IN THE COURT OF APPEALS OF GEORGIA

GEORGIACARRY.ORG, INC.,et.al., Appellants,	)	
v.	)	Case No. A16A0077
TOM CALDWELL, *et.al.*,	)	
Appellees	)	

Reply Brief of Appellants

Appellants GeorgiaCarry.Org, Inc. and Dan Haithcock state the following as their Reply Brief.

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Statutes

Response to Appellees' Statement of Facts

Appellees Caldwell and Floyd County (the "County")[1] state as an additional fact that GCO and Haithcock did not immediately appeal the trial court's denial of their motion for an interlocutory injunction. Instead, they appealed that denial as a part of this appeal of the entire case. While that is a true statement, the County does not appear to rely on that fact for any argument nor explain why it is significant. It is of course true that GCO and Haithcock had no obligation to do an interlocutory appeal.

The County next asserts affirmatively that GCO and Haithcock did not conduct any discovery. The County did not cite to the record for this fact, nor is there anything in the record indicating whether discovery was conducted or whether any discovery requests were made, or whether any discovery was even needed. Indeed, a fundamental aspect of this appeal is that the trial court dismissed the case prematurely, before the parties had even filed dispositive motions. It remains to be seen what facts GCO and Haithcock could have established in a

[1] Tom Caldwell is an Appellee in his official and individual capacities. Where his status is irrelevant, he is included in the designation the "County." Where his individual status is significant he will be referred to separately as "Caldwell."

summary judgment motion or at trial. The only facts available to this Court are the facts alleged in the Verified Complaint.

Finally, the County asserts that GCO and Haithcock did not amend their complaint after the 2014 WONG Air Show. Again, this is a true statement about the proceedings below, but it is not significant. The County is vexed that GCO and Haithcock did not amend the complaint to state any facts that happened at the Air Show. The County overlooks the fact that at this stage of the proceedings, reasonable inferences must be drawn in GCO's and Haithcock's favor. If the trial court had not prematurely ended the case, the County might have been able to put facts about the Air Show into the record. But the County cannot use the early demise of the case to draw negative inferences of facts in its favor.

Argument and Citations of Authority

Summary of Argument

GCO and Haithcock raised several issues in the Verified Complaint, including damages. Regardless of the outcome of any other issues, damages is a retrospective remedy and cannot be rendered moot by the happening of a subsequent event. It was therefore error for the trial court to dismiss that claim. The claims for prospective relief are capable of repetition, yet evading review, and

therefore are not moot, either. The trial court incorrectly applied statutes regarding carrying firearms, and, finally, the trial court abused its discretion in denying the motion for an interlocutory injunction.

1.A. – GCO Has Standing

The County argues that GCO does not have standing in this appeal because it did not appeal the trial court's denial of an interlocutory injunction to it on grounds of lack of standing. GCO disputes the premise. GCO clearly stated in its Opening Brief that it had made the requisite showing for standing, by saying in its Verified Complaint that it had other members that intended to attend the Air Show. R8 (Verified Complaint), ¶ 13. Opening Brief, pp. 4-5. The County is hung up on the fact that GCO did not present evidence at the hearing for interlocutory injunction on the plans of its other members. The County fails, however, to cite to any authority that GCO was required to present any evidence beyond what was contained in the Verified Complaint.

Even if this Court determines that GCO did not appeal the issue, however, the County reads way too much into the trial court's order (which perhaps explains why the County failed to cite the portion of the trial court's order regarding standing). What the trial court said in its order is, "The Court concludes that

Plaintiff GCO does not have standing ***to seek an interlocutory injunction in this case.***" R77 [emphasis supplied]. The trial court never ruled that GCO did not have standing in this case generally, only that it had no standing to seek an interlocutory injunction. The implication is that GCO had standing to seek all other relief.

