



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



SUMMARIES OF OPINIONS

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OLSEN V. THE STATE (S17A1014)

The prosecution of former **DeKalb County** police officer **Robert Olsen** – charged with shooting and killing an unarmed nude man in 2015 – may go forward under a ruling today by the Supreme Court of Georgia.

Olsen had moved to get his indictment thrown out on the ground that a large number of “unauthorized” persons were allowed in the grand jury room during the prosecutor’s presentation of evidence, and that unfairly hurt his case.

But in today’s opinion, the high court disagrees, and it has upheld the DeKalb County court’s order dismissing Olsen’s motion. “No unlawful conduct is shown in this case, and no prejudice is demonstrated by the manner in which the prosecutor conducted the evidentiary stage of the grand jury proceedings,” **Justice Robert Benham** writes for a unanimous court.

According to briefs filed in this highly publicized case, Hill had received a medical discharge from the United States Air Force following his service in Afghanistan. He had been diagnosed with Post-Traumatic Stress Disorder (PTSD) and bi-polar disorder, and was being treated for both. On March 9, 2015, employees of the apartment complex in Chamblee, GA, where Hill lived, called 911 after seeing Hill roaming about the complex nude and acting strangely. Olsen, a seven-year veteran of the DeKalb County police, responded to the call, arriving alone in a marked patrol car.

According to Olsen’s attorney, while the officer drove around, he spotted the suspect who suddenly sprang from a crouched position and sprinted toward Olsen’s car. Olsen got out of his car and told Hill to stop, but Hill ignored his command. When Hill was within a few feet of the officer, Olsen shot him twice in the torso, killing him. Olsen claimed he shot Hill in self-defense.

According to the district attorney, representing the State, the naked Hill ran toward Olsen's car with his hands in the air. While Hill was unarmed, the State alleges Olsen was armed with handcuffs, a baton, pepper spray, and a Taser, in addition to his service weapon. After ordering Hill to stop, Olsen shot him when Hill was about 5 feet away.

At issue in this case are the grand jury proceedings, which occurred in January 2016. At the time, state law allowed law enforcement officers, such as Olsen, to attend the proceedings with legal counsel and to make a statement to the grand jury. In all, as many as 12 to 14 people were present during the presentation of evidence, including Olsen and his three attorneys, the district attorney, five assistant district attorneys, several staff members of the district attorney's office, a court reporter, and an expert for the State who observed the proceedings and testified after Olsen had testified.

The DeKalb County grand jury subsequently indicted Olsen and charged him with felony murder, aggravated assault, violation of oath of office and making a false statement. The State alleges Olsen falsely claimed at the scene to another officer that Hill had assaulted him prior to his discharging his weapon, although he later said he had not been physically assaulted by Hill.

In June 2016, Olsen's attorney filed a "Motion to Dismiss based on the Presence of 'Unauthorized' Individuals in the Grand Jury Room." The trial court denied the motion, but permitted Olsen to apply to the state Supreme Court to consider his pre-trial appeal. In October 2016, the Supreme Court agreed to review the case.

Today's opinion says that the issue in this case "concerns the secrecy and confidentiality of the evidentiary stage of grand jury proceedings. While federal rules strictly specify what persons are authorized to be present during the presentation of evidence to the grand jury, no such limitation exists pursuant to Georgia statutory law or procedural rules."

"Despite the absence of express rules in this state governing who may be present during the presentation of evidence to the grand jury, law does exist addressing the secrecy of grand jury proceedings, and we look to that law for guidance," the opinion says. "There is no doubt that the preservation of the secrecy of grand jury proceedings is a well-recognized principle in Georgia."

However, statutory law addressing the secrecy of grand jury proceedings has changed over time, and "had the General Assembly intended to provide a new limitation on the number of people who could be present at the evidentiary stage of a grand jury proceeding it could have done so, but it did not," the opinion says. "It did, however change the law to make the secrecy requirement less restrictive than was previously the case."

