



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Wednesday, September 16, 2020

10:00 A.M. Session

NEUMAN V. THE STATE (S20A1143)

Hemy Neuman is appealing his conviction and life-without-parole prison sentence that he received following his retrial for the 2010 murder of Russell “Rusty” Sneiderman outside a Dunwoody daycare center. This is the second time this highly publicized case has come to the state Supreme Court.

In Neuman’s first trial in 2012, a **DeKalb County** jury found Neuman “guilty but mentally ill” of malice murder and “guilty” of possession of a firearm during commission of a felony. Neuman was sentenced to life in prison with no chance of parole for the murder charge

plus five years for the firearm charge. Neuman appealed, and in 2015, the Georgia Supreme Court reversed his convictions in a 6-to-1 decision, finding that the trial judge erred by allowing in as evidence the notes and records of two mental health experts who examined Neuman before trial – records that should not have been admitted because they were protected by the attorney-client privilege.

In its 2015 decision, the Supreme Court found the facts of the case were as follows:

“Shortly after 9:00 a.m. on November 18, 2010, Sneiderman was walking to his car outside of a Dunwoody daycare center after having just dropped off his son, when Neuman approached and shot him four to five times in the neck and torso. Sneiderman was pronounced dead approximately an hour later.”

“Neuman does not dispute that he planned and perpetrated Sneiderman’s murder,” the 2015 opinion says. “He admitted that he had an affair with Sneiderman’s wife, planned Sneiderman’s murder, purchased a disguise and a gun, rented a car, shot Sneiderman, threw the gun in a lake, disposed of the disguise, asked the person from whom he had purchased the gun to lie to the police, and lied to the police himself. Additionally witnesses from the scene at the daycare identified Neuman as the shooter during trial. Ballistic evidence showed that the bullets that killed Sneiderman matched the gun Neuman had purchased.”

The high court concluded in its 2015 decision that “the evidence as summarized above was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Neuman was guilty of the crimes of which he was convicted.”

In 2016, the State retried Neuman, and this time, the jury returned an unqualified “guilty” verdict on both counts. The judge reimposed the previous sentence and Neuman again was sentenced to life without parole plus five years in prison. He now appeals a second time to the Georgia Supreme Court.

In their brief, Neuman’s attorneys argue the following: “Because the jury in his second trial was barred from reaching a verdict of guilt without the condition that he be found mentally ill as found by the jury in his first trial; because the Stone Mountain District Attorney should have been disqualified from the prosecution because of their exposure to privileged information during his first trial; and because his witnesses were prohibited from fully testifying as to matters which would have supported his sole defense of insanity, Hemy Neuman’s convictions and sentence should be reversed and his case remanded for a new trial.”

The State argues that none of Neuman’s arguments has merit and his convictions and sentences should be upheld.

Attorneys for Appellant (Neuman): Michael Tarleton, Veronica O’Grady, Office of the Appellate Defender

Attorneys for Appellee (State): Sherry Boston, District Attorney, Deborah Wellborn, Dep. D.A., Anna Cross, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

BOARD OF COMMISSIONERS OF LOWNDES COUNTY V. MAYOR AND COUNCIL OF THE CITY OF VALDOSTA ET AL. (S20G0472)

At issue in this appeal is whether the doctrine of sovereign immunity bars a lawsuit brought by the **Lowndes County Board of Commissioners** against the commissioner and board members of the state Department of Community Affairs. Sovereign immunity protects state

government and its agencies from being sued without the State's consent. The Lowndes County Superior Court dismissed the County's claims for injunctive and declaratory relief on sovereign immunity grounds.

The case involves the Georgia Service Delivery Strategy Act (Georgia Code § 36-70-1) and a dispute between the Lowndes County Board of Commissioners and the cities within Lowndes County, including the **City of Valdosta**. The Act promotes coordination among municipal governments to "minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use." The County and the cities operated under a service delivery strategy agreement they signed in 2008. In June 2016, the chairman of the Lowndes County Board of Commissioners circulated a new draft Strategy Agreement to the Mayors of the Cities of Valdosta, Dasher, Hahira, Lake Park, and Remerton. The County and Cities were instructed to notify the state Department of Community Affairs by Oct. 31, 2016 either that the required review of the service delivery strategy had been completed and no revisions were necessary, or that they were filing a revised service delivery strategy with the Department. When the Department did not receive any notification or revised strategy by the deadline, it determined it could not verify that the 2008 Strategy Agreement continued to comply with the Act, as is required under Georgia Code § 36-70-27. The state Department then notified the County and Cities that they would be ineligible for state-administered financial assistance, grants, loans, or permits until the Department could verify that Lowndes County and the Cities were in compliance with the Service Delivery Act.

