IN THE COURT OF APPEALS OF GEORGIA

GEORGIACARRY.ORG, INC., And EDWARD A. STONE, Appellants,	)	
v.	)	Appeal No. A07A2036
COWETA COUNTY, GEORGIA Appellee	)	

APPELLANTS' REPLY BRIEF

Coweta County Ignores the Express Preemption Statute

Coweta County's response brief is most notable for what it does not include. Nowhere is there any discussion of a single word of the text appearing in Georgia's express preemption statute. At the bottom of page 8, Coweta County assures this Court that it "bases its arguments on the **substance** of the statutes at issue, not the titles." (emphasis in original). Neither before nor after this emphatic declaration is there any discussion of any "substance" from the preemption statute, O.C.G.A. § 16-11-173, which clearly provides that Coweta County may not "regulate in any manner . . . the possession" or "carrying" of "firearms," among the many other things Coweta County may not regulate.

Coweta County's silence on this issue, which is after all the crux of this entire case, is telling. Rather than mention a single word of the statute, Coweta County points only to Sturm, Ruger & Company, Inc. v. City of Atlanta, 253 Ga. App. 713 (2002) and superficially indicates its ultimate holding, that the preemption statute barred the City of Atlanta from regulating firearms via litigation. Coweta County makes no attempt to explain the reasoning of this case, except to observe that it "in no way involves the issue of carrying of firearms in public places."[1] Appellee's Brief, p. 9 (emphasis in original).

Coweta County Purports to Analyze Preemption Case Law

While Coweta County's discussion of preemption law in general is interesting, it completely misses the boat. Coweta County is correct in that there is a general rule that local

[1] Of course, this observation by Appellee is not entirely true. While the facts of the Sturm, Ruger case do not involve violation of the statutes regulating carry of firearms, this Court pointed to the carry statutes as contributing to this Court's determination of implied preemption of the field of firearms regulation, as Appellant already pointed out in its first brief.

governments may pass laws that are authorized by and do not conflict with general laws. See Appellee's Brief, p. 6. Coweta County fails to apply this general rule properly to its own ordinance, however, as that ordinance is not authorized by general law and conflicts with general law. O.C.G.A. § 16-11-173 provides for three limited areas of local government oversight pertaining to firearms.[2] See O.C.G.A. § 16-11-173 (c), (d), and (e). Those three narrow categories are the ***only*** authority in general law for local ordinances regulating firearms. There is no exception for county regulations concerning the possession or carrying of firearms on or about recreational facilities and any surrounding areas being property of the county. See Coweta Code Section 64-33(c). Thus, Coweta County is without authority to pass or enforce the ordinance. Moreover, Coweta County's ordinance plainly conflicts with the "substance" of O.C.G.A. § 16-11-173(b).

[2] Appellee does not even deign to discuss these three exceptions to complete preemption.

The Public Gathering Law Contains No Authority for Enacting Local Ordinances

Coweta County attempts to discover a grant of authority in the state's general law with reference to O.C.G.A. § 16-11-127, the public gathering law. This is among the statutes regulating the carry of firearms that this Court held constitute a comprehensive regulatory scheme, implicitly preempting local laws on the same subject[3]. See Sturm, Ruger, 253 Ga. App. at 718. Review of even the selective quote by Coweta County of the public gathering statute fails to reveal any authority for any local ordinance on any subject whatsoever. Rather, the quote reveals an express prohibition on carrying firearms "to or while at" public gatherings, which expressly include "publicly owned or operated buildings." Appellee's Brief, p. 10 (emphasis in original).

As in the trial court below, Appellee's Brief again omits the next sentence of the public gathering law. "Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to

[3] Oddly, Coweta County fails to discuss the concept of implied preemption at all.

carry such firearm by this part." O.C.G.A. § 16-11-127(b). This startling omission is rather glaring in light of the fact that Appellant made this same argument in its first brief before this Court, pointing out that Coweta County may not attempt to prohibit what the state expressly authorizes and licenses. Coweta County's silence on this issue is as telling as its silence on the language of the express preemption statute.[4]

[4] Coweta County's discussion of State v. Burns, 200 Ga. App. 16 (1991) (a case that does not mention "parking lot"), misrepresents GCO's argument. The issue in that case was what constitutes a public gathering, and this Court held that in addition to the places listed, it is "when people *are* gathered or will be gathered for a particular function" (emphasis in original). GCO notes that Coweta County omitted the "for a particular function" language from its citation, for obvious reasons. Appellee's Brief, p. 12. In any event, the Burns decision discusses a state statute, and Appellant is at a loss to understand Coweta County's contention that this case supports a preempted county ordinance.

