



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Wednesday, January 15, 2020

10:00 A.M. Session

SRM GROUP, INC. V. TRAVELERS PROPERTY CASUALTY OF AMERICA **(S19G0473)**

At issue in this appeal is whether the Court of Appeals – the state's intermediate appellate court – correctly ruled that Georgia statutory law prohibits the award for the expenses of litigation in a case such as this.

FACTS: SRM Group – which provides management consulting services to customers in Georgia – obtained a workers compensation policy from **Travelers Property Casualty of America**. The policy provided an initial estimate of premiums and stated that the premiums could be retroactively increased after Travelers reviewed SRM's employee risk classifications. After the policy was in force, Travelers conducted an audit and concluded that two types of SRM employees were improperly classified. It therefore dramatically increased the premiums based on its reclassification of those employees. SRM subsequently quit paying the monthly premiums, Travelers terminated the policy for non-payment, and Travelers filed a lawsuit in **Fulton County** State Court for breach of contract, seeking to recover damages totaling \$479,017.54 from SRM's failure to pay the increased premium due under the workers compensation policy. According to SRM, the premium was 20 times the price that Travelers had estimated it would be, and the

increase was the result of an improper classification of certain SRM employees. Consequently, it counterclaimed in a lawsuit against Travelers, claiming breach of contract and breach of the covenant of good faith and fair dealing based on the manner in which Travelers conducted the audit of SRM's employee classifications and Travelers' subsequent refusal to reclassify those employees. SRM also sought attorneys' fees under Georgia Code § 13-6-11, which authorizes a jury to award attorneys' fees against defendants who have acted in bad faith. Specifically, the statute says that the expenses of litigation "generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them."

Following a four-day trial, the jury awarded \$174,858 in damages to Travelers based on SRM's failure to pay some of the alleged increased premium due under the policy. The jury awarded the same amount to SRM, finding that Travelers had also breached the contract and acted in bad faith in conducting the audit and in subsequently refusing to reclassify certain SRM employees. The jury's award of \$174,858 to SRM consisted of \$57,858 for the breach of contract and \$117,000 in bad faith attorneys' fees. Travelers appealed the ruling, and the Court of Appeals affirmed in part and reversed in part. Specifically, the Court of Appeals reversed the award of attorneys' fees against Travelers, concluding that under Georgia Code § 13-6-11, a party cannot recover expenses of litigation "where there is a compulsory counterclaim." A "compulsory counterclaim" is defined as a claim made by a defendant against a plaintiff that arises from the same subject matter as the plaintiff's claim. The claim is compulsory in that it must be asserted in the original action and generally may not be brought in a later, separate action. The Court of Appeals, quoting the Georgia Supreme Court's 2009 decision in *Byers v. McGuire Props., Inc.* found that, "if the counterclaim is an independent claim that arose separately from the plaintiff's claim or arose after plaintiff's claim, then a plaintiff-in-counterclaim may recover expenses of litigation." The Court of Appeals then ruled that SRM's counterclaim was a "compulsory counterclaim" and reversed the award of attorneys' fees to SRM. SRM now appeals to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals correctly ruled that a defendant asserting a compulsory counterclaim is automatically precluded from seeking an award of litigation expenses under Georgia Code § 13-6-11.

ARGUMENTS: Attorneys for SRM ask the Supreme Court to direct the Court of Appeals to reinstate the jury award or, in the alternative, to order a new trial on damages, "because the Court of Appeals departed from this Court's precedent in interpreting Section 13-6-11 to disallow litigation expenses in connection with a compulsory counterclaim." The Court of Appeals erred in ruling that a defendant prosecuting a compulsory counterclaim is *never* entitled to the benefits of Section 13-6-11. "This means that a would-be defendant can avoid application of Section 13-6-11 simply by winning the race to the courthouse." "No principled reason exists for treating counterclaim plaintiffs differently from plaintiffs, and it leads to inequity," the attorneys argue. "The 'simple denomination of one party as plaintiff and another as defendant should not dictate a possible award of attorneys' fees'...because barring defendants from seeking expenses of litigation 'would endorse a race to the courthouse theory of recovery.'"