"The legislature clearly knew at the time of this proceeding how to make explicit its intent to require secrecy of persons attending the evidentiary stage of a grand jury proceeding, but it did not impose that requirement on either the grand jurors or the prosecuting attorney."

"Given that presumption, we decline to extend the requirement of secrecy applicable to grand jury proceedings in Georgia beyond that which is currently imposed by statute," today's opinion says. "The expansion of grand jury secrecy requirements, if an expansion is to be made, is properly the domain of the legislature or the appropriate procedural rule-making body. We similarly conclude that any strict limitation on the number of persons who may be present during the presentation of evidence to the grand jury is an issue for the legislature, not the courts."

The Court says it is not convinced that the presence of a state expert witness, along with lawyer and non-lawyer members of the district attorney's staff "violated the need for grand jury secrecy or compromised the grand jury's independence from outside influences."

Olsen has been unable to demonstrate that his case or his legal rights were damaged by the number of persons from the prosecutor's office who were present at the proceedings, or by the presence of the expert witness for the State.

"This does not mean that prosecutors have unfettered discretion to invite mere spectators to grand jury proceedings," such as a news reporter, a high school class or a law school class, the opinion cautions. The high court urges prosecutors to "take care to conduct grand jury proceedings in a manner that does not discourage witnesses from testifying fully and frankly, that protects against the risk that the accused might flee to avoid prosecution, and that ensures persons who are ultimately not indicted are not the subject of public ridicule."

Attorney for Appellant (Olsen): Donald Samuel

Attorneys for Appellee (State): Sherry Boston, District Attorney, Anna Cross, Dep. Chief D.A., Christopher Timmons, Asst. D.A.

PATTON V. VANTERPOOL (S17A0767)

The Supreme Court of Georgia has reversed a **Chatham County** court ruling that declared a man the father of his ex-wife's child. The child was conceived through in vitro fertilization using donor eggs and donor sperm. The man argued he is not the child's biological father, the couple was divorced before the child was born, and he never intended to consent to become a father.

Central to this case is a Georgia statute that says, "All children born within wedlock or within the usual period of gestation thereafter who have been conceived by means of artificial insemination are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination." (An "irrebuttable presumption" is an absolute presumption that can't be overcome by argument and is in effect a mandatory rule of law.) The question is whether *artificial insemination*, which has been in use since the late 18th century, includes the more recently developed technology of *in vitro fertilization*, which was first written about in the 1970s.

In today's 8-to-1 opinion, written by **Justice Carol Hunstein**, the majority concludes that "artificial insemination" does not encompass "in vitro fertilization," and therefore the automatic presumption of legitimacy does not apply to children conceived through in vitro fertilization.

According to the facts of the case, David Patton and Jocelyn Vanterpool married Aug. 29, 2010 and separated Aug. 13, 2013. He filed for divorce on Jan. 15, 2014, and the trial court granted it on Nov. 14, 2014. The court order and the parties' agreements stated there were no minor children and they were not expecting any. However, on Sept. 15, 2014, before the divorce was final, Vanterpool, a physician, claims that Patton provided her with written consent to undergo in vitro fertilization, according to briefs filed in the case. He claims he signed the agreement under duress to get her to agree to proceed with the divorce. Four days before the divorce was final, Vanterpool traveled to the Czech Republic and received in vitro fertilization treatments using donor eggs and donor sperm. Patton did not participate or go with her. On June 6, 2015, Vanterpool gave birth prematurely to twins 29 weeks and one day after the couple's divorce was finalized. Only one of the babies survived. Vanterpool filed a Motion to Set Aside

the Final Judgment and Decree of Divorce, but the trial court denied that motion on Oct. 15, 2015. She then filed a claim to establish paternity, alleging that because Patton had signed an informed consent for in vitro fertilization, Georgia Code § 19-7-21 forbid him from challenging the issue of paternity. She also sought child support. Patton objected, arguing that he did not meaningfully consent to the procedure and that even if he did, § 19-7-21 is unconstitutional. Vanterpool filed a motion asking the court to grant “summary judgment” on the issue of paternity. (A judge grants summary judgment after determining a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) The trial court ruled in her favor, and Patton then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether § 19-7-21 applies to children conceived by means of in vitro fertilization.

