

COURT OF APPEALS OF GEORGIA

City of Greensboro, Georgia v. Rowland et al.

City of Greensboro v. Rowland, 334 Ga. App. 148 (Ga. Ct. App. 2015) · No. A15A1145 · Decided October 22, 2015

SUMMARY

The Georgia Court of Appeals affirmed the denial of the City of Greensboro's motion to dismiss claims arising from the construction and maintenance of a drainage ditch across the Rowlands' properties. The court held that sovereign immunity did not bar the inverse-condemnation and related claims and that the Rowlands' ante litem notices substantially complied with OCGA § 36-33-5.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Judge McMillian; Presiding Judge Barnes; Judge Ray
JURISDICTION	Georgia
DECIDED	October 22, 2015
DOCKET	A15A1145
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City appealed the trial court's denial of its motion to dismiss claims for inverse condemnation, trespass, intentional tort, and nuisance arising from the City's construction and maintenance of a drainage ditch across the Rowlands' properties.
STANDARD OF REVIEW	De novo review applies to the denial of a motion to dismiss and to the sovereign-immunity issue.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	City of Greensboro, Georgia v. Tony Rowland, Flenard Rowland

TOPICS

[municipal liability](#) [eminent domain municipal](#) [nuisance](#) [trespass](#) [civil procedure](#)

PRACTICE AREAS

[municipal law](#) [constitutional law](#) [real estate](#) [torts](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether sovereign immunity barred the Rowlands' claims arising from the City's drainage project and alleged taking of their property.
2. Whether the Rowlands' ante litem notices substantially complied with OCGA § 36-33-5.
3. Whether ante litem notice for a continuing nuisance or trespass had to identify a specific date or event for each injury.

HOLDINGS

1. Sovereign immunity did not bar the claims because the Rowlands alleged that the City's drainage system caused an unlawful taking of their property; the Georgia Constitution itself waives sovereign immunity for takings requiring just compensation.
2. The Rowlands' notices substantially complied with OCGA § 36-33-5 because they placed the City on notice of the general character of the complaint and, generally, the time, place, and extent of the injury.
3. A property owner alleging continuing nuisance or trespass need not identify a specific date for each injury in the ante litem notice. The notice limits recovery to damages incurred during the six months preceding notice, subject to the applicable limitations period.

KEY QUOTATIONS

“Here, because the Rowlands assert that the damage from the City’s drainage system amounts to an unlawful taking of their Property, sovereign immunity has been waived by the terms of the Constitution.” (334 Ga. App. at 150)

“The information supplied will be deemed sufficient if it puts a municipality on notice of the general character of the complaint, and, in a general way, of the time, place, and extent of the injury.” (334 Ga. App. at 152)

“Where a trespass is continuing in nature, . . . a new cause of action arises daily.” (334 Ga. App. at 153)

FACTUAL BACKGROUND

The Rowlands owned property on Martin Luther King, Jr. Drive in Greensboro. After receiving a community development grant for drainage improvements, the City installed an expansion pipe and drainage ditch through the property. The Rowlands alleged that the City's project and continued maintenance increased water flow and caused ongoing flooding, environmental and sanitation problems, infestation, and pecuniary damage, amounting to an unlawful taking and continuing nuisance or trespass. The City had acquired easements from other property owners but had not obtained one from or compensated the Rowlands.

PROCEDURAL HISTORY

The Rowlands sued the City seeking compensatory and punitive damages and injunctive relief. The trial court dismissed the punitive-damages claim but denied the City's motion to dismiss the remaining claims based on sovereign immunity and allegedly inadequate ante litem notice. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Ga. Dept. of Natural Resources v. Center for a Sustainable Coast, Inc., 294 Ga. 593, 596, 599-600 (2) (755 SE2d 184) (2014)
- Liberty County School Dist. v. Halliburton, 328 Ga. App. 422, 423 (762 SE2d 138) (2014)
- City of Atlanta v. Mitcham, 296 Ga. 576, 577-578 (1) (769 SE2d 320) (2015)
- City of Thomasville v. Shank, 263 Ga. 624, 625 (437 SE2d 306) (1993)
- Columbia County v. Doolittle, 270 Ga. 490 (1) (512 SE2d 236) (1999)
- Hibbs v. City of Riverdale, 267 Ga. 337, 338 (478 SE2d 121) (1996)
- Simmons v. Mayor & Aldermen of the City of Savannah, 303 Ga. App. 452, 454 (693 SE2d 517) (2010)
- Owens v. City of Greenville, 290 Ga. 557, 561-562 (4) (722 SE2d 755) (2012)
- City of Chamblee v. Maxwell, 264 Ga. 635, 636-637 (452 SE2d 488) (1994)
- Savage v. E. R. Snell Contractor, Inc., 295 Ga. App. 319, 324-325 (3) (a) (672 SE2d 1) (2008)