The Ordinances Cited by Coweta County Were Passed Pursuant To Express Preemption Authority

Ordinance Number One

Coweta County's shallow preemption analysis cites to cases analyzing ordinances actually authorized by the general laws at issue. See, for example, Appellee's brief on page 14. O.C.G.A. § 44-12-135 provides, "Nothing in this part shall supersede existing local laws nor relieve a pawnbroker from the necessity of complying with them. The requirements of local laws shall be construed as cumulative to this part." Appellee, however, fails to quote this language, preferring instead to argue that the ordinance in question on page 14 of its brief was a "proper use of Gwinnett County's police power and, thus, authorized by general law." Appellee's Brief, pp. 14-15.

Ordinance Number Two

The next ordinance Coweta County offers as an example of an appropriate preemption analysis was authorized by O.C.G.A. § 3-3-23(a). See Appellee's Brief, p. 16. That subsection provides a grant of authority for powers relating to the revocation of licenses to sell alcohol. "Each such local governing authority is given discretionary powers within the guidelines of due

process set forth in this Code section as to the granting or refusal, suspension, or revocation of the permits or licenses . . .″ O.C.G.A. § 3-3-23(a). Thus it is no real surprise that the Supreme Court found that the ordinance in question was authorized by general law.

There ***Is*** an Express Grant of Authority for Firearms Ordinances

The only grant of authority for Coweta County to regulate firearms in any manner occurs in the three narrow exceptions to preemption found at O.C.G.A. § 16-11-173 (c), (d), and (e), pertaining to regulations governing Appellee's own employees while they are actually at work, regulations requiring heads of household to own and maintain a firearm, and reasonably limiting or prohibiting the discharge of firearms within the boundaries of the county. The General Assembly limited Coweta County's regulatory authority to the three exceptions to express preemption listed. If the ordinance being challenged fell within one of the three exceptions to complete preemption, then Coweta County's argument would have some conceivable relevance to this case, but even Coweta County does not contend that its

ordinance in this case falls within one of the three exceptions to preemption.

On Complete Bans, Smoking and Beer

While Appellant commends Coweta County for not attempting to enact a "Wholesale Ban on Carrying Firearms . . . everywhere in the County," Appellant cannot discern how this argument appearing on page 17 of Coweta County's brief has anything to do with any issue in this case. Coweta County confidently asserts, "This is no different from prohibiting people from smoking . . ." Id. Well, to the contrary, the issue in this case is ***drastically*** different. O.C.G.A. § 16-12-2(b) states, "This Code section [pertaining to smoking] shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules and regulations of state or local agencies, and local ordinances prohibiting smoking which are more restrictive than this Code section." So, again, Coweta County's argument entirely misses the boat. The State of Georgia has expressly authorized Coweta County to enact local laws, rules, and regulations pertaining to smoking. At the same time, the State of Georgia has expressly ***barred*** Coweta County from "regulating

in any manner" the "carry" or "possession" of firearms, with three narrow exceptions not applicable here.

Coweta County's argument pertaining to alcoholic beverages also misses the boat. In some circumstances, counties and cities may not regulate the possession of alcoholic beverages on county or city owned property. See O.C.G.A. § 3-8-1(d). But the general rule for alcoholic beverages is different than for other local ordinances because of the Georgia Constitution, which provides that the State of Georgia shall have "complete authority to regulate alcoholic beverages," pursuant to the Twenty First Amendment of the United States Constitution. Georgia Constitution, Art. III, § VI, ¶ VII. An exception is made, however, for local regulations pertaining to alcohol mixed with nudity, and state law "shall not preempt any local ordinance provisions not in direct conflict with general law." Id.

Moreover, neither consuming alcoholic beverages nor inhaling tobacco smoke involves the exercise of rights with explicit protection in the Georgia Constitution. "Art. I, Sec. I, Par. VIII of the Constitution of 1983 provides: 'The right of the people to keep and bear arms shall not be infringed, but the

General Assembly shall have power to prescribe the manner in which arms may be borne.' The General Assembly has exercised this power given by the constitution to create a regulatory scheme for the distribution and use of firearms." Sturm, Ruger, 253 Ga. App. at 718 (citation omitted).

A part of this regulatory scheme is an express preemption statute that declares, omitting the nonpertinent words, "No county shall regulate in any manner the possession or carrying of firearms." O.C.G.A. § 16-11-173(b). Any contention that this statute does not pertain to the carry or possession of firearms, two activities explicitly listed, is legally frivolous. Coweta County's ordinance is expressly preempted, and this Court should reverse the judgment of the trial court in Coweta County.

CONCLUSION

O.C.G.A. § 16-11-173 unambiguously preempts Coweta County's ordinance. Coweta County makes no attempt to explain why the statute means anything other than what it clearly states on its face. Because Appellant has shown a clear case of preemption, both and express and implied, and Coweta County has failed to rebut that case in any meaningful way, this Court should reverse

the judgment of the trial court and remand the case with instructions to enter judgment in favor of Appellant.

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CERTIFICATE OF SERVICE

I certify that I have this day served Nathan T. Lee, Esq. with a copy of this Brief by mailing a copy first class mail postage prepaid to him at 10 Brown Street; Newnan, Georgia 30264.

Date August 17, 2007

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