In today’s majority opinion, “We conclude that it does not and reverse the judgment of the superior court.”

For more than 150 years, artificial insemination has been understood to mean the introduction of semen into the female reproductive tract to further the purpose of *in vivo* fertilization of an ovum. (In vivo means to “take place in the body” while *in vitro* means “in glass.”) In vitro fertilization involves implanting an egg that has been fertilized outside a woman’s body and then inserted into the womb for gestation. “[T]hough each procedure aims for pregnancy, the procedures are distinct, and we conclude that the term ‘artificial insemination’ does not encompass in vitro fertilization,” the majority opinion says.

Vanterpool argued that when the General Assembly enacted § 19-7-21 in 1964, it could not have conceived of the advent of advanced reproductive technology such as in vitro fertilization. A “plain-language construction” of the statute is therefore at odds with the “plain purpose” of the statute, which is to legitimate children born by means of reproductive technology.

But in today’s opinion, the majority argues that other amendments to other statutes “make plain that the General Assembly is now well acquainted with the developments in reproductive medicine.” For instance, in 2009, the General Assembly passed legislation to address the custody, relinquishment, and adoption of embryos. “Thus, as late as 2009, the General Assembly was aware of the existing language of § 19-7-21 and was familiar with advances in reproductive technology, yet chose to leave the statute unchanged,” the opinion says. “[W]e must, therefore, presume that § 19-7-21 remains the will of the legislature.”

In a 19-page dissent, **Presiding Judge Christopher McFadden**, who sat by designation on this case in place of Justice Michael Boggs, argues that the General Assembly did not anticipate subsequent advances in medical technology when it enacted § 19-7-21. But under the Georgia Code, “In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.” “That rule directs us to the conclusion that the intention of the General Assembly was to protect children like S., the child in this case. So I respectfully dissent.”

Attorney for Appellant (Patton): Richard Sanders, Jr.

Attorneys for Appellee (Vanterpool): David Purvis, Michael Manely

OLEVIK V. THE STATE (S17A0738)

Under a ruling today, the Georgia Supreme Court has made it clear that law enforcement officers are prohibited under Georgia's constitution from compelling a person suspected of Driving Under the Influence (DUI) to take a breath test by blowing into a breathalyzer.

With today's unanimous opinion, written by **Justice Nels S.D. Peterson**, the high court has overruled a number of its previous decisions, which held that the Georgia Constitution does not give people a constitutional right to refuse to take breath tests. Rather, the Court has ruled, the state constitution's protection against compelled self-incrimination applies not only to *testimony* but also to *acts* that generate incriminating evidence.

At the same time, the man at the center of the case, who challenged the language of the state's implied consent notice as "unconstitutionally coercive," has lost his appeal, and the high court has upheld his conviction for driving under the influence in **Gwinnett County**.

According to the facts of the case, on June 6, 2015, a Gwinnett County police officer stopped **Frederick Olevik** for failure to maintain lane and no tail lights. Another officer noticed that Olevik had bloodshot and watery eyes, slow speech and was emitting a strong odor of alcohol. The officer performed Standardized Field Sobriety Tests on Olevik, including having him blow into an Alco-sensor, although the officer told Olevik that this test was not the same as the state-administered breath test. The result from the Alco-sensor test was positive. When the officer told Olevik he was under arrest for DUI, Olevik suddenly began to sweat profusely and acted as if he were about to faint. The officer called medical services to the scene and placed Olevik in the back of his patrol car where he then read to him Georgia's implied consent notice. Under Georgia Code § 40-5-67.1, the arresting officer must read the arrestee the implied consent notice, which states: "Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial." The notice goes on to say that if the test results show an alcohol concentration of .08 grams or more, which is the legal definition of intoxication, the person's license may be suspended for a minimum of one year. And the notice says that after taking the state tests, the person may hire his own qualified expert to conduct the same tests. Olevik agreed and submitted to the state-administered breath test, which registered a blood alcohol concentration of 0.113. He was subsequently charged with DUI less safe, DUI unlawful alcohol concentration, failure to maintain lane and no brake lights.

