

SUPREME COURT OF GEORGIA

Innovative Clinical & Consulting Services, LLC v. First National Bank of Ames, Iowa, 279 Ga. 672

620 S.E.2d 352 (2005) · No. No. S04G1413 · Decided October 3, 2005

SUMMARY

The Supreme Court of Georgia addressed the scope of personal jurisdiction over nonresident defendants under Georgia's long-arm statute, OCGA § 9-10-91. The court reaffirmed that subsections (2) and (3) require the statutory acts and limitations stated in the statute, while holding that subsection (1), concerning transacting business in Georgia, must be construed broadly to the maximum extent permitted by constitutional due process. The court affirmed in part, vacated in part, and remanded for further consideration of jurisdiction under subsection (1).

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Presiding Justice
JURISDICTION	Georgia
DECIDED	October 3, 2005
DOCKET	No. S04G1413
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' decision concerning whether Georgia courts could exercise personal jurisdiction over the Iowa bank under OCGA § 9-10-91.
STANDARD OF REVIEW	The court reviewed the construction and application of Georgia's long-arm statute and the personal-jurisdiction ruling; it noted that no question of fact remained concerning the bank's contacts and conduct.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential
PARTIES	Innovative Clinical & Consulting Services, LLC v. First National Bank of Ames, Iowa

TOPICS

- personal jurisdiction
- statutory interpretation
- plain meaning rule
- due process
- commercial litigation

PRACTICE AREAS

civil procedure

constitutional law

commercial litigation

QUESTIONS PRESENTED

1. Whether OCGA § 9-10-91(2) permits personal jurisdiction over a nonresident whose tortious act or omission occurred outside Georgia but whose injury occurred in Georgia.
2. Whether OCGA § 9-10-91(3) permits personal jurisdiction over a nonresident whose out-of-state act caused a tortious injury in Georgia absent regular or persistent Georgia contacts or substantial revenue from Georgia.
3. Whether OCGA § 9-10-91(1)'s authorization for jurisdiction over a nonresident who transacts any business in Georgia is limited by a physical-presence requirement, a contract-claim limitation, or other judicially created restrictions.
4. Whether the bank's contacts and conduct required further consideration of personal jurisdiction under OCGA § 9-10-91(1).

HOLDINGS

1. Subsection (2) applies when a nonresident commits a tortious act or omission within Georgia, subject to constitutional due process; subsection (3) applies when a nonresident commits a tortious injury in Georgia caused by an act or omission outside Georgia, but only if the statutory regular, persistent, or substantial-contact conditions are satisfied.
2. OCGA § 9-10-91(1) authorizes Georgia courts to exercise personal jurisdiction over any nonresident who transacts any business in Georgia, without a statutory requirement of physical presence, a contract claim, or diminished significance for intangible contacts, subject only to the maximum reach permitted by constitutional procedural due process.
3. The Court of Appeals' limited review of personal jurisdiction under OCGA § 9-10-91(1) was no longer appropriate; the subsection (1) issue had to be reconsidered under the broader construction announced by the Supreme Court.

KEY QUOTATIONS

“The rule that controls is our statute, which requires that an out-of-state defendant must do certain acts within the State of Georgia before he can be subjected to personal jurisdiction.” (279 Ga. at 673)

“The courts cannot reject the plain language of a statute unless it will lead to unreasonable consequences or absurd results not contemplated by the Legislature.” (279 Ga. at 675)

“Accordingly, under that literal construction, OCGA § 9-10-91(1) grants Georgia courts the unlimited authority to exercise personal jurisdiction over any nonresident who transacts any business in this State.” (279 Ga. at 676)

FACTUAL BACKGROUND

The defendant was an Iowa bank sued by Innovative Clinical & Consulting Services, LLC. The bank did not commit a tortious act within Georgia, did not regularly conduct or solicit business there, did not engage in a persistent course of conduct there, and did not derive substantial revenue from goods used or services rendered there. The record identified postal and telephonic contacts with Georgia, and the Court of Appeals had considered those contacts only in relation to the plaintiff's breach-of-contract claim.

PROCEDURAL HISTORY

The Court of Appeals held that the trial court lacked personal jurisdiction over the Iowa bank under subsections (2) and (3) of Georgia's long-arm statute and considered only the breach-of-contract claim under subsection (1). The Supreme Court affirmed the Court of Appeals' ruling under subsections (2) and (3), disapproved part of its analysis, and vacated and remanded the subsection (1) issue for further consideration.

