COUNTIES & THE LAW

A Newsletter of the Association County Commissioners of Georgia

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CIVIL PROCEDURE

Tanner Advertising Group, L.L.C. v. Fayette County
United States Court of Appeals for the Eleventh Circuit
June 09, 2006
451 F.3d 777

This appeal addressed the issue of 1) whether the repeal of a statute will result in the mootness of claims under that statute and 2) whether a plaintiff has standing to press issues for which he/she/it has not incurred actual injury. Tanner Advertising Group, L.L.C. brought this appeal to challenge an order that dismissed its challenge of the Fayette County Sign Ordinance of 1998. Tanner applied for sign permits under the ordinance and was denied under section 1-43 of the provision. Tanner challenged the constitutionality of the 1998 Sign Ordinance on numerous First Amendment grounds. The District Court found that section 1-43 was constitutional and dismissed Tanner's claims under that section, as well as the request for damages. The District Court also found that Tanner had no standing to facially challenge the other provisions of the ordinance. Tanner appealed only the decision regarding the facial challenge to a panel of the Court and not the decision that 1-43 was constitutional or the dismissal of damages. The panel reversed and held that Tanner had standing to facially challenge all sections of the ordinance. The Court vacated the decision of the panel and granted the petition for rehearing en banc after which Fayette County repealed the 1998 Sign Ordinance and passed a new ordinance. The 2005 Sign Ordinance addressed and rectified all of Tanner's issues with the 1998 ordinance with the exception of the ordinance's prohibition of "attention getting devices." Ordinarily, a constitutional challenge to a statute is mooted by the repeal of the statute. Neither Tanner's claim that the request for damages kept the controversy alive, nor its claim that it had vested property rights in the sign permits were accepted by the court. Tanner failed to address on appeal the District Court's ruling that 1-43 was constitutional and the denial of damages which provided the basis for the arguments for damages and vested property rights, thus the Court was unable to hear the arguments as a matter of law. Though the issue was not moot, Tanner lacked standing to challenge the remaining provision of the ordinance that related to "attention getting devices." The record showed that Tanner was not affected by the provision that allegedly grants unbridled discretion to prohibit "attention getting devices" since the proposals did not include any such devices. To have standing to invoke the jurisdiction of a federal court, the plaintiff must prove that there is an injury in fact that is actual or imminent, since Tanner suffered no injury he had no standing to challenge the provision.

The Forest City Gun Club v. Chatham County
Georgia Court of Appeals
June 30, 2006
280 Ga. App. 219

The trial court entered an order granting "Chatham County, Georgia's Motion for Summary Judgment Regarding Respondent's Improper Valuation Method" in a partial-taking condemnation action initiated by The Forest City Gun Club. The Court of Appeals reviewed the substance of the order and determined that it was, despite its title, a motion in limine. Summary judgment is designed to test the merits of a claim, but neither the ruling on the above titled motion or any of the other determinations by the trial court were in fact on the merits of the condemnation claim. Because the superior court's order is not otherwise a final appealable judgment within the meaning of O.C.G.A. §9-11-56(h), the parties could have attempted to appeal by complying with interlocutory appeal requirements. They did not do so, and consequently, the Court of Appeals had no jurisdiction to hear the case.

