



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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CITY OF COLLEGE PARK V. CLAYTON COUNTY ET AL. (S19A0460)

The Supreme Court of Georgia has unanimously ruled that sovereign immunity – the legal doctrine that bars lawsuits against the state government without the state’s consent – does not apply to a lawsuit brought by the **City of College Park** against **Clayton County**. As a result, the lawsuit can go forward.

With today’s opinion, the high court has reversed in part a judgment by the Fulton County Superior Court, which had ruled that the City’s lawsuit against the County was prohibited by sovereign immunity.

“Considering the fundamental nature of sovereign immunity and its parameters as the doctrine was understood in Georgia at the time it became part of our State’s constitution, we conclude that sovereign immunity does not apply to bar the current lawsuit,” **Chief Justice Harold D. Melton** writes in today’s opinion.

This is the second time this case has been before the state’s high court. At issue is a longstanding dispute between the City of College Park and Clayton County over the share each gets of tax revenue from alcohol sold at Hartsfield-Jackson Atlanta International Airport.

The airport is owned and operated by the City of Atlanta but is located primarily within the geographic limits of Clayton County. A sizable portion is located in an area of Clayton County that is incorporated within the city limits of College Park, but some of the airport’s businesses sit in unincorporated sections of the County.

In 1983, the Georgia legislature enacted Georgia Code § 3-8-1 (e) as part of the Alcoholic Beverage Code. The provision states that the “proceeds of the taxes which the county and the municipality are authorized by law to impose and collect on the sale, storage, and distribution of

alcoholic beverages at the airport shall be equally divided by the county and the municipality.” For more than 30 years since the enactment of § 3-8-1, Clayton County and College Park had a policy by which vendors of alcoholic beverages at the Atlanta airport remitted one half of the excise tax revenues to the County and one half to the City. In 2007, however, the City began arguing that this approach technically never did comply with the requirements of the Constitution and the Code as the County was “collecting” such monies outside its authorized jurisdiction.

In February 2014, the County sent a letter to all the airport’s alcohol distributors and vendors instructing them not only to remit to the County 50 percent of the taxes from the sale of distilled spirits in portions of the airport situated within College Park’s limits, but also to remit *all* taxes from the sale of distilled spirits in sections of the airport situated in unincorporated areas of Clayton County. The City objected and solicited an opinion from the state Attorney General. In a July 2014 letter, the Attorney General’s office responded that “Clayton County is not authorized to impose a tax on alcoholic beverages at the same location where the City of College Park is authorized to impose such a tax.” It also noted that Georgia Code § 3-8-1 (e) “plainly provides that the proceeds of the taxes on the sale, storage, and distribution of alcoholic beverages at the airport are required to be divided equally between the City of College Park and Clayton County.” The City subsequently requested that the County remit to the City the \$2.5 million in alcoholic beverage tax monies it claimed the County had wrongfully collected since § 3-8-1 became effective in 1983.

When the County did not respond, in March 2015 the City sued the County and County officials in Fulton County Superior Court. The complaint contained 14 counts, including a request for a “declaratory” judgment, asking the court to declare that all collected airport alcoholic beverage tax monies were to be equally divided between College Park and Clayton County, including those from parts of the airport in unincorporated areas of the County. The City also sought a declaration that Clayton County was precluded from collecting taxes from airport alcoholic beverage transactions that occur in College Park’s limits.

Clayton County filed a motion requesting a “judgment on the pleadings,” i.e. asking the court to rule in its favor based on the formal written statements of its claims and defenses. Among other things, the County argued that based on sovereign immunity, the County was shielded from lawsuits seeking a declaratory judgment. In October 2015, the trial court issued an order denying the County’s motion and ruling that sovereign immunity did not apply to the City’s claims. The County then appealed to the state Supreme Court. While the County’s appeal was pending, the Supreme Court issued an opinion in *Lathrop et al. v. Deal et al.*, in which it ruled that sovereign immunity bars claims involving an alleged violation of the Constitution unless the government has consented. However, when the high court subsequently issued its decision in *Clayton County v. City of College Park et al.* in June 2017, it stated that, “there is a threshold question of whether sovereign immunity applies at all in suits between political subdivisions of the same sovereign (like the City and the County), a question that the trial court did not address and the parties have not adequately briefed. It is a complex and important question, and one that we are reluctant to address in the first instance without affording the trial court an opportunity to consider the question and without complete briefing by the parties.” The high court therefore vacated the lower court’s decision and remanded it to the lower court to

determine whether or not College Park's claims against the County were barred by sovereign immunity.

