

**IN THE SUPREME COURT OF GEORGIA**

<b>GEORGIACARRY.ORG, INC., <i>et al.</i>,</b>	)	
	)	
<b>PETITIONERS,</b>	)	
	)	
<b>V.</b>	)	<b>CASE NO.:</b>
	)	
<b>TOM CALDWELL, <i>et al.</i>,</b>	)	<b>COURT OF APPEALS CASE</b>
	)	<b>NO.: A16A0077</b>
<b>RESPONDENT</b>	)	

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**PETITION FOR CERTIORARI**

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John R. Monroe  
John Monroe Law, P.C.  
Attorney for Petitioners  
9640 Coleman Road  
Roswell, GA 30075  
State Bar No. 516193  
678 362 7650  
770 552 9318 (fax)  
[jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)

## **Introduction**

Petitioners GeorgiaCarry.org (“GCO”) and Dan Haithcock (“Haithcock”) commenced this action against Tom Caldwell (“Caldwell”) and Floyd County, Georgia (“the County”) seeking damages and declaratory and injunctive relief after Caldwell declared his intention to enforce Floyd County Ordinance Article 1, Section 2-3-3(f) in violation of O.C.G.A. 16-11-173 at the Wings Over North Georgia (“Wong”) scheduled for October 18-19, 2014. The Court of Appeals found no error in the April 13, 2015, Superior Court of Floyd County order dismissing. Among other issues, the meaning of “commercial service airport” is an issue of first impression throughout the state, and impacts an enumerated, fundamental federal constitutional right of significant importance

## **Standard for Granting Certiorari**

Certiorari is granted “only in cases of great concern, gravity, or importance to the public.” Supreme Court Rule 40. This is a case of significant public concern. The decision of the Court of Appeals held that this case had no precedential value, depending upon the trial court’s ruling. The trial court’s ruling contained two troubling issues: first, the court adopted Defendant’s interpretation of a “commercial service airport” relating to O.C.G.A. 16-11-130.2 as an airport that merely sells things; and second, that when the General Assembly revised O.C.G.A. 16-11-127(c) to limit the right to exclude to lessees of private property

only, it meant to include public property. It is questionable how these ruling apply to the free exercise of a vital, fundamental constitutional right.

### **Statement of Facts**

Petitioner GCO is a non-profit corporation organized under the laws of the State of Georgia. R7. GCO's mission is to foster the rights of its members to keep and bear arms. *Id.* Appellant Haithcock is a member of GCO. *Id.* On an unspecified date in 2014, Haithcock purchased tickets to attend the WONG airshow with his family. Tr. 13.<sup>1</sup> Haithcock possesses a valid Georgia weapons carry license ("GWL") issued to him by the judge of the Probate Court of Fulton County. *Id.* Haithcock generally carries a weapon with him wherever it is legal to do so. *Id.*, p. 14. He would carry a weapon with him at the WONG if he were not in fear of arrest and prosecution for doing so. *Id.* Haithcock is a licensed pilot and has attended airshows previously. *Id.* GCO has other members with GWLs that desired to attend the WONG and carry handguns with them. R8.

The WONG is held at the Richard Russell Airport, located in and owned by Floyd County. Tr. 20. On September 11, 2014, Haithcock saw on the Floyd County Sheriff's Office Facebook page that the Sheriff's Office was handling WONG security and that weapons would be banned. *Id.*, p. 10. Haithcock posted a message

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<sup>1</sup> References denoted "Tr <page number>" are to the transcript of the hearing held October 8, 2014 in the trial court.

on the Facebook page, asking by what authority they were banned. *Id.* On September 16, 2014, Caldwell, the Chief Deputy of the Floyd County Sheriff's Office, responded on the Facebook page. R8. Caldwell stated that the airshow was not banning weapons, that he (Caldwell) was responsible for security at the WONG, and that weapons were banned pursuant to state law. *Id.* Caldwell further stated that unspecified "federal guidelines from the FAA and TSA" applied, and further stated that a Floyd County ordinance prohibits weapons at "public gatherings." *Id.* On September 17, 2014, Haithcock replied on the Facebook page that O.C.G.A. 16-11-173 preempts local regulation of firearms, and pressed Caldwell to identify by what authority Caldwell was banning firearms at WONG. *Id.*, p. 9.

Caldwell responded that 16-11-173 does not apply to individual carrying of firearms and that if Haithcock did not understand the law, it was a waste of time for Caldwell to explain it to him. *Id.* Caldwell further stated, in all uppercase letters, that the county ordinance would be enforced at the WONG. *Id.* The County Ordinance (Floyd County Ordinances, Article 1, Section 2-3-3(h)) provides that "No persons ... shall carry ... weapons on the airport property...." *Id.*; Tr. 2, Exhibit P-2. Haithcock and other GCO members were in fear of arrest and prosecution for carrying weapons at the WONG. R9.