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

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

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CIVIL SERVICE SYSTEM

Hill v. Watkins
Supreme Court of Georgia
February 27, 2006
280 Ga. 278

Shortly after assuming the office of Sheriff of Clayton County in January 2005, Victor Hill sent notices summarily terminating the employment of twenty-seven employees of the Clayton County Sheriff's Office, and advising them that they are not entitled to the protections of the Clayton County Civil Service System Act. Two discharged employees, Holly Watkins and Sherrie Martin, brought a petition for declaratory judgment and injunctive relief, asserting that they are subject to the Act, which affords them due process and prohibits termination without just cause. The trial court agreed with Watkins that employees of the Clayton County Sheriff's Office are covered by the Act, and it granted summary judgment in her favor. The question was whether there was proper authorization under the Georgia Constitution for the specific inclusion of sheriff's office employees in the Act. The Supreme Court of Georgia ruled that the Act was authorized by a 1963 local constitutional amendment, which was continued in effect by legislation enacted in 1986. After the adoption of the 1983 Constitution, the 1963 constitutional amendment, 1963 Ga. Laws 681, was specifically continued in effect by 1986 Ga. Laws 5573. Thus, the General Assembly specifically authorized Clayton County, Georgia, via an unambiguous 1963 local constitutional amendment, 1963 Ga. Laws 681, as extended in 1986, to enact a civil service system which included any person whose wages or salary was paid by the county.

CONSTITUTIONAL OFFICERS: BENEFITS

Supreme Court of Georgia
January 17, 2006
280 Ga. 241

Elaine Mealor, a former Superior Court Clerk for Morgan County, claimed that her exclusion from the County's pension plan denied her equal protection under the law. Morgan County participates in a pension plan, created by the Association County Commissioners of Georgia, that provides retirement benefits to County employees. Morgan County, rather than the individual employees, contributes its own funds towards each employee's pension plan. Initially, the County's constitutional officers, including the Superior Court Clerk, the Probate Judge, the Sheriff, and the Tax Commissioner, were not included in Morgan County's pension plan because these constitutional officers have access to pension plans through the State's retirement system. In 1989, the General Assembly passed a statute allowing, but not requiring, counties to include their constitutional officers within their pension plans. In 1996, Morgan County chose to include the Tax Commissioner within its plan because, at that time, the only other retirement plan that the Tax Commissioner could participate in was funded by the employee's own personal funds and by funds contributed by the State, but included no funds contributed by Morgan County. Morgan County chose not to include the other constitutional officers within its retirement plan because those officers already participated in State plans funded in part by fines and fees collected by their respective County offices. Thus, Morgan County Board of Commissioners concluded that unlike the Tax Commissioner's retirement plan, the other constitutional officers' retirement plans were already funded or supplemented by Morgan County funds. The Supreme Court of Georgia found that the reason Morgan County included the Tax Commissioner within its pension plan, while excluding the other constitutional officers, was its decision that it should contribute to each constitutional officer's retirement plan only once. Thus, it chose to include the Tax Commissioner because the state plan was funded without any contribution from the county, while the other constitutional officers' retirement plans were all funded in part by county fines and fees. Morgan County's decision was based on a rational distinction between the various constitutional officers, and furthered the legitimate governmental purpose of equalizing the County's pension contributions and fostering financial responsibility in the funding of its retirement plans. Therefore, the Court found that Morgan County had a rational basis for including certain employees within its pension plan and excluding others, like the Superior Court Clerk, and reversed the trial court's judgment granting Mealor a writ of mandamus compelling Morgan County to retroactively include her within its pension plan.

CONTRACTS

Marlowe v. Colquitt County
Georgia Court of Appeals
March 10, 2006
278 Ga. App. 184

Former County Administrator, Brian Marlowe, sued Colquitt County to recover the lump sum payment contemplated by his employment contract in the event of Marlowe's termination without cause. The trial court granted the County's motion for summary judgment, and Marlowe appealed. The trial court concluded that the employment agreement at issue could not be enforced, but that the county administrator was entitled to six months' salary, less the amount actually paid to him, for the period between September 15, 2003, and December 31, 2003. The 1986 Georgia General Assembly Act No. 817, which was the governing act, did not authorize Colquitt County to incur the obligation contemplated by Section 3A of the agreement, which outlined the county's right to terminate its administrator. Thus, that section was void and unenforceable. As a result, the Court of Appeals declined to address whether the trial court correctly held that the lump sum payment provision violated the Georgia Constitution and O.C.G.A. § 36-30-3. Furthermore, the county administrator failed to show how the employment agreement might have been construed in a way that

conformed with the requirements of the local law, but also allowed him to recover a lump sum payment. The Court of Appeals affirmed because the employment contract's lump sum payment provision was unenforceable. Therefore, absent a motion for attorney's fees, the county administrator was not entitled to the same.