On remand, this time the trial court ruled in favor of the County and held that the City's claims against the County were barred by sovereign immunity. The City appealed to the Georgia Supreme Court.

"Put in the simplest of terms in this case, the County is not a sovereign over the City, and the City is not a sovereign over the County," today's opinion says. "Neither entity retains a superior authority over the other that would prevent it from being hailed into a court of law by the other."

As stated in *Lathrop*, "The doctrine of sovereign immunity has been a part of our law for more than 230 years," the opinion says. "A review of case law reveals that political subdivisions such as counties and cities generally have been allowed to sue one another at common law, both in England and Georgia. It is important to consider the case law in this regard, as each case provides some indication of the breadth and limitations of sovereign immunity as it was understood in Georgia at the time it was made a part of the Georgia Constitution," which initially occurred in 1945.

The nature of sovereign immunity appears to be clear: "The sovereign cannot be called into the courts of its own making by private persons without the permission of the sovereign," the opinion says. With the Georgia Constitution, the people of Georgia have "created a state government through which the sovereign power is exercised. As a result, the State of Georgia is the sovereign for purposes of sovereign immunity."

"This understanding of the nature of sovereign immunity, standing alone, strongly indicates that sovereign immunity has no application to the current litigation. Here, the City and the County are merely exercising their own respective home rule powers by collecting tax revenues for their own purposes, and neither the City nor the County is acting on behalf of the State of Georgia. There is no sovereignty to be maintained."

"There are only two political subdivisions, neither of which controls the court into which it was called or has governing authority over the other party with respect to the matter in dispute," the opinion says. "As the doctrine of sovereign immunity is a 'principle derived from the very nature of sovereignty,' it stands to reason that the doctrine would be inapplicable in a lawsuit in which there is no sovereignty to protect."

As a result, "the City's claims against the County in this case are not barred by the doctrine of sovereign immunity," the high court concludes.

Attorneys for Appellant (City): Steven Fincher, Winston Demark, Eugene Smith, Jr.

Attorneys for Appellees (County): Richard Carothers, Thomas Mitchell, Amy Cowan

VASQUEZ V. THE STATE (S19A0042)

The Supreme Court of Georgia has upheld the murder conviction and life prison sentence given to **Christian Vasquez**, who killed his 2-year-old daughter, then wrapped her body in garbage bags and concealed it in the attic where it remained for more than a year before being discovered.

In today's unanimous opinion, written by **Justice Charles J. Bethel**, the high court finds that the evidence at trial "was sufficient to authorize a rational jury to find Vasquez guilty beyond a reasonable doubt of each of the crimes for which he was convicted."

According to the facts at trial, in February 2007, Vasquez and Amy Ruiz, who were married at the time, lived in a rented house with their 2-year-old daughter, Prisi Vasquez, and Ruiz's 3-year-old son, J.E. At the time, the children were in the legal custody of Ruiz's father following their removal from Vasquez's and Ruiz's custody over allegations that the couple had abused J.E. While the children were in his custody, Ruiz's father had allowed them to be with their parents.

The morning of Feb. 3, 2007, Ruiz left the couple's home at 7:30 to go babysit the daughter of her sister. She left J.E. and Prisi with Vasquez. At 9:36 a.m., Vasquez called Ruiz and said she needed to come home because Prisi was sick. When Ruiz returned that evening after running errands, she found Prisi lying on the couch. Ruiz tried to talk to the toddler, who made noises with her mouth but could not form words. She eventually stopped breathing. Ruiz later testified that she asked Vasquez what he had done to Prisi, and he told Ruiz to "shut up," that "he needed time." She said Vasquez stuffed Prisi's unclothed body into trash bags and hid her in the attic through an entrance in the bedroom closet. He then pressured Ruiz to get money for him, threatening to kill J.E. if she failed. Ruiz borrowed money from her sister, and the next day, she, Vasquez, and J.E. boarded a bus to Mexico. Ruiz did not tell her sister or family they were leaving, and after becoming concerned when they could not contact Ruiz, the family filed a missing person report after finding the couple's home in disarray.