Olevik's attorney filed a motion to suppress the results of the state-administered breath-alcohol test, challenging the constitutionality of Georgia's implied consent notice. The trial court denied the motion to suppress and in September 2016, Olevik proceeded to a bench trial (before a judge with no jury). He was convicted of all charges and sentenced to 24 hours in jail with credit for 24 hours time served, plus 12 months on probation, 40 hours of community service, a DUI risk reduction course and drug and alcohol substance abuse evaluation, and an \$800 fine. Olevik did not contest his convictions for failure to maintain lane and no brake lights. But he appealed to the state Supreme Court the trial court's decision that the implied consent notice is not unconstitutionally coercive.

“The Georgia Constitution protects each of us from being forced to incriminate ourself,” begins today’s 49-page opinion. “Unlike the similar right guaranteed by the Fifth Amendment to the U.S. Constitution, this state constitutional protection applies to more than mere testimony; it also protects us from being forced to perform acts that generate incriminating evidence. This case calls this Court to decide whether this state constitutional protection prohibits law enforcement from compelling a person suspected of DUI to blow their deep lung air into a breathalyzer. A nearly unbroken line of precedent dating back to 1879 leads us to conclude that it does, although the appellant here [i.e. Olevik] still loses because the language of the implied consent notice statute he challenges is not per se coercive.”

In his appeal, Olevik argued that the misleading language of the implied consent notice statute compelled him to perform the test. Therefore, he argued, the admission of his breath test results violated his right against compelled self-incrimination under the Georgia Constitution.

“We agree with Olevik that submitting to a breath test implicates a person’s right against compelled self-incrimination under the Georgia Constitution, and we overrule prior decisions that held otherwise,” today’s opinion says. “We nevertheless reject Olevik’s facial challenges to the implied consent notice statute, because the language of that notice is not per se coercive. Our previous decisions prevented the trial court from fully considering Olevik’s argument that, based on a totality of the circumstances in this case, the language of the implied consent notice actually coerced him to incriminate himself.”

“But we have already concluded in rejecting his facial challenge that the notice, standing alone, is not per se coercive,” the opinion states. “Olevik identifies no other factors surrounding his arrest that, in combination with the reading of the implied consent notice, coerced him into performing a self-incriminating act. Indeed, Olevik stipulated that the officer’s actions were not threatening or intimidating. Because the reading of the implied consent notice is not, by itself, coercive, and Olevik has offered nothing else, Olevik’s claim must fail. Accordingly we affirm the trial court’s order denying Olevik’s motion to suppress and affirm his convictions.”

Attorney for Appellant (Olevik): Lance Tyler

Attorneys for Appellee (State): Rosanna Szabo, Solicitor-General, Samuel d’Entremont, Asst. Sol.-Gen.

WOMEN’S SURGICAL CENTER, LLC ET AL. V. BERRY ET AL. (S17A1317)

BERRY ET AL. V. WOMEN’S SURGICAL CENTER, LLC ET AL. (S17X1318)

The Supreme Court of Georgia has upheld as constitutional Georgia’s statutes and regulations that require healthcare services to obtain a “certificate of need” from the State before building a medical facility or expanding one.

In today’s opinion, written by **Presiding Justice Harold D. Melton**, owners of a women’s surgical center have lost their appeal of a **Fulton County** court ruling that rejected their constitutional challenges of the laws requiring them to obtain a certificate of need before making an addition to their facility.