Griffin Brothers Inc. v. Town of Alto
Georgia Court of Appeals
June 27, 2006
280 Ga. App. 176

Griffin Brothers Inc. appealed the grant of summary judgment to the Town of Alto (the Town) in its suit for damages arising from an unsuccessful bid on a pipeline project. The Town planned to install a water pipeline and contacted Griffin Brothers Inc. to get an estimate of the cost. After providing an estimate, the mayor contacted Griffin Brothers Inc. and asked that they purchase the pipe necessary to complete the pipeline. The mayor then advised Griffin Brothers Inc. that it would have to submit a formal bid to be awarded the project. Griffin Brothers Inc. and one other company submitted bids. The competitor's bid was more expensive but included a longer run of pipe. The competitor was awarded the bid. Griffin Brothers Inc. contended that 1) the Town was required to accept the lowest bid and 2) that the Town is estopped from denying that a contract existed between Griffin Brothers Inc. and the Town. O.C.G.A. 36-91-22(a) states that the requirement to accept the lowest bid for public work contracts does not apply to projects that can be completed for under $100,000. In this case the highest bid was $89,989. The mayor's request to purchase the pipe was insufficient to create a contract. The mayor only had the authority to bind the Town for purchases under $2,000. It was Griffin Brother Inc.'s duty to determine whether the mayor had the authority to bind the Town. Therefore, the Town, acting within the scope of its authority, merely exercised its discretion to award the contract to the contractor's competitor and because the mayor lacked authority to unilaterally bind the Town to a contract with the contractor, any contract asserted by the contractor based on authorization from the mayor was unauthorized. This foreclosed the contractor from asserting estoppel against the Town and the grant of summary judgment to the Town was affirmed.

ENVIRONMENTAL LAW

Jackson County v. Earth Resources, Inc.
Supreme Court of Georgia
March 13, 2006
280 Ga. 389

Earth Resources, Inc. applied for a conditional use permit to develop 94.48 acres of property as a Construction and Demolition landfill. The application was presented twice in public hearings before the Jackson County Planning Commission, during which the Commission heard from the county planning and zoning staff, other governmental personnel, Earth Resources and citizens. After each hearing, the Planning Commission recommended to the Jackson County Board of Commissioners that the special use permit be denied. After the final public hearing, the Board of Commissioners denied the application and Earth Resources sought a writ of mandamus to require the Board to issue the permit. The trial court ordered the Board of Commissioners to issue the permit, concluding that there is "a clear right to have all relevant evidence considered by the Board of Commissioners," and for the Board to fail to do so constituted a "gross abuse of discretion." However, the Supreme Court of Georgia reversed the trial court's judgment, finding that the Jackson County Georgia Zoning Ordinance provided that a special use permit was required to issue only if each provision of a set of criteria were met, but left the Board of Commissioners with discretion. As the Board's decision was discretionary, the grant of mandamus was proper only if the denial of the permit was a gross abuse of discretion, and here there were specific concerns raised as to the negative impact of truck traffic to and from the site, decreasing land values, the potential for groundwater contamination, and other issues. It was also noted that the project was inconsistent with Jackson County's Comprehensive Land Use Plan, which called for mid-density residential use. Therefore, the Board did not abuse their discretion, and the trial court erred in ordering that the Board issue the special use permit.

