

COUNTIES & THE LAW

A Newsletter of the Association County Commissioners of Georgia

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ANTE LITEM/ NOTICE

Simon v. City of Atlanta

Georgia Court of Appeals
August 7, 2007
2007 Ga. App. LEXIS 895
2007 WL 2246770

An arrestee brought action against the City of Atlanta alleging claims of police and custodial brutality and loss of consortium. The City of Atlanta attempted to bar suit against them claiming that the statute of limitations had expired

for such claims. The trial court barred the claim and the plaintiff appealed and the court reversed the decision citing that the plaintiff provided adequate ante litem notice of his claims and that the amount of time between plaintiff's filing of the suit and the case being heard must be subtracted from the statute of limitations time frame.

CIVIL PROCEDURE

Journey-Bush v. County of Macon

U.S. District Court for Middle District of Georgia
May 9, 2007
2007 U.S. Dist. LEXIS 34046
2007 WL 1390723 (M.D. Ga.)

Journey-Bush filed suit in late May 2005, claiming that her constitutionally protected rights were violated when the Montezuma Police Department and the Macon County Sheriff's Department failed to adequately respond to her allegations of attempted and actual rape. The incidents occurred in 2003 and 2004. The 2005 case was dismissed, before defendants could be served, for failure to comply with a show-cause order. Despite this dismissal, Journey-Bush filed a § 1983 action in 2006. The court granted the defendant's motion to dismiss because the new complaint was time-barred. O.C.G.A. § 9-3-33 requires that § 1983 claims for personal injuries be brought within two years of the latest event giving rise to the litigation. In the present controversy, these events occurred more than two years prior to the filing of the complaint. Moreover, the plaintiff's 2005 claim did not toll the statute of limitations under Georgia's renewal statute, O.C.G.A. § 9-2-61. The 2005 suit did not constitute a valid action and it was dismissed before the defendants were served. Therefore, the renewal statute was inapplicable.

Sherrod v. Palm Beach County Sch. Dist.

11th Circuit Court of Appeals
May 24, 2007
2007 U.S. App. LEXIS 12323
2007 WL 1501045 (11th Cir.)

Sherrod, a former school teacher within the Palm Beach County School District, filed suit against the District. His suit alleged that the District had retaliated against him for exercising his right to free speech in violation of 42 U.S.C. § 1983. A jury returned a verdict in favor of Sherrod, but the district court granted the District's motion for judgment as a matter of law. The district court denied Sherrod's motions to set aside the order and grant a new trial. Sherrod appealed the district court's denial of his motions. The 11th Circuit did not find any abuse of discretion in the district court's denial of these motions. With regard to Sherrod's motion for a new trial, the court found that the record contained no "manifest errors of law or fact" nor was there any demonstration of other extraordinary circumstances. Sherrod also claimed that the district court erred in dismissing several individually named employees of the district. However, the court found that this would have no effect on the District's liability, since a plaintiff may bring suit against local government units directly.

CIVIL RIGHTS

City of Duluth, Ga v. Morgan

Georgia Court of Appeals
August 22, 2007
2007 Ga. App. LEXIS 955
2007 WL 2386477

Plaintiff sued the city of Duluth when he was caught running a red light by a red light camera at a city intersection. The plaintiff contended that he was overcharged when a surcharge was added to his fine and that this was a

This edition of Counties & The Law includes decisions of interest to county attorneys published between May 1, 2007 and August 31, 2007. The next issue will cover cases published between September 1, 2007 and December 31, 2007.

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violation of his due process rights. The Court of Appeals reversed denial of summary judgment for the city citing that the charge was not in bad faith and that the act of the city did not shock the conscience of the court.

In addition, the court added that although the city did overcharge the plaintiff in violation of state statute and the corresponding city red light ordinance, the plaintiffs claim did not involve allegations that the enacted legislation burdened any constitutionally protected right.

CONDEMNATION

Orr v. Georgia Transmission Corp

Georgia Court of Appeals
May 10, 2007
285 Ga. App. 333

The Georgia Court of Appeals vacated an earlier decision, following a reversal of that decision by the Georgia Supreme Court in *Orr v. Ga. Transmission Corp.*, 642 S.E.2d 809 (Ga. 2007). In reviewing the trial court's resolution to a condemnation proceeding, the Georgia Court of Appeals had upheld the lower court's order that the date of a taking was the date that the condemner filed its original petition. In reversing the earlier Court of Appeals decision, the Georgia Supreme Court found that the appellate court had incorrectly focused upon O.C.G.A. § 22-2-109(a), which is limited to takings for public road and street purposes. The appellate court should have instead focused on O.C.G.A. §§ 22-2-110 and 22-2-11 apply generally to condemnation proceedings before a special master. The present case, involving condemnation for the maintenance of electrical transmission lines, requires that the date of the taking is the date when the condemner pays the award into the registry.