According to the facts of the case, Drs. Hugo D. Ribot, Jr., and Malcolm Barfield are the co-owners of Women’s Surgical Center, LLC, which is known as The Georgia Advanced Surgery Center for Women. The Center provides outpatient surgical services in Cartersville, GA. In 2014, the owners decided to add a second operating room to its premises to create opportunities for contracting with other surgeons who could use the Center in connection with

their medical practices. Under Georgia’s certificate of need statutes and regulations, to add to its facility, the Center first had to apply for, and be granted, a certificate of need by the Georgia Department of Community Health. The Georgia General Assembly enacted the statute in 1979 to “ensure that health care services and facilities are developed in an orderly and economical manner and are made available to all citizens” and that they “be provided in a manner that avoids unnecessary duplication of services, that is cost effective, that provides quality health care services, and that is compatible with the health care needs of the various areas and populations of the state.” The Center’s owners, however, believed the Center should not be subject to the certificate of need requirements. (They had previously been denied a certificate of need, although that denial is not at issue in the current appeal.) On June 30, 2015, the Center and its owners sued the Commissioner of the Department of Community Health (today Frank Berry) and the Department’s Health Planning Director, Rachel King. In their lawsuit, they sought “declaratory” relief – asking that the trial court declare as unconstitutional the state’s statutes and regulations that govern the certificate of need program because they restrain competition, economic liberty, and consumer choice. They also sought “injunctive” relief to prevent the State from requiring the Center to get a certificate of need before expanding its facility.

In August 2015, the Department filed a motion to dismiss the Center’s complaint, arguing among other things that the Center had failed to exhaust administrative remedies before filing a lawsuit in court and therefore it lacked standing to bring its declaratory action. The trial court denied the Department’s motion. In September 2016, the Center and the Department each filed motions requesting that the court grant “summary judgment” to them. (A court grants summary judgment when it determines there is no need for a jury trial because the facts are undisputed and the law falls squarely on the side of one of the parties.) In an October 2016 order, the trial court rejected all of the Center’s constitutional challenges and granted summary judgment to the Department. The Center and its owners then appealed to the state Supreme Court. In a cross-appeal, the Department appealed the trial court’s denial of its motion asking the court to dismiss the Center’s suit.

In today’s opinion, the high court addresses the cross-appeal first, finding that a party has standing to pursue a declaratory action where the threat of an injury is “actual and imminent, not conjectural or hypothetical.” Here, “we find that the Center is confronted with an injury in fact that is ‘actual and imminent, not conjectural or hypothetical,’ such that it has standing to pursue its declaratory action here,” the opinion says. Because the Center has standing to pursue a constitutional challenge of the statute, it was not required to exhaust its administrative remedies before filing its declaratory action.

As to the constitutional challenges, the Center claims that Georgia Code § 31-6-40 (a) (7) (C) violates the Anti-Competitive Contracts Clause of the Georgia Constitution because the Center cannot compete in the healthcare market through the expansion of its facilities without first getting a certificate of need. However, the Center’s argument shows a “fundamental misunderstanding” of the clause, which states: “The General Assembly shall not have the power to *authorize any contract or agreement* which may have the effect of or which is intended to have the effect of encouraging a monopoly, which is hereby declared to be unlawful and void.”

“By its plain terms, § 31-6-40 (a) (7) (C) does not authorize monopolistic ‘contracts’ relating to providers of new institutional health services,” the opinion says. “It only requires that all such providers obtain a certificate of need before adding new services.”

“Because the Anti-Competitive Contracts Clause simply does not apply here, the Center’s constitutional claim on this ground must fail.”

Similarly, the Center’s claim that the statute violates due process under the Georgia and U.S. constitutions also fails. If the challenged laws have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, under previous Georgia Supreme Court rulings, which have found that promoting quality health care services is a legitimate legislative purpose. “Accordingly, the Center’s due process challenges to § 31-6-40 (a) (7) (C) are without merit,” the opinion says.

In a footnote, the high court emphasizes that “this is a case about the General Assembly’s ability to regulate healthcare,” and that there are few other private sector markets so dominated by government regulation – particularly federal regulation – as healthcare. “Nothing in today’s opinion should be understood to support sweeping economic regulation of this sort beyond this unique context,” the footnote says.

Attorneys for Appellants (Center): James Manley, Veronica Thorson, Glenn Delk

Attorneys for Appellees (State): Christopher Carr, Attorney General, Isaac Byrd, Dep. A.G., Daniel Walsh, Sr. Asst. A.G., Monica Sullivan, Asst. A.G., Forrest Pearce, Asst. A.G.