Murray County v. R&J Murray, L.L.C.
Supreme Court of Georgia
March 13, 2006
280 Ga. 314

In 2002, R&J first proposed building a Construction and Demolition landfill on 398 acres it owned in Murray County. Under O.C.G.A. § 12-8-24 (g), before R&J could obtain a permit to build and operate a landfill from the Georgia Environmental Protection Division, it first had to obtain written verification from Murray County that its proposed landfill did not violate any zoning or land use ordinances and was consistent with the County's Solid Waste Management Plan (SWMP). Murray County responded to R&J's initial proposal, by letter, stating that the proposed landfill, which would be restricted to the disposal of construction and demolition waste, was consistent with its zoning ordinances and its SWMP. R&J amended the request multiple times, and eventually asked Murray County to verify that an unrestricted Municipal Solid Waste landfill was also consistent with the County's SWMP. Murray County refused to verify that the proposed Municipal Solid Waste landfill was consistent with its SWMP, claiming that an unrestricted Municipal Solid Waste landfill would cause more environmental harm than the originally proposed Construction and Demolition landfill, and that the proposed landfill, owing to economic factors as well as its geographic proximity to the County's existing landfill, would render Murray County unable to continue operating its existing landfill. Due to land and geological limitations, Murray County's SWMP states that the County will rely exclusively on its existing

Municipal Solid Waste landfill until at least 2030. Murray County found that the proposed landfill would interfere with the expansion of the existing landfill necessary to achieve that goal, due to statutory restrictions on landfill density. In addition, Murray County concluded that the proposed landfill would render the County financially unable to continue operating its existing landfill, contrary to the SWMP, and that by increasing the waste stream into the County, it would be unable to meet its waste reduction goals. Murray County thus concluded that the proposed landfill was inconsistent with its SWMP, and refused to issue the requested verification to the Environmental Protection Division. The Supreme Court of Georgia found that the language of O.C.G.A. § 12-8-24 (g) authorizes local governments to determine whether a proposed facility is consistent with its SWMP, but does not restrict the local government to consider only certain factors. The Court further held that the General Assembly plainly chose not to impose such restrictions on local governments in their consistency determinations. Thus, in determining whether a proposed facility is consistent with its SWMP, a local government is authorized to consider any relevant factor that it appropriately considered in the SWMP itself. Because the trial court's determined that Murray County abused its discretion, the Supreme Court of Georgia reversed the judgment and remanded.

Fulton County v. City of Atlanta
Supreme Court of Georgia
March 27, 2006
280 Ga. 353

The City of Atlanta entered into contracts with Advanced Disposal Services, Inc. and Republic Services of Georgia, L.P. to collect, transport and dispose of the city's municipal solid waste. Under the contract, municipal solid waste was collected, taken to transfer stations in South Fulton County and Cobb County, and transported to landfills in Forsyth County and Butts County for final disposal. Fulton County made a demand upon the City of Atlanta to comply with the provisions of O.C.G.A. § 36-1-16 (a), which gives Georgia counties the power to veto the importation of solid waste. The City of Atlanta asserted that O.C.G.A. § 36-1-16 (a) is unconstitutional because it impairs interstate commerce. The Supreme Court of Georgia affirmed the trial court's finding that in fact, O.C.G.A. § 36-1-16 (a) impinges on interstate commerce because it empowers counties to control both the importation and the exportation of waste. A state, or one of its political subdivisions, is not allowed to avoid the strictures of the Commerce Clause by curtailing the movement of articles of commerce through subdivisions of the state, rather than through the state itself and therefore, O.C.G.A. § 36-1-16 (a) was unconstitutional because it impaired interstate commerce.

FIRST AMENDMENT

CAMP Legal Defense Fund v. City of Atlanta
United States Court of Appeals for the Eleventh Circuit
June 13, 2006
451 F.3d 1257

