

COUNTIES & THE LAW

A Newsletter of the Association County Commissioners of Georgia

May 2007

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ADMINISTRATIVE REMEDIES

Jordan v. City of Atlanta

Georgia Court of Appeals
January 19, 2007
283 Ga. App. 285

Employees of the City of Atlanta lost their jobs as a result of a City reduction-in-force (RIF) ordinance. Employees filed a complaint in Superior Court, which was dismissed on the finding that they had failed to exhaust their administrative remedies. Jordan and Wilburn appealed, arguing that an appeal by writ of certiorari was not an

administrative prerequisite. The court here held that appellants had exhausted their administrative remedies by appealing to the city's Service Board and therefore the complaint should not have been dismissed for failure to exhaust administrative remedies. The writ of certiorari is the appropriate legal remedy here, however it must be applied for within 30 days of the final decision. Jordan concedes that she failed to file her writ on time, and Wilburn concedes that she filed no writ at all. Because appellants failed to timely file for a writ of certiorari, dismissal of their complaint was proper.

Webster v. DeKalb County Jail

Federal District Court
March 20, 2007
2007 WL 879586
2007 U.S. Dist. LEXIS 19674

Plaintiff Webster claims that his Eighth Amendment rights have been violated. He complains of the food received and requests being moved to the medical floor to avoid harassment that is stressful to his medical condition. He has grievances pending on these matters at the jail's Administrative Remedy Office. The court here held that his complaint should be dismissed because of his failure to exhaust his administrative remedies, which is required of prison suits concerning conditions of confinement. Additionally, because the Plaintiff is now satisfied with his diet, his only relevant complaint concerns the stress he is experiencing. The court here held that such stress is not a sufficiently extreme deprivation as to make out the Eighth Amendment claim, therefore the complaint should be dismissed on these grounds as well.

CIVIL PROCEDURE

High Five Investments, LLC v. Floyd County

Federal District Court
January 10, 2007
239 F.R.D. 663

Plaintiffs sued the County Commissioners, claiming that an ordinance violates their First Amendment rights. Plaintiffs served deposition notices on the

Commissioners, and later demanded a designated agent for deposition. Defendants argued that the deposition notices sought testimony that was irrelevant or improper. The information plaintiffs were seeking included the ordinance's enactment process, all governmental interests meant to be furthered by the ordinance, how the regulations further such interests, and the origin, timing, and authenticity of all materials relied upon by the county in enacting the ordinance. The court held that the information that plaintiff sought is relevant despite the availability of information in public records, despite being questions of law not fact, and in order to determine authenticity. The deposition was allowed to proceed.

Lepone-Dempsey v. Carroll County Commissioners

Eleventh Circuit Court of Appeals
February 2, 2007
476 F.3d 1277

Plaintiffs filed a complaint against the City of Villa Rica, and various officials. Plaintiffs' counsel contended that the city attorney said he was authorized to accept service on behalf of all defendants, and that he would waive formal service. Plaintiffs' attorney mailed service copies of the complaint, summons, and a waiver of formal service form to the city attorney. Defendants later filed a motion to dismiss for insufficient service. Plaintiffs claimed that defense had waived formal service. The court here found that the plaintiffs' were required to serve the City and the waiver of service procedure they relied on does not apply to local governments. The court also found that plaintiffs failed to properly serve the City or the individual defendants.

The court here held that when a plaintiff fails to show good cause for failure to properly serve, the court must still consider whether there are other circumstances that might warrant an extension. In this case the lower court did not consider that the statute of limitations had run and the plaintiffs would be barred from filing their claims again. The court here held that this failure to consider the running of the statute of limitations was reversible error and remanded the case.

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

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

James F. Grubiak
General Counsel

Kem Kimbrough
Assistant General Counsel

Donald Oliver, Walker County
County Attorneys Section President
2006-2007

Walter Elliott, Lowndes County
County Attorneys Section
President 2007-2008



50 Hurt Plaza
Suite 1000
Atlanta, Georgia
Telephone (404) 522-5022
Fax (404) 525-2477

Smith v. Coffee County Jail

Federal District Court
 March 27, 2007
 2007 WL 947180
 2007 U.S. Dist. LEXIS 22285

Plaintiff filed a suit contesting the conditions of his confinement while he was incarcerated in the Coffee County Jail. Smith named the Coffee County Jail as the defendant in this action. While local governments can be sued for the alleged violations, police departments and jails are arms of such governments which are generally not considered to be legal entities subject to suit. Because the Coffee County Jail is a mere vehicle through which the County governs it is not a proper party defendant, and Smith cannot state a claim against it.

CONDEMNATION

City of Stockbridge v. Meeks

Georgia Court of Appeals
 January 31, 2007
 283 Ga. App. 343

The Meeks had reached a tentative agreement with the city of Stockbridge to sell their property to the city in exchange for finished retail space in a new "town center" development, but the City chose not to enter into the agreement and instead condemned their property. The City did not specify the public purpose of the condemnation before the special master, but the Meek's motion to dismiss was denied. The trial court later reversed and dismissed the condemnation petition. The City appealed. The court here held that the trial court's dismissal of the condemnation petition was not error because the city failed to properly plead a valid public purpose as required by law, and the Meeks properly raised the issue of such failure. The court further held that there is no presumption of a valid public purpose absent a finding of bad faith and that the burden of showing that a taking is for a public purpose lies with the City.