GEORGIA ASSOCIATION OF PROFESSIONAL PROCESS SERVERS ET AL. V. JACKSON, SHERIFF, ET AL. (S17A1079)

The Supreme Court of Georgia has ruled in favor of Georgia’s sheriffs in a lawsuit brought against them by the Georgia Association of Professional Process Servers.

In their dispute with sheriffs, the private “process servers,” whose job is to serve people with subpoenas and other legal documents, appealed a **Fulton County** court ruling that gives sheriffs the final say on whether or not to allow certified process servers to work in their counties, arguing that the statute on which the sheriffs rely is unconstitutional.

But in today’s unanimous opinion, written by **Justice Michael P. Boggs**, the high court has upheld the trial court’s ruling that under Georgia Code § 9-11-4.1, Georgia’s sheriffs have “absolute discretion to permit or deny” certified process servers in their counties.

As background, in 2010, the Georgia General Assembly amended the law governing the service of legal documents by establishing rules and requirements for becoming a certified process server. Under Georgia Code § 9-11-4.1, “A person at least 18 years of age who files with a sheriff of any county of this state an application stating that the movant complies with this Code section and any procedures and requirements set forth in any rules or regulations promulgated by the Judicial Council of Georgia regarding this Code section shall, absent good cause shown, be certified as a process server.” Among the qualifications, the server must complete a 12-hour course, pass a competency test administered by the Administrative Office of the Courts, post a surety bond, be a U.S. citizen, and pass a criminal background check to receive statewide certification. The statute also states: “Such certified process server shall be entitled to serve in such capacity for any court of the state, anywhere within the state, *provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county...*” And it says that before beginning work in a county, the certified process server must file with the local sheriff a written notice prescribed by the Georgia Sheriff’s Association of his or her intent to begin serving process in that county. The statute also says: “*Such notice shall only be accepted by a sheriff who allows certified process servers to serve process in his or her*

county.” Since the legislation passed, there have been several attempts to amend the law and remove sheriffs’ discretion to determine the use of certified process servers in their counties, but none has passed. Today, all but two of the state’s 159 sheriffs have decided not to use the private process servers, using their own deputies instead to serve papers.

In 2013, the Georgia Association of Professional Process Servers sued the sheriffs of Fulton, DeKalb, Cobb, Gwinnett, Clayton, Forsyth and Paulding counties, contending that the sheriffs had “blatantly” and “unlawfully” banned them statewide from doing their jobs. They argued that the General Assembly wouldn’t have passed the 2010 statute detailing the requirements for certification if they intended to allow sheriffs to prohibit them from working in their counties. The servers asked the court for “injunctive relief,” to stop the sheriffs from banning them from their counties, and a “declaratory judgment” – a declaration that the sheriffs’ interpretation that the statute gave them “unbridled discretion” to deny certified servers the right to work in their county rendered the statute laying down requirements for certification meaningless in violation of Georgia law and unconstitutional through the unauthorized delegation of legislative power to the sheriffs. They also sought a “writ of mandamus” from the court, to require sheriffs to permit a certified server to work in their county if the server met the qualifications for certification. Both sides in the lawsuit asked the court for “summary judgment” – a ruling a judge makes only after deciding that a jury trial is not needed because the facts are undisputed and the law falls squarely on the side of one of the parties. In 2015, the trial court ruled in favor of the sheriffs, finding that under a plain reading of the statute, the process servers’ association was not entitled to any of the relief sought. The association then appealed to the state Supreme Court.

In today’s opinion, the high court has tossed out the trial court’s ruling on the association’s claims for declaratory and injunctive relief. The court had no authority to rule on the merits of those claims, and should have dismissed them, the opinion says, because they are barred by sovereign immunity – the legal doctrine that protects the government or its departments from being sued without consent. “Accordingly, we vacate that portion of the trial court’s order and remand for dismissal,” the opinion says.