The Coalition for the Abolition of Marijuana Prohibition (CAMP) appealed a judgment regarding the constitutionality of the Atlanta Outdoor Festivals Ordinance of 2003. After dealing with issues of standing and mootness, the Court moved on to a substantive analysis of whether several provisions violated the First Amendment's prohibition on the restraint of free speech. CAMP alleged that the ordinance granted unfettered discretion to city officials in violation of the First Amendment because 1) the Chief of Staff was allowed to impose special limitations on certain neighborhoods if there were special considerations warranting such limitations; 2) city officials were allowed to comment on permit applications, and 3) Atlanta failed to assert a compelling interest for the content-based exemption of city sponsored events. CAMP also alleged the ordinance created unconstitutional prior restraints on speech because it 1) required a 90-day advance application for a permit, 2) contained a liability insurance requirement for events with more than 10,000 anticipated attendees, and 3) established a moratorium on permits between the time the old ordinance was repealed and the 2003 ordinance took effect. In addressing the issues of unfettered discretion to city officials, the Court found that reading the statute in its entirety showed that the Chief of Staff did not have unfettered discretion. Additionally, the comments allowed by other city officials were not problematic because the officials were given no power to grant or deny the permits. The Court did find that the exception for city-sponsored events, defined as a public event which is in major part initiated, financed and executed by the city, did violate First Amendment protections. While Atlanta was not required to grant a permit or pay permit fees to itself, the language of the ordinance extended to the exemption to include events run by private organizations as long as Atlanta in major part initiated, financed or executed the event. As to the issue of prior restraint, the court found that the 90-day filing requirement, the liability insurance requirement and the moratorium were content neutral and the least restrictive means for achieving Atlanta's goals and were therefore not a violation of the First Amendment.

Coffey v. Fayette County
Supreme Court of Georgia
June 26, 2006
280 Ga. 656

This is the second appeal challenging the constitutionality of a Fayette County sign ordinance for violation of freedom of speech. The Court has interpreted the Georgia Constitution to provide broader protection for freedom of speech than the First Amendment because it requires the government to adopt the least restrictive means of achieving its goals. The inquiry of whether the government has used the least restrictive means is to be determined on careful consideration of the evidence. The trial court simply accepted Fayette County's determination that only one sign and one size would adequately

promote traffic safety without actually receiving any evidence from Fayette County. The Court remanded the case for further consideration consistent with this opinion.

LAW ENFORCEMENT/ COUNTY POLICE

Johnson v. Fayette County
Supreme Court of Georgia
May 05, 2006
280 Ga. 493

Fayette County filed suit seeking injunctive and declaratory relief contending that the Fayette County Marshal's Department (FCMD) is a police force and that Sheriff Johnson was acting illegally by not accepting prisoners arrested by FCMD. O.C.G.A. § 36-8-1(b) requires that the creation of any county police force after January 1, 1992 receive voter approval before it can become effective. O.C.G.A. §36-8-1(c) contains a grandfather provision that makes the voter referendum unnecessary for any county police force that was created before January 1, 1992, so long as that police force remains in existence and is fully operational. The trial court granted summary judgment to Fayette County, finding that on January 1, 1992 the FCMD was an established, operational and fully functional county law enforcement agency with full arrest powers. The Georgia Supreme Court affirmed in part and reversed in part. There was no dispute that the FCMD was properly authorized to exercise full police powers as of the effective date. There was question in the record whether the FCMD was in fact operating as a police force on January 1, 1992. Because there was a genuine issue of material fact, summary judgment was not appropriate and the issue of whether the FCMD was acting on its authorized powers was remanded.

OPEN RECORDS, OPEN MEETINGS ACT

Central Atlanta Progress, Inc. v. Baker
Georgia Court of Appeals
April 11, 2006
278 Ga. App. 733

