

COURT OF APPEALS OF GEORGIA

Walker County v. Tri-State Crematory, 292 Ga. App. 411

664 S.E.2d 788 (2008) · No. No. A08A0684 · Decided July 2, 2008

SUMMARY

The Georgia Court of Appeals affirmed dismissal of Walker County’s contribution claim under the Georgia Hazardous Site Response Act. The court held that “corrective action” for purposes of the statute’s contribution provision requires involvement by the Environmental Protection Division Director through an administrative consent or administrative order, and does not include unilateral cleanup efforts.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Bernes; Ruffin, P.J.; Andrews
JURISDICTION	Georgia
DECIDED	July 2, 2008
DOCKET	No. A08A0684
DISPOSITION	affirmed
PROCEDURAL POSTURE	Walker County appealed the dismissal of its second amended complaint for failure to state a claim. The complaint sought contribution under the Georgia Hazardous Site Response Act for costs incurred in removing, storing, identifying, and otherwise abating conditions at the Tri-State Crematory property.
STANDARD OF REVIEW	The Court of Appeals reviewed the trial court's ruling on the motion to dismiss de novo. A motion to dismiss may be granted only when the complaint shows with certainty that the plaintiff would not be entitled to relief under any set of facts that could be proven in support of the claim.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Court of Appeals of Georgia
PARTIES	Walker County v. Tri-State Crematory, Owners and operators of the Tri-State Crematory, Funeral homes and funeral directors that sent human remains to the crematory

TOPICS

hazardous waste

environmental law

statutory interpretation

administrative law

appellate procedure

PRACTICE AREAS

environmental law

administrative law

statutory interpretation

QUESTIONS PRESENTED

1. Whether the term "corrective action" in OCGA § 12-8-96.1(e) includes environmental cleanup activities undertaken unilaterally by a party without involvement of the EPD Director.
2. Whether Walker County could pursue contribution under the HSRA for costs associated with its voluntary cleanup of the crematory property.

HOLDINGS

1. The "corrective action" referenced in OCGA § 12-8-96.1(e) does not include environmental cleanup efforts undertaken independently by a party without involvement of the EPD Director. Corrective action by a person must be taken pursuant to an administrative consent order entered with the EPD Director or an administrative order issued by the EPD Director.

KEY QUOTATIONS

"We conclude that the "corrective action" referenced in OCGA § 12-8-96.1(e) does not contemplate environmental clean up efforts undertaken independently by a party without the involvement of the EPD Director." (664 S.E.2d at 792)

"For these combined reasons, we conclude that Walker County cannot seek contribution from the defendants under OCGA § 12-8-96.1(e) for the costs associated with the county's voluntary clean up of the crematorium property done without the involvement of the EPD Director." (664 S.E.2d at 793)

FACTUAL BACKGROUND

Walker County discovered uncremated and decayed human bodies on property associated with the Tri-State Crematory and removed, moved, stored, and identified the remains. Some remains allegedly contained formaldehyde, which Walker County characterized as a hazardous waste, hazardous constituent, or hazardous substance under the HSRA. The County sought contribution from the crematory-related defendants for costs incurred in voluntarily abating the alleged nuisance, without involvement by the Director of the Environmental Protection Division.

PROCEDURAL HISTORY

After discovering uncremated and decayed human remains at the crematory property, Walker County sued the crematory's owners and operators and related funeral homes and directors. The trial court dismissed the first amended complaint, and the Court of Appeals affirmed in *Walker County v. Tri-State Crematory*, 284 Ga. App. 34, 643 S.E.2d 324 (2007), based on the free public services doctrine. Walker County then added an HSRA

contribution claim in a second amended complaint. On remand, the trial court dismissed that complaint, and Walker County brought this appeal.

DISPOSITION

affirmed

CASES CITED

- Tate v. Kia Autosport of Stone Mountain, 273 Ga. App. 627, 616 S.E.2d 112 (2005)
- Gillis v. American General Life Insurance Co., 222 Ga. App. 891, 476 S.E.2d 648 (1996)
- Walker County v. Tri-State Crematory, 284 Ga. App. 34, 643 S.E.2d 324 (2007)
- Footstar v. Liberty Mutual Insurance Co., 281 Ga. 448, 637 S.E.2d 692 (2006)
- Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004)
- McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 618 S.E.2d 59 (2005)
- Briggs & Stratton Corp. v. Concrete Sales & Services, 20 F. Supp. 2d 1356 (M.D. Ga. 1998)
- Holland v. Independent Fire Insurance Co., 168 Ga. App. 761, 310 S.E.2d 297 (1983)

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