Department of Transportation v. Camvic Corporation

Georgia Court of Appeals
 March 19, 2007
 2007 WL 805783
 2007 Ga. App. LEXIS 296

The Department of Transportation (DOT) was granted its petition to acquire property, owned by Camvic Corporation. The lessee of the property, CVS, requested a jury trial on the issue of just and adequate compensation. Prior to the trial all parties signed a

consent judgment stating among other things that the trial would resolve CVS's claims for business loss, damages to trade fixtures, and relocation expenses. Before the trial the DOT filed a motion in limine to bar any evidence of CVS's business losses from the trial. The trial court denied the motion. The court here held that because the DOT had participated in the consent judgment it could not complain about that judgment on appeal, absent a showing of fraud or mistake.

The court also held that the lessee was not required to specify in the notice of appeal that they were seeking recovery of business losses, therefore the superior court was authorized to give directions on a trial for business losses, and the trial could proceed and include evidence of such losses.

Mayo v. City of Stockbridge

Georgia Court of Appeals
 March 27, 2007
 2007 WL 901473
 2007 Ga. App. LEXIS 355

The City of Stockbridge condemned Mayo's land, with the special master awarding Mayo \$58,000. Mayo appealed this award to a jury trial in the superior court and received a judgment of \$63,361. The City thereafter moved for attorney's fees under O.C.G.A. § 22-2-84.1. On appeal from the superior court's decision, Mayo challenged the legality of the taking, certain evidentiary rulings, the jury charge, as well as the award of attorney's fees to the City. The Court of Appeals affirmed the superior court's decision. The court found that Mayo was estopped from protesting the condemnation because she acquiesced in the superior court's judgment by withdrawing the money awarded. The court also affirmed the superior court's overruling of Mayo's objection to expert testimony, finding that special knowledge to qualify an expert may be derived from experience and life study. Additionally, the court found that Mayo's objections to the jury charge were not relevant to the issue of the fair market value of her property. Moreover, the court found the Mayo's objections to the City's motion in limine were inconsequential since she had failed to demonstrate there was no final ruling for the appellate court to review.

CONTRACTS

Jacks v. City of Atlanta

Georgia Court of Appeals
 March 14, 2007
 2007 WL 755192
 2007 Ga. App. LEXIS 284

After an explosion in a city park, Atlanta contracted with a company to make repairs. This company hired another company for the project, who in turn hired Jacks. The city later conducted an audit and determined that that company had not paid the subcontractors it had used. Upon the auditor's recommendation, the city paid subcontractor C & S \$373,529 in exchange for them agreeing to ensure that anyone who had done work for them would be paid in full. Jacks filed suit against C & S and the city claiming payment for the work he had done. The lower court found that his claim was barred because of his failure to timely file an ante litem notice. Here, the court finds that the ante litem statute of limitations begins to run when the breach of the city's duty occurs, meaning Jacks claim did not accrue until after Atlanta had paid C & S, therefore Jacks had not failed the ante litem notice requirement. The city also claimed that it was not bound by bond requirements in emergency situations such as this. The court held that Atlanta did not establish that it had treated the event as an emergency because of its failure to produce minutes with a description of the emergency and its failure to mention the existence of an emergency in the authorizing ordinance.

McArthur Electric, Inc. v. Cobb County School District

Supreme Court of Georgia
 March 26, 2007
 2007 WL 879006
 2007 Ga. LEXIS 250

McArthur Electric was a subcontractor working on the construction of a school in Cobb County. The contractor terminated services with McArthur, claiming that the subcontractor was in default. In addition to filing suit against the contractor, McArthur brought this action against the school district for an equitable lien on the funds that were owed to the general contractor. The lower court and the Supreme Court held that the subcontractor has an adequate legal remedy under the general contractor's payment bond. Because McArthur had an adequate legal remedy in the form of the payment bond, the equitable remedy of a lien on funds held by the owner of a public works project was not available.

Williams v. City of Atlanta

Supreme Court of Georgia
 January 8, 2007
 281 Ga. 478

The appellant, Williams, appealed

from an adverse decision by the trial court on his claims against the City for mandamus and quantum meruit relief. The appeal is a renewal action of the appellant's 2003 claims for breach of contract and fraud against the City. Williams alleged that, while he had resigned from employment in 1997, the City rehired him with the understanding that he would receive credit for his former years of service and be paid accordingly. The trial court ruled that the two-year statute of limitations had run on Williams's breach of contract action and found that the complaint failed to state a claim for fraud. Though Williams had previously dismissed a claim for quantum meruit in 2003, he reasserted this claim along with a new claim for mandamus relief. Williams sought to enforce a 2001 Bureau of Labor Relations grievance decision, which stated that the Bureau had "no objection to any accommodation" to rectify the dispute. However, the court upheld the trial court's grant of summary judgment to the City, because that this grievance decision did not entitle the appellant to back pay nor to any reinstatement of his previous position. Additionally, the court found that William's claim for quantum meruit was precluded by the facts that the trial court had previously resolved his contract claim and that Williams was seeking the same compensation under his action for quantum meruit.