These appeals involve the Georgia Open Records Act and the refusal of Central Atlanta Progress, Inc. (CAP)and the Metropolitan Atlanta Chamber of Commerce, Inc. (MACOC) to permit the Atlanta Journal-Constitution (AJC) to inspect their bids for the NASCAR Hall of Fame and the 2009 Super Bowl. In May 2005, the AJC requested a copy of MACOC's 2009 Super Bowl bid pursuant to Georgia's Open Record Act and in June 2005, the AJC requested a copy of the NASCAR Hall of Fame bid from CAP. Both MACOC and CAP, which were represented by the same legal counsel, refused to disclose the bids, arguing that because the bids were prepared neither by nor on behalf of public agencies, the documents were not subject to disclosure under the Act. The Open Records Act was enacted in the public interest to protect the public from "closed door" politics and the potential abuse of individuals and the misuse of power such policies entail. Therefore, the Act must be broadly construed to effect its remedial and protective purposes. The intent of the General Assembly was to encourage public access to information and to promote confidence in government through openness to the public. It is undisputed that the NASCAR bid involved the use of public funds and for the future expenditure of substantial public resources. The president of CAP testified that CAP hoped to receive $25 million from the state "in whatever form," and, furthermore, public officials and employees participated in the preparation and promotion of the bid. The Super Bowl Bid Committee also included numerous public officials, including Georgia's governor, Atlanta's mayor, and the general manager of the Georgia Dome, and there was evidence that the bid required the future use of public resources to be effective and that public entities would provide millions of dollars in "in-kind" services for the Super Bowl. For example, the City of Atlanta pledged to provide additional police, fire and other services for the event, at an estimated cost of $1.4 million. Thus, there was sufficient evidence that the corporations were acting "for or on behalf of" public offices or agencies and the Georgia Court of Appeals affirmed the trial court's judgment in disclosing records relating to the bids.

PROPERTY

Stanfield v. Glynn County
Supreme Court of Georgia
June 12, 2006
280 Ga. 785

Glynn County zoned an area as "general industrial" and allowed a waste management facility to be built on the site. The Plaintiffs filed a suit against Glynn County and the waste management facility for nuisance, trespass, and inverse condemnation. The trial court granted summary judgment to Glynn County and the Georgia Supreme Court affirmed. Counties can be liable for conditions created on private property only under the constitutional eminent domain provisions against taking or damaging such property for public purposes with just compensation. Glynn County neither owns nor is charged with the ongoing maintenance of the waste management facility. The county's approval of the construction of the waste transfer facility and its issuance of building permits did not subject it to liability for inverse condemnation or for any claim rising to that level. Additionally, the issuance of citations for violation of the nuisance ordinance did not show that the county was responsible for maintaining a nuisance.

Forsyth County v. Georgia Transmission Corp.
Supreme Court of Georgia
June 26, 2006
280 Ga. 664

In this action, Forsyth County appeals a ruling declaring a zoning ordinance unconstitutional. Forsyth County passed an ordinance requiring electrical power utilities to gain approval from the Board of Commissioners before constructing high voltage power transmission lines or support facilities in the county. The Home Rule provision of the Georgia Constitution allows

county governments to pass laws for which no provision has been made by general law. Georgia Transmission Corp (GTC) is granted the power of eminent domain to effectuate the purpose of furnishing electric power and service by the General Assembly. There is no requirement in the general law that GTC demonstrate to the county the necessity or appropriateness of its proposed project. The ordinance however allowed the county board to substitute its own judgment for that of GTC and possibly frustrate GTC's power of eminent domain. The court found that the ordinance was defective in that it required the utility to successfully comply with the procedures established by the ordinance, and it authorized the county to deny "any or all" portions of an application. This power to wholly preclude construction was an unconstitutional infringement on the utility's legislatively-delegated power of eminent domain. Even without the "any or all" language, the ordinance still authorized the county to modify an electric power utility company's plans regarding the location and sitting of transmission lines and, in effect, to substitute its own judgment for that of the condemnor.