Months later, Ruiz phoned her sister and said she, Vasquez, J.E. and Prisi were in Mexico. She also contacted her father, and sometime in mid-2008, told him that Prisi was in fact dead and her body was in the attic of their Gwinnett County home. Ruiz's father and sister then went to police with the information, and law enforcement found the child's decomposed remains in four black garbage bags, hidden in the attic under insulation. The medical examiner found that the toddler's skull had been fractured and determined that the cause of death was blunt-force head trauma, and the manner of death was homicide.

On June 23, 2008, a detective was able to speak to Ruiz by phone. Ruiz told the detective that Vasquez had wrapped Prisi's body in garbage bags and left the body in the attic. In an earlier call recorded by law enforcement, Ruiz told her father that when she discovered that Prisi was injured, she had wanted to call 911 but was afraid that she would not be believed, that J.E. would be taken from her, and that she'd be put in jail. Following his phone call with Ruiz, the detective filed murder charges against Vasquez and Prisi. On June 25, 2008, Ruiz's father contacted the detective and said Ruiz had relayed to him that J.E. told her Vasquez had hit Prisi in the head with a "tube."

In September 2009, Ruiz returned to the United States and turned herself into law enforcement at the Texas-Mexico border. She was transferred to Gwinnett County and jailed. Vasquez was later extradited from Mexico after Ruiz signed an affidavit in support of his extradition.

In 2015, Vasquez and Ruiz were jointly indicted in connection with Prisi's death. In a separate trial, Ruiz was convicted of involuntary manslaughter, cruelty to children in the first degree, and concealing the death of another. Her case is not at issue in this appeal. In a December 2016 trial, the jury found Vasquez guilty of malice murder, felony murder, aggravated assault, cruelty to children in the first degree, and concealing the death of another. He was sentenced to life plus 50 years in prison. After the trial court denied his motion for new trial, Vasquez appealed to the Georgia Supreme Court.

In his appeal, Vasquez listed a number of reasons his convictions should be overturned, including that the State failed to present sufficient evidence to support his conviction for cruelty to children in the first degree based on his failure to seek medical care for Prisi. He also argues that he received “ineffective assistance of counsel” from his trial attorney based on the attorney’s failure to object to the admission of evidence that Vasquez had previously abused J.E. And he argued, among other things, that the trial court erred in its instructions to the jury.

In today’s 44-page opinion, the court lays out each of Vasquez’s arguments and rejects them all. Among them, Vasquez argued that the trial court plainly erred by failing to instruct the jury regarding the need to corroborate the testimony of an accomplice. Georgia Code § 24-14-8 states that, “The testimony of a single witness is generally sufficient to establish a fact. However, in...felony cases where the only witness is an accomplice, the testimony of a single witness shall not be sufficient. Nevertheless, corroborating circumstances may dispense with the necessity for the testimony of a second witness.” Here, there was evidence that Ruiz was an accomplice of Vasquez, “particularly in the failure of both individuals to seek medical care for Prisi or report her injuries and subsequent death to authorities and in their joint efforts to leave their home and flee to Mexico,” the opinion says. “However, the record makes clear that Vasquez intentionally relinquished his right to have the jury instructed as to the accomplice-collaboration requirement under § 24-14-8.”

In this case, “the record reflects that trial counsel elected not to request a jury instruction regarding accomplice corroboration as part of a conscious defense strategy to place blame for Prisi’s death on Ruiz and to avoid any suggestion by the trial court that Ruiz and Vasquez were accomplices,” today’s opinion says. “Thus, we conclude that Vasquez intentionally relinquished any request to an accomplice-corroboration instruction.”