Woodland Partners Ltd. P'ship v. Dep't of Transp.

Georgia Court of Appeals
June 29, 2007
2007 Ga. App. LEXIS 735
2007 WL 1863426 (Ga. App.)

The Georgia Department of Transporta-

tion (GDOT) condemned 0.913 acre strip of land belonging to Woodland Partners L.P. (Woodland). Woodland contested the GDOT's estimation of adequate compensation. Woodland appealed the judgment in a jury trial, challenging several evidentiary rulings of the lower court. Woodland argued that the trial court erred in allowing GDOT's expert testimony because the witness was not qualified. The Georgia Court of Appeals found that GDOT's expert was sufficiently experienced and that the trial court did not abuse its discretion in admitting his testimony. Similarly, Woodland contended that the trial court erred in sustaining an objection to its cross-examination of another GDOT expert and the striking of testimony of its own expert witness. However, the court found that the trial court did not abuse its discretion in either of these evidentiary rulings.

Rutland v. Georgia Power Co.

Georgia Court of Appeals
June 20, 2007
286 Ga. App. 14

Georgia Power Co. sought to condemn an easement for transmission lines across Rutland's property. Pursuant to the Special Master Act, O.C.G.A. § 22-2-100 et. seq., the special master made an award to Rutland, which was filed with the superior court on July 29, 2005. That same day, Rutland's attorney spoke with a secretary in the special master's office who was unsure whether the award had been filed. Rutland's attorney did not receive a faxed copy of the award until August 10th. He filed an appeal the following day. The trial court granted summary judgment against the appeal because it was not filed within the ten day time limit under O.C.G.A. § 22-2-112. Rutland appealed this dismissal, claiming that a failure to toll the time limit until a party received actual notice would violate due process. The Court of Appeals found that the Special Master Act provided for both constructive and implied notice of the filing of an award. Moreover, the statute did not require the special master or the court to serve the parties with the award. Therefore, parties in such proceedings

are required to exercise due diligence to determine when the award was filed. In the exercise of such diligence, Rutland's attorney could have obtained this information without solely relying upon a third party. Importantly, the court also noted that O.C.G.A. § 22-2-112 was amended in 2006 to provide that any appeal shall be filed within ten days of the service of the award, plus three additional days for mailing. However, this amendment applies to condemnation proceedings filed on or after February 9, 2006.

CONSTITUTIONAL LAW/ SIGN ORDINANCE

Fulton County v. Galberaith

Supreme Court of Georgia
June 25, 2007
282 Ga. 314

Galberaith applied to place outdoor signs on two commercial sites in Fulton County. Fulton County denied the application because such off-premise advertising was not permitted under a county sign ordinance. The board of zoning appeals affirmed this denial, but a superior court found several parts of the sign ordinance unconstitutional. On appeal, the Georgia Supreme Court determined that the ordinance violated First Amendment protections for commercial speech. The court found that the county sign ordinance was overly broad in scope. The ordinance declared all signs to be illegal, only to be exempted on a case-by-case basis. The court found this legal structure violated First Amendment protections, which presume the legality of commercial speech that does not involve illegal conduct or fraudulent material. Bans of commercial speech must directly advance a legitimate government interest with prohibitions that are no more broad than necessary to achieve that interest. Therefore, the court upheld the judgment of the superior court as to the unconstitutionality of the sign ordinance.

CONSTITUTIONAL LAW/ NOISE ORDINANCE

Da Mortgage Inc. v. City of Miami

11th Circuit Court of Appeals

May 18, 2007
486 F.3d 1254 (11th Cir. 2007)