COUNTY GOVERNING AUTHORITY

Merry v. Williams

Supreme Court of Georgia
February 5, 2007
281 Ga. 571

An affirmative vote of six members of the Augusta-Richmond County governing authority is required for any action. Merry filed this petition, requesting a declaratory judgment regarding how to count abstaining votes by members.

The trial court dismissed, but the Supreme Court found that this was a proper subject for judicial review because the claim involved interpretation of the voting requirements in the consolidation charter and the rules of procedure.

Merry complains that not counting an abstaining vote as either affirmative or negative is contrary to public policy. The court here finds that the Commission may adopt rules to govern its procedure, but such rules must be read in conjunction with the Consolidation Act. The Consolidation

Act requires that abstentions by commissioners should not be counted as affirmative votes. The rules of procedures required that they not be counted as negative votes. In that the rules were not inconsistent with the Consolidation Act, the court held the abstentions by commissioners must not be counted as either affirmative or negative votes and therefore the appellant was not entitled to declaratory relief.

DISCRIMINATION AND HARASSMENT

Crawford v. City of Fairburn

Eleventh Circuit Court of Appeals
February 21, 2007
479 F.3d 774

Officer Tallman filed two internal sexual harassment complaints, one in 2002 and one in 2003. She filed an EEOC charge against the City for the first complaint in 2002, but not the second. Crawford, a Major in the Police Department, investigated the second complaint.

In February 2004, city officials decided to terminate Crawford. He filed an EEOC charge and sued the city claiming that his termination was retaliation for conducting the Tallman investigation. The court here held that to establish a case for retaliation Crawford needed to demonstrate that his activities were statutorily protected. Crawford claimed that his involvement in the internal investigation into Tallman's complaint amounted to participation in the EEOC's investigation which protects him from retaliation. The court however held that the EEOC investigation had ended before Crawford reported the findings of his investigation. Therefore Crawford's 2003 investigation was not part of the EEOC's investigation. The court held that Crawford was not engaging in protected behavior, and therefore was not protected from retaliation.

Forehand v. Fulton County

Federal District Court
March 26, 2007
2007 WL 951501
2007 U.S. Dist. LEXIS 22309

Plaintiff Forehand was denied a promotion, and later terminated after a departmental reorganization. Forehand claims that she was denied a promotion and terminated because of her past charges of race and sex discrimination, and that she was denied a promotion and a transfer on the basis of gender. A county is only liable for a claim

based on respondeat superior if the county's official policy causes a constitutional violation. Here the plaintiff has not identified an officially adopted policy that permits retaliatory action against complaining employees, nor is there evidence of a custom or practice of permitting such retaliation. A plaintiff may establish liability if the decision-maker possessed final authority to establish a policy with respect to the unlawful action. Here there is no evidence that the decision-maker was the county official responsible for establishing county employment policy, and therefore the County cannot be held liable for the alleged retaliatory termination. Hopkins, the defendant who actually terminated Forehand, argues that he has qualified immunity because he was acting within the scope of his discretionary authority. The court here finds that he was acting in a discretionary manner, but the court held that an employee's right to be free from retaliation of the kind alleged here is clearly established, and therefore Hopkins is not entitled to qualified immunity.

Newberry v. Valdosta-Lowndes County Conference Center & Tourism Authority

Federal District Court
March 30, 2007
2007 WL 988719
2007 U.S. Dist. LEXIS 23364

Newberry, a former employee, sued the Authority, claiming that her discharge was in violation Title VII. The Authority argued that it does not meet the statutory definition of "employer" because there are less than fifteen employees. The plaintiff contends that because the Authority is under the common control of the City of Valdosta and Lowndes County, the court must use the integrated enterprise test and consider the total employees of each entity in determining if the Authority meets the definition of "employer" required by the statute. The court here found that the integrated enterprise test was not applicable, and instead the presumption should be that governmental subdivisions that are separate under state law are not to be aggregated for Title VII purposes. The presumption can be overcome if the plaintiff can establish that the government entity was structured with the purpose of evading the reach of federal discrimination law, or if factors manifestly indicate that the entities are so interrelated in matters concerning the employment relationship that they should be treated together under Title VII. The court held that evidence of either was insufficient and therefore,

the plaintiff's claim under Title VII is barred.

ELECTIONS

McCreary v. Martin
 Supreme Court of Georgia
 February 26, 2007
 281 Ga. 668

McCreary filed a petition contesting the primary election for a county commission chair which he had lost. His petition was dismissed because it was untimely and he had failed to properly verify his petition and serve the State Election Board. About a month and a half later McCreary filed motions for expedited consideration and supersedeas.