Attorneys for Appellant (Vasquez): Jessica Towne

Attorneys for Appellee (State): Daniel Porter, District Attorney, Richard Vandever, Dep. Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

WILKES & MCHUGH, P.A. ET AL. V. LTC CONSULTING, L.P. ET AL. (S19A0146)

In an opinion today, the Supreme Court of Georgia has set aside a **Cobb County** court decision that stems from a lawsuit filed by three nursing homes against a law firm over ads the nursing homes claimed suggested they were mistreating residents.

With today’s unanimous opinion, written by **Justice Michael P. Boggs**, the high court has vacated the trial court’s denial of the law firm’s “anti-SLAPP” motion and is sending the case back to the trial court “with direction to reconsider the motion under the proper standards.”

As background, SLAPP stands for “Strategic Lawsuits Against Public Participation,” which are lawsuits that are designed to silence critics. Today’s opinion describes such lawsuits as “meritless lawsuits brought not to vindicate legally cognizable rights, but instead to deter or punish the exercise of constitutional rights of petition and free speech by tying up their target’s resources and driving up the costs of litigation.”

In 2016, the Florida law firm **Wilkes & McHugh, P.A.** and one of its attorneys took out advertisements in local Georgia newspapers regarding three nursing homes owned by **LTC Consulting, L.P.** and its affiliates: Rockdale Healthcare Center, Powder Springs Transitional Care and Rehabilitation, and Bonterra Transitional Care and Rehabilitation. Near the top of each

of the ads, which appeared in newspapers in Cobb County and Rockdale County, were the words, “IMPORTANT NOTICE.” The ads stated that each nursing home “has been cited for multiple deficiencies” that were purportedly uncovered by the annual “surveys” that the Georgia Department of Community Health conducts as required by federal law. The nursing homes complained that, among other things, many of the citations in the ads were several years old and since had been remedied. The nursing homes claimed that the ads exaggerated the number of residents affected and suggested harm of patients where none existed. The ads falsely implied, the nursing homes claimed, that their residents may have suffered “bedsores,” “broken bones,” and “death” as a result of the cited deficiencies. The ads listed the law firm’s website and telephone number and stated, “If someone you love has been a resident” of one of the nursing homes, “we would like to hear your story. Call or email our attorneys for a free consultation.”

In October 2017, the nursing homes sued the law firm and attorney Gary Wimbish, who is licensed to practice in Georgia. The nursing homes alleged that the ads were false, fraudulent, deceptive, and misleading, and that they failed to comply with the requirements of Georgia Code § 31-7-3.2 (j), which restricts the use of nursing home survey report data in advertisements unless specific disclosures accompany the ads. The nursing home companies sought a court-ordered injunction to stop the ads based on Wilkes & McHugh’s violations of the Georgia Uniform Deceptive Trade Practices Act. Under § 31-7-3.2 (j), an advertiser must state the “number of findings and deficiencies cited in the statement of deficiencies on the basis of the survey and a disclosure of the severity level for each finding and deficiency.” The statute also requires an advertiser referencing a survey to include a “disclosure of whether each finding or deficiency caused actual bodily harm to any residents and the number of residents harmed thereby.” The nursing homes argued the ads failed to follow these directives.

On Oct. 20, 2017, the trial court issued a temporary restraining order against Wilkes & McHugh pending a hearing. On Nov. 9, the day before the scheduled hearing, Wilkes & McHugh filed a motion to dismiss the nursing homes’ request for injunctive relief under Georgia’s anti-SLAPP statute. The law firm argued that the nursing home companies were attempting to suppress its constitutionally protected advertising speech concerning a state agency’s findings of health and safety deficiencies at nursing homes. On Nov. 10, 2017, the trial court ruled against the law firm and denied McHugh’s motion to dismiss the lawsuit. Wilkes & McHugh then appealed to the state Supreme Court.

