

SUPREME COURT OF GEORGIA

McHugh Fuller Law Group, PLLC v. PruittHealth-Toccoa, LLC

297 Ga. 94 (2015) · No. S15A0362, S15A0641 · Decided May 11, 2015

SUMMARY

The Georgia Supreme Court held that a trial court improperly granted permanent injunctive relief after an interlocutory hearing without clear notice that the merits would be decided. The Court also held that the trial court erred by excluding filings made before the notice of appeal from the appellate record. The permanent injunction was vacated and remanded for further proceedings, while the appellate-record order was reversed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice
JURISDICTION	Georgia
DECIDED	May 11, 2015
DOCKET	S15A0362, S15A0641
DISPOSITION	other
PROCEDURAL POSTURE	McHugh Fuller appealed from a superior court order granting PruittHealth permanent injunctive relief after an interlocutory hearing and from a subsequent order excluding filings from the appellate record. The Supreme Court of Georgia consolidated the appeals.
STANDARD OF REVIEW	The Supreme Court reviewed whether the trial court complied with the statutory and due-process requirements governing permanent relief after an interlocutory injunction hearing and whether the appellate record was properly designated under Georgia's Appellate Practice Act.
PRECEDENTIAL VALUE	published Georgia Supreme Court opinion
PARTIES	McHugh Fuller Law Group, PLLC v. PruittHealth-Toccoa, LLC

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QUESTIONS PRESENTED

1. Whether the trial court could grant permanent injunctive relief at the conclusion of an interlocutory hearing without clear notice that it would decide the merits of permanent relief.
2. Whether the trial court could exclude from the appellate record filings made in the trial court after entry of the injunction but before the notice of appeal.

HOLDINGS

1. A trial court generally may not enter permanent injunctive relief after an interlocutory hearing unless the merits trial was properly advanced and consolidated with that hearing and the parties received fair and unambiguous notice and an opportunity to be heard on permanent relief. Because McHugh Fuller lacked such notice, the permanent injunction was improperly entered.
2. When an appellant requests that nothing be omitted from the record, the trial court may not exclude filings made in the trial court before the notice of appeal merely because they were submitted after the order being appealed or may be irrelevant to the appellate issues. The appellate record must include the designated portions of the clerk's record and conform to the truth.

KEY QUOTATIONS

“The general rule is that entering permanent relief after an interlocutory hearing is improper.” (p. 5)

“Accordingly, in the absence of any express or otherwise unambiguous notice that the trial court intended to consider — or was purporting to grant — permanent injunctive relief at the May 13 hearing, McHugh Fuller’s failure to object at that time did not constitute acquiescence.” (p. 8)

“The statutory scheme presumes that a complete record will be transmitted to the appellate court unless the appellant specifically requests otherwise.” (p. 9)

FACTUAL BACKGROUND

McHugh Fuller published a newspaper advertisement stating that a PruittHealth-owned nursing home had been cited by the government for deficiencies in resident care and inviting reports of suspected abuse or neglect. PruittHealth sought injunctive relief under the Georgia Uniform Deceptive Trade Practices Act, asserting that the cited deficiencies had been resolved and that the advertisement damaged the facility's reputation and admissions. At the scheduled hearing on interlocutory relief, McHugh Fuller presented evidence supporting the advertisement and expert testimony that it was not false or deceptive, but the trial court entered an order permanently enjoining publication and requiring removal of electronic postings.

PROCEDURAL HISTORY

PruittHealth obtained an ex parte temporary restraining order concerning a newspaper advertisement and thereafter received permanent injunctive relief at the scheduled interlocutory hearing. McHugh Fuller filed post-

order pleadings and motions, designated the entire record for appeal, and challenged the trial court's exclusion of filings submitted before the notice of appeal. The Supreme Court vacated the permanent injunction, reversed the record-designation order, and remanded.

DISPOSITION

other

REMAND INSTRUCTIONS

In Case No. S15A0362, the permanent injunction is vacated and the case is remanded for further proceedings consistent with the opinion. In Case No. S15A0641, the order excluding filings from the appellate record is reversed; the record must include the designated filings made before the notice of appeal.

CASES CITED

- Smith v. Guest Pond Club, Inc., 277 Ga. 143, 144 (1) (586 S.E.2d 623) (2003)
- Georgia Kraft Co. v. Rhodes, 257 Ga. 469, 471 (1) (360 S.E.2d 595) (1987)
- Regency Club v. Stuckey, 253 Ga. 583, 586 (3) (324 S.E.2d 166) (1984)
- Wang v. Liu, 292 Ga. 568 (2) (740 S.E.2d 136) (2013)
- Mosley v. H.P.S.C., Inc., 267 Ga. 351 (2) (477 S.E.2d 837) (1996)
- Gwinnett County v. Vaccaro, 259 Ga. 61, 62 (1) (376 S.E.2d 680) (1989)
- Dortch v. Atlanta Journal, 261 Ga. 350 (1) (405 S.E.2d 43) (1991)
- Wilkerson v. Chattahoochee Parks, Inc., 244 Ga. 472 (2) (260 S.E.2d 867) (1979)
- Dunaway v. Windsor, 197 Ga. 705, 709 (30 S.E.2d 627) (1944)
- Carter v. Wyatt, 113 Ga. App. 235, 240 (1) (148 S.E.2d 74) (1966)

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