

SUPREME COURT OF GEORGIA

West v. City of Albany

300 Ga. 743 (2017) · Decided March 6, 2017

SUMMARY

The Supreme Court of Georgia answered a certified question concerning whether a plaintiff pursuing monetary damages under the Georgia Whistleblower Act must provide municipal ante litem notice under OCGA § 36-33-5. The court held that the notice requirement does not apply because the statute addresses injuries caused by negligence, while whistleblower retaliation is an intentional employment action governed by the Georgia Whistleblower Act.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All Justices
JURISDICTION	Georgia
DECIDED	March 6, 2017
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Middle District of Georgia certified a question of Georgia law concerning whether a plaintiff must provide municipal ante litem notice before pursuing money damages under the Georgia Whistleblower Act.
STANDARD OF REVIEW	De novo interpretation of questions of statutory law certified by a federal court.
PRECEDENTIAL VALUE	Published and precedential Supreme Court of Georgia opinion; certified question answered.
PARTIES	Searless West v. City of Albany, Two individual defendants

TOPICS

whistleblower retaliation municipal law statutory interpretation motion for judgment on the pleadings

PRACTICE AREAS

employment law municipal law statutory interpretation civil procedure remedies

QUESTIONS PRESENTED

1. Whether a plaintiff must provide municipal ante litem notice under OCGA § 36-33-5 before pursuing a claim for money damages against a municipality under the Georgia Whistleblower Act.
2. Whether OCGA § 36-33-5 applies only to damages caused by negligence, rather than to intentional retaliation claims under the Georgia Whistleblower Act.

HOLDINGS

1. A plaintiff is not required to provide ante litem notice under OCGA § 36-33-5 before pursuing a whistleblower retaliation claim under the Georgia Whistleblower Act against a municipal corporation.
2. OCGA § 36-33-5 applies only to damages caused by negligence and does not extend to intentional acts merely because the claimant seeks money damages.

KEY QUOTATIONS

“We hold that the pre-suit notice requirement contained in the municipal ante litem statute does not apply to a whistleblower claim brought pursuant to the GWA.” (300 Ga. at 749)

“It is obvious from this language that the municipal ante litem statute contemplates an injury sustained as a result of a negligent act or omission.” (300 Ga. at 746)

FACTUAL BACKGROUND

Searless West was a former employee of the City of Albany who alleged that the City retaliated against her for disclosing financial irregularities in its utility department. She sought economic and noneconomic damages, including lost wages, lost employment benefits, reputational injury, emotional distress, humiliation, and attorney fees and costs. The City argued that her Georgia Whistleblower Act claim was subject to the municipal ante litem notice statute and was barred because she had not provided timely written notice.

PROCEDURAL HISTORY

West, a former City of Albany employee, filed a federal action asserting, among other claims, retaliation under the Georgia Whistleblower Act. The City moved for judgment on the pleadings, arguing that West's claim was barred because she had not provided notice under OCGA § 36-33-5. Finding no controlling Georgia Supreme Court precedent, the federal district court certified the question to the Supreme Court of Georgia, which answered it in the negative.

DISPOSITION

other

REMAND INSTRUCTIONS

The certified question was answered in the negative; the federal district court was left to proceed consistently with that answer.

CASES CITED

- Footstar, Inc. v. Liberty Mutual Ins. Co., 281 Ga. 448, 450 (637 SE2d 692) (2006)
- Federal Deposit Ins. Corp. v. Loudermilk, 295 Ga. 579, 588 (2) (761 SE2d 332) (2014)
- Mooney v. Webster, 300 Ga. 283 (794 SE2d 31) (2016)
- Neely v. City of Riverdale, 298 Ga. App. 884, 885 (1) (681 SE2d 677) (2009)
- Holland v. Caviness, 292 Ga. 332, 337 (737 SE2d 669) (2013)
- Pandora Franchising, LLC v. Kingdom Retail Group, LLLP, 299 Ga. 723, 726 (1) (a) (791 SE2d 786) (2016)
- City of Statesboro v. Dabbs, 289 Ga. 669 (1) (a) (715 SE2d 73) (2011)
- Foster v. Ga. Regional Transp. Auth., 297 Ga. 714, 717 (777 SE2d 446) (2015)
- City of College Park v. Sekisui SPR Americas, LLC, 331 Ga. App. 404, 408 (1) (771 SE2d 101) (2015)
- Reilly v. Alcan Aluminum Corp., 272 Ga. 279 (1) (528 SE2d 238) (2000)
- Jellico v. Effingham County, 221 Ga. App. 252, 253 (471 SE2d 36) (1996)
- Colon v. Fulton County, 294 Ga. 93, 95 (1), 100 (2) (751 SE2d 307) (2013)
- Tuttle v. Bd. of Regents of the Univ. System of Ga., 326 Ga. App. 350 (756 SE2d 585) (2014)
- Maryon v. City of Atlanta, 149 Ga. 35, 36 (99 SE 116) (1919)
- Camp v. Columbus, 252 Ga. 120 (311 SE2d 834) (1984)
- Carruthers v. City of Hawkinsville, 171 Ga. 313 (155 SE 520) (1930)
- Mayor and City Council of City of Richmond Hill v. Maia, 336 Ga. App. 555 (1) (784 SE2d 894) (2016)
- Rabun v. McCoy, 273 Ga. App. 311 (1) (615 SE2d 131) (2005)
- Brownlow v. City of Calhoun, 198 Ga. App. 710 (2) (402 SE2d 788) (1991)
- Acker v. City of Elberton, 176 Ga. App. 580 (2), (3) (336 SE2d 842) (1985)
- Greater Atlanta Home Builders Assn., Inc. v. City of McDonough, 322 Ga. App. 627 (1) (745 SE2d 830) (2013)

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