Attorneys for Travelers argue that the “Court of Appeals reversal of the verdict awarding attorneys’ fees to SRM in the amount of \$117,000 upon its compulsory counterclaim pursuant to § 13-6-11 should be affirmed.” The opinion was based upon the doctrine of the Georgia Supreme Court’s 2009 *Byers* decision and the Court of Appeals’ 2002 decision in *Sanders v. Brown* “and an uninterrupted line of Court of Appeals decisions” emanating since the Georgia Supreme Court’s decision in *Byers*, which held that “a defendant is not entitled to bad faith attorneys’ fees in a compulsory counterclaim.” Neither *Sanders* nor *Byers* involved compulsory counterclaims for abusive litigation, the attorneys argue. Travelers “respectfully contends that the doctrine of *Sanders/Byers* is neither a mistake, nor does it in any way contradict the holding in *Vogtle v. Coleman, supra*. As a result, Travelers respectfully requests the Supreme Court of Georgia to affirm the Court of Appeals decision accordingly.”

Attorneys for Appellant (SRM): J. Elizabeth Graddy, Peter Schoenthaler

Attorneys for Appellee (Travelers): William Turnipseed, David Gram

MATHENIA ET AL. V. BRUMBELOW (S19G0426)

A single mother who terminated her parental rights the day after her son was born is appealing a Court of Appeals ruling that could lead to the biological father gaining custody of the now 3½-year-old boy who since birth has been with the couple who hopes to adopt him.

FACTS: After a one time sexual encounter in late 2015 with **Joshua Brumbelow**, **Jeannie Mathenia** (who was separated from her then-husband) became pregnant. She told Brumbelow she was expecting soon after learning herself. At first, they discussed raising the child together, but ultimately, she sought to distance herself from him, and throughout the pregnancy, he denied that the child was his, although she repeatedly assured him he was the father. Early in the pregnancy, Brumbelow accompanied Mathenia to a doctor’s appointment to find out how many weeks she had been pregnant, so he could “do the math” and determine whether the baby was his. Although he still professed uncertainty about his paternity, he offered to pay for her to have an abortion. She flatly declined and soon after “cut off all contact” with Brumbelow because he continued to deny he was the father. Throughout the pregnancy, Brumbelow never asked about her well-being or if she needed anything. Although he knew where she lived, he never visited. He also never offered Mathenia any financial support during the pregnancy to help with doctor’s appointments or maternity clothes. About two months before the baby was born, however, Mathenia sent a text message to Brumbelow’s mother and told her that her son was the baby’s father and she did not want to raise a child with him.

On July 10, 2016, the baby, “E.M.,” was born, and the following day, Mathenia voluntarily relinquished her parental rights. The same day, E.M. went home from the hospital with Lance and Ashley Hall, who planned to adopt the child, and he has remained in their custody since. About one month after the baby’s birth, when Brumbelow and his mother learned the baby had been placed with a family for adoption, Brumbelow contacted Mathenia and told her he wanted to raise the child. Brumbelow’s mother also contacted Mathenia, offered to help her and Brumbelow raise the child, and Brumbelow and his mother asked Mathenia to meet them at an attorney’s office to discuss Brumbelow’s intent to pursue legitimation and seek custody. Mathenia agreed to the plan and during the August 2016 meeting at the attorney’s office, even expressed her desire to revoke the surrender of her parental rights so she could be E.M.’s mother and help raise him. Shortly after the meeting, on Aug. 23, 2016, Mathenia returned to the

attorney's office and signed an acknowledgment of service of the legitimation petition, which was filed in court that day. Subsequently, however, Mathenia changed her mind and supported the Halls in contesting legitimation and pursuing the adoption of E.M. The Halls' petition for adoption was then consolidated with the legitimation petition.

Following a hearing, the **Habersham County** Superior Court denied Brumbelow's petition to legitimate E.M., on the ground that he had abandoned his "opportunity interest" in developing a parent-child relationship with E.M. Brumbelow then filed a motion for new trial and a motion to stay the adoption proceedings. The trial court denied the new trial motion but granted the motion to stay adoption proceedings. Brumbelow then appealed to the Court of Appeals, the state's intermediate court, which agreed to review the discretionary appeal and subsequently reversed the trial court's ruling, finding that the trial court erred in finding that Brumbelow had abandoned his "opportunity interest" to develop a relationship with the child.

