval for like changes. Hill, as the Sheriff of Clayton County, "is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission." However, the Board does "have the control of all property belonging to the county" yet this control over county property is limited in the context of motor vehicles and equipment owned by a county but assigned to a sheriff for his exclusive use. Therefore, the Sheriff had the independent authority to repaint and remark the vehicles assigned to his exclusive use, but did not have the authority to repaint the offices in the county facility without the Board's approval. The trial court erred in granting summary judgment to the Board. The Court of Appeals did, though, affirm the trial court's denial of the Sheriff's motion for recusal.

LEGAL SERVICES/ COUNTY ATTORNEYS

Putnam County v. Adams
Georgia Court of Appeals
November 2, 2006
282 Ga. App. 226

From April 1998 until May 2001, Putnam County retained a private attorney, Dorothy Adams, to function as county attorney. When the representation ended, many closed files and some open files remained in Adams's possession and a

dispute arose as to the procedure for transferring the files to a new county attorney, as well as issues regarding which files needed to be transferred, which documents had already been produced, and who would pay certain costs involved, including copying charges. When the parties could not agree on these details, Putnam County filed suit seeking an order requiring Adams to turn over all of the files. Following a bench trial, the trial court granted partial relief in favor of Putnam County. Not satisfied with the specifics, Putnam County appealed. Putnam County contends there are no issues of fact and it is entitled to judgment as a matter of law because, absent an agreement to the contrary, a client is entitled to all of the files and any associated expenses must be borne by the former attorney. Adams contends the trial court correctly determined that a client is only entitled to those documents necessary to avoid foreseeable prejudice to the client. Adams also contends the trial court correctly weighed the evidence and determined that Putnam County had not shown that it would be prejudiced if it did not recover, at Adams's expense, the closed files. On review of the evidence presented, and the relevant case law, the Court of Appeals found that Putnam County, as the client, was presumptively entitled to have the files returned absent good cause. Second, the foreseeable prejudice standard, upon which Adams and the trial court relied, was only applicable to cases where the attorney was attempting to assert a lien on the client's papers and property under O.C.G.A. § 15-19-14(a). Where there were no unpaid legal services, the client was entitled to the return of his or her papers and property, as well as documents created by the attorney in the course of representing the client. Hence, the trial court applied the wrong legal standard. Further, it also appeared to have taken into account testimony and other evidence to show that the attorney might have already turned over some number of the documents sought by Putnam County and therefore, the Court of Appeals reverses and remands the trial court's judgment.

OPEN RECORDS/OPEN MEETINGS ACT

Decatur County v. Bainbridge Post Searchlight, Inc.
Supreme Court of Georgia
July 6, 2006
280 Ga. 706

Bainbridge Post Searchlight, Inc (Newspaper) brought this action against Decatur County for violations of the Open Records Act (O.C.G.A. §§ 50-18-70 et seq.) and the Open Meetings Act (O.C.G.A. §§ 50-14-1 et seq.). The Decatur County Grand Jury forwarded presentments to the county attorney that questioned the propriety of the manner in which the county commissioners handled vacation and overtime policies applicable to county employees. The presentments were then discussed in a closed session of the county commissioners and the county attorney and the chairperson submitted an affidavit that the subject matter of the discussion was devoted to matters covered by an unspecified exception to the Open Meetings Rule. The Newspaper made two requests for the documents mentioned in the meetings and was denied both times. This action then ensued. The trial court found that the county commissioners violated the Open Meetings Act by conducting the closed session and the Open Records Act by refusing to comply with the request for the presentment. This Court reversed in part and affirmed in part. The trial court erred in granting mandamus relief after the grand jury presentments were published and in granting injunctive relief against future violations. The Court determined however that there was no pending litigation and thus the closed session did not qualify under the attorney-client exception to the Open Meetings Act. As such, the commissioners had violated the act by closing the meeting. Additionally, the documents sought were made public by their release to the county attorney for a response from the county commissioners and the Court affirmed the County's violation of the Open Records Act.