## **Proceedings Below**

GCO and Haithcock commenced this action on September 23, 2014. *Id.*, p. 7. In their Verified Complaint, they sought a declaration that the County Ordinance is preempted by O.C.G.A. § 16-11-173 and is void and unenforceable. *Id.*, p. 10. They further sought a declaration that no other provision of law prohibits a GWL holder from carrying a firearm at the WONG. *Id.* They further sought preliminary and permanent injunctive relief, and damages in the amount of \$100. *Id.*

Contemporaneously with their Verified Complaint, GCO and Haithcock filed a motion for an interlocutory injunction and a brief in support. R12-16. On September 25, 2014, the trial court issued a Rule Nisi on the Motion for October 8, 2014. R17. On October 8, 2014, Appellees Caldwell and Floyd County filed a verified Answer and a Response to the Motion. R27-62. The same day, the trial court held a hearing on the Motion. Tr., generally. At the conclusion of the hearing, the trial court orally denied the Motion. Tr. pp. 60-67. On October 10, 2014, the trial court entered a written order denying the Motion. R73-81. On April 13, 2015, the trial court *sua sponte* issued an order dismissing the case as moot, based on the earlier denial of the Motion and the fact that the 2014 WONG had occurred. R87.

GCO and Haithcock filed a Notice of Appeal on May 11, 2015, so the appeal was timely. R1. On July 5, 2016, the Court of Appeals ruled without

opinion that the evidence supported the judgment; second, that no reversible error of law appears, and an opinion would have no precedential value; and third, that the judgment of the court below adequately explains the decision. On July 14, 2016, GCO and Haithcock filed a notice of intention to petition for certiorari.

### **Argument and Citations of Authority**

#### **1. The Case is Not Moot**

Because the Court of Appeals issued no opinion, we must look to the decision of the Floyd County Superior Court to evaluate the case. As noted earlier, that court *sua sponte* dismissed the case without notice or hearing on the issue. The court decided, *inter alia*, that the case was moot based on the occurrence of the 2014 WONG.

A matter is not moot if it is capable of repetition while evading review. *Owens v. Hill*, 295 Ga. 302, 305 (2014). The WONG is an annual event. GCO and Haithcock could bring essentially the same case again and again every year, but never achieve final resolution of the case before the event occurred. They would never get review of their complaint.

Moreover, the mootness issue must of necessity be premised on the notion that there is no further relief available to GCO and Haithcock, a premise which is clearly erroneous. GCO and Haithcock sued for both prospective and retrospective

relief. The latter included damages, which are specified in O.C.G.A. § 16-11-173(g)(1). The occurrence of the WONG cannot make the damages sought moot.

Finally, the declaratory judgment sought on the Floyd County Ordinance, while prospective in nature, is not tied directly to the WONG. The fact remains that the County enforces an ordinance banning carrying guns at the airport, and that Ordinance is clearly preempted by O.C.G.A. § 16-11-173. GCO and Haithcock seek a declaration that the Ordinance is preempted, and they are entitled to a ruling on the merits.

## **2. “Commercial Service Airport” Has a Specific Meaning**

The trial court’s ruling is based in part on the meaning of the term “commercial service airport.” This is because Caldwell and the County changed arguments after the case was commenced. Before the filing of the Complaint, Caldwell relied on the County Ordinance. He later tried to distance himself from the clearly illegal Ordinance and instead rely on O.C.G.A. § 16-11-130.2(a), which provides, in pertinent part:

- (a) No person shall enter the restricted access area of a commercial service airport, in or beyond the airport security screening checkpoint, knowingly possessing or knowingly having under his or her control a weapon or long gun.

Because what constitutes a “commercial service airport” under O.C.G.A. § 16-11-130.2 is an issue of first impression, and because this statute impacts an enumerated, fundamental federal constitutional right, the Court of Appeals erred

when it ruled that an opinion would have no precedential value. The statute in question contains no definition of what constitutes a “commercial service airport” for the purposes of excluding the lawful carrying of firearms, and no case in this state has yet dealt with such an issue.

Respondents take up an interesting position in regard to the definition of a commercial service airport: one that sells things. Excluding private and military airports, Georgia has approximately 119 airports, ranging in size from single runway fixed-base operations to the busiest international airport in the world, Hartsfield Jackson Atlanta International Airport. According to Respondents, engaging in commercial services such as selling fuel makes an airport a commercial service airport; thus, an unpaved grass runway next to a hanger is a commercial service airport if it should happen to have a functioning Coca-Cola vending machine inside. Brief of Appellees in the Court of Appeals at 14. Indeed, by such a definition every single airport in the state is likely a commercial service airport. If so, the legislature need not have bothered to include the words “commercial service” and instead could have left at “airport” with no qualification. Respondents rely upon *Apollo Travel Services v. Gwinnett Cnty. Bd. of Tax Assessors*, 230 Ga. App. 790, 791-92 (1998) for the supposition that, absent a definition, the literal meaning of terms apply.