“This case presents the first opportunity for this Court to consider the effects of the General Assembly’s wholesale revision in 2016 of the anti-SLAPP statute, Georgia Code § 9-11-11.1, which now substantially mirrors California Code of Civil Procedure § 425.16,” today’s 32-page opinion begins. “We vacate the trial court’s denial of the defendants’ anti-SLAPP motion at issue in this case, and we remand the case with direction to reconsider the motion under the proper standards.”

Since 1996, Georgia has had an anti-SLAPP statute, but the 2016 amendment substantially revised the statute to track California’s anti-SLAPP procedure. “Thus, our precedents construing the pre-amendment version of § 9-11-11.1 are of limited utility in interpreting the revised anti-SLAPP statute,” the opinion says.

The new statute significantly changes the procedural mechanism for challenging SLAPPs at the outset of litigation. And the General Assembly has expanded the statute’s scope.

Under the revised statute, the analysis of an anti-SLAPP motion involves two steps.

“First, the court must decide whether the party filing the anti-SLAPP motion (usually the defendant) has made a threshold showing that the challenged claim is one ‘arising from’ protected activity,” the opinion says. “The critical consideration is whether the cause of action is *based on* the defendant’s protected free speech or petitioning activity.” Once a court concludes this initial threshold showing has been made, it must proceed to the second step of the analysis and decide whether the plaintiff has established that there is a probability that the plaintiff will prevail on its claim.

“Only a claim that satisfies ‘*both* prongs of the anti-SLAPP statute – i.e. that arises from protected [activity] *and* lacks even minimal merit – is a SLAPP’ that is subject to being stricken,” the opinion says. Here, contrary to the nursing homes’ representations to the state Supreme Court, the trial court did not decide the threshold showing that the nursing homes’ claims are ones “arising from” protected activity. Rather it rejected the law firm’s anti-SLAPP motion at the second step of the analysis, the opinion says.

The nursing homes’ claims against Wilkes & McHugh “are all based on the defendants’ running of ads in local newspapers informing the public of the defendants’ availability to provide legal services related to alleged serious injuries and even deaths at nursing homes in the area that resulted from deficiencies cited in government surveys,” the opinion says. “It is ‘well established that lawyer advertising is commercial speech and, as such, is accorded a measure of First Amendment protection.’ And the alleged existence of serious injuries and deaths at local nursing homes resulting from deficiencies known to a government agency certainly qualifies as a public issue or an issue of public concern. Thus, running the ads could reasonably be construed as an act in furtherance of the defendants’ constitutional right of free speech in connection with a public issue or an issue of public concern, and the defendants therefore met their burden of making a threshold showing that the plaintiffs’ claims are ones arising from protected activity,” today’s opinion says.

The trial court also did not apply the proper standards at step two of the anti-SLAPP analysis, and the particular claims at issue in this case implicate complex and important questions of statutory interpretation and constitutional law,” the opinion says.

“Accordingly, we vacate the trial court’s denial of the defendants’ anti-SLAPP motion, and we remand the case to the trial court with direction to reconsider the motion under the analysis set out above.”

Attorneys for Appellants (Wilkes): Leighton Moore, Meredith Watts

Attorneys for Appellees (Nursing homes): Jason Bring, Kara Silverman

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Donald Bannister (Gwinnett Co.)

BANNISTER V. THE STATE (S19A0418)

* Kevin Boyd (Walton Co.)

BOYD V. THE STATE (S19A0018)

* Charles Fleming (DeKalb Co.)

FLEMING V. THE STATE (S19A0016)

* Torico Jackson (Fulton Co.)

JACKSON V. THE STATE (S19A0231)

(Although the Supreme Court found no error with respect to Jackson's convictions, the trial court erred in sentencing him as a recidivist to life in prison without the possibility for parole under Georgia Code § 17-10-7 (c). In 2004, the year of the murder, that section of the Code did not apply to capital felonies, such as malice murder. Therefore, Jackson's sentence of life without parole has been vacated and the case remanded to the trial court to enter a legal sentence.)

* Davious Letron Taylor (Clayton Co.)

TAYLOR V. THE STATE (S19A0373)

* Ruiz Suchiapa Venturino (Chatham Co.)

VENTURINO V. THE STATE (S19A0166)