The City of Miami cited a nightclub owner for violations of the county noise ordinance. Before an administrative hearing could be held, the nightclub owners filed suit, claiming that the city had violated their rights to free speech and due process. The district court granted the city's motion for summary judgment. Because the city had recently amended its noise ordinance, the appellant's due process claims were rendered moot. The court went on to review the appellants' claims that the ordinance impermissibly restricted their freedom of speech, was overly broad, and unconstitutionally vague. The court observed that any restrictions on protected speech must be content neutral, narrowly tailored to serve a significant government interest and leave ample alternative channels of communication. Applying this standard, the court found that the noise ordinance was content neutral and simply limited the volume of the music. Moreover, the ordinance was "narrowly tailored", because the government established that the regulation "promotes a substantial government interest that would be achieved less effectively absent the regulation." The court found that the comprehensive nature of the ordinance, which applied to all sound-producing devices, met this test. Additionally, the court found that the noise ordinance left ample alternatives of communication because it did not ban outright the reproduction of music, but simply restricted the volume of sound. In rejecting the appellant's over breadth argument, the court found that the ordinance did not impermissibly impose any prior restraints on speech nor did the appellant successfully demonstrate any realistic threat of over breadth. Finally, the court found that the ordinance was not unconstitutionally vague because it provided sufficient notice of the prohibited conduct and established clear, objective enforcement standards. Because the ordinance conformed to these constitutional requirements, the court affirmed the district court's decision.

CONTRACTS/REAL ESTATE

Peaches Land Trust v. Lumpkin County Sch. Bd.

Georgia Court of Appeals
June 25, 2007
286 Ga. App. 103

Lumpkin County School Board and the Peaches Land Trust executed a real estate sales agreement in which the trust would pay \$600,000 for a 2.72 acre tract of land as reflected by a referenced 1955 property plat. Prior to closing, the trust discovered that the school board did not own a portion of the 2.72 acres, an area which was identified on the plat by a dotted line within a larger solid line. Because the school board was unable to convey good title to all 2.72 acres, the trust filed suit for breach of contract seeking damages or, in the alternative, specific performance. The trial court granted the school board's motion for summary judgment on both claims. In reversing the trial court's decision with regard to the breach of contract claim, the Georgia Court of Appeals ruled that the contract ambiguity could not have been resolved as a matter of law. Evidence introduced by both sides of the controversy raised a question of fact as to the property that the parties intended to transfer. However, the Court of Appeals upheld the trial court's summary judgment as to specific performance. The court found that the trust had failed to show that it met the unconditional tender requirement and it was further unable to prove that tender would have been futile.

King v. Comfort Living Inc.

Georgia Court of Appeals
August 23, 2007
2007 Ga. App. LEXIS 964
2007 WL 2390390

The developer of a local subdivision brought a § 1983 action against the mayor and the city council alleging that the town unreasonably withheld water from the subdivision. The suit arose when the company that the town hired to install water lines for the subdivision, developed by the plaintiff, delayed comple-

tion to the subdivision by failing to obtain the proper land disturbance permit from the county and through conflicts with a water line extension done by the city to the state prison that was next to the subdivision. The Court found that the trial court erred in denying summary judgment for the defendant since there was no valid binding contract. The Court also concluded that the actions of the mayor and council were discretionary, not ministerial for purposes of official immunity. The plaintiff could not prevail on a § 1983 claim because the mayor and council did not intentionally delay the extension of the water service and thus the mayor and council were entitled to qualified immunity regarding this claim.

ELECTIONS

Brooks v. Brown

Supreme Court of Georgia
June 11, 2007
282 Ga. 154

In 2006, House Bill 1600 reorganized the Carroll County Board of Education from a six member to a seven member board. Pursuant to the new legislation, a special election was to be held in conjunction with the general primary on July 18, 2006. The legislation also stated that a special election was to be called "as soon as practicable after" the bill became effective. House Bill 1600 became effective July 19, 2006 after the U.S. Department of Justice issued its pre-clearance. Thereafter, Brown, the Election Supervisor of Carroll County, sought a declaratory judgment from the trial court that November 7, 2006 was the earliest practical time for the special election. Brown also sought and received an ex parte order allowing her to open election qualifying for certain districts. The trial court authorized the board of elections to hold the special election on November 7, 2006. Brooks appealed both orders, claiming that the trial court had no authority to allow the election to take place on any date other than July 18, 2006. The Court found the case to be moot, since the disputed election contest had already occurred. However, the Court admonished both

Brown's counsel and the trial court for the pursuit and issuance of improper ex parte orders.

Randolph County v. Johnson

Supreme Court of Georgia
 June 11, 2007
 282 Ga. 160

Johnson filed a nomination petition to seek re-election to the Randolph County Board of Commissioners. The election superintendent accepted the nomination and placed Johnson's name on the ballot. Later, the board of elections noticed an insufficiency in the petition and sought to hold a hearing on the matter seven days before the general election. Johnson sought for and the superior court granted a writ of prohibition to prevent the board of elections from conducting the hearing. Johnson was re-elected as commissioner and the board of elections appealed the superior court's grant of the writ of prohibition. On review, the Georgia Supreme Court found the appeal to be moot since the general election had already taken place. Furthermore, the Court rejected the appellant's argument that the situation was capable of repetition.