The court here considered the timing of the dismissal of McCreary's challenge and his failure to act with dispatch. The court found that while there are situations where last minute requests are unavoidable, this was not such a situation, especially because the general election had already been completed. The court concluded that this election challenge was moot because of McCreary's failure to request relief in a timely manner.

EMPLOYMENT

Ewing v. City of Atlanta
 Supreme Court of Georgia
 February 26, 2007
 281 Ga. 652

Ewing was denied a request to work an outside job and he sued for mandamus relief and damages. The City moved for dismissal and the trial court granted their request.

The court here found that the city ordinances governing an employee's request to work an outside job sets forth seven reasons that a supervisor may deny a request. The court here found, however, that the "best interest" reason for the initial denial was merely an unexplained conclusion that gave no indication as to which of the acceptable reasons in the ordinance was relied upon.

The court also found that when the pleadings are correctly construed in favor of Ewing, his complaint tended to show that the city did not properly deny his request, and the city's motion to dismiss did not establish that Ewing could not produce evidence to warrant relief.

Ferdinand v. Board of Commissioners of Fulton County
 Supreme Court of Georgia
 February 26, 2007
 281 Ga. 643

The Fulton County Tax Commissioner, Ferdinand, indicated to the County Personnel Director that he intended to raise the salaries of some people in his office. The Director refused to implement these raises, citing county regulations restricting the tax commissioner from adjusting salaries of civil service employees. Ferdinand claimed that his employees were not county employees, therefore not part of the civil service system.

The court found that the employees and deputies were included in the civil service system, therefore Ferdinand did not have the authority to raise their salaries, and the trial court properly granted summary judgment to Fulton County.

FREE SPEECH

Dennis v. Putnam County School District
 Federal District Court
 March 21, 2007
 2007 WL 891517
 2007 U.S. Dist. LEXIS 23598

Plaintiff Dennis was a fiscal officer for the County's Head Start Program. She spoke out regarding some financial mismanagement that she had discovered, and later resigned. She filed suit claiming retaliation in the form of constructive termination in violation of her First Amendment right to free expression.

The court here held that for a public employee to sustain a claim of retaliation the speech must be protected, meaning it must address a matter of public concern, and the employee's interests as a citizen must outweigh the interests of the government as an employer. Additionally, the court held that the First Amendment does not protect an employee's speech made pursuant to their official duties. Here the court found that, as a result of practical inquiry and the plaintiff's own admissions, reporting financial irregularities was part of Dennis's official duties, therefore it was not protected by the First Amendment.

IMMUNITY

Alyshah v. Georgia
 Eleventh Circuit Court of Appeals
 April 11, 2007
 2007 WL 1072931
 2007 U.S. App. LEXIS 8357

Alyshah brought several state-law tort claims as well as First, Fifth and Fifteenth Amendment violations

against the State of Georgia in federal court which dismissed the case for failure to state a claim upon which relief can be granted. The lower court concluded that the federal claims were barred by Eleventh Amendment immunity, and the state tort claims were barred by the Eleventh Amendment and sovereign immunity. The court here affirmed the lower court decision, finding that the Eleventh Amendment bar against suits has been extended to bar claims against states by its own citizens unless the state consents or Congress has abrogated the state's sovereign immunity. The court held that the Georgia Tort Claims Act preserves the State's sovereign immunity in federal court, even though the state consents to being sued in its own state courts. The court also held that Congress had not abrogated Georgia's sovereign immunity.

Collins v. Summerville
 Georgia Court of Appeals
 March 7, 2007
 284 Ga. App. 54

Collins brought an action against the City of Summerville, claiming that he was injured as a result of negligently installed and maintained swing equipment in one of the City's parks. The trial court granted the City's motion for summary judgment and Collins appealed. The Court of Appeals affirmed. The court found that the City was immune from liability under the Georgia Recreational Property Act, O.C.G.A. § 51-3-20 *et. seq.*, which provides liability to landowners that willfully or maliciously fail to warn against a known dangerous condition. In order to demonstrate this failure to warn, the court ruled that Collins must establish that: (1) the City had actual knowledge that the property was being used for recreational purposes; (2) that the City had actual knowledge of the existence of a condition that posed an unreasonable risk of death or serious bodily harm; (3) that the condition was not apparent to those using the property; and (4) that the City chose not to warn the users, disregarding the potential consequences. The court found that Collins was unable to establish that the City had actual knowledge of the specific dangerous conditions which injured him. Because there was no genuine issue of material fact as to whether the City willfully or maliciously failed to warn Collins, the court upheld the trial court's grant of summary judgment.

