

SUPREME COURT OF GEORGIA

Oglethorpe Power Corp. v. Forrister, 289 Ga. 331

711 S.E.2d 641 (2011) · No. S10G1244 · Decided June 13, 2011

SUMMARY

The Supreme Court of Georgia held that noise from the Sewell Creek power plant constituted a permanent nuisance because it resulted from enduring features of the plant's construction and essential method of operation. The plaintiffs' claims for harm that merely increased in degree were barred by the statute of limitations, but claims based on a new and previously unobservable type of noise occurring within four years of filing could proceed. The court affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	June 13, 2011
DOCKET	S10G1244
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' affirmance of the trial court's denial of summary judgment in a nuisance action involving noise from a power plant.
STANDARD OF REVIEW	Summary-judgment rulings are reviewed by viewing the evidence and all reasonable inferences in the light most favorable to the nonmovant.
PRECEDENTIAL VALUE	precedential
PARTIES	Oglethorpe Power Corporation, Smarr EMC v. Forrister et al.

TOPICS

[nuisance](#)[statute of limitations](#)[summary judgment](#)[damages](#)[civil procedure](#)

PRACTICE AREAS

[Torts](#)[Civil Procedure](#)[Statute of Limitations](#)[Remedies](#)

QUESTIONS PRESENTED

1. Whether noise from the power plant constituted a permanent nuisance caused by a substantial and relatively enduring feature of the plant's construction or an essential method of operation.
2. Whether the plaintiffs' nuisance claim was barred by Georgia's four-year statute of limitation because the plant began operating in 2000.
3. Whether evidence that a new type of noise became observable after the 2004 operating season created a factual issue permitting the claim to proceed.
4. Whether a change only in the degree, amount, or extent of noise could restart the limitations period for a permanent nuisance.

HOLDINGS

1. Noise caused by the plant's integral exhaust-silencing system and essential method of generating electricity constituted a permanent nuisance because it resulted from a substantial and relatively enduring feature of the plant's plan of construction and an essential method of operation.
2. The plaintiffs could not recover for harm that was already observable when the plant began operating in 2000, because the four-year limitations period began when the permanent nuisance was created and the harm became observable.
3. A factual dispute concerning whether a new type of noise, not previously observable, began after the 2004 operating season precluded summary judgment on that aspect of the nuisance claim.
4. A change only in the degree, extent, or amount of noise and vibrations does not restart the statute of limitation for a permanent nuisance.

KEY QUOTATIONS

"The exhaust silencing system, which is an integral part of the gas turbines that generate power, is an enduring feature of the power plant's plan of construction, and the noise emanating from the exhaust stacks results from the essential method of the plant's operation, which is the generation of electrical power." (645)

"Such a change in the type of the noise would constitute a new harm that the plaintiffs did not observe before, and because it occurred within four years of their filing this lawsuit, they would not be precluded from filing suit to recover damages." (646)

FACTUAL BACKGROUND

Smarr EMC owned and Oglethorpe Power Corporation operated the Sewell Creek Energy Facility, a gas-fired peaking power plant that began operating in 2000. Neighboring landowners alleged that the plant caused excessive noise and vibrations that interfered with their use and enjoyment of their property. The alleged noise resulted from gas-turbine exhaust traveling through exhaust stacks lacking an adequate noise-reduction system; correcting the problem would require tearing down and rebuilding the stacks and temporarily stopping electricity production. The plaintiffs filed suit in 2007 and claimed that a new or materially different type of noise began after the 2004 operating season.

PROCEDURAL HISTORY

Neighbors of the Sewell Creek Energy Facility filed a nuisance action in 2007 alleging excessive noise and vibrations. The trial court denied the power plant operators' motion for summary judgment, concluding that factual disputes existed concerning whether the nuisance was permanent and whether a new type of harm arose in 2004. The Court of Appeals affirmed, and the Supreme Court of Georgia affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for proceedings consistent with the opinion, including permitting the nuisance claim to proceed to the extent it concerns a potentially new type of noise arising within the limitations period, while granting summary judgment as to damages based only on changes in the degree, extent, or amount of previously observable noise.

CASES CITED

- Oglethorpe Power Corp. v. Forrister, 303 Ga. App. 271, 693 S.E.2d 553 (2010)
- City of Atlanta v. Kleber, 285 Ga. 413, 677 S.E.2d 134 (2009)
- Bainbridge Power Co. v. Ivey, 41 Ga. App. 193, 152 S.E. 306 (1930)
- Cox v. Cambridge Square Towne Houses, 239 Ga. 127, 236 S.E.2d 73 (1977)
- Kaplan v. City of Sandy Springs, 286 Ga. 559, 690 S.E.2d 395 (2010)