

COURT OF APPEALS OF GEORGIA

Thomas J. Kempton v. Southern Flavor Real Estate, LP

Kempton v. Southern Flavor Real Estate, LP, A21A1551 (Ga. Ct. App. Dec. 6, 2021) · No. A21A1551 · Decided December 6, 2021

SUMMARY

The Georgia Court of Appeals affirmed summary judgment for Southern Flavor Real Estate in a nuisance action involving light emitted by a commercial greenhouse. The court held that the greenhouse was lawfully operated in a properly zoned agricultural location and therefore could constitute a nuisance only if operated illegally. A special concurrence questioned whether that rule is consistent with the plain language of Georgia's nuisance statute, OCGA § 41-1-1, but recognized that the Court of Appeals is bound by Supreme Court precedent.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Presiding Judge McFadden; Chief Judge Rickman; Senior Appellate Judge Herbert E. Phipps
JURISDICTION	Georgia
DECIDED	December 6, 2021
DOCKET	A21A1551
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kempton appealed the trial court's grant of summary judgment to Southern Flavor on his nuisance claim.
STANDARD OF REVIEW	The grant or denial of summary judgment is reviewed de novo, with the evidence construed in favor of the nonmovant. Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published and precedential Georgia Court of Appeals opinion
PARTIES	Thomas J. Kempton v. Southern Flavor Real Estate, LP

TOPICS

[nuisance](#)[real estate](#)[statutory interpretation](#)[standard of review](#)[appellate procedure](#)

PRACTICE AREAS

torts real estate land use civil procedure

QUESTIONS PRESENTED

1. Whether the greenhouse's light emissions constituted a nuisance despite Southern Flavor's lawful operation of a permitted greenhouse on property zoned for agricultural use.
2. Whether summary judgment was proper where the undisputed facts showed that Southern Flavor operated the greenhouse lawfully and in a manner consistent with the character of the area.

HOLDINGS

1. An act authorized by law and performed as the law authorizes cannot constitute a nuisance merely because it causes inconvenience or damage to a neighbor; when the act is lawful in itself, nuisance liability requires that it be conducted in an illegal manner or in a manner inconsistent with the area. Because Southern Flavor's greenhouse was lawfully operated on agricultural-zoned property and in a manner ordinarily associated with greenhouse operations, it was not a nuisance under the circumstances presented.
2. Summary judgment for Southern Flavor was proper because the undisputed evidence showed that it was entitled to judgment as a matter of law on Kempton's nuisance claim.

KEY QUOTATIONS

"Because the undisputed facts show that Southern Flavor was authorized by law to operate the greenhouse and did so in a lawful manner, we affirm the trial court's summary judgment ruling." (1)

"However, that which the law authorizes to be done, if done as the law authorizes, cannot be a nuisance." (2)

"Unlike the commercial businesses in those cases, Southern Flavor's greenhouse is not located in the wrong place or operating in a manner inconsistent with the rural area." (4)

"Because the greenhouse is a legal enterprise operated as the law authorizes, "[t]he trial court did not err in granting summary judgment to [Southern Flavor] on the nuisance claim."" (5)

FACTUAL BACKGROUND

Southern Flavor located a commercial greenhouse on rural land in Peach County zoned for agricultural use after recruitment by the Peach County Development Authority. The greenhouse used automated supplemental lights during the winter months, and light reflected upward through the roof; the evidence showed no feasible way to limit the emissions while allowing the greenhouse to function properly. Kempton owned neighboring property with a residence, pecan orchard, and fenced acreage, and testified that the light awakened him and impaired his quality of life. Southern Flavor had obtained all necessary licenses and permits and operated the greenhouse lawfully.

PROCEDURAL HISTORY

Kempton sued Southern Flavor, alleging that light emitted from Southern Flavor's commercial greenhouse constituted a nuisance to his neighboring property. The trial court granted Southern Flavor's motion for summary judgment, and Kempton appealed. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Klingensmith v. Long County*, 352 Ga. App. 21 (833 SE2d 608) (2019)
- *Effingham County Bd. of Commrs. v. Shuler Bros.*, 265 Ga. App. 754, 755 (595 SE2d 526) (2004)
- *McBrayer v. Governors Ridge Office Park Assn.*, 359 Ga. App. 741, 744-746 (1) (a) (1) (860 SE2d 58) (2021)
- *City of Douglasville v. Queen*, 270 Ga. 770, 773 (4) (514 SE2d 195) (1999)
- *Asphalt Products Co. v. Marable*, 65 Ga. App. 877, 880 (16 SE2d 771) (1941)
- *Coker v. Birge*, 9 Ga. 425, 428 (54 Am. Dec. 347) (1850)
- *Poultryland, Inc. v. Anderson*, 200 Ga. 549, 556 (1) (37 SE2d 785) (1946)
- *McGowan v. May*, 186 Ga. 79 (196 SE 705) (1938)
- *Benton v. Pittard*, 197 Ga. 843, 846 (31 SE2d 6) (1944)
- *Deal v. Coleman*, 294 Ga. 170, 172-173 (1) (a) (751 SE2d 337) (2013)
- *Watson v. State*, 337 Ga. App. 16, 18 (2) (785 SE2d 656) (2016)