EMPLOYMENT

Dawson v. Henry County Police Dep't

11th Circuit Court of Appeals
 July 3, 2007
 2007 U.S. App. LEXIS 15868
 2007 WL 1893367 (11th Cir.)

Dawson brought a complaint in federal district court alleging that the Henry County Police Department racially discriminated against him in by imposing harsher disciplinary action upon him than similarly situated Caucasian officers. The district court granted the department summary judgment. On appeal, the 11th Circuit Court of Appeals found that Dawson failed to establish a prima facie case for discrimination. Specifically, Dawson was unable to demonstrate the requisite "nearly identical" comparator. Moreover, the comparator evidence also showed that Dawson failed to cast sufficient doubt upon the department's nondiscriminatory reasons

for disciplinary action. Therefore, the court upheld the district court's grant of summary judgment.

Epps v. Watson

11th Cir. Court of Appeals
 July 18, 2007
 492 F.3d. 1240

During the 2004 election for Madison County Tax Commissioner, Epps, a clerk within the tax commissioner's office, allowed Watson's opponent to display campaign signage on Epp's property. Shortly after Watson's re-election to office, Epps was terminated and not given an opportunity to appeal her dismissal. Epps filed suit against Watson, claiming that her termination after Watson's re-election denied her due process and violated her First and Fourteenth Amendment rights. Watson moved to dismiss the claim based on qualified immunity and the district court denied this motion. On interlocutory appeal, the 11th Circuit upheld the district court's denial of Watson's motion to dismiss. The Court analyzed the case as one of pure political patronage, which allows for patronage dismissals of those holding policymaking positions. The Court found that because the record indicated that Epps' position was merely one of limited objectives and defined duties, her complaint successfully alleged a deprivation of her right to free association. Moreover, the Court found that Watson had fair notice that such termination may have been unconstitutional. As to her due process claim, the court ruled that Epps had sufficiently alleged a protected property interest in continued employment because the tax commissioner's office was subject to the policies of the Madison County merit system. Therefore, the court affirmed both denials of Watson's motions to dismiss the claims.

Ledbetter v. Goodyear Tire & Rubber Co.

U.S. Supreme Court
 May 29, 2007
 127 S. Ct. 2162 (2007)

Ledbetter was an employee with Goodyear Tire & Rubber Co. from 1979 to

1998, when she took early retirement. Prior to leaving Goodyear in 1998, Ledbetter filed an EEOC complaint alleging that the company sexually discriminated against her. She later filed suit in district court, claiming violations of Title VII and the Equal Pay Act of 1963 (EPA). In particular, she claimed that her supervisor had discriminatorily given her poor evaluations, which resulted in her being paid significantly less than similarly situated male employees. The district court granted summary judgment to Goodyear on the EPA claim, but allowed the Title VII claim to go to trial. The jury returned a verdict in favor of Ledbetter. Goodyear appealed and the 11th Circuit Court of Appeals reversed the decision, finding that Ledbetter's Title VII claim was time-barred and that there was insufficient evidence of discrimination within the applicable period of review. The U.S. Supreme Court granted certiorari to review the Circuit Court's application of the limitations period for Title VII actions involving disparate pay. In a 5-4 decision, a majority of the U.S. Supreme Court affirmed the Circuit Court's decision. The majority found that her claims were barred by the 180-day statute of limitations. Revisiting precedent, the court observed that Title VII requires EEOC complaints to be filed 80 days after a discrete unlawful employment practice takes place. Moreover, the mere issuance of a lower paycheck, absent the requisite discriminatory intent, had no legal consequences under Title VII. The court found this to be true notwithstanding that prior uncharged acts of discrimination, which occurred outside the 180 day time limit, may have lowered Ledbetter's current salary. Because Ledbetter was unable to demonstrate unlawful discriminatory conduct within the 180 day charging period, the majority found her claim to be untimely.

