

SUPREME COURT OF GEORGIA

Sherman v. City of Atlanta

293 Ga. 169 (2013) · Decided June 17, 2013

SUMMARY

The Georgia Supreme Court dismissed an appeal from a judgment validating the City of Atlanta's proposed tax allocation district bond issuance. The court held that the appellants failed to present competent evidence that they were Georgia citizens and Atlanta residents, prerequisites for becoming parties under the Revenue Bond Law. Because they were not proper parties in the trial court, they lacked standing to appeal.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	June 17, 2013
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed from a superior court judgment confirming and validating the City's proposed revenue bond issuance. The Supreme Court of Georgia ordered supplemental briefing and oral argument on whether appellants had standing under the Revenue Bond Law to become parties and appeal.
STANDARD OF REVIEW	De novo review of the legal issue of standing and the statutory requirements for becoming a party and appealing under the Revenue Bond Law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John S. Sherman, Christopher D. Eichler v. City of Atlanta, Fulton County, Atlanta Independent School System

TOPICS

- standing
- appellate jurisdiction
- evidence
- judicial notice
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether appellants established that they were Georgia citizens and residents of Atlanta, as required by OCGA § 36-82-77 (a), to become parties to the bond validation proceeding.
2. Whether persons who failed to establish standing to become parties in the trial court had standing to appeal the bond validation judgment.
3. Whether the appellants' verified objection, counsel's statements, alleged taxpayer status, judicial notice, failure to file a formal answer, or judicial estoppel established standing or excused the failure to present competent evidence.

HOLDINGS

1. Under OCGA § 36-82-77 (a), a person seeking to become a party to a bond validation proceeding must prove that he or she is a Georgia citizen and a resident of the governmental body issuing the bonds. Because appellants presented no competent evidence of those facts, they failed to carry their burden of proving standing.
2. A person who was not a proper party to the bond validation proceeding under OCGA § 36-82-77 (a) lacks standing to appeal the trial court's judgment.
3. A court must determine whether a litigant has standing before adjudicating the merits of the litigant's claims or objections.
4. When citizenship or residency is disputed at a bond validation evidentiary hearing, allegations in a pleading, an unadmitted verification, and counsel's rejected statements in place do not substitute for competent evidence such as admitted exhibits or testimony subject to cross-examination.

KEY QUOTATIONS

“Thus, the trial court should not have addressed the merits of the Objection without first determining whether Appellants had established standing to raise those objections.” (at 172)

“Appellants therefore failed to carry their burden of proving their standing to become parties under OCGA § 36-82-77 (a), and the trial court should have dismissed the Objection instead of addressing the merits of Appellants’ arguments against the bond issuance.” (at 173)

“When facts are disputed, the litigant with the burden of proof must prove them with competent evidence.” (at 176)

FACTUAL BACKGROUND

The City of Atlanta sought validation of up to \$35 million in bonds secured by tax allocation increments for the Perry-Bolton Tax Allocation District. Sherman and Eichler filed an objection claiming that they were Georgia citizens and Atlanta residents, which would allow them to become parties under OCGA § 36-82-77 (a). Neither appellant attended the bond validation hearing, and their counsel offered no competent evidence, documents, or

testimony establishing their citizenship or residency. The trial court nevertheless addressed and rejected their objections on the merits without resolving standing.

PROCEDURAL HISTORY

The State of Georgia petitioned the Fulton County Superior Court to validate up to \$35 million in bonds issued by the City of Atlanta and secured by tax allocation increments. Sherman and Eichler filed an objection asserting that they were Georgia citizens and Atlanta residents, but they presented no admissible evidence of citizenship or residency at the evidentiary hearing. The trial court declined to decide standing and rejected their objections on the merits, after which they appealed. The Supreme Court held that they had not established standing to become parties or to appeal and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Sherman v. Atlanta Independent School System, 293 Ga. 268, 744 SE2d 26 (2013)
- Warth v. Seldin, 422 U.S. 490, 498 (1975)
- Dept. of Human Resources v. Allison, 276 Ga. 175, 178 (575 SE2d 876) (2003)
- Morris v. State, 228 Ga. 39, 49 (184 SE2d 82) (1971)
- LN West Paces Ferry Assocs., LLC v. McDonald, 306 Ga. App. 641, 648 n.5 (703 SE2d 85) (2010)
- Rank v. Rank, 287 Ga. 147, 149 (695 SE2d 13) (2010)
- Dozier v. Parker, 219 Ga. 725, 728 (135 SE2d 857) (1964)
- Lester v. Copeland, 219 Ga. 195, 200 (132 SE2d 190) (1963)
- Fitzpatrick v. Harrison, 300 Ga. App. 672, 673 & n.1 (686 SE2d 322) (2009)
- Perdue v. Lake, 282 Ga. 348, 348 (647 SE2d 6) (2007)
- Rymuza v. Rymuza, 292 Ga. 98, 102 (734 SE2d 384) (2012)
- CSX Transp., Inc. v. Howell, 296 Ga. App. 583, 587 (675 SE2d 306) (2009)
- Sherman v. Dev. Auth. of Fulton County, 321 Ga. App. 550, 554-555 & n.8 (739 SE2d 457) (2013)
- Thompson v. Brown, 288 Ga. 855, 857 (708 SE2d 270) (2011)
- Rolland v. Martin, 281 Ga. 190, 191 (637 SE2d 23) (2006)