Douglas Asphalt Co. v. E.R. Snell Contractor, Inc.
Georgia Court of Appeals
November 22, 2006
282 Ga. App. 546

E.R. Snell Contractor, Inc. and ten other contractors applied for an injunction against the Georgia Department of Transportation to prevent them from answering the Open Records Act request submitted by Douglas Asphalt. The contractors claimed that the documents, contained trade secrets and were thus exempt from the Act. Douglas Asphalt was granted permission to intervene, and objected to the injunction. The trial court permanently enjoined the DOT from giving unredacted copies of the documents to Douglas Asphalt, specifying which information was to be redacted. Douglas Asphalt then appealed.
The appellate court held that some of the information about the asphalt formulas contained in the requested documents did constitute trade secrets. The Georgia Open Records Act does not apply to any trade secrets that are of a privileged or confidential nature, and that are required by law to be submitted to a government agency.
Trade secrets are defined as information not commonly known, which has or can have some economic value, and is the subject of reasonable efforts to maintain its secrecy. The court found that there was economic value in the formula not being generally known or being easy to determine. The mix design in this case was not readily ascertainable and could not be duplicated by independent research.
The contractors did not destroy any expectation of privacy that they had by selling their asphalt to the public. Even if the asphalt on Georgia's roadways was public property, the confidential formula of the mix is not. While it is true that the companies were not required by law to form contracts with the state, once the contracts were entered into, the law required them to submit the information to the DOT before performing any work. Because the contractors were required to submit the proprietary information to the DOT it falls under the Open Records Act exception for trade secrets.

PROPERTY

Gwinnett County v. Howington
Georgia Court of Appeals
July 10, 2006
280 Ga. App. 347

Gwinnett County appealed a motion in limine that excluded any evidence of the Gwinnett County School District's condemnation of a tract of land that the County had already begun condemnation proceedings against, to determine the value of the land at the time it was condemned by the County. The courts of this state have long held that sales of land to condemning authorities are inadmissible as evidence in condemnation proceedings on the issue of the land sought to be condemned. Accordingly, the trial court did not abuse its discretion in excluding evidence of that School District's taking.

A A OK Ltd. v. City of Atlanta
Supreme Court of Georgia
July 13, 2006
280 Ga. 764

A A OK appealed a ruling by the trial court that the City of Atlanta had not abandoned its claim in the dedicated street that is and was Woodall Avenue. Pursuant to O.C.G.A. §44-2-64, A A OK filed a petition to register its title to certain property located within the City of Atlanta and named the City as one of the defendants. The trial court referred the case to an examiner. After conducting a hearing, the examiner found that the City of Atlanta had not abandoned its claim. The trial court adopted the examiner's report and ruled in favor of the City of Atlanta.
On appeal, A A Ok argued that the examiner failed to file a transcript and consequently that the trial court erred in adopting the report without looking at the transcripts. The Court found that there was no requirement for the examiner to submit a transcript and that it was A A OK Ltd.'s burden to make a timely request that any transcript that did exist be filed with the clerk of the trial court. A A OK made no such request. Additionally, A A OK contended that the City of Atlanta failed to turn over documents allegedly subpoenaed by the examiner. The record contained no evidence of this subpoena for documents. Accordingly, the Court affirmed the ruling of the trial court in approving and adopting the report finding that the City of Atlanta did not abandon the street.

Reidling v. City of Gainesville
Georgia Court of Appeals
July 26, 2006
280 Ga. App. 698

Plaintiffs Melissa Reidling, Buncum Lightsey, and Shane Reidling sued the City of Gainesville, Hall County, and the Georgia Department of Transportation (DOT), alleging that the defendants' road construction project created a flooding nuisance which damaged plaintiffs' property. Hall County executed a lump sum contract with a general contractor for the construction of a road just north of Reidling's property. The City of Gainesville took control over the road once it was completed. Aside from executing the contract, Hall County's participation consisted of relaying contracting questions from the contractor to the appropriate city official. Upon approval by the City, excess soil from the construction was placed on property adjacent to a creek that borders Reidling's property. Two years after the completion of the project, the creek flooded as a result of the change in gradation that occurred because of the excess soil storage. Since Hall County had no role in designing the project or in supervising the contractor's activities, simply bidding out the contract and relaying messages does not show that Hall County created or maintained the nuisance. The Court affirmed the grant of summary judgment, as the City owned and maintained the nuisance property, the County had no control over the property, and the County did not perform a continuous act that caused plaintiffs' harm.