In its ruling, the Court of Appeals explained that when considering a legitimation petition, "we must initially determine whether 'the father has abandoned his opportunity interest to develop a relationship with the child.'" This opportunity interest "begins at conception and endures probably throughout the minority of the child," but it "is not indestructible" and "it may be lost," the Court of Appeals said in its opinion. "Indeed, as we have previously explained, the factors which may support a finding of abandonment include, without limitation, 'a biological father's inaction during pregnancy and at birth, a delay in filing a legitimation petition, and a lack of contact with the child.'" In this case, however, the Court of Appeals determined that the trial court had: 1) applied the wrong legal standard by basing its determination on what Brumbelow had *failed* to do – rather than what he *did* do – to pursue a parent-child relationship; and 2) incorrectly found that the only thing the father had actually done was file the legitimation petition. According to the Court of Appeals, the trial court also discounted evidence 1) of other actions Brumbelow had taken such as attending at least one prenatal doctor's appointment; 2) that Mathenia's actions had made it difficult for him to maintain contact during her pregnancy; 3) that the father's mother had contacted Mathenia and offered to help raise the child; and 4) that Brumbelow had made at least one request of the Halls for visitation of the child. The Court of Appeals held that while Brumbelow "certainly could have done more," it could not under the circumstances hold that the father had "done so little as to constitute abandonment." The Court of Appeals also addressed the standard under which the trial court is required to assess the legitimation petition on remand. Noting that the trial court found that the denial of the petition was in the "child's best interests," the Court of Appeals held that the proper standard in this case was not the child's best interests standard but rather the parental fitness standard. In conclusion, "we reverse the trial court's finding that Brumbelow abandoned his opportunity interest in a relationship with E.M., but remand the case for the trial court to determine whether Brumbelow is a fit parent, rather than whether denying his legitimation petition is in E.M.'s best interests," the Court of Appeals opinion says. "As previously noted, if the trial court concludes that Brumbelow is a fit parent, his legitimation petition must be granted." Mathenia and the Halls now appeal to the state Supreme Court.

ARGUMENTS: In their brief, attorneys for Mathenia and the Halls list the facts supporting the trial court's finding that Brumbelow had abandoned his opportunity interest, including the fact that he had only had contact twice with Mathenia between their sexual encounter and their baby's birth; that while he claimed he had been unable to contact her, this

was belied by the fact that his mother had been able to do so; and that although he was earning a significant income, he never offered Mathenia any financial support. Furthermore, the legislature amended the state's legitimation statute, effective July 1, 2016, to specifically provide a best interests of the child standard. Georgia Code § 197-22 (d) (1) states: "Upon the presentation and filing of a legitimation petition, and after a hearing for which notice was provided to all interested parties, the court may issue an order declaring the biological father's relationship with the child to be legitimate, **provided that such order is in the best interests of the child.**" In adding this provision, the General Assembly clearly intended that going forward, all legitimation petitions be assessed under the best interests standard, regardless of any "state action" or other circumstances, the attorneys argue. The Court of Appeals not only committed a clear error here but also has created confusion in the law by deviating from the statutorily required standard. "The Court of Appeals applied the incorrect standard as to the trial court's findings of fact, and in doing so re-weighed the evidence in this case and substituted its own judgment for that of the trial court," the attorneys argue in briefs. "Further, the Court of Appeals disregarded Appellee's [i.e. Brumbelow's] complete lack of any support (or offers of support) demonstrating development of his opportunity interest during Ms. Mathenia's pregnancy, despite decades of case law emphasizing the importance of such support and actions during pregnancy in determining whether or not an opportunity interest has been abandoned." Additionally, "the Court of Appeals erred in directing that the 'fitness' standard, rather than the 'best interests' standard, would be applicable," the attorneys argue. "This directly conflicts with our state's legitimation statute itself." The attorneys request that the high court reverse the Court of Appeals ruling and affirm the trial court's denial of Brumbelow's petition for legitimation. (The Georgia Council of Adoption Lawyers, Inc. has filed an amicus brief in support of Mathena and the Halls.)

Brumbelow's attorney argues that the Court of Appeals did not apply an incorrect standard as to the trial court's findings of fact, effectively reweighing evidence that the trial court had already weighed. It did not err in finding that the trial court's finding that Brumbelow had abandoned his opportunity interest was not supported by the evidence. And it did not err in remanding the case for the trial court to determine whether Brumbelow is a fit parent rather than whether denying his legitimation petition is in the child's best interests, and if the trial court concludes he is fit, "his legitimation petition must be granted." "In Georgia, the unwed mother of a child retains all of the legal and custodial rights to the child, while the unwed father is left with nothing but an 'opportunity interest,'" the attorney argues. "For the child to be declared the legitimate issue of the unwed father, the father must pursue this interest." But in this case, "the unwed father was never given a true opportunity to pursue his interest and develop a relationship with his son due to the actions and inactions of the mother. Appellant Mathenia ignored Appellee virtually from the time the child was conceived. She moved her place of residence; she ignored his phone calls; when they did speak, she cursed at him; and when it was time for her to give birth, she did not even let him or his mother know." "While the unwed biological father was not give notice of the birth, the Halls were, and left the hospital with Appellee's son," Brumbelow's attorney argues. This occurred without his knowledge. "Appellee has NOT done so little as to constitute abandonment," the attorney argues. "This Court MUST be established which discourages unwed mothers from hindering and disrupting the unwed father's opportunity to assert his parental interest. The Appellee was **DENIED** his constitutional right to pursue his