SERVICE DELIVERY STRATEGIES

Alcovy Shores Water & Sewerage Authority v. Jasper County
Georgia Court of Appeals
January 24, 2006
277 Ga. App. 341

Pursuant to the Service Delivery O.C.G.A. § 36-70-20, Jasper County, the City of Monticello and the City of Shady Dale entered into an agreement to implement a local government service delivery strategy. Characterizing the service agreement as improperly reducing the scope of its territory, the Alcovy Shores Water and Sewerage Authority filed an action for declaratory judgment and injunctive relief against Jasper County, the City of Monticello, the City of Shady Dale, and the Jasper County Water and Sewer Authority seeking, among other things, a declaration that the defendants had no right to Alcovy Shores Water and Sewerage Authority's territory and an injunction prohibiting them from interfering with Alcovy Shores Water and Sewerage Authority's right to provide water service within its territory. Alcovy Shores Water and Sewerage Authority appealed the trial court's grant of the defendants' motion for summary judgment and denial of its motion for summary judgment. Alcovy Shores Water and Sewerage Authority claimed that because it was established as a separate political subdivision, a local action by defendants could not take precedence over the authority's creating legislation. However, the Court of Appeals of Georgia affirmed the trial court's judgment and held that the service agreement did not purport to modify the authority's creating legislation. The service agreement also did not prohibit the authority from providing services within its project area. Rather, the Act forbade the issuance of any state administered financial assistance or grant, loan, or permit to any local government or authority for a project which was inconsistent with a verified service delivery strategy, Service Delivery O.C.G.A. § 36-70-27 (a). Thus the Alcovy Shores Water and Sewerage Authority, to the extent it relied on any state-administered financial assistance or grant, loan, or permit, might not be able to complete a project outside the service area designated by the service agreement.

SOVEREIGN IMMUNITY

Northern Insurance Co. of New York v. Chatham County
Supreme Court of the United States
April 25, 2006
126 S. Ct. 1689
Chatham County owns, operates and maintains the Clauston Bluff Bridge over the Wilmington River. On October 6, 2002 the bridge malfunctioned and a portion of it fell onto a boat owned by Mr. James Ludwig causing $130,000 in damage. Mr. Ludwig filed an insurance claim with Northern Insurance, which paid in accordance with the terms of their policy. Northern then sought to recoup costs by filing suit in admiralty against Chatham County in District Court. The District Court granted summary judgment to Chatham County on the grounds that, even though it did not qualify for Eleventh Amendment immunity because it was not an arm of the state, common law has carved out a residual immunity which would protect a political subdivision like Chatham County from suit. The Court of Appeals affirmed the grant of summary judgment. The U.S. Supreme Court granted certiorari to determine whether an entity that does not qualify as an "arm of the state" can still assert sovereign immunity as a defense in an admiralty suit. State sovereign immunity neither derives from, nor is limited by, the Eleventh Amendment, instead it stems from the sovereignty the states enjoyed before the ratification of the Constitution. Only states and arms of the state possess immunity from federal law and the Court has repeatedly refused to extend this immunity to counties or municipalities. Because Chatham County cannot claim immunity based upon its identity as a county or as an arm of the state, as delineated by the Court's precedents, the county is subject to suit for the operation of the drawbridge. The Court also rejected Chatham County's request that the Court recognize a distinct sovereign immunity against in personam admiralty suits arising from the county's exercise of core state functions with regard to navigable waters. Immunity in admiralty is governed by the principles set out in the Court's sovereign immunity cases and not by the history or jurisprudence specific to suits in admiralty. The Court has long recognized that sovereign immunity does not bar an admiralty suit against a county or city.

TAXATION/SPECIAL DISTRICTS

Greene County Board of Commissioners v. Higdon
Georgia Court of Appeals
January 24, 2006
277 Ga. App. 350

Harvey Higdon, Charles Bryant, Glenn Wright, Ben W. Boswell, Charles A. McKinley, and Samuel Atkins, Jr. filed a "Complaint to Set Aside Hospital Service Assessment" against the Greene County Board of Commissioners, its individual members in their official capacities, and the Tax Commissioner of Greene County. After a bench trial, the trial court entered an order setting aside the assessment, and the Court of Appeals of Georgia reversed. Greene County had created a special tax district consisting of all real property within the county to allow the assessment of each parcel for the purpose of providing hospital-based care within the district. The Board of Commissioners entered into a contract whereby funds from the assessment were to be used to provide facilities to care for indigent patients requiring medical attention and hospitalization. The taxpayers argued that the assessment was unconstitutional under the Georgia and United States Constitutions. The Board of Commissioners was authorized to create the special district for the purpose of providing health services, as Ga. Const. art. IX, § 2, para. 6 allowed the special districts, and Ga. Const. art. IX, § 2, para. 3 allowed the county to provide public health services. The assessment did not violate due process and equal protection where it did not provide a benefit to each parcel of land owned by the taxpayers, as similarly taxed citizens were not entitled to the same benefit. Thus, the Court of Appeals found that the trial court's distinction between an assessment and a tax inapposite.