SOVEREIGN IMMUNITY

Scott v. City of Valdosta
Georgia Court of Appeals
July 13, 2006
280 Ga. App. 481

Lindsay Scott appeals the dismissal of his complaint against Lowndes County. Due to identity confusion Lindsay Scott was arrested and detained under a warrant for Lindsey Scott. The events that set the mistaken arrest into motion began when Scott was stopped by a Lowndes County sheriff deputy for speeding. He was given a warning and allowed to proceed. After he had left, the deputy received information from the Lowndes County Sheriff's Department that there was an outstanding warrant for Lindsey Scott. The deputy then issued a "be on the lookout" call for a man matching Scott's description. Scott was then arrested and detained by the Valdosta City Police. At the Lowndes County jail, Scott attempted to explain that he had been wrongly arrested. Nevertheless, he was fingerprinted, given a jail jumpsuit, and strip searched. Finally, an intake officer showed Scott the warrant for writing a bad check. Scott saw the check was not on his bank and that the signature was not his. He also stated that he was informed by a deputy at the jail that the warrant was for Lindsey Elizabeth Scott, a white female with a different address and social security number. Scott, an African-American male, was then released.
Scott sued Lowndes County and the City of Valdosta for false arrest and false imprisonment. Counties are protected by sovereign immunity unless that immunity is waived by the General Assembly. The General Assembly has allowed counties to waive their immunity on issues arising by reason of ownership, maintenance, operation, or use of any motor vehicle through the purchase of liability insurance. Scott failed to demonstrate that such an insurance plan existed and that the injuries arose by reason of ownership, maintenance, operation, or use of any motor vehicle. The Court ruled that the mere use of vehicle in the stop, where such use was proper, was too remote from the actual injury to implicate any insurance policy on the vehicle. The dismissal of the charges against Lowndes County was affirmed.

TAXATION

Mulligan v. Security Bank of Bibb County
Georgia Court of Appeals
July 3, 2006
280 Ga. App. 248

Appellants Don T. Mulligan, Patsy L. Ruip and Virginia Ann Mulligan appeal the trial court's decision ordering that county ad valorem taxes be paid from surplus proceeds obtained from a foreclosure sale. The owners contended that the trial court erred by determining that the Tax Commissioner could collect delinquent ad valorem taxes from the surplus proceeds. They claimed that the buyer incurred the tax liability as part of his purchase of the property based on the published notice of foreclosure. Under Georgia law, ad valorem taxes were chargeable either as a personal debt of the taxpayer or as a lien, which extended not only to the property giving rise to the tax obligation, but also to all other property owned by the taxpayer. In addition, the notice of foreclosure did not limit the Tax Commissioner's discretionary authority over how to seek payment of the outstanding taxes and the notice provided that the proceeds of a property sale would be applied as provided in the deed. Therefore, nothing could be construed as precluding collection of the taxes from the surplus sale proceeds, and the Court of Appeals affirmed the trial court's judgment ordering that the county ad valorem taxes be paid from surplus proceeds obtained from the foreclosure sale of realty owned by appellants.

Mundell v. Chatham County Board of Tax Assessors
Georgia Court of Appeals
July 11, 2006
280 Ga. App. 389

Lee and Melissa Mundell appeal a superior court order concerning valuation of their real property by the Chatham County Board of Tax Assessors. The Board of Tax Assessors sent the Mundells notice of a change in value of their property for tax year 1999 from $51,500 to $137,500. The Mundells appealed the assessment to the Chatham County Board of Equalization, which established the value of the property at $120,000. The Mundells appealed that decision to the superior court in February of 2001. While that action was pending in the superior court, the Board of Tax Assessors sent the Mundells notice of a change in value of the same real property for tax year 2000, setting the value at $137,000. The superior court entered a consent judgment establishing the value of the property for tax year 1999 at $51,500.
With respect to the case concerning tax year 2000, in March 2002, the Mundells filed a motion for summary judgment, arguing that pursuant to O.C.G.A. § 48-5-299 (c), the consent judgment entitled them to a ruling that the value of their property for 2000 was also $51,500. The Mundells sought a judgment to reflect a value of $51,500 for 2000, which would have arguably extended the § 48-5-299(c) freeze for two more years, 2001 and 2002, which would have given the Mundells a three year freeze at the 1999 valuation of $51,500.
The appellate court found that the Mundells were given full and fair notice of and opportunity to respond in the trial court to the issue of whether § 48-5-299(c) operated to bar the assessors from increasing the valuation on their property for 2002. The legislature did not intend that § 48-5-299(c) effectively afforded a taxpayer protection from a change in value for more than the two successive years following a reassessment. A ruling pursuant to § 48-5-299(c) did not "establish" the value of the real property as contemplated by that provision so as to entitle a taxpayer to an additional two-year period of protection. Thus, the trial court's ruling pertaining to tax year 2002 did not violate § 48-5-299(c) and the Court of Appeals affirmed the judgment.