ENVIRONMENTAL LAW

Coastal Marshland Prot. Comm. v. Ctr. for a Sustainable Coast

Georgia Court of Appeals
 July 11, 2007
 286 Ga. App. 518

Pursuant to the Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et. seq., the Coastal Marshland Protection Committee issued a conditional permit authorizing a developer to construct a public marina and dock facilities for a large residential development near St. Mary's. The Center for a Sustainable Coast filed a petition to challenge this decision before an administrative law judge (ALJ). The ALJ affirmed portions of the conditional permit but remanded the case back to the committee to consider the adverse effects of any upland development upon the marshlands. Both the developer and the center appealed this decision to the Fulton County Superior Court, which affirmed the decision by operation of law. On review, the Georgia Court of Appeals reversed in part and affirmed in part. The court found that under Coastal Marshlands Protection Act, the committee must only consider the upland components that are intended to augment the marshland components of the development. The court affirmed the portion of the ALJ's decision which remanded the case for further consideration of conservation measures for threatened marine animals. Finally, the court affirmed the portions of the decision which otherwise affirmed the permit. Under the "any evidence" rule, the court found no error in these ALJ's findings.

FIREARMS

Moore v. Cranford

Georgia Court of Appeals
May 25, 2007
285 Ga. App. 666

In December of 2005, Moore sought a firearms license from the Probate Court of Coweta County. After three months passed, Moore filed suit in superior court, seeking a writ of mandamus and declaratory and injunctive relief requiring the probate court to issue him a license. The probate court subsequently issued a license to Moore, making his claims for mandamus relief moot. However, because the issue was capable of repetition, the superior court reviewed the case and granted summary judgment to the probate court. Moore appealed

this decision, arguing that O.C.G.A. § 16-11-129(d) required the probate court to issue him a gun license at the end of the 60 day investigation period. The Georgia Court of Appeals disagreed and affirmed the superior court's decision. Under O.C.G.A. § 16-11-129, local law enforcement officials are required to conduct a background check using federal and state agencies and then report the results to the probate court within 50 days. However, the statute does not have jurisdiction over federal agencies to require them to return their background checks within the same time period. The court found that before the probate court may issue a gun license, it must receive a report that the requisite background checks were undertaken and that no disqualifying information was discovered. The court found that it is the duty of the probate court to ensure that applicants meet the statute's qualifications. Therefore, the court found that the statute's 60 day time period was implicitly extended to accommodate any delays in the investigative process.

IMMUNITY

Gilbert v. City of Jackson

Georgia Court of Appeals
August 22, 2007
2007 Ga. App. LEXIS 957
2007 WL 2386658

Property owner brought suit against city alleging that the city was negligent in repairing drainage pipes in front of her house and that because of this negligence her house flooded on numerous occasions. In this suit the city moved for summary judgment citing that the claim was barred given the city's sovereign immunity. The plaintiff appealed and argued that the city waived its immunity by purchasing and maintaining liability insurance at the time of this incident. The court noted that "sovereign immunity is not an affirmative defense that must be established by the party seeking its protection. Instead, immunity from suit is a privilege and the waiver must be established by the party seeking to benefit from the waiver." The court further established that the proof of insurance that the plaintiff provided

was mere hearsay and could not be used in this case.

IMPACT FEES

Newton County Home Builders v. Newton County

Georgia Court of Appeals
June 08, 2007
286 Ga. App. 89

Newton County adopted a development impact fee pursuant to O.C.G.A. § 36-71-1 et. seq. Shortly after the county began to collect these fees, the Newton County Home Builders Association (Association) filed suit. The suit alleged that the program was illegal and sought interlocutory relief to have all past and future fees held in a common fund until the close of litigation. Newton County moved for summary judgment with respect to this claim and the court granted its motion. The Court of Appeals found that the Association did not have standing to seek such monetary damages. In particular, the Association lacked standing because the damage claims were not common to the entire membership nor were they shared in an equal degree. Moreover, the Association lacked standing to represent nonmembers and unaffiliated non-parties.

LAW ENFORCEMENT

Best v. Cobb County

11th Cir. Court of Appeals
July 3, 2007
2007 U.S. App. LEXIS 15877
2007 WL 1892148 (11th Cir.)

Best and two other plaintiffs were involved in a fatal car crash, when a suspect vehicle pursued by a Cobb County policeman struck them head-on. The plaintiffs initiated a § 1983 action, claiming that Cobb County violated their constitutional rights by failing to train its police officers on proper pursuit procedures. The trial court granted the county's motion for summary judgment and the 11th Circuit upheld this judgment. In order for the plaintiffs to prevail against Cobb County, they were required to establish that their constitutional rights were violated, that

the county's policy or custom constituted indifference to this right, and that this policy caused the constitutional violation. The plaintiffs conceded that there was no constitutional violation. The court found that the claim could not proceed without this underlying violation. Moreover, the plaintiffs were unable to show a direct link between the county's pursuit and the alleged constitutional deprivation. Therefore, because the plaintiffs failed to establish these two elements, the 11th Circuit upheld the district court's grant of summary judgment.

