

SUPREME COURT OF GEORGIA

Summerlin v. Georgia Pines Community Service Board, 286 Ga. 593

690 S.E.2d 401 (2010) · No. No. S09G0980 · Decided March 1, 2010

SUMMARY

The Supreme Court of Georgia held that borrowed servants may qualify as state employees under the Georgia Tort Claims Act. Accordingly, the Act's waiver of sovereign immunity may apply to torts committed by borrowed servants acting within the scope of their official duties on behalf of the state. The court reversed the Court of Appeals and reinstated the trial court's denial of the Georgia Pines Community Service Board's motion to dismiss.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice
JURISDICTION	Georgia
DECIDED	March 1, 2010
DOCKET	No. S09G0980
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted Summerlin's petition for certiorari to review the Court of Appeals' reversal of the trial court's denial of Georgia Pines Community Service Board's motion to dismiss on sovereign-immunity grounds.
STANDARD OF REVIEW	Review of the denial of a motion to dismiss based on sovereign immunity and interpretation of the Georgia Tort Claims Act.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; binding precedent in Georgia.
PARTIES	Marilyn Summerlin, in her capacity as mother of George Summerlin and administratrix of his estate v. Georgia Pines Community Service Board

TOPICS

- statutory interpretation
- wrongful death
- torts
- respondeat superior
- remedies

PRACTICE AREAS

statutory interpretation

torts

sovereign immunity

wrongful death

employment law

QUESTIONS PRESENTED

1. Whether borrowed servants qualify as state employees under OCGA § 50-21-22(7) of the Georgia Tort Claims Act.
2. Whether the Act's waiver of sovereign immunity extends to torts committed by borrowed servants acting within the scope of their official duties on behalf of the state.

HOLDINGS

1. Borrowed servants are included within the term "employee" for purposes of OCGA § 50-21-22(7) and therefore qualify as state employees under the Georgia Tort Claims Act.
2. The Act contains a specific waiver of sovereign immunity for torts committed by borrowed servants acting within the scope of their official duties on behalf of the state.

KEY QUOTATIONS

"Accordingly, we hold that encompassed within OCGA § 50-21-23(a)'s waiver of immunity for all "state employees acting within the scope of their official duties" is a concomitant specific waiver of immunity for torts committed by borrowed servants acting within the scope of their official duties on behalf of the state." (690 S.E.2d at 403)

"By electing not to include a separate definition of the term "employee" within the Tort Claims Act, we conclude the General Assembly intended courts to apply the legal definition of that term as developed under common law and our existing jurisprudence." (690 S.E.2d at 403)

FACTUAL BACKGROUND

George Summerlin was an 18-year-old patient at Georgia Pines, a residential facility operated by the Georgia Pines Community Service Board for individuals with mental illness, mental retardation, and addiction. His mother alleged that Carlos Hernandez and Charles Whiddon, health care workers supplied through an outside staffing company, negligently cared for him and caused his death. She further alleged that the workers were employees of the Board, making the Board liable for their negligence.

PROCEDURAL HISTORY

Summerlin filed a wrongful-death action alleging that health care workers at Georgia Pines negligently cared for her son and that the workers were employees of the Board. The Board moved to dismiss, asserting that the Georgia Tort Claims Act waived immunity only for acts of state employees and that the workers were borrowed servants rather than state employees. The trial court denied the motion, but the Court of Appeals reversed, holding that borrowed servants are not state employees under the Act. The Supreme Court reversed the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- Georgia Pines Community Service Board v. Summerlin, 296 Ga.App. 32, 36-38, 673 S.E.2d 582 (2009)
- Youngblood v. Gwinnett Rockdale Newton Community Service Board, 273 Ga. 715(1), 545 S.E.2d 875 (2001)
- Higdon v. City of Senoia, 273 Ga. 83, 86, 538 S.E.2d 39 (2000)
- Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 9, 178 S.E.2d 868 (1970)
- Six Flags Over Georgia v. Hill, 247 Ga. 375(1), 276 S.E.2d 572 (1981)
- Brown v. Smith & Kelly, 86 Ga. 274, 276-277, 12 S.E. 411 (1890)
- Underwood v. Burt, 185 Ga.App. 381, 382, 364 S.E.2d 100 (1987)
- United States Fidelity & Guaranty Co. v. Forrester, 230 Ga. 182, 196 S.E.2d 133 (1973)
- Hoffman v. Wells, 260 Ga. 588(2), 397 S.E.2d 696 (1990)
- Burt v. Underwood, 258 Ga. 207, 367 S.E.2d 230 (1988)
- Farmer v. Ryder Truck Lines, 245 Ga. 734, 266 S.E.2d 922 (1980)

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