Leake v. Murphy

Georgia Court of Appeals
 March 26, 2007
 2007 WL 881659
 2007 Ga. App. LEXIS 352

Leake appealed from the trial court's grant of summary judgment to the defendant in a negligence action. The trial court found that the appellee had sufficiently established that a statutorily required safety plan was in place at the time the appellant's daughter was injured on school grounds. The appellants argued that the trial court erred in finding that a valid school safety plan had been put into place at the time of the injury. The court disagreed, finding that there was sufficient evidence of the preparation and initiation of such safety plan to uphold the trial court's decision. The appellants further argued that this plan was invalid because there was no evidence that the school formally adopted the plan. The court held that O.C.G.A. § 20-2-1185(a) does not require such formal approval of the school's individual safety plan. The statute merely requires that the county superintendent and county school board ensure that such plans are developed and implemented at each individual school. Additionally, the appellants argued that the safety plan was invalid because the defendants had improperly delegated its development to third parties, such as GEMA. However, the court ruled that the statute authorizes such third party input. Finally, the appellant argued that the trial court erred in not finding that the defendant negligently violated a separate ministerial duty under O.C.G.A. § 20-2-1185(a) to involve parents, students and school staff in the development of the safety plan. The court held that the general nature of the statutory provision at issue imposed a discretionary duty rather than a ministerial one. The court found that the appellee was entitled to statutory immunity as a matter of law, which barred the appellant's negligence claims.

Murray v. Georgia Department of Transportation

Georgia Court of Appeals
 March 19, 2007
 2007 WL 805803
 2007 Ga. App. LEXIS 305

Murray's parents and estate brought wrongful death and pain and suffering claims against several defendants, including county employees, claiming they acted negligently in delaying installation of an approved traffic signal and that this failure was the proximate cause of Murray's death.

The county employees moved for dismissal, claiming official immunity from suit. Official immunity protects individuals from suits involving discretionary actions.

The court found that the county employees were not required to install the traffic signal or adhere to any time limitation for its installation, therefore any action taken by defendants would have been discretionary. Because these actions would have been discretionary the county employees are entitled to official immunity.

Norton v. Cobb County

Georgia Court of Appeals
 March 19, 2007
 2007 WL 806018
 2007 Ga. App. LEXIS 301

After falling from a park swing and injuring himself, plaintiff Daniel Cobb sued the county and county employee Norton. The county claimed sovereign immunity, but the plaintiff argued that the Recreational Properties Act (RPA) waived that immunity. The court held that a waiver of sovereign immunity only occurs when the General Assembly explicitly does so in a statute, and the RPA had no such explicit waiver. Norton claimed official immunity from suit, which applies to discretionary acts. The court held that the Norton's actions here were discretionary and therefore he was entitled to official immunity, which cannot be waived.

The county and Norton also argued that even if they lacked immunity, they were still entitled to summary judgment under the RPA. Under the RPA a defendant who acts in a willful or malicious manner does not receive immunity. The test for willfulness requires that the defect not be apparent to those using the property, however the court held that the earlier complaint from someone observing the swing, and the later report from the risk management officer establish that the condition of the swing was apparent to those using the property. Therefore the actions of the county and Norton were not willful, and they have immunity.

Reece v. Turner

Georgia Court of Appeals
 March 19, 2007
 2007 WL 805876
 2007 Ga. App. LEXIS 309

Turner filed suit against school officials alleging that they had failed to carry out their ministerial duties, resulting in her being sexually molested while a student by a school employee, Virgil Spaur. Spaur had previously molested another student. Following an internal investigation the relevant child welfare

agency was not notified, but the defendants delivered a memorandum to Spaur detailing future conditions of his employment, including requiring that Spaur be supervised any time that students were around.

Turner contended that the memo, school administrative regulations, and OCGA §19-7-5 placed ministerial duties upon appellants to report the first incident of molestation and adhere to the requirements in the memo. According to Turner, appellants failed to carry out these ministerial duties, which allowed Spaur the opportunity to molest her. Defendants claimed that they were entitled to official immunity for the claims brought against them in their individual capacities.

The court here held that official immunity applies only to discretionary actions. The court held that decisions regarding supervision are discretionary, even when the duty to supervise is incorporated into an internal policy document such as the memo. The court also held that OCGA §19-7-5 and the administrative regulations do not provide for a civil remedy, only criminal sanctions. Therefore the school officials had none of the alleged ministerial duties and were entitled to official immunity.

Tatroe v. Wheeler

Eleventh Circuit Court of Appeals
 March 29, 2007
 2007 WL 934716
 2007 U.S. App. LEXIS 7510

Tatroe sued, claiming that Wheeler retaliated against her for constitutionally protected speech made while working as a county 911 operator. Wheeler moved for qualified immunity, arguing that the adverse employment actions alleged by Tatroe were motivated by lawful considerations, at least in part, and that therefore he is entitled to immunity.

The court here held that qualified immunity only applies where the record indisputably establishes that the defendant was motivated by lawful considerations. Because the record did not provide indisputable evidence of a lawful motivation, the defendant is not entitled to qualified immunity.

Touchton v. Bramble

Georgia Court of Appeals
 March 13, 2007
 284 Ga. App. 164

While visiting an amusement park with his granddaughter, Touchton was identified by other park patrons as being the person they had earlier seen exposing himself. Touchton was then arrested by a Lowndes County Sheriff's

Detective. He and his granddaughter were taken to the Lowndes County jail. Touchton was charged, but later acquitted by a jury. He then sued the amusement park and Detective Bramble on various tort claims.

