

COURT OF APPEALS OF GEORGIA

Richardson v. Phillips, 309 Ga. App. 773

711 S.E.2d 358 (Ga. Ct. App. 2011) · No. A11A0405 · Decided June 3, 2011

SUMMARY

The Georgia Court of Appeals affirmed summary judgment for a county commissioner in a taxpayer action seeking her removal for allegedly engaging in an unlawful or unethical real estate transaction with the county. The court held that the local act governing Miller County commissioners must be read together with OCGA § 36-1-14, including its exception for transactions in which the county acquires property as cheaply as or cheaper than it could elsewhere. Because the county received the property as a debt-free gift at no cost to taxpayers, removal was not required.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	McFadden, Judge; McFadden, J.; Andrews, J.; Phipps, P.J.
JURISDICTION	Georgia
DECIDED	June 3, 2011
DOCKET	A11A0405
DISPOSITION	affirmed
PROCEDURAL POSTURE	Richardson appealed from the trial court's grant of summary judgment to Phillips on Richardson's petition to remove Phillips from office for alleged illegal and unethical conduct in connection with a county real-estate transaction.
STANDARD OF REVIEW	De novo review of the grant of summary judgment and the interpretation of the Local Act and related statute.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion; precedential under applicable Georgia law.
PARTIES	Bobby E. Richardson, Sr. v. Frankie C. Phillips

TOPICS

[municipal law](#)[statutory interpretation](#)[legislative intent](#)[in pari materia](#)[real estate](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Section 14 of the Miller County Local Act, read together with OCGA § 36-1-14, required removal of Phillips despite the County's acquisition of the property at no cost and free of debt.
2. Whether the Local Act's reference to OCGA § 36-1-14 incorporated only the removal procedure in subsection (b), or also the substantive exemption in subsection (a) for transactions in which the county obtains property as cheaply as or cheaper than it could elsewhere.
3. Whether summary judgment for Phillips was proper on Richardson's removal claim.

HOLDINGS

1. Section 14 of the Local Act must be construed together with the entirety of OCGA § 36-1-14, including subsection (a)'s exemption for a transaction in which the county obtains property as cheaply as or cheaper than it could elsewhere.
2. Phillips's actions did not require her removal because the County received the building at no cost to taxpayers and free of debt, bringing the transaction within the applicable statutory exemption.
3. Summary judgment for Phillips was proper because the undisputed record showed no illegal or unethical conduct requiring removal.

KEY QUOTATIONS

“Ultimately, we must determine the General Assembly's intent in enacting the legislation.” (at 361)

“The trial court properly harmonized the local and general statutory legislation to find that Phillips's actions—which benefitted the County at no cost to taxpayers—do not require her removal.” (at 362)

FACTUAL BACKGROUND

Before being elected to the Miller County Board of Commissioners, Phillips purchased a building financed by a promissory note and deed to secure debt held by Hilda J. Grow. After her election, Phillips sold the building to Union Investment, Inc., which assumed and paid off the debt, leased the property to Miller County, and ultimately conveyed it to the County as a gift. The Ruth T. Jinks Foundation funded the County's annual lease payments and eventual payoff, and the County acquired the building without taxpayer funds and free of debt. Richardson alleged that Phillips's continuing liability on the original note gave her an indirect financial interest in an illegal transaction with the County requiring her removal from office.

PROCEDURAL HISTORY

Richardson, a Miller County taxpayer, petitioned to remove county commissioner Frankie C. Phillips from office. After cross-motions for summary judgment, the trial court ruled for Phillips, initially finding the claims moot because the transaction had been completed. In the first appeal, the Court of Appeals dismissed the declaratory-judgment claims but held that the removal claim was not moot, vacated that portion of the judgment,

and remanded. On remand, the trial court again granted summary judgment to Phillips on the merits, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Richardson v. Phillips, 302 Ga. App. 305, 690 S.E.2d 918 (2010)
- Moore v. Whaley, 189 Ga. 647, 649-651, 7 S.E.2d 394 (1940)
- SCA Svcs. of Ga. v. Fulton County, 238 Ga. 154, 156, 231 S.E.2d 774 (1977)
- Randolph County v. Bantz, 270 Ga. 66, 67, 508 S.E.2d 169 (1998)
- Weldon v. Bd. of Comm'rs of Monroe County, 212 Ga. App. 885, 887(2), 443 S.E.2d 513 (1994)
- Morgan v. Woodard, 253 Ga. 751, 752, 325 S.E.2d 369 (1985)
- Gavin v. State, 292 Ga. App. 402, 405, 664 S.E.2d 797 (2008)
- Velasquez v. State, 276 Ga. App. 527, 530-531(2), 623 S.E.2d 721 (2005)