

SUPREME COURT OF GEORGIA

Scarborough v. Hunter

293 Ga. 431 (2013) · Decided July 11, 2013

SUMMARY

The Georgia Supreme Court held that the Stephens County Board of Commissioners did not grossly abuse its discretion by abandoning Winding Bluff Road under Georgia’s county-road abandonment statute. The Court reversed the trial court’s order setting aside the abandonment and the related writ of mandamus requiring road repair and maintenance, and vacated the attorney-fee award. It also vacated summary judgment on the Board’s counterclaims and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice; All Justices
JURISDICTION	Georgia
DECIDED	July 11, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Stephens County Board of Commissioners appealed orders setting aside its decision to abandon Winding Bluff Road, issuing a writ of mandamus requiring repair and maintenance of the road, awarding attorney fees, and granting summary judgment to the plaintiffs on the Board's counterclaims. The Court of Appeals transferred the case to the Supreme Court of Georgia because it involved extraordinary remedies.
STANDARD OF REVIEW	For factual determinations concerning a local governing body's abandonment decision, the appellate court asks whether any evidence supports the local governing body's decision, not whether evidence supports the superior court's decision. Whether the decision constituted a gross abuse of discretion is a question of law reviewed de novo. The trial court's review is limited to the record before the Board and may not substitute the court's judgment for the Board's judgment on the weight of the evidence.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Stephens County Board of Commissioners, C. Dean Scarborough and the other Stephens County commissioners v. Jason Hunter, James

TOPICS

municipal law

administrative law

judicial review of agency action

appellate procedure

remedies

PRACTICE AREAS

municipal law

administrative law

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly set aside the Board's decision to abandon Winding Bluff Road as arbitrary, capricious, and a gross abuse of discretion.
2. Whether the trial court properly issued a writ of mandamus requiring the Board to repair and maintain the road after setting aside the abandonment decision.
3. Whether the plaintiffs remained prevailing parties entitled to attorney fees under OCGA § 13-6-11 after the abandonment and mandamus rulings were reversed.
4. Whether the trial court properly granted summary judgment to the plaintiffs on the Board's counterclaims.
5. Whether the Georgia Administrative Procedure Act governed judicial review of the county Board's road-abandonment decision.

HOLDINGS

1. A county Board's decision to abandon a public road under OCGA § 32-7-2 (b) (1) may be set aside in mandamus only when the decision is so arbitrary or capricious as to constitute a gross abuse of discretion; the reviewing court may not reweigh the evidence or substitute its judgment for the Board's.
2. Because the trial court's mandamus order was expressly predicated on its erroneous setting aside of the Board's abandonment decision, reversal of the abandonment ruling also requires reversal of the mandamus order.
3. A party is a prevailing party entitled to an attorney-fee award under OCGA § 13-6-11 only if it obtains damages or other affirmative relief on its underlying claims; after reversal of the plaintiffs' affirmative relief, the plaintiffs were no longer prevailing parties.
4. The trial court's summary judgment for the plaintiffs on the Board's counterclaims must be vacated when the grant was based substantially on the rulings concerning abandonment and mandamus that were being reversed.
5. The Georgia Administrative Procedure Act does not apply to local governments or local administrative bodies that are not state agencies within the APA's statutory definitions.

KEY QUOTATIONS

“The function of the Board was to determine whether the road served a substantial public purpose. If the Board determines that a road has ceased to be used by the public to the extent that no substantial public purpose is served by it, then the Board may exercise its discretion to close the road. The function of the trial court in a mandamus action is to decide if the Board’s action was a gross abuse of discretion.” (293 Ga. at 435)

“The court shall not substitute its judgment for that of the [Board] as to the weight of the evidence on questions of fact.” (293 Ga. at 436)

“This evidence amply supported the Board’s conclusion, in accord with the statutory standard, that the Road had “ceased to be used by the public to the extent that... no substantial public purpose is served by it and that its removal from the county road system is otherwise in the . . . best public interest.”” (293 Ga. at 437-438)

FACTUAL BACKGROUND

K-M Development Corporation built Winding Bluff Road to serve approximately a dozen undeveloped subdivision lots, and the county accepted the road into its road system in 2007. After heavy rains, the road cracked, failed, and was closed as unsafe in 2009. At a public hearing, county staff and engineering evidence indicated that defective construction, including decomposable fill and construction over springs, caused the failure and that rebuilding would cost approximately \$600,000 to \$800,000; the Board unanimously voted to abandon the road. The plaintiffs challenged the decision, asserting that the county was obligated to repair and maintain the road.

PROCEDURAL HISTORY

The trial court initially entered a temporary restraining order preventing the Board from holding an abandonment hearing; the Supreme Court reversed that order in a prior interlocutory appeal. After a noticed public hearing, the Board unanimously abandoned the road. The trial court later set aside the abandonment decision, issued mandamus requiring repair and maintenance, awarded attorney fees, and granted summary judgment to the plaintiffs on the Board's counterclaims. The Supreme Court reversed the abandonment and mandamus rulings, vacated the attorney-fee award and summary-judgment order, and remanded for further proceedings on the counterclaims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The abandonment and mandamus orders are reversed, the attorney-fee award and summary-judgment order are vacated, and the case is remanded for further proceedings on the Board's counterclaims.

CASES CITED

- Scarborough v. Hunter, 288 Ga. 687, 688-690 (706 SE2d 650) (2011)
- Chatham County v. Allen, 261 Ga. 177, 177 (402 SE2d 718) (1991)

- *Burke County v. Askin*, 291 Ga. 697, 698-701 (732 SE2d 416) (2012)
- *Commissioners of Sumter County v. McMath*, 138 Ga. 351, 352 (75 SE 317) (1912)
- *Richmond County v. Steed*, 150 Ga. 229, 231-232 (103 SE 253) (1920)
- *Board of Commissioners of Roads & Revenues of Walton County v. Robinson*, 160 Ga. 816, 818 (129 SE 73) (1925)
- *Gwinnett County v. Ehler Enterprises, Inc.*, 270 Ga. 570, 570 (512 SE2d 239) (1999)
- *Marietta Chair Co. v. Henderson*, 121 Ga. 399, 403 (49 SE 312) (1904)
- *Torbett v. Butts County*, 271 Ga. 521, 522 (520 SE2d 684) (1999)
- *McIntosh County v. Fisher*, 242 Ga. 66, 67-68 (247 SE2d 863) (1978)
- *Fulton County v. Congregation of Anshei Chesed*, 275 Ga. 856, 859-860 (572 SE2d 530) (2002)
- *Carnes v. Charlock Investments (USA), Inc.*, 258 Ga. 771, 772 n.1, 773 (373 SE2d 742) (1988)
- *Clear Vision CATV Services, Inc. v. Mayor of Jesup*, 225 Ga. 757, 759 (171 SE2d 505) (1969)
- *Cherokee County v. McBride*, 262 Ga. 460, 461 (421 SE2d 530) (1992)
- *Smith v. Board of Commissioners of Athens-Clarke County*, 264 Ga. 316, 317 (444 SE2d 775) (1994)
- *Benchmark Builders, Inc. v. Schultz*, 289 Ga. 329, 330 (711 SE2d 639) (2011)
- *Lansford v. Cook*, 252 Ga. 414, 416 (314 SE2d 103) (1984)
- *Aldridge v. Georgia Hospitality & Travel Assn.*, 251 Ga. 234, 237 (304 SE2d 708) (1983)