1.B. Sovereign Immunity Has Been Waived

The County next argues that sovereign immunity has not been waived by O.C.G.A. § 16-11-173. As an initial matter, GCO and Haithcock observe that the trial court did not rule on the issue of damages or sovereign immunity, but instead dismissed the case without considering this issue. That is the gist of GCO's and Haithcock's complaint – that the case must be remanded to give the trial court an opportunity to rule on this issue in the first instance. It is inappropriate for this Court to consider the issue on the merits when the trial court declined to do so. It is sufficient that GCO and Haithcock appropriately pleaded the issue in the Verified Complaint.

If this Court nonetheless decides to reach the merits of the issue, it is clear that O.C.G.A. § 16-11-173(b)(1) has the effect of waiving sovereign immunity. On its face, the statute applies to governmental entities. ("[N]o county or

municipal corporation … nor any agency, board, department, commission, political subdivision, school district, or authority of this state … shall regulate ….").

O.C.G.A. § 16-11-173(g) then authorizes damages actions by aggrieved persons "against the person who caused such aggrievement" for violations of the proscription against regulation. The County concedes that "person" can be used to describe an individual or an entity, but argues that the possibility that it could be an individual means the statute may not constitute a waiver sovereign immunity.

The County obviously has lost sight of the antecedent that it must be a governmental entity that attempts a regulation in the first place. It is patently obvious that a non-governmental entity cannot cause the aggrievement, because only governmental entities can be guilty of violating the proscription against regulating weapons. The County does not attempt to suggest how it might be that the statute applies to an individual.

The County next argues that GCO and Haithcock have not suffered any cognizable injury, on the basis of "the absence of any evidence of enforcement [of the ordinance]." Once again, the County forgets that this case never progressed to the "evidence" phase. Neither party presented the trial court with a dispositive motion, and the case did not proceed to trial. Neither GCO nor Haithcock ever had

the opportunity, let alone the burden, to prove their case. The only evidentiary burden they have had so far is in their motion for an interlocutory injunction. The trial court denied their motion, so the case proceeded until it was prematurely stopped by the trial court.

GCO and Haithcock alleged in their Verified Complaint that they had weapons carry licenses, that they intended to attend the Air Show, that they desired to carry weapons when they did so, that the County told them they could not do so, and that the County cited their ordinance as grounds therefore, that the ordinance would be enforced, and that they were in fear of arrest and prosecution. At this stage of the proceedings, all these allegations must be taken to be true.

Thus, GCO and Haithcock alleged sufficient facts to demonstrate an injury. Moreover, the general assembly has created a statutory injury. Anyone aggrieved by a violation of § 16-11-173 is entitled to statutory damages of $100 or actual damages, whichever is greater. The entitlement to minimum damages of $100 makes it unnecessary to prove any actual damages.

The County repeatedly refers to the ordinance's "mere presence on the books," as though the ordinance were some relic of days gone by, with no chance of enforcement. The County could have renounced its ordinance at any time, but it

failed to do. The County specifically referenced the ordinance as justification for banning guns at the Air Show, and threatened to enforce it against anyone who brought a gun. The ordinance is not "merely present on the books."

The county also claims sovereign immunity against declaratory and injunctive relief. As with the damages claim, the trial court did not rule on sovereign immunity for declaratory and injunctive relief. This Court should not rule on the issue in the first instance, but should remand the case for the trial court to consider it.

If, however, this Court takes up the issue, the issue is once against controlled by § 16-11-173. In addition to damages, § 16-11-173(g) authorizes "equitable relief, including … an injunction" as well as "any other relief which the court deems proper." It is clear from this wording that the legislature has waived sovereign immunity for ***all remedies.*** Injunctions are explicitly included, but other remedies are not excluded. As a catchall, the statute includes "any other relief." Based on this broad wording, it is not possible to conclude that any remedies were taken off the table. The general assembly intended for sovereign immunity to be completely waived for violations of this statute.

1.C. The Case is Not Moot

The County next argues that the issue in this case is not one that is capable of repetition yet evading review. As grounds for this argument, the County claims GCO and Haithcock should have sought a supersedeas. The problem with this argument is that a supersedeas is supposed to maintain the status quo. The County concedes this point in its Brief, p. 13. The status quo between the parties was that the County was enforcing its ordinance and banning firearms at the Air Show. A supersedeas would not have accomplished anything.