opportunity interest and therefore was **DENIED** equal protection and due process of law.” “For all of these foregoing reasons, the Appellee respectfully requests that this Court uphold the ruling of the Court of Appeals.”

Attorneys for Appellants (Mathenia): James Outman, Justin Hester

Attorney for Appellee (Brumbelow): Timothy Healy

RAINES V. THE STATE (S20A0181)

A young man sentenced to spend the rest of his life in prison for a murder he committed when he was a juvenile is appealing an **Upson County** court’s denial of his motion to have a jury determine whether he is “irreparably corrupt” or “permanently incorrigible” – a necessary finding for a juvenile to be eligible for the sentence of life without parole. This is the second time this case has come before the state’s highest court.

FACTS: In **Dantazias Raines**’s first appeal, the Georgia Supreme Court upheld Raines’ 2013 convictions for malice murder and other crimes in connection with the shooting and attempted armed robbery of Brandy Guined.

According to the Supreme Court’s 2018 ruling, the evidence showed that in the early morning hours of Dec. 21, 2011, police in Thomaston, GA “received a call to Avenue N in reference to a possible shooting involving a taxicab driver.” On their way, police saw a vehicle trapped in a fence at a convenience store on Barnesville Street with tires that were spinning “at a high rate of speed.” After several attempts, an officer was able to break a window and shut off the ignition before the vehicle broke through the fence. The victim was unconscious behind the wheel. She was transported to Upson Regional Medical Center, where she died of a gunshot wound to the torso. Police found a purse with more than \$150 under her right arm. Earlier, on the evening of December 20, 2011, Raines had come to the back door of his friend, Marquerious Traylor, and asked him to come outside, saying he had the possibility of “catching a sweet lick” – street slang for committing a robbery. Raines asked to use Traylor’s iPod, which was set up to use as a phone. Traylor gave it to him and then went inside to get a jacket. As they walked toward the intersection of Third Street and Avenue N, a taxicab approached. Raines flagged down the cab, entered the rear passenger side, and pulled out a gun. At that point, Traylor ran home. As he ran, he heard a gunshot and a woman’s scream. Later that night, Traylor said he texted Raines, asking if he had shot the woman, to which Raines responded, “Hell, yeah.” When Traylor asked Raines why he had shot the cab driver, Raines responded that “she tried to grab the gun and he got nervous and shot her.” Traylor also recorded on his iPod a conversation with Raines that was later played for the jury.

The day after the shooting, Raines, Reginald Dawson, and Terrell Searcy were riding in a car together when Dawson asked Searcy if he had heard about the “cab incident” the previous night. Raines interjected that when it happened, he had been coming from his mother’s house and heard some arguing on Avenue N. He told them he heard a gunshot and a lady scream and saw the cab race by him.

Raines was arrested Dec. 24, 2011. According to officers, he did not comply with verbal commands, refused to put his hands behind his back, and after he was placed in handcuffs, became belligerent and refused to sit down. In March 2012, an Upson County grand jury indicted him for malice murder, felony murder based on attempted robbery, aggravated assault with a deadly weapon, criminal attempt to commit armed robbery, and gun possession charges. He was

also charged with three counts of misdemeanor obstruction of a law enforcement officer stemming from his arrest. At Raines's trial, Traylor, who had been granted immunity, testified against him. The State also called Dawson to testify, but Dawson initially said he did not remember speaking with Raines or what he had told police in his interview. The State then played a portion of his recorded police interview for the jury, in which Dawson said that Raines told him on the night of the shooting, "I seen something," but added, "I don't want to talk about it," and later told Searcy and him, "I seen what happened." Dawson told the investigators he concluded that "something ain't right" and Raines "knew something" about the shooting. He also told Raines's mother, for whom he had romantic feelings, that she needed to talk to Raines. Following trial, the jury found Raines guilty on all counts. He was sentenced to life without parole, plus 40 years.

