

SUPREME COURT OF GEORGIA

Mayor & Aldermen of the City of Savannah v. Palmerio, 242 Ga. 419

249 S.E.2d 224 (1978) · No. 33708 · Decided October 25, 1978

SUMMARY

The Supreme Court of Georgia held that a trial court may grant a reserved motion for directed verdict after a jury verdict has been returned, even without a motion for judgment notwithstanding the verdict. On the merits, the court concluded that the City of Savannah was not liable for nuisance because the state, rather than the city, had exclusive responsibility for the relevant state-aid road and traffic-control devices. The court reversed the Court of Appeals and upheld the directed verdict for the city.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Marshall, Justice; Hall, Justice; Hill, Justice; Nichols, Chief Justice
JURISDICTION	Georgia
DECIDED	October 25, 1978
DOCKET	33708
DISPOSITION	reversed
PROCEDURAL POSTURE	Certiorari review of a Court of Appeals decision reversing a judgment entered after the trial court granted the City of Savannah's post-verdict motion for directed verdict and remanding for a new trial.
STANDARD OF REVIEW	The Supreme Court reviewed the legal validity of the post-verdict directed verdict and whether the evidence demanded a verdict for the City. A directed verdict is proper when there is no conflict in the evidence on any material issue and the evidence, with all reasonable deductions, demands a particular verdict.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mayor & Aldermen of the City of Savannah v. Palmerio et al., State Highway Department of Georgia

TOPICS

- municipal liability
- nuisance
- negligence
- motions to dismiss
- appellate procedure

PRACTICE AREAS

municipal tort liability

municipal law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may grant a reserved motion for directed verdict after a jury verdict and entry of judgment without the prevailing party first filing a motion for judgment notwithstanding the verdict.
2. Whether the evidence supported a directed verdict for the City because the State Highway Board, rather than the City, had exclusive responsibility for the road and traffic-control devices.
3. What legal requirements govern municipal liability for maintenance of a nuisance.
4. Whether the plaintiffs' evidence established that the City created the dangerous condition or failed to perform a legally required act necessary to impose nuisance liability.

HOLDINGS

1. A trial court may grant a reserved motion for directed verdict after a jury verdict and entry of judgment without requiring the prevailing party to file a motion for judgment notwithstanding the verdict.
2. A municipality may be liable for damages caused by the operation or maintenance of a nuisance even when performing a governmental function, but nuisance liability requires a continuous or regularly repetitious act or condition, notice or knowledge of the danger, and, when the municipality did not create the condition, a violation of a duty to act.
3. The plaintiffs' evidence did not establish that the City created the dangerous condition or failed to perform an act it was legally required to perform; therefore, the City's directed verdict was proper.

KEY QUOTATIONS

“A motion for directed verdict is properly granted if there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict.” (242 Ga. at 421)

“To be held liable for maintenance of a nuisance, the municipality must be chargeable with performing a continuous or regularly repetitious act, or creating a continuous or regularly repetitious condition, which causes the hurt, inconvenience or injury; the municipality must have knowledge or be chargeable with notice of the dangerous condition; and, if the municipality did not perform an act creating the dangerous condition, the failure of the municipality to rectify the dangerous condition must be in violation of a duty to act.” (242 Ga. at 426-27)

FACTUAL BACKGROUND

The plaintiffs, husband and wife, were injured in a head-on collision in the reversible lane of a three-laned viaduct on U.S. Highway 80 in Savannah. The State Highway Board had authority over the state-aid road and had placed the lane markings, while the City placed signs intended to control reversible-lane usage. One sign was probably not visible to the driver, and she did not see another sign until it was too late; experts testified that

larger and additional signs were needed. The plaintiffs claimed that inadequate traffic-control warnings constituted a municipal nuisance.

PROCEDURAL HISTORY

The plaintiffs sued the City of Savannah and the State Highway Department in Chatham State Court after a collision on a reversible-lane viaduct. The trial court dismissed the claims against the Department on sovereign-immunity grounds, denied the City's motion for summary judgment, and proceeded to trial. After the jury returned a verdict for the City, the trial court granted the City's previously reserved motion for directed verdict and denied the plaintiffs' motion for new trial. The Court of Appeals held the post-verdict directed verdict void and ordered a new trial; the Supreme Court of Georgia granted certiorari and reversed.

DISPOSITION

reversed

CASES CITED

- Town of Ft. Oglethorpe v. Phillips, 224 Ga. 834, 165 S.E.2d 141 (1968)
- State Highway Department v. Barrett, 124 Ga. App. 703, 185 S.E.2d 624 (1971)
- Tounsel v. State Highway Department, 180 Ga. 112, 178 S.E. 285 (1934)
- Mayor & Aldermen of the City of Savannah v. Palmerio, 130 Ga. App. 238, 202 S.E.2d 677 (1973)
- Mayor & Aldermen of the City of Savannah v. Palmerio, 135 Ga. App. 147, 217 S.E.2d 430 (1975)
- Mayor & Aldermen of Woodbury v. State Highway Department, 225 Ga. 723, 171 S.E.2d 272 (1969)
- Davis v. City of Barnesville, 80 Ga. App. 3, 54 S.E.2d 915 (1949)
- Perkerson v. Mayor & Aldermen of Greenville, 51 Ga. App. 240, 180 S.E. 22 (1935)
- Hancock v. City of Dalton, 131 Ga. App. 178, 205 S.E.2d 470 (1974)
- Delta Air Corp. v. Kersey, 193 Ga. 862, 20 S.E.2d 245 (1942)
- Burrus v. City of Columbus, 105 Ga. 42, 31 S.E. 124 (1898)
- Georgia Railroad & Banking Co. v. Maddox, 116 Ga. 64, 42 S.E. 315 (1902)
- City of Atlanta v. Due, 42 Ga. App. 797, 157 S.E. 256 (1930)
- City of Quitman v. Underwood, 148 Ga. 152, 96 S.E. 178 (1918)
- Southland Coffee Co. v. City of Macon, 60 Ga. App. 253, 3 S.E.2d 739 (1939)
- Sheppard v. Georgia Railroad & Banking Co., 31 Ga. App. 653, 121 S.E. 868 (1923)
- City Council of Augusta v. Cleveland, 148 Ga. 734, 98 S.E. 345 (1918)
- Arthur v. City of Albany, 98 Ga. App. 746, 106 S.E.2d 347 (1958)
- Archer v. City of Austell, 68 Ga. App. 493, 23 S.E.2d 512 (1942)
- Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99 (1954)
- Lewis v. City of Moultrie, 27 Ga. App. 757, 110 S.E. 625 (1921)
- City of East Point v. Terhune, 144 Ga. App. 865, 242 S.E.2d 728 (1978)

- Morin v. City of Valdosta, 140 Ga. App. 361, 231 S.E.2d 133 (1976)
- Ethridge v. City of Lavonia, 101 Ga. App. 190, 112 S.E.2d 822 (1960)
- Hutcheson v. City of Jesup, 132 Ga. App. 84, 207 S.E.2d 547 (1974)
- Stanley v. City of Macon, 95 Ga. App. 108, 97 S.E.2d 330 (1957)
- City Council of Augusta v. Jackson, 20 Ga. App. 710, 93 S.E. 304 (1917)
- Bowen v. Little, 139 Ga. App. 176, 228 S.E.2d 159 (1976)
- Kea v. City of Dublin, 145 Ga. 511, 89 S.E. 484 (1916)
- Love v. City of Atlanta, 95 Ga. 129, 22 S.E. 29 (1894)

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