Touchton contended that the park was responsible for the detective's conduct based on respondeat superior. The court held that the park could not be held responsible for Bramble's actions because he was not under the direction or control of the park, even though they paid him.

Bramble claims official immunity from suit. Official immunity attaches if acts were discretionary and done without willfulness, malice, or corruption. Touchton claims that there are factual issues as to whether there was malice or corruption, arguing that Bramble arrested him before conducting any meaningful investigation. The court here held that there was evidentiary support for the arrest and Bramble's failure to take additional steps does not amount to behavior that would strip him of official immunity.

Weldon v. Bartow County Board of Education

Federal District Court
March 16, 2007
2007 WL 842086
2007 U.S. Dist. LEXIS 19112

At a school board meeting, Plaintiff Weldon spoke during the time for public comment, complaining of corruption in the school system. Officer Thurman, employed by the Board of Education as a police officer, was also in attendance. The next day he signed five affidavits alleging criminal defamation against Mr. Weldon. Magistrate Mosely then issued an arrest warrant for Mr. Weldon, who was subsequently arrested and incarcerated overnight. Weldon filed suit claiming that his Fourth Amendment rights were violated by this arrest.

Officer Thurman has argued that he has qualified immunity from this suit. Government officials sued as individuals are entitled to qualified immunity if they are engaging in discretionary action, which Thurman was, and if the plaintiff's constitutional rights were not violated. To determine whether Weldon's constitutional rights were violated the court had to determine if there was probable cause, or even arguable probable cause, for the arrest.

The court found that Thurman had neither actual nor arguable probable cause under any code section and reasonably should have known the arrest was unlawful because he failed to include all relevant information in the

affidavits he signed, and because it is clearly established that a person cannot be arrested for criminal defamation, therefore he was not entitled to qualified immunity.

JUVENILES

In re J.S.

Georgia Court of Appeals
February 6, 2007
283 Ga. App. 448

A Baldwin County juvenile court ordered J.S. taken into custody by the Department of Juvenile Justice (DJJ). While in custody of the DJJ, J.S. was presented to medical personnel with a life-threatening condition. DJJ later filed a motion seeking payment by Baldwin County of the medical expenses. Georgia law requires counties to pay for "subsistence" costs for children in custody. The court here found that based on legislative intent, the purpose of protecting the well-being of children, and persuasive authority, "subsistence" included emergency medical treatment. Therefore the medical costs involved here were expenses that should, by law, be charged to the county.

OPEN RECORDS

Athens Newspapers, LLC v. Unified Government of Athens-Clarke County

Georgia Court of Appeals
March 7, 2007
2007 WL 677777
2007 Ga. App. LEXIS 258

Athens Newspapers filed suit against Athens-Clarke County claiming that the denial of a request for police records of an unsolved case was a violation of the Open Records Act. The newspaper argued that the records did not meet an Open Records exemption and that the county violated the act's time requirements.

The county claimed that the investigation was pending, and could still be solved, so the records were exempt. The court here found that there was no progress in the case for several years and that there was no active investigation that will likely lead to solving the case. Because exemptions to the Open Records Act must be construed narrowly the court held that there was no pending investigation in the Stone case and therefore the police records do not fall under the exception. The county also asserts that the records are exempt because their release would reveal facts known only to investigators and the

perpetrator. This reason for denial was not included in the county's refusal to the newspaper. The court found that the county could not rely on an exemption that it did not assert at the time that it denied access to records. Regarding the three business days requirement the court held that the three business day requirement should begin running when the agency, not the custodian, receives the request, otherwise there was great potential for abuse.

PUBLIC SERVICES

Walker County v. Tri-State Crematory

Georgia Court of Appeals
March 7, 2007
284 Ga. App. 34

Walker County filed this suit after the discovery and removal of the unburied and decaying bodies at the Tri-State Crematory. The county sought to recover expenses incurred in dealing with the situation as well as punitive damages.

The defendants asserted that the free public services doctrine, among others, barred the county's claims. The court here held that Georgia has adopted the common-law free public services doctrine, which provides that a county cannot recover the costs of carrying out a public service (either required or discretionary) from a tortfeasor, absent statutory authority or damage to government property. The court found that Walker County was not seeking recovery for injury to its own property, nor did the County point to any statute that authorized recovery.

The County also argued that there should be an exception to the free public services doctrine when costs are incurred as the result of the abatement of a public nuisance. The court did not agree, saying that allowing such an exception would swallow the rule because so many expenditures could be characterized as public nuisance abatements.

TAXATION

City of Atlanta v. Clayton County Board of Tax Assessors

Georgia Court of Appeals
March 22, 2007
2007 WL 852334
2007 Ga. App. LEXIS 344

The Clayton County Board of Tax Assessors refused to exempt property held by the City of Atlanta from ad valorem property taxes. While normally public property is exempt from taxation,

property owned by one political subdivision that is in the territory of another may be taxed, unless it falls within an exemption. The relevant exemption in this case requires at least 25 percent of the land to be developed and actively in use for a government purpose. The court held that the property should be considered in conjunction with the city's other airport-related property in making the ad valorem tax exemption determination. Because 25 percent of the city's airport-related property was developed and in use it falls within the ad valorem tax exemption.