MANDAMUS/ALCOHOL LICENSE

City of Homerville v. Touchton

Supreme Court of Georgia
June 25, 2007
282 Ga. 237

Touchton was denied an alcohol license by the Homerville City Council. Touchton filed suit for mandamus relief, naming the city as the only defendant, though he later would name city officials to the petition without leave of the court. While the action was pending, the city revoked the existing alcohol ordinance and adopted a new one. The city again reconsidered Touchton's application under the new ordinance, but denied the application. Thereafter, the trial court granted mandamus relief to Touchton and ordered the city to issue the alcohol license. The Georgia Supreme Court granted discretionary appeal. As to the city's objections that they were not a proper party to the mandamus action, the Georgia Supreme Court found that the city had failed to raise any objections prior to appeal or properly assert enumerations of error in the lower court's adjudication. However, the court found that the trial court had erroneously applied only the revoked ordinance. The court remanded the case for review of the city's actions under the new ordinance.

MANDAMUS/CONTRACT

Duty Free Air and Ship Supply Co. v. City of Atlanta

Supreme Court of Georgia
May 14, 2007
282 Ga. 173

The City of Atlanta issued a Request for Proposals (RFP) to construct and operate an expansion to the duty-free shops at Hartsfield-Jackson International Airport. Duty Free Air and Ship Supply Co. (DFASS) and Atlanta Duty Free, LLC (ADF) both submitted proposals. The City selected DFASS. After an unsuccessful appeal to an administrative hearing officer, ADF appealed to the superior court, which reversed the officer's decision. The Georgia Court of Appeals reversed the lower court ruling because ADF had failed to file a valid bond with its certiorari petition. While the case was pending before the appellate court, the city canceled the previous RFP and issued a new one. After the appellate court's decision, DFASS filed for a writ of mandamus, in order to compel the city to execute a contract. On review, the Georgia Supreme Court found that DFASS was not entitled to mandamus relief. O.C.G.A. § 36-91-20(a) of the Georgia Local Government Public Works Construction Law requires that municipalities and consolidated governments execute and enter into contracts in the manner provided by local law. The court found that the statute's requirement that a contract be awarded to the most responsible offeror is subject to any requirements and procedures under local law. In the present case, it was undisputed that local requirements, such as mayor and council approval, were not met. Moreover, these local actions were discretionary and mandamus relief is inappropriate to compel the exercise of such discretion. Accordingly, the court denied the writ of mandamus.

NEGLIGENCE/NUISANCE

City of Toccoa v. Pittman

Georgia Court of Appeals
June 29, 2007
286 Ga. App. 213

A late night game room brawl spilled over into a neighboring Huddle House. A witness to the fight was killed by a shard from the restaurant's plate glass

window. The estate of the victim filed a negligence suit against Huddle House, which in turn filed a third-party complaint against the city of Toccoa. In this complaint, Huddle House alleged that the city's negligence in enforcing business and liquor license regulations allowed for the late night brawl and that the city was liable for maintaining a nuisance. A trial court denied the city's motions for summary judgment as to both claims. The Georgia Court of Appeals found that the trial court erred in holding that the public duty doctrine did not bar the negligence claim. Under the public duty doctrine, liability does not attach where the duty runs generally to the public, unless there exists a special relationship. Huddle House was unable to demonstrate the existence of any special relationship between the city and the victim. The appellate court also reversed judgment on the nuisance claim. The court found that there was no evidence to establish that the city created or controlled a repetitiously dangerous condition. Moreover, Huddle House was unable to show any prior case law which held a city liable for nuisance where an injury resulted from criminal activity on private property.

TAXATION

Clayton County Bd. of Tax Assessors v. City of Atlanta

Georgia Court of Appeals
June 27, 2007
286 Ga. App. 193

This case consolidated four disputes between the City of Atlanta (City) and the Clayton County Board of Tax Assessors (Board) regarding the city's liability for tax of real property located within Clayton County. The Court of Appeals found that two of the city's claims for tax exemption of a new Air Mail Facility were precluded by collateral estoppel. The court had previously adjudicated the issue in *City of Atlanta v. Clayton Co. Bd. of Tax Assessors*, 608 S.E.2d 710 (Ga. App. 2004). The court also reversed the trial court's exemption of a convention center and hotel, recently purchased by the city from the College Park Business and Industrial Develop-

ment Authority. The court found that the city was unable to piggyback onto the Authority's exemption because the city did not use the property for a governmental or public purpose within the meaning of O.C.G.A. § 48-5-41(a)(1)(B). The city merely acted in a proprietary capacity to generate revenue when it leased the disputed property to College Park.

