

SUPREME COURT OF GEORGIA

Inserecton, a Fantasy Store v. City of Marietta, 278 Ga. 170

598 S.E.2d 452 (2004) · No. S04A0249 · Decided June 7, 2004

SUMMARY

The Supreme Court of Georgia dismissed as moot an interlocutory appeal concerning a temporary injunction that closed a store allegedly selling obscene materials. The court held that expiration of the store's business license eliminated the possibility of the requested relief and that the appeal did not present an issue capable of repetition yet evading review. Justice Carley dissented, arguing that the short license period and potential effects on future licensing warranted reaching the merits.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; Carley, Justice
JURISDICTION	Georgia
DECIDED	June 7, 2004
DOCKET	S04A0249
DISPOSITION	dismissed
PROCEDURAL POSTURE	The City sought temporary and permanent injunctive relief to close appellants' retail store based on alleged obscenity and nuisance. After the trial court entered a temporary injunction and ordered the premises padlocked, appellants obtained interlocutory review. The Supreme Court of Georgia dismissed the appeal as moot after the business license expired.
STANDARD OF REVIEW	The court considered de novo whether the interlocutory appeal remained justiciable or had become moot.
PRECEDENTIAL VALUE	Published opinion; precedential Georgia Supreme Court decision, with a dissent.
PARTIES	Inserecton, a Fantasy Store v. City of Marietta

TOPICS

- mootness
- interlocutory appeal
- appellate procedure
- injunctions
- civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

Constitutional law

Municipal law

Remedies

QUESTIONS PRESENTED

1. Whether the appeal from the interlocutory injunction became moot when the appellants' business license expired.
2. Whether the appeal fell within the exception for issues capable of repetition yet evading review.

HOLDINGS

1. The appeal became moot when the business license expired because appellants could no longer obtain the requested relief of reopening the store.
2. The exception did not apply because appellants failed to show that the challenged issue was incapable of receiving appellate review before the license expired.

KEY QUOTATIONS

"This court will upon its own motion dismiss an appeal where it affirmatively appears that a decision would be of no benefit to the complaining party." (278 Ga. at 171)

FACTUAL BACKGROUND

Inserction received a City of Marietta license to operate a general merchandise retail establishment effective March 13, 2003. After investigating complaints, the City believed the store was distributing obscene material prohibited by state law and by the license, and it demanded that the sales cease. The City then sought injunctive relief, and the trial court ordered the store closed and padlocked pending a final hearing. The license expired no later than December 31, 2003, eliminating the requested remedy of reopening the store.

PROCEDURAL HISTORY

The City filed an injunction action in the Superior Court of Cobb County after investigating allegedly obscene merchandise sold by Inserction. The trial court issued a temporary injunction, ordered the store padlocked, and set a final hearing. Appellants removed the case to federal court, which returned it to the superior court; appellants also unsuccessfully sought supersedeas. The Supreme Court granted interlocutory review but dismissed the appeal after the license expired.

DISPOSITION

dismissed

CASES CITED

- Chastain v. Baker, 255 Ga. 432, 339 S.E.2d 241 (1986)
- Members of Bd. of Comm'rs of Whitfield County v. Golden Gallon, Inc., 244 Ga. 209, 259 S.E.2d 463 (1979)
- Cook v. Harris, 209 Ga. 425, 73 S.E.2d 89 (1952)

- Cravey v. Bankers Life & Cas. Co., 209 Ga. 273, 71 S.E.2d 659 (1952)
- Exley v. Blackmon, 129 Ga. App. 598, 200 S.E.2d 334 (1973)
- Collins v. Lombard Corp., 270 Ga. 120, 508 S.E.2d 653 (1998)
- Penthouse Int'l v. McAuliffe, 454 F. Supp. 289 (N.D. Ga. 1978)
- Brown v. Spann, 271 Ga. 495, 520 S.E.2d 909 (1999)
- Jackson v. Bibb County School Dist., 271 Ga. 18, 515 S.E.2d 151 (1999)
- Howell v. Fears, 275 Ga. 627, 571 S.E.2d 392 (2002)
- Napper v. Ga. Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987)

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