Georgia Power Company v. Monroe County

Georgia Court of Appeals
March 30, 2007
2007 WL 959741
2007 Ga. App. LEXIS 399

Georgia Power submitted, and the State Board of Equalization approved, an estimate of the fair market value of the company's operating property and an assessment ratio for that property. The Monroe County Board of Tax Assessors rejected the State's valuation and ratio, arguing that it had the power to make such changes to the State's determinations. The court here found that the "final assessment" power of the County did not include a revaluation of market value and reversed the lower court.

**TAXATION/
CONSTITUTIONAL LAW**

Marathon Investment Corp. v. Spinkston

Supreme Court of Georgia
April 24, 2007
2007 WL 1185711
2007 Ga. LEXIS 306

Marathon Investment Corp. appealed the superior court's order that voided a tax sale in which it obtained property used by Hills Avenue Baptist Church as an overflow parking lot. The superior court had found that since the property was owned by the church, it was tax exempt and title was vested back to the trustees of the church. On review, the Supreme Court of Georgia found that the property was included within the meaning of "places of worship" under OCGA § 48-5-41 (a) (2.1) (A) and therefore tax-exempt. Moreover, the Court found that the church was not required to tender the redemption price of unpaid taxes because at the time the property was sold, it was tax-exempt. The Court also found that there were

due process problems with the tax sale. The Court stated that there exists a policy of favoring the owner in such tax sales, particularly in the instant case because it was uncontroverted that the church did not expect the subject property to be taxable. This was compounded by the fact that the trustees were never given proper notice of the tax sale. The Court found that these due process defects resulted in an unconstitutional sale of the church's land and therefore voided the tax sale.

TORTS

Best v. Cobb County

Federal District Court
February 5, 2007
2007 WL 433101
2007 U.S. Dist. LEXIS 8016

After being struck by a car being pursued by Cobb County authorities, plaintiffs sued alleging that their rights were violated by the County's failure to train its officers on the proper police pursuit procedures.

The Eleventh Circuit has held that a municipality is liable if a plaintiff has shown a constitutional violation, a policy or custom of deliberate indifference toward that constitutional right, and a causal link between the two. The court here held that the County cannot be held liable if the plaintiff did not suffer a constitutional tort at the hands of the pursuing officer, which plaintiff did not.

The court also held that plaintiffs did not demonstrate that the alleged indifference on the part of the county was the cause of the injuries sustained by the plaintiff. Furthermore, the training that was provided by the county was more substantial than the training found in other cases where it was considered adequate.

City of Atlanta v. Broadnax

Georgia Court of Appeals
April 26, 2007
2007 WL1218231
2007 Ga. App. LEXIS 452

The plaintiff-homeowners brought a nuisance suit against the City as a result of flooding in their neighborhood after a severe rainstorm. The jury awarded a verdict of over \$1.8 million and the City appealed, claiming that the trial court erred in denying its motions for summary judgment and directed verdict. The City asserted that they were immune from the suit. The court found that although the City may be immune from certain negligence actions, it may be held liable if its actions in the construction and maintenance of a

sewer or drainage systems constitute a "continuing, abatable nuisance." The City further argued that the homeowners had failed to establish a claim for nuisance, but the court found that there was sufficient evidence presented to establish this claim. Additionally, the City objected to the trial court's jury charge, claiming that it could have led the jury to believe liability would follow a finding of simple negligence. The court found that the jury charge was not harmful to the City since the trial court made it clear that this was not a negligence case. The City also made objections to other instructions to the jury, but the court did not find reversible error in these instructions. The plaintiff-homeowners filed a cross appeal in which they claimed that the trial court erred in instructing the jury that they were unable to recover damages for both diminution in value and costs of repair. The court dismissed this argument, finding that it conflicts with a long-standing rule to the contrary. Homeowners Broadnax and Wyatt also claimed in their cross appeal that the trial court erred in granting the City's motion for JNOV with respect to their nuisance claims. The court found that the trial court erred in granting this motion with respect to Broadnax, but not Wyatt, because it was clear from the record that only he had provided ante litem notice. Finally, the plaintiff-homeowners claimed that they were entitled to a new trial because the jury did not award attorney fees or litigation expenses. The court upheld the trial court's denial of this motion for a new trial because the resolution of this issue was solely for the jury.

Hicks v. McGee

Georgia Court of Appeals
February 22, 2007
283 Ga. App. 678

McGee filed suit against the Fulton County Superior Court Clerk and Deputy Clerk for their failure to notify the Department of Corrections (DOC) of his sentence, which resulted in him serving an additional 22 months in prison. Defendants moved for dismissal, claiming the statute of limitations had run and that they had both official and sovereign immunity. The court found that McGee's continued confinement amounted to a continuous tort that was not eliminated until he was released from prison. Because McGee filed suit six months after his release he had satisfied the statute of limitations. Official immunity applies to individual defendants acting in a discretionary manner, but they may still be liable for ministerial acts. The court here held that the claim concerns a failure to

perform a ministerial act. Therefore, the defendants, in their individual capacities, were not entitled to official immunity.