International Auto Processing, Inc. v. Glynn County

Georgia Court of Appeals
September 6, 2007
2007 Ga. App. LEXIS 990
2007 WL 2482469

Taxpayer bought suit against county seeking a refund for four years worth of ad valorem taxes stating that the properties should have been taxed at zero value since taxpayer filed a return that was silent as to the fair market value. The trial court rejected the taxpayer's argument citing that it is the taxpayers' affirmative duty to report fair market value of taxable property and must do so in writing and under oath. If this is not done then the county is able to tax on the previously existing tax bill and the taxpayer is not entitled to a refund. The taxpayer appealed and the court affirmed the trial court's decision.

DeKalb County v. City of Decatur

Georgia Court of Appeals
August 28, 2007
2007 Ga. App. LEXIS 972
2007 WL 2442338

The City of Decatur brought an action against DeKalb County for breach of an intergovernmental agreement relating to the distribution of funds generated by the Homestead Option Sales Tax Act (HOST). At the trial, DeKalb County moved for summary judgment on the grounds that the agreement entered into by the city and the county was invalid under the Intergovernmental Contracts Clause of the Georgia Constitution of 1983. The trial court denied summary judgement and the county appealed. Under the Intergovernmental Contracts Clause, cities and counties seeking to enter into contract with each other

must meet two requirements: First, the contract must pertain to the provision of services, or the joint or separate use of facilities or equipment. Second, the contract must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide. On appeal the court stipulated that in order to prove that this agreement was a services contract, one party had to have agreed to perform a specific undertaking in return for receiving some type of payment, financing or guarantee from the other party. Here, the contract was an agreement between the city and the county which specified how to divide up the HOST, with the city spending the money allocated to them as they deem necessary so long as they comply with the HOST. The court concluded that this contract did not involve the performance of a specific undertaking in return for payment; instead this agreement was simply a sharing of revenue between the city and the county. Because the contract between the city and the county was not for services, the court deemed the intergovernmental contract was invalid and reversed the decision of the trial court by granting summary judgement to DeKalb County.

TORTS/IMMUNITY

Hagemann v. City of Marietta

Georgia Court of Appeals
July 11, 2007
2007 Ga. App. LEXIS 816
2007 WL 1990026 (Ga. App.)

Hagemann sought declaratory judgment that the City of Marietta had improperly rezoned 18.5 acres adjacent to his property. The city asserted counterclaims against Hagemann, seeking damages and alleging that Hagemann's lawsuit was an unfounded suit filed solely for private gain. Hagemann motioned to strike the counterclaims, arguing that they fell within the purview of Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1. The trial court denied this motion to strike and Hagemann applied for interlocutory review. The Georgia Court of Appeals reversed, finding that the city's counterclaims violated the anti-SLAPP

statute. O.C.G.A. § 9-11-11.1 applies to any claim, including counter claims, asserted against a person petitioning the government for redress of a grievance. The court found that the city could not have reasonably believed that its counterclaims were warranted by law and therefore the verification of the counterclaims was false. The case was remanded for reconsideration under the anti-SLAPP statute.

Nichols v. Prather

Georgia Court of Appeals
July 16, 2007
2007 Ga. App. LEXIS 835

A Pickens County Sheriff's deputy was involved in an accident where he struck and killed a civilian. The plaintiff in this case brought a personal injury and wrongful death suit against the county because of the deputy's actions. The county moved for summary judgment in the trial court; however, it was denied. The county appealed and was awarded summary judgment on the grounds that the county could not be held liable for the deputy's actions under the agency theory due to the fact that the deputy was a sheriff's department employee, not a county employee.

Rutherford v. DeKalb County

Georgia Court of Appeals
August 29, 2007
2007 Ga. App. LEXIS 971
2007 WL 2417272

Plaintiff brought an injury suit against the county, after a water meter collapsed when plaintiff stepped on it, which the trial court dismissed. The plaintiff appealed alleging that the county was liable for failing to maintain water meter covers because the maintenance and operation of water works is a private, non-governmental function. The court affirmed the dismissal by the trial court citing that the analysis used in this case is only applicable to cities not counties, whose liability can only be abrogated by statute. The plaintiff also argued that the proper maintenance of the water meter was a ministerial duty, which was also rejected. Lastly, the court noted that sovereign immunity bars any action

for injury against a county arising from nuisance or inverse condemnation.