In October 2018, the Georgia Supreme Court upheld his convictions for malice murder and other crimes, although it reversed the three obstruction misdemeanor convictions due to the failure to prove venue. However, the Court vacated Raines's sentence to life without parole and remanded the case for resentencing in light of its 2016 decision in *Veal v. State*, which was decided several years after Veal's 2013 convictions. On remand, Raines's attorney filed various motions challenging his life-without-parole sentence, including one that was a "motion for jury to determine sentence eligibility." Following a hearing on the motion, where Raines's attorney acknowledged he had not raised the argument earlier when the case had come up for direct appeal in the Supreme Court, the trial court denied the motion. Raines again appeals to the Georgia Supreme Court, which has agreed to review the case to answer this question: "Does a defendant facing a sentence of life without parole for an offense committed when he was a juvenile have a constitutional right to have a jury (as opposed to a judge) make the requisite determination of whether he is 'irreparably corrupt' or 'permanently incorrigible?'"

ARGUMENTS: Raines's attorneys argue in briefs that under *Veal*, this Court explained "that sentencing authorities no longer enjoy 'significant discretion' in deciding whether children convicted of murder would serve life with the possibility of parole or life without parole. Rather, juvenile life without parole is constitutional only in the rarest of cases, and it is unconstitutional for the majority of children. Moreover, this Court recognized that 'determining whether a juvenile falls into that exclusive realm [for whom juvenile life without parole is constitutional] turns...on a *specific determination* that he is *irreparably corrupt*.'" "Unless and until Mr. Raines is proven to be 'irreparably corrupt' or 'permanently incorrigible,' life without parole *is not an available sentence*," the attorneys argue. "Thus, the Sixth and Fourteenth Amendments (of the U.S. Constitution) require a jury determination of whether Mr. Raines is 'irreparably corrupt' or 'permanently incorrigible.'" Under the U.S. Supreme Court's 2000 decision in *Apprendi v. New Jersey*, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." Raines's jury verdict contained no specific finding of "irreparable corruption" or "permanent incorrigibility," but "such a finding is necessary to increase Mr. Raines's maximum sentencing exposure from life with the possibility of parole to life without parole, a particularly draconian sentence for a crime committed by a juvenile," his attorneys argue. "The conclusion that a jury is required to determine Mr. Raines's eligibility for juvenile life without parole is not only compelled by the Sixth, Eighth, and Fourteenth Amendments and Georgia law, but it also squares with the fundamental role of the jury envisioned at the framing of the

Constitution,” the attorneys argue. “It is the ‘people at large’ who have the ‘constitutional authority to set the metes and bounds of judicially administered criminal punishments.’”

The State, represented by the District Attorney’s and Attorney General’s offices, argues that Raines does not have a constitutional right to have a jury determine if he should be sentenced to life without parole. Raines’s argument lacks merit, as the jury’s verdict finding Raines guilty of malice murder made him eligible in Georgia for a sentence of life without parole, the State argues. In its *Veal* decision, the Georgia Supreme Court gave effect to the substantive rule announced in the U.S. Supreme Court’s 2012 decision in *Miller v. Alabama* and its 2016 decision in *Montgomery v. Louisiana*. This substantive rule states that before a life-without-parole prison sentence may be imposed on one who was a juvenile at the time of the crime, “the sentencing court must conduct a hearing to determine if that person is one of the exceptionally rare juveniles for whom such a sentence is appropriate because of a specific determination that he is *irreparably corrupt*.” As *Veal* stated, “The Supreme Court has now made it clear that life-without-parole sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers.” Raines argues that a jury must determine whether he is “irreparably corrupt” or “permanently incorrigible” to authorize a life-without-parole sentence, based on the U.S. Supreme Court’s 2002 decision in *Ring v. Arizona*, which said that any “fact” that increases the penalty for a crime must be found by a jury. But the State argues that “no jury is required to make this determination in Georgia, as a life-without-parole sentence falls within the statutory sentencing range for murder.” By finding Raines guilty of malice murder, “the jury has already determined the ‘facts’ that make him eligible for a life-without-parole sentence,” the State argues. If Raines wants a jury to determine his sentence for malice murder, “his forum lies in the General Assembly for the enactment of such a provision.”

Attorneys for Appellant (Raines): Mark Loudon-Brown, Atteeyah Hollie

Attorneys for Appellee (State): Benjamin Coker, District Attorney, B. Ashton Fallin, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.