DISPOSITION

other

REMAND INSTRUCTIONS

The Court of Appeals must reconsider the subsection (1) personal-jurisdiction issue under the Supreme Court's literal construction of OCGA § 9-10-91(1), without limiting the analysis to breach-of-contract claims or requiring physical contacts. Division 2 was affirmed, Division 3 was disapproved, and Division 1 was vacated and remanded for action consistent with the opinion.

CASES CITED

- First National Bank of Ames, Iowa v. Innovative Clinical & Consulting Services, LLC, 266 Ga. App. 842, 598 S.E.2d 530 (2004)
- Gust v. Flint, 257 Ga. 129, 356 S.E.2d 513 (1987)
- Clarkson Power Flow v. Thompson, 244 Ga. 300, 260 S.E.2d 9 (1979)
- Shellenberger v. Tanner, 138 Ga. App. 399, 227 S.E.2d 266 (1976)
- Coe & Payne Co. v. Wood-Mosaic Corp., 230 Ga. 58, 195 S.E.2d 399 (1972)
- First United Bank of Miss. v. First Nat. Bank of Atlanta, 255 Ga. 505, 340 S.E.2d 597 (1986)
- Haugen v. Henry County, 277 Ga. 743, 594 S.E.2d 324 (2004)
- Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981)
- Phears v. Doyne, 220 Ga. App. 550, 470 S.E.2d 236 (1996)
- Whitaker v. Krestmark of Alabama, Inc., 157 Ga. App. 536, 278 S.E.2d 116 (1981)
- Wise v. State Board of Registration for Professional Engineers and Land Surveyors, 247 Ga. 206, 274 S.E.2d 544 (1981)
- Six Flags Over Ga. II v. Kull, 276 Ga. 210, 576 S.E.2d 880 (2003)
- Beasley v. Beasley, 260 Ga. 419, 396 S.E.2d 222 (1990)
- Asahi Metal Indus. Co. v. Superior Court of California, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987)

- Allstate Ins. Co. v. Klein, 262 Ga. 599, 422 S.E.2d 863 (1992)
- Francosteel Corp. v. M/V Charm, 19 F.3d 624 (11th Cir. 1994)
- CareKeeper Software Dev. Co. v. Silver, 46 F. Supp. 2d 1366 (N.D. Ga. 1999)

OPINION

HUNSTEIN, J.

620 S.E.2d 352 (2005) 279 Ga. 672 INNOVATIVE CLINICAL & CONSULTING SERVICES, LLC v. FIRST NATIONAL BANK OF AMES, Iowa. No. S04G1413. Supreme Court of Georgia. October 3, 2005. *353 Tyler Dixon, Raiford & Dixon, LLP, Atlanta, for Appellant. William V. Custer, IV, Jennifer Burch Dempsey, Powell Goldstein, Atlanta, for Appellee. HUNSTEIN, Presiding Justice.

We granted certiorari from the holding in First National Bank of Ames, Iowa v. Innovative Clinical & Consulting Services, LLC, 266 Ga.App. 842, 598 S.E.2d 530 (2004) to address perceived inconsistencies in our precedents defining the scope of personal jurisdiction that Georgia courts may exercise over nonresidents pursuant to OCGA § 9-10-91, the Georgia long-arm statute.

We reiterate our holding in Gust v. Flint, 257 Ga. 129, 356 S.E.2d 513 (1987), that "[t]he rule that controls is our statute, which requires that an out-of-state defendant must do certain acts within the State of Georgia before he can be subjected to personal jurisdiction." Id. at 130, 356 S.E.2d 513.

However, because as set forth below we conclude that our earlier opinions have unduly limited the literal *354 language of OCGA § 9-10-91, we reverse in part the holding of the Court of Appeals and remand this case for further consideration by that court. OCGA § 9-10-91 provides in pertinent part that a court of this State may exercise personal jurisdiction over any nonresident..., as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he were a resident of the state, if in person or through an agent, he: (1) Transacts any business within this state; (2) Commits a tortious act or omission within this state...; (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;....