ZONING

Catoosa County v. R.N. Talley Props. LLC

Supreme Court of Georgia
July 13, 2007
2007 Ga. LEXIS 524
2007 WL 2013586 (Ga.)

The Catoosa County Board of Commissioners rezoned property owned by R.N. Talley Properties, LLC (Talley) from agricultural to industrial. Talley planned to lease the property to a company that would operate an asphalt plant thereon. County ordinances required property owners to obtain a special use permit for injurious or annoying industrial uses, though the ordinance did not specifically identify asphalt plants. Talley was informed that a special use permit was required for the asphalt plant. After the county informally declined to grant the permit, Talley filed suit to assert facial constitutional challenges to the relevant sections of the county code. The trial court granted declaratory judgment to Talley, finding that the ordinances were unconstitutionally vague on their face. On appeal, the county argued that Talley could not make a facial challenge for vagueness. The county argued that Talley was required to make an as-applied challenge, which requires an exhaustion of all administrative remedies. However, the Georgia Supreme Court ruled that facial challenges to a statute's vagueness are permissible in two circumstances. Such challenges may be brought where an ordinance impacts a fundamental constitutional right in a large percentage of cases to which the ordinance applies. In the absence of this large impact on constitutionally protected conduct, a facial challenge may also be brought where the ordinance is unconstitutionally vague in all of its applications. Nonetheless, in the instant case, the court ruled that Talley lacked standing to make any constitutional attack upon the ordinance because the company did not seek a special use permit nor had the county formally granted or denied such a permit. Accordingly, the Georgia

Supreme Court reversed the judgment of the lower court.

City of St. Marys v. Fulford

Georgia Court of Appeals
July 11, 2007
2007 Ga. App. LEXIS 814
2007 WL 1990096 (Ga. App.)

Fulford requested approval for a small subdivision in St. Mary's. The zoning commission determined that Fulford had met the requirements of the zoning ordinance and recommended that the city council approve the subdivision. Subsequently, the city council denied the request and Fulford appealed to superior court. The superior court found that the city's denial was arbitrary and capricious. On appeal, the Georgia Court of Appeals found that the applicable zoning ordinances were never properly tendered into evidence. Because a superior court has no judicial notice of city or county ordinances, they must be alleged and proven by either party. Therefore, the Court of Appeals reversed the superior court's decision.

Combs v. Atlanta Auto Auction, Inc.

Georgia Court of Appeals
July 5, 2007
2007 Ga. App. LEXIS 758
2007 WL 1933141 (Ga. App.)

In 1996, Fulton County approved a rezoning petition for a new facility for Atlanta Auto Auction (Auction). The rezoning was conditioned upon the company's payment of the total costs of traffic signalization at a nearby railroad crossing and an additional meeting with county officials. Auction did not meet any of these conditions before opening the new facility. Combs and her children were injured when their car was struck by a train as it cross the un-signalized railroad tracks. Combs thereafter brought a negligence suit against several parties, including Auction. The superior court granted summary judgment in favor of Auction, ruling that the conditions for rezoning

were illegal and that Auction's failure to comply with these conditions would not support a negligence claim. The Court of Appeals disagreed. The court found that although O.C.G.A. § 32-6-200 requires that the costs of protective devices for railroad crossing be shared by the county and the railroad, this statute does not prevent a county from requiring reimbursement for such costs as a condition for rezoning. Counties may require petitioners for rezoning to bear the costs of public improvements provided that the conditions are imposed to "ameliorate the effects of the zoning change." *Cross v. Hall Co.*, 235 S.E.2d 379, 382 (Ga. 1977). The remaining portions of the decision further analyze Combs' claims against Auction.

Effingham County Bd. of Comm'rs v. Effingham County Indus. Dev. Auth.

Georgia Court of Appeals
June 28, 2007
2007 Ga. App. LEXIS 727
2007 WL 1840196 (Ga. App.)

The Effingham County Industrial Development Authority sought a declaratory judgment against the Effingham County Board of Commissioners. The authority sought a ruling from the trial court that it was a public entity and therefore immune from the county's zoning regulations. The trial court granted the petition and the Court of Appeals vacated the judgment. The court found that the authority failed to establish a justiciable controversy. Specifically, the authority was unable to produce evidence that it faced uncertainty as to a future act. Because the trial court lacked jurisdiction to issue an advisory opinion, the Court of Appeals vacated the lower court's judgment.

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