“As we have noted before, however, ‘sovereign immunity is no bar to petitions for writs of mandamus.’” In this case, the trial court correctly ruled on the merits, finding that the process servers’ association failed to show a “clear legal right” to mandamus relief.

“Here, a plain reading of the statute shows that each sheriff is authorized to decide, as a threshold matter, whether to ‘allow certified process servers to serve process in his or her county,’” the opinion says. “As the trial court correctly noted, that is a separate issue from the sheriff’s duty to process applications for certification under § 9-11-4.1 (b).”

“The trial court therefore did not err in granting summary judgment to the sheriffs on the association’s petition for mandamus.”

Attorneys for Appellants (Servers): A. Lee Parks, M. Travis Foust

Attorneys for Appellees (Sheriffs): Steven Rosenberg, Attorney for Sheriff Theodore Jackson, et al. (i.e. attorneys for other six sheriffs)

COLUMBUS BOARD OF TAX ASSESSORS ET AL. V. MEDICAL CENTER HOSPITAL AUTHORITY (S17G0091)

The Supreme Court of Georgia has reversed a Georgia Court of Appeals decision that would have allowed a retirement facility for wealthy elderly people to qualify as “public property” and therefore avoid having to pay ad valorem property taxes.

In today’s unanimous opinion, written by **Justice Carol Hunstein**, the high court has reversed the decision, which upheld a **Muscogee County** court ruling, and is sending the case back to the Court of Appeals for further proceedings.

According to the facts of the case, Spring Harbor at Green Island is a continuing care retirement facility in Columbus, GA built on 40 acres of land owned by Columbus Regional Healthcare System, Inc., which is not a party in this case. In 2004, the Medical Center Hospital Authority issued \$74.66 million in revenue bonds to finance construction of Spring Harbor. It refinanced the bonds in 2007. On June 1, 2004, the Hospital Authority entered into a lease agreement with Columbus Regional so the Hospital Authority could “construct, own, and operate” Spring Harbor and lease the real estate owned by Columbus Regional for a term of 40 years. For \$10, the Hospital Authority leased the land.

In May 2007, the Hospital Authority sued the Columbus Board of Tax Assessors, the City of Columbus, and the tax commissioner for Muscogee County, seeking a declaration by the Muscogee County court that its interest in Spring Harbor under the lease was not subject to ad valorem property taxation. It contended that its interest was “public property,” that the use and income from the interest furthered its legitimate functions as a hospital authority, and that therefore its interest in Spring Harbor was exempt from ad valorem taxation under Georgia Code § 48-5-41 (a) (1).

The superior court ruled in favor of the Hospital Authority, stating that its “property interest in the facilities and improvements constituting Spring Harbor qualifies as public property, and therefore, it is exempt from ad valorem property taxation.” Specifically, the trial court ruled that, “the validity of Plaintiff Hospital Authority’s property interest in Spring Harbor under the ground lease, and the validity of the ground lease itself, has been established by the Superior Court of Muscogee County in two separate bond validation orders, one in 2004 and another in 2007.” The tax board appealed to the Court of Appeals, arguing that the Hospital Authority’s interest in the property was not exempt as public property. But the appellate court affirmed the lower court’s ruling, finding that it was bound by the earlier superior court bond validation orders. The Board of Tax Assessors then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals was wrong in determining that the bond validation orders conclusively determined that the property is “public property” and therefore exempt from ad valorem taxation.

In today’s opinion, “we hold that these orders did not conclusively establish that the Hospital Authority’s leasehold interest was ‘public property’ exempt from ad valorem taxes and therefore reverse the Court of Appeals and remand this case for further proceedings.”

The question in this case, the opinion says, is whether the Hospital Authority holds the leasehold interest for “public purposes...in furtherance of the legitimate functions of the hospital authority,” rather than for “private gain or income.”

The Court has accepted a petition for voluntary discipline and ordered a **Review Panel reprimand** of attorney:

* Melissa M. Clyatt

IN THE MATTER OF: S. CARLTON ROUSE (S15Y1199)