In January 2017, the Lowndes County Board of Commissioners sued the Cities of Valdosta, Dasher, Hahira, Lake Park, and Remerton relating to the Service Delivery Strategy Agreement. The petition requested declaratory and injunctive relief, as well as mandamus relief against the Department and the Cities. The petition argued that the 2008 Strategy Agreement remained in effect, and that the County and Cities remained eligible for state-administered financial assistance, grants, loans, and permits. The Department filed a motion to dismiss the declaratory and injunctive relief claims under sovereign immunity grounds and argued the mandamus claim should be dismissed for failure to state a claim. The Board later amended its petition, removing the Department as a party and adding Camila Knowles as the Commissioner of the Georgia Department of Community Affairs and members of the Board of the Department of Community Affairs. Knowles and the Board then filed a motion to dismiss the amended petition on the basis that sovereign immunity barred the claims for injunctive and declaratory relief and that the mandamus claim failed to state a claim for relief. The trial court granted their motion to dismiss the lawsuit.

On appeal, the Georgia Court of Appeals affirmed the lower court's judgment, writing that it was clear that the Department, not Knowles and the department's board members, "is the real party in interest," and that the relief sought would "control the actions of the State" and could "only be granted by the State," whereas Knowles and the board members have no authority in their individual capacities under the Service Delivery Strategy Act to direct the Georgia Department of Community Affairs to do anything. The appellate court also agreed with the trial court that the County's petition failed to state a claim for mandamus relief. The Lowndes County Board of Commissioners now appeals to the Georgia Supreme Court, which has agreed to review the case to address the complex sovereign immunity issue.

The attorneys for the County Board of Commissioners argue that the Court of Appeals erred by affirming the dismissal of the County's claims for declaratory relief and prospective relief based on sovereign immunity. If not reversed, the ruling will render legally void a number of the Georgia Supreme Court's decisions, including *Georgia Department of Natural Resources v. Center for a Sustainable Coast, Inc.*, *Olvera v. University System of Georgia's Board of Regents*, and *Lathrop v. Deal*. Under these decisions, "sovereign immunity does not preclude a suit for declaratory or injunctive relief against state officers in their *individual* capacities for alleged wrongful conduct committed without lawful authority and beyond the scope of official power because such a suit is not against the state but against an individual stripped of official character," the attorneys argue in briefs. "As the Court explained in *Lathrop*, the doctrine of sovereign immunity is generally inapplicable in cases in which state officers in their individual capacities are alleged to have acted without lawful authority, even if they acted under color of their offices."

The Attorney General's office, representing Knowles and members of the Board of Community Affairs, argues that it is well settled that a lawsuit cannot be maintained without its statutory consent. "This general rule cannot be evaded by making an action nominally against the servants or agents of a State, when the real claim is against the State itself and it is the party vitally interested," the attorneys argue, quoting the *Lathrop* opinion. "Therefore, generally where a suit is brought against an officer or agency of the State with relation to some matter in which the defendant represents the State in action and liability, and the State, while not a party to the record, is the real party against which relief is sought, so that a judgment for plaintiff, although nominally against the named defendant as an individual or entity distinct from the State, will operate to control the action of the State or subject it to liability, the suit is in effect one against the State. If, however, the sole relief sought is relief against the State officers, it is maintainable." Here, the attorneys argue, the Lowndes County Board of Commissioners' pleadings and briefs "demonstrate that the Department of Community Affairs, and not Knowles and the Department of Community Affairs Board Members in their individual capacities, is the real party in interest." "The real-party-in-interest exception prevents plaintiffs from avoiding sovereign immunity by bringing a claim against state officials in their individual capacities when the claim itself is, in reality, against, the State," the Attorney General's office contends.

Attorneys for Appellant (Lowndes County Board of Commissioners): Walter Elliott, James Elliott

Attorneys for Appellees (Knowles, Board Members of DCA): Christopher Carr, Attorney General, Julie Jacobs, Dep. A.G., Logan Winkles, Sr. Asst. A.G.

Attorneys for Appellees (Cities): Andrew Welch, III, Warren Tillery, Brandon Palmer, George Talley, Timothy Tanner