Fulton County v. Perdue
Supreme Court of Georgia
June 12, 2006
280 Ga. 807

Fulton County appealed an order granting Governor Sonny Perdue and the State judgment on the pleadings and rejecting the County's constitutional challenge of O.C.G.A. § 36-31-12 in which the County claimed that the statute violated the County's exclusive authority over expenditures of revenue collected in special tax and spending districts (SSDs). In 2005, the General Assembly enacted O.C.G.A. §36-31-12 which imposed new requirements on counties that have created SSDs in the noncontiguous unincorporated areas of the county. Any fees, taxes or assessments that are collected in the noncontiguous areas are to be spent in the noncontiguous areas. Fulton County claimed that the statute was only applicable when noncontiguous areas are first created by the incorporation of a new municipality. Fulton County claimed exemption from the statute because there were noncontiguous areas before the incorporation of the City of Sandy Spring. The Court rejected this argument, noting that there was nothing in the language of the statute indicating that it apply only to SSDs with newly created noncontiguous areas. Fulton County further argued that statute encroaches on its exclusive authority over expenditure of revenues. In reviewing the statute, the Court affirmed the trial court's determination that under Georgia constitutional and statutory laws, the County and the General Assembly have concurrent authority to govern the collection and expenditure of revenue collected within SSDs. Accordingly, Court concluded, as did the trial court, that it was within the constitutional authority of the General Assembly to enact O.C.G.A. § 36-31-12 (b), a general law providing for the collection and expenditure of revenue within SSDs and nothing in the language removed the General Assembly's authority to act in that area.

TORTS

Georgia Department of Transportation v. Strickland
Georgia Court of Appeals
May 24, 2006
279 Ga. App. 753

This appeal arises out of Doris Strickland's suit for damages sustained when she fell in the right-of-way of a state road within the city limits of Sylvania, Georgia. She admitted that she was a licensee at the time she fell. As a result of being a licensee, the City only owed the duty not to injure her willfully and wantonly. There was no evidence suggesting that the pothole was camouflaged such that it was a hidden danger. There was also no evidence that the pothole was created, concealed, or maintained willfully or wantonly with the intent to injure. Strickland was as aware of the pothole as the City and the DOT, and therefore may not recover. The Court reversed the denial of summary judgment to the City.

Carroll v. City of Carrollton
Georgia Court of Appeals
June 27, 2006
280 Ga. App. 172

Tracy Carroll appealed the grant of summary judgment to the City of Carrollton (the City). Carroll was riding his motorcycle around Lake Carroll when the motorcycle slipped on construction gravel and hit a fence that the City used to keep people out of an area where the public played sports. Carroll suffered injuries to his hip, lower back and pelvis. The trial court held that the Recreational Property Act (RPA)(O.C.G.A. § 51-3-20 et seq.) applied to the case and that it barred recovery by Carroll because there was no evidence that any acts or omissions by the City rose above the level of simple negligence. The RCA shields any landowner, public or private, from liability arising under a negligence cause of action, if the land is open to the public, free of change and used for recreational purposes. The moment of injury is used to determine the legal applicability of the RCA and it is the intention of the landowner that determines the use to which the land is put. Carroll was injured in the impact with the fence which is part of the City's recreational property, so the RCA applies. Carroll was therefore correctly barred from recovery and the summary judgment for the City was affirmed.