The County insists that GCO and Haithcock should have appealed the denial of their motion for an interlocutory injunction, but they were not required to do so. They would not have been able, for example, to appeal the denial of damages or the denial of declaratory relief, as they are able to do so in this appeal. There is no case law indicating that a party is required to exercise a right to interlocutory appeal in order to preserve his appeal.

The County also argues that the issues are not capable of repetition yet evading review because there was a year available for appeal, and the appeal would have been decided in that time. The status of the appeal belies that argument. First, there was not a year, because the trial court did not dismiss the case until

April 13, 2015, less than six months ago from the writing of this Reply Brief. Second, this appeal is still pending, so it is plainly incorrect to say the appeal would be decided before the next Air Show comes along.

Lastly, the County complains that the record does not indicate any plans of GCO or Haithcock regarding the 2015 Air Show. Again, however, GCO and Haithcock have yet to produce evidence except in support of their motion for interlocutory injunction. They have not had to because the case has not yet gone to trial and neither party has filed a dispositive motion. Moreover, an issue only has to be ***capable*** of repetition yet evading review to constitute an exception to the mootness doctrine. The County has filed to demonstrate how the issue in this case is not ***capable*** of repetition.

1.D. O.C.G.A. § 16-11-130.2 Does Not Apply

The County argues that O.C.G.A. § 16-11-130.2 bans carrying guns at the Air Show. According to the County, that statute, when referring to "commercial service airports," means any airport that sells anything, including airplane fuel. Aside from the obvious issue that nearly every airport (as opposed to a landing strip) sells airplane fuel, there are other problems with the County's interpretation.

First, O.C.G.A. § 16-11-130.2 only applies where there is "the airport security screening checkpoint" and "federally required transportation security screening procedures." O.C.G.A. § 16-11-130.2(a) and (b). The Floyd County Airport does not have such a checkpoint. TR, pp. 26-27. Moreover, the person in charge of the Floyd County Airport testified that he is not aware of any state laws that prohibit carrying firearms at the Floyd County Airport. TR, p. 26 (Question: "Other than the county ordinance is there any state or federal restriction [against carrying firearms at the airport], to your knowledge? Answer: "No."). In fact, the airport manager said he sometimes grants permission to pilots to carry firearms at the airport. *Id.* The County fails to explain how it is that its airport manager has the authority to grant permission to people to do something that is, in the County's estimation, a violation of the state criminal laws.

Clearly, the legislature did not have Floyd County Airport in mind when it passed O.C.G.A. § 16-11-130.2. A more logical reading would be to apply the federal statute that actually defines "commercial service airport," 49 U.S.C. § 47102(7).

Even if this Court were to conclude that O.C.G.A. § 16-11-130.2 applies to Floyd County Airport, that does not alter the fact that the County has an ordinance

that it enforces and that is preempted by O.C.G.A. § 16-11-173. GCO and Haithcock are aggrieved by that illegal ordinance and they are entitled to relief under the preemption statute.

Finally, the County calls "irrational" GCO's and Haithcock's "interpretation" of the definitions of "long gun" and "weapon" contained in the Code. The County refuses to accept that the General Assembly intended to include some weapons and exclude others (*see* O.C.G.A. § 16-11-125.1, defining various terms used in the relevant statutes, including O.C.G.A. § 16-11-130.1). The County fails to supply any alternative plausible definitions, nor can it. The definitions are plain in that they exclude certain firearms based on characteristics such as barrel length and caliber. The legislature made the policy choices, and those choices are clear. It is not for this Court to ignore those choices just because the County does not like them.

CONCLUSION

For the foregoing reasons, this Court should reverse the dismissal of the complaint and denial of the interlocutory injunction and remand this case for further proceedings.

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CERTIFICATE OF SERVICE

I certify that on September 30, 2015, I served a copy of the foregoing via U.S. Mail upon:

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