Caldwell and the County fail to acknowledge the longstanding “golden rule” of statutory construction: “Follow the literal language of the statute unless doing so “produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else.” *GCO v. Coweta County*, 288 Ga. App. 748 (2007). It is absurd to believe the legislature intended for the defining factor of a commercial service airport be the mere sale of goods.

Airports are, of course, heavily regulated by the federal government. It stands to reason that terms the federal government uses to define different types of airports would be used by state and local governments as well. Fortunately, the United States Code defines a “commercial service airport,” providing a much more specific and useful definition. 49 U.S.C. § 47102(7) provides that: “‘commercial service airport’ means a public airport in a State that the Secretary of Transportation determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service. The Floyd County Airport has no scheduled passenger aircraft service. Tr. 27.

Even if it were a commercial service airport, the Floyd County Airport operates no security checkpoints; therefore, a person with a GWL may legally carry anywhere at the airport, because there is no restricted area. Tr. 27. Clearly, the legislature contemplated that a security checkpoint would be one that screens passengers bound for aircraft. Caldwell and the County, believe, however, that

when a private event sets up a folding table and dispenses tickets, the statutory requirement for a security checkpoint has been fulfilled. (Brief of Appellees 14, 15).

The trial court also ruled, and the Court of Appeals agreed, that when the County leased the Floyd County Airport to WONG that WONG then had the right to exclude firearms from the property. Tr. 79. There are two problems with such a proposition: first, (and perhaps the simpler of the two) Caldwell on the Sheriff's Office Facebook page said that the WONG organizer was not banning weapons. R8, ¶ 19; Tr., Exh. P-1. Moreover, Caldwell said he was responsible for WONG security. *Id.* Such security was provided by the County at County expense. Tr., pp. 25, 27-28. WONG did not choose to exercise any rights regarding the exclusion of firearms; the Floyd County Sheriff's Department via Caldwell took sole responsibility for such a ban.

Second, O.C.G.A. 16-11-127(c) specifically disallows lessees of public property from excluding persons with GWLs in possession of firearms from public property. Prior to 2014, the trial court may have been correct; In 2014, however, the General Assembly passed House Bill 60, which became enrolled as Act 604. In pertinent part<sup>2</sup>:

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<sup>2</sup> Normal font language indicates then-current law that remained unchanged. Underlined font indicates insertions into then-current law, and strikethrough font indicates language that was deleted from then-current law.

(c) [A GWL] holder ... shall be authorized to carry a weapon as provided in Code Section 16-11-135 and in every location in this state [with exceptions not applicable to this case]; provided, however, that private property owners or persons in control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to ~~forbid~~ exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21...

Prior to Act 604, any private property owner or person in legal control of “property” through a lease could forbid weapons. The change in Act 604 restricted that power to lessees of “private” property only, to the exclusion of lessees in control of public property. The General Assembly specifically and deliberately took away the power of lessees of public property to exclude persons with GWLs in possession of firearms. Keeping in mind once again the golden rule of statutory construction, reading “private property” to include “public property” in O.C.G.A. 16-11-127(c) would invite absurdity and contradiction. Respondents, the trial court, and the Court of Appeals all failed to discuss why the General Assembly did not mean exactly what it says in O.C.G.A. 16-11-127(c).

### **Conclusion**

GCO and Haithcock request that this Court grant certiorari for this case to correct the clear error of the trial court and Court of Appeals and clarify the meaning of “commercial service airport” under O.C.G.A. 16-11-130.2 and the inability of lessees of public property to exclude persons lawfully carrying

firearms.

Dated this 25th day of July, 2016

/s/John R. Monroe

John R. Monroe

John Monroe Law, P.C.

Attorney for Plaintiffs

9640 Coleman Road

Roswell, GA 30075

678-362-7650

State Bar No. 516193

[jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)

## CERTIFICATE OF SERVICE

I certify that on July 25, 2016, I served a copy of the foregoing via U.S. Mail

upon:

Ronald R. Womack  
Womack, Gottlieb & Rodham, P.C.  
PO Box 549  
LaFayette, GA 30728

/s/John R. Monroe  
John R. Monroe  
John Monroe Law, P.C.  
Attorney for Plaintiffs  
9640 Coleman Road  
Roswell, GA 30075  
678-362-7650  
State Bar No. 516193  
[jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)

**SECOND DIVISION  
BARNES, P. J.,  
BOGGS and RICKMAN, JJ.**

**NOTICE: Motions for reconsideration must be  
*physically received* in our clerk's office within ten  
days of the date of decision to be deemed timely filed.  
<http://www.gaappeals.us/rules>**

**July 5, 2016**

**NOT TO BE OFFICIALLY  
REPORTED**

**In the Court of Appeals of Georgia**

A16A0077. GEORGIACARRY.ORG, INC. et al. v. CALDWELL. RI-003

RICKMAN, Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears, and an opinion would have no  
precedential value; and

(3) The judgment of the court below adequately explains the decision.

The judgment of the court below therefore is affirmed in accordance with Court  
of Appeals Rule 36.

*Judgment affirmed. Barnes, P. J., and Boggs, J., concur.*