Prior to our holding in Gust, this Court in Clarkson Power Flow v. Thompson, 244 Ga. 300, 301, 260 S.E.2d 9 (1979) expanded subsection (2) to encompass nonresidents in those situations where the cause of action arising from injury in Georgia resulted from a tortious act or omission occurring outside this State, see also Shellenberger v. Tanner, 138 Ga.App. 399(2), 227 S.E.2d 266 (1976), holding that there was "no essential difference" between subsections (2) and (3).

Clarkson Power Flow, *supra* at 301, 260 S.E.2d 9. Because subsection (2), unlike subsection (3), contained no explicit legislative limiting conditions, we held that subsection (2) was constrained only by, and thus was co-extensive with, the Fourteenth Amendment of the U.S. Constitution. *Coe & Payne Co. v. Wood-Mosaic Corp.*, 230 Ga. 58, 61-62, 195 S.E.2d 399 (1973).

See also *First United Bank of Miss. v. First Nat. Bank of Atlanta*, 255 Ga. 505, 506, 340 S.E.2d 597 (1986). In *Gust* the Court rejected these cases and returned to a "literal construction" of OCGA § 9-10-91, *Gust, supra*, 257 Ga. at 130, 356 S.E.2d 513, thus holding that a nonresident "must do certain acts" as delineated by the statute before the nonresident could be subjected to personal jurisdiction in Georgia.

Id. This holding reinstated the difference between subsections (2) and (3) established by the literal language of the statute. Thus, under subsection (2) a Georgia court may exercise personal jurisdiction over a nonresident who commits a tortious act or omission within this State,[1] insofar as the exercise of that personal jurisdiction comports with constitutional due process; and under subsection (3) a Georgia court may exercise personal jurisdiction over a nonresident who commits a tortious injury in Georgia caused by an act or omission outside Georgia only if the tortfeasor "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state," notwithstanding that these limiting conditions may preclude a Georgia court from exercising personal jurisdiction over the nonresident to the fullest extent permitted by constitutional due process.

Gust, supra. [2] *355 For over 17 years the justices of this Court and the judges of the Court of Appeals have urged the Legislature to amend Georgia's long-arm statute so as to provide the maximum protection for Georgia residents damaged by the out-of-state acts or omissions committed by nonresident tortfeasors. See *Gust, supra*, 257 Ga. at 130, 356 S.E.2d 513 (Gregory, J., concurring); *Phears v. Doyne*, 220 Ga.App.

550, 552, 470 S.E.2d 236 (1996) (Beasley, C.J., concurring specially). Despite the eloquence of these pleas, the Legislature has chosen to retain the statutory limitations on in personam jurisdiction set forth in OCGA § 9-10-91(3).

In our system of checks and balances, it is as inappropriate for the judicial branch to encroach upon the powers of the legislative or executive branches as it would be for either of those branches to encroach upon the powers of the judicial branch.

Thus, contrary to the statements in Division 3 of the Court of Appeals' opinion below, the fact that Georgians damaged by nonresidents are deprived of a forum in this State to the fullest extent permitted by due process is not the result of court decisions interpreting OCGA § 9-10-91(3) but the result of the plain and unambiguous language of OCGA § 9-10-91.

The courts cannot reject the plain language of a statute unless it will lead to unreasonable consequences or absurd results not contemplated by the Legislature. See generally *Haugen v. Henry County*, 277 Ga. 743(2), 594 S.E.2d 324 (2004); *Hollowell v. Jove*, 247 Ga. 678, 681, 279 S.E.2d 430 (1981).

Accordingly, under these circumstances, the courts may not interpret OCGA § 9-10-91 to provide what the Legislature chose to omit. However, our holding in *Gust* necessarily affects the construction heretofore applied to subsection (1) of OCGA § 9-10-91. That subsection authorizes a Georgia court to exercise personal jurisdiction over a nonresident who "[t]ransacts any business within" Georgia.

As is the case with subsection (2), there are no explicit legislative limiting conditions on this language. Nothing in subsection (1) limits its application to contract cases, but see *Whitaker v. Krestmark of Alabama, Inc.*, 157 Ga.App. 536(1), 278 S.E.2d 116 (1981); nothing in subsection (1) requires the physical presence of the nonresident in Georgia or minimizes the import of a nonresident's intangible contacts with the State.

But see *Wise v. State Board etc., of Architects*, 247 Ga. 206, 209, 274 S.E.2d 544 (1981). Although Georgia courts have engrafted these and other requirements onto subsection (1), such requirements conflict with the literal language of the statute.