Miranda v. Fulton DeKalb Hospital Authority

Georgia Court of Appeals
 March 14, 2007
 2007 WL 755200
 2007 Ga. App. LEXIS 287

Diego Garcia's parents and estate filed a claim of medical malpractice against defendant. Garcia was taken by a police officer to the DeKalb Crisis Center, and then transferred to Grady Hospital after making statements suggesting suicide. While at Grady he was placed in restraints but was not checked on as frequently as the hospital policy required. He left the hospital, drove his car to North Carolina, and killed himself.

The plaintiffs argue that the hospital's failure to keep watch over Garcia was malpractice, resulting in his suicide. The court outlined the three elements of a medical malpractice claim which are the duty of the doctor to the patient, the breach of that duty, and that this breach was the proximate cause of the injury. The court here only ruled on the question of proximate cause, holding that the even if there was a breach on the part of the hospital, it was too remote to be the proximate cause of Garcia's suicide.

Welch v. Georgia Department of Transportation

Georgia Court of Appeals
 March 7, 2007
 283 Ga. App. 903

The executor of the Welch estate filed a wrongful death suit against the Georgia Department of Transportation, claiming that negligently maintained trees and shrubs adjacent to a state highway intersection obstructed Welch's line of sight. The trial court granted the DOT's motion for summary judgment without specifying the grounds for its decision and Welch appealed. The Court of Appeals affirmed, holding that under O.C.G.A. § 32-2-2, the DOT is merely required to provide "substantial maintenance activities and operations" to portions of the state highway system that are located within the corporate limits of any municipality. In construing this statute, the Court of Appeals applied the principle of "ejusdem generic," which limits a general term to the same kind of class as other enumerated items. Accordingly, the court declined to include the maintenance of vegetation and shrubbery within the meaning of

"substantial maintenance activities." The court also found that the appellant failed to maintain a claim under O.C.G.A. § 50-21-24 (8), which provides for liability for losses resulting from the DOT's failure to inspect or maintain its right-of-way. The court found that the appellants had failed to establish that the vegetation extended into the DOT right-of-way.

Williams v. DeKalb County

Federal District Court
 January 4, 2007
 2007 WL 41955
 2007 U.S. Dist. LEXIS 217

Plaintiff, a homeless individual, was picked up by Jones, a DeKalb police officer, driven to another county, ordered out of the car, and stabbed multiple times. Plaintiff filed this lawsuit against DeKalb County, Jones, and the Police Chief Graham and argues that he asserts a valid claim against the County because it was negligent in hiring Jones, inadequately trained and supervised him, and Jones' actions were a result of a police department policy or custom. The Court held that the county is not liable for Jones' conduct and dismisses the claims.

The court found that the evidence gave no indication that the county was aware of the need for additional training or supervision of Jones and chose not to act, nor that there was any causal connection between any deficiency and the assault on the plaintiff. The court found no evidence that a final policy maker had negligently hired Jones, little direct evidence of a "homeless removal" policy, and no causal link between the alleged policy and the constitutional violation. The court also found that Chief's decisions are subject to administrative review, therefore he cannot be found to have final policymaking authority, absolving the county of liability for his actions. Defendants' also claim that the plaintiff's state-based claims against the county are barred by sovereign immunity. Plaintiff argues that the purchase of liability insurance covering negligent actions by its officers amounts to a waiver of immunity. The court held that immunity is only waived for losses arising from claims concerning the negligent use of a motor vehicle, therefore the county's sovereign immunity is intact.

ZONING

BBC Land Development, Inc. v. Butts County

Supreme Court of Georgia
 January 8, 2007
 281 Ga. 472

Appellants bought property in Butts County for development and got county approval for building plans. The county later changed the zoning requirements, and the developers sold lots to builders. The builders' applications for building permits were denied because they did not meet the new zoning requirements. The builders and developers then sued Butts County. Appellants argue that these vested rights to build according to old zoning requirements attach to the land and benefit subsequent purchasers, analogizing to nonconforming uses which do run with the land. The court held that vested rights to develop property in accordance with prior zoning are personal to the owner of them, and are not transferable with the land.

City of Roswell v. Fellowship Christian School, Inc.

Supreme Court of Georgia
 March 26, 2007
 2007 WL 878992
 2007 Ga. LEXIS 254

Fellowship Christian School (FCS) was denied a permit to build a football stadium, and sued for a writ of mandamus to allow the stadium. FCS claimed the denial was abuse of discretion, and a violation of state and federal equal protection guarantees. The court held that the decision was discretionary and can only be reversed if there was an abuse of discretion. If there was any evidence supporting the decision of the local governing body then there was no abuse. The court found that the city's decision was based on an authorized consideration, traffic, and held that the denial was not an abuse of discretion. Regarding the equal protection claim, the court held that the traffic concerns provided a rational basis for the denial. Therefore there was no equal protection violation on either state or federal grounds.