Mayor and Council of the City of Fort Valley v. Grills
Georgia Court of Appeals
Nov. 15, 2006
282 Ga. App. 397

Grills brought this action challenging the legality of the city collecting a fee for overdue property taxes. The trial court found in favor of Grills, and the city then appealed. The Court of Appeals held that the city did not have the authority to collect a fee for overdue property taxes until after a tax sale. Once a levy is made, the statute provided that the expenses of execution and levy could be collected. The statute also required that the notice of the levy include the amount of costs that had accrued. The statute did not, however, provide that those costs were collectible prior to levy and advertisement.
The court also pointed out that cities cannot levy any tax unless the state first grants them the power to do so. The burden of showing the authority to exercise such taxing power is upon every political subdivision of the state.

ZONING

Hollberg v. Spalding County
Georgia Court of Appeals
October 5, 2006
281 Ga. App. 768

On February 3, 2004, Wilma Hollberg entered into an agreement to sell her property to developer/defendant Next Generation Properties, L.L.C., with the sale being contingent upon rezoning of the parcel from AR-1 (agricultural and residential) to R-4 (single-family residential). Next Generation, acting as Wilma's agent, then filed two applications with Spalding County: an application to rezone the property to R-4 and an application for a special exception to allow one-acre lots in the R-4 district. The county planning commission held a hearing on March 30, 2004. Benjamin Sinclair Hollberg, the appellant, was present and voiced objections, citing adverse environmental and quality of living consequences. The planning commission recommended approval of the rezoning application, with certain conditions. The Board then held a hearing on April 22, 2004, at which Benjamin Sinclair Hollberg again objected, and unanimously approved rezoning Wilma Hollberg's property, but to classification R-2 with conditions, instead of R-4 as requested. Next Generation had proposed developing a residential subdivision on the 143 acres with 95 minimum one-acre lots, with the remainder dedicated to green space

and buffers, but no action was taken on the special exception.
Spalding County adopted a resolution amending the local zoning ordinance and official county zoning map to reflect the change from R-4 to R-2. Benjamin Sinclair Hollberg did not appeal the county's action. The hearing on the application for the special exception was held before the Board on September 23, 2004. Noting that the property already had been rezoned to R-2 with conditions, the Board approved the application on a 3-2 vote, with several conditions, including minimal disturbance of the land, with no clear-cutting permitted. On October 25, 2004, Benjamin Sinclair Hollberg filed in superior court a petition for a writ of certiorari or, in the alternative, a complaint for declaratory judgment, naming Spalding County and Next Generation as defendants and the Board as respondent. Benjamin Sinclair Hollberg sought review of the Board's grant of the special exception, alleging that it was void because it was based upon a rezoning decision issued pursuant to the local ordinance governing amendments to the official zoning map, which, Benjamin Sinclair Hollberg argued, was void because it contained no standards governing the exercise of zoning power, as required by O.C.G.A. § 36-66-5 (b).
The appellate court held that Benjamin Sinclair Hollberg's failure to appeal the rezoning of Wilma Hollberg's property precluded him from attacking the rezoning decision, and the Court of Appeals affirmed the trial court's default judgment entered against Benjamin Sinclair Hollberg.

Monterey Community Council v. DeKalb County Planning Commission
Georgia Court of Appeals
October 13, 2006
281 Ga. App. 873

Legacy Investment Group, L.L.C. sought approval from the DeKalb County Planning Commission to develop a subdivision of 124 townhomes. The Monterey Community Council, Johnnie Fogle, and Jamie White, the property owners, opposed the development, asserting that it violated several DeKalb County ordinances. According to the property owners, the Planning Commission initially required Legacy to revise its development plan, but Legacy did not do so. The plan was nonetheless approved during a Planning Commission meeting for which the property owners contend they had no notice.
The property owners filed an action for declaratory judgment and injunctive relief in DeKalb County, seeking to clarify the validity of the plan approved by the Planning Commission. Specifically, the property owners contend that because the Planning Commission did not comply with relevant DeKalb County ordinances, its approval was void.
On appeal, the Court of Appeals concluded that the ordinance was not properly before the superior court, as neither the superior court nor an appellate court could take judicial notice of a county ordinance, and neither the original nor a certified copy of the relevant ordinance was contained in the record. Thus, the trial court erred by relying upon an ordinance not properly in the record to conclude that a writ of certiorari was an appropriate method of judicial review of the commission's actions. Therefore, the Court of Appeals reversed the trial court's grant in dismissing the action seeking declaratory judgment and injunctive relief.