To be consistent with *Gust* and the well-established rules of statutory interpretation that preclude judicial construction of plain and unambiguous statutory language, *Six Flags Over Ga. II v. Kull*, 276 Ga. 210, 211, 576 S.E.2d 880 (2003), we must give the same literal construction to subsection (1) of OCGA § 9-10-91 that we give to the other subsections.

Accordingly, under that literal construction, OCGA § 9-10-91(1) grants Georgia courts the unlimited authority to exercise personal jurisdiction over any nonresident who transacts any business in this State. Of course, because this statutory language would expand the personal jurisdiction of Georgia courts beyond that permitted by constitutional due process, we accordingly construe subsection (1) as reaching only "to the maximum extent permitted by procedural due process."

Coe & Payne Co., supra, 230 Ga. at 60, 195 S.E.2d 399. See generally *Beasley v. Beasley*, 260 Ga. 419, 421, 396 S.E.2d 222 (1990) (explicating the minimum contacts required for proper exercise of long arm jurisdiction). See also *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102(II)(A), 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) (due process clause of the Fourteenth Amendment constrains states' exercise of personal jurisdiction over nonresidents).

We hereby overrule all prior cases that fail to accord the appropriate breadth to the construction of the "transacting any business" language of OCGA § 9-10-91(1). The Court of Appeals in this case correctly recognized that the trial court did not have personal jurisdiction over the Iowa bank

under subsections (2) and (3) of OCGA § 9-10-91 because no question of fact remains[3] that *356 the Iowa bank did not commit a tortious act within Georgia and that the Iowa bank does not regularly conduct or solicit business in Georgia, engage in any other persistent course of conduct in Georgia or otherwise derive substantial revenue from goods used or consumed or services rendered in Georgia.[4] However, because it was bound by prior precedent, the Court of Appeals did not fully consider whether the trial court had personal jurisdiction over the Iowa bank under OCGA § 9-10-91(1), limiting its review to ICCS's breach of contract claim and that evidence establishing the lack of physical contacts (i.e., the presence of only postal and telephonic contacts) to connect the Iowa bank with Georgia.

That limited review is no longer appropriate. Therefore, we affirm Division 2 of the Court of Appeals' opinion; disapprove the language in Division 3; and vacate and remand Division 1 to the Court of Appeals for action not inconsistent with this opinion. Judgment affirmed in part, vacated in part and case remanded with direction. All the Justices concur. NOTES [1] The Legislature provided only one exception to subsection (2), namely, actions for defamation of character arising from the tortious act.

[2] Dicta in footnote 1 in *Allstate Ins. Co. v. Klein*, 262 Ga. 599, 422 S.E.2d 863 (1992), a case involving jurisdiction over a defendant who was a Georgia resident so that OCGA § 9-10-91 was wholly inapplicable, does not support a different conclusion because that footnote cited only to cases rendered prior to *Gust*, *supra*.

Although the Federal courts persist in reiterating the language from *First United Bank of Mississippi*, *supra*, that Georgia's long-arm statute confers in personam jurisdiction to the maximum extent allowed by the due process clause of the U.S. Constitution, e.g., *Francosteel Corp. v. M/V Charm*, 19 F.3d 624(IV) (11th Cir.1994), the *First United* holding was superseded by *Gust*, *supra*.

The Eleventh Circuit's interpretation of OCGA § 9-10-91 is not binding on this Court and it is not necessary for this Court to correct erroneous Federal interpretations of our State's statutes for the precedential value of our opinions to remain the controlling authority on the proper interpretation of those statutes. See *contra CareKeeper Software Dev. Co. v. Silver*, 46 F. Supp. 2d 1366, 1369, n. 1 (N.D.Ga.1999) (following the erroneous interpretation given OCGA § 9-10-91 by *Francosteel*, *supra*, because the district court "has not found any contrary Georgia Supreme Court authority decided since the Eleventh Circuit's decision" in that case).

[3] The facts of this case are more fully set forth in *First National Bank of Ames, Iowa*, *supra*, 266 Ga.App. at 842-843, 598 S.E.2d 530. [4] While OCGA § 9-10-91(1) requires only that the nonresident transact any business in Georgia, subsection (3) requires "regular," "persistent" or "substantial" contact with this State in order for Georgia courts to exercise personal jurisdiction over nonresident tortfeasors.

