In the Court of Appeals of Georgia

GEORGIACARRY.ORG, INC.,
et. al.,
Appellants

v.

CITY OF ROSWELL,
et. al.,
Appellees

No. A09A0307

On Direct Appeal of an Order of the Superior Court of Fulton County, Georgia

Reply Brief of Appellants

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October 16, 2008

Background

Appellees Roswell, Sandy Springs, and Atlanta all had ordinances banning the carrying of firearms in their city parks. Because such ordinances are unconstitutional and preempted by state law, Appellants contacted each Appellee and requested a repeal of the ordinances. When Appellees refused, Appellants commenced this action in the Superior Court of Fulton County for declaratory and injunctive relief.

During the pendency of the action, Roswell and Sandy Springs amended their ordinances. The amendments repealed the provisions banning carrying firearms in parks and created provisions banning carrying firearms to public gatherings. Roswell and Sandy Springs then moved for summary judgment on the grounds that Appellants' claims were mooted by the changed ordinances. Atlanta did not change its ordinance.

Appellants filed motions for summary judgment against all three Appelleets on Appellants' state law claims (Appellants also brought federal civil rights claims against Appellees). The trial court granted Roswell's and Sandy Springs' motions for summary judgment and denied Appellants' motions against those two cities. The trial court granted Appellants' motion for summary judgment against Atlanta,

but made its order a final order pursuant to O.C.G.A. § 9-11-54(b). Appellants appeal the trial court's grant of Roswell's and Sandy Springs' motions (and the denial of Appellants' motions against those cities) and the trial court's making the judgment against Atlanta a final judgment.

I. The Atlanta Judgment Did Not Address All Relief Requested by Appellants

Atlanta opposes this appeal solely on the grounds that it believes (mistakenly) that the trial court made its judgment final only on the claims that were the subject of Appellants' motion for summary judgment. Assuming *arguendo* that this was the trial court's intention (even though nothing in the order gives that indication), it still was error for the trial court to have done so. In its amended complaint, Appellants requested 1) a declaration that Atlanta's ordinance is unconstitutional, void, and *ultra vires;* 2) a declaration that it is illegal for Atlanta to spend any funds enforcing its ordinance; 3) an injunction prohibiting Atlanta from enforcing its ordinance; 4) an injunction prohibiting Atlanta from spending any public funds enforcing its ordinance; and 5) an injunction requiring Atlanta to remove any signs in its parks that cite a prohibition of carrying firearms (Appellants requested other relief, but the foregoing is the relief requested that relates to Appellants' motion for

summary judgment). Appellants also file a motion for an interlocutory injunction to prevent Atlanta from enforcing the ordinance while the case was pending.

The only relief granted to Appellants in the Order at issue in this appeal was Appellants' motion for an interlocutory injunction. Tr., p. 58. At the hearing on all parties' motions for summary judgment, when the trial court announced its decision, Appellants' counsel then requested that Appellants' motion for an interlocutory injunction against Atlanta be granted. Tr., p. 56. Atlanta's counsel expressed concern about having to modify signs (apparently referring to the releief requested in the Amended Complaint). Tr., p. 57. Appellant's counsel reiterated that Appellants were "trying to enjoin enforcement of the ordinance essentially granting the interlocutory injunction. It's entirely appropriate that at the end of the case an injunction would be issued to change the signage, but we're not asking for that today." Tr., p. 58. The trial court agreed to Appellants' request. *Id.*

When the trial court signed the Order, however, it added a handwritten note that the Order was a final order. If, as Atlanta now suggests, the notation only made the Order final for the claims in Appellants' motion for summary judgment, then the trial court still extinguished, without notice to Appellants, Appellants' ability to request the additional declaratory and injunctive relief described above.

Appellants have not received any declaratory relief and only received a portion of the injunctive relief requested in the Amended Complaint. Contrary to Atlanta's assertion, Appellants had to bring this appeal now in order to preserve this issue. If Appellants had waited until the case was completed (under Atlanta's theory), Atlanta could have argued that the case already had been finalized for Appellants' summary judgment claims and no further relief was available. Thus, even under Atlanta's view, this appeal was necessary and proper.

II. Sandy Springs' Revised Ordinance Is Preempted by State Law

It is undisputed that Sandy Springs' counsel advised Sandy Springs to "make it unlawful" to carry a firearm to a public gathering. R. 386-387. Sandy Springs then enacted the ordinance, drafted by the same counsel, to implement this advice. During oral argument, Sandy Springs' same counsel admitted to the trial court that the ordinance was capable of being violated (as opposed to being merely advisory, as Sandy Springs now claims). Tr., p. 30.

Belatedly jumping on the "advisory ordinance" bandwagon (seeing how well Roswell has done with it), Sandy Springs claims in its Brief that focusing on its counsel's admissions during oral argument is an attempt to "confuse the issue." In an attempt to distance itself from its counsel's admissions *in judicio*, Sandy

Springs claims such admissions are "not evidence." Admissions made by a party's counsel in open court are binding on the party. *Cramer v. Truitt*, 113 Ga. 967, 969 (1901).

It is difficult to imagine how our system of justice could function under a different result. If a party were free to let its counsel float trial balloons to see how well they play, and then adopt the good ones and reject the bad ones, our courts would be reduced to rendering a series of advisory opinions until a party received one it liked.

The fact of the matter is that Sandy Springs adopted the very language its counsel said would have the effect of "making it unlawful" to carry a firearm to a public gathering. It's self-serving statements after the fact as to the meaning of the revised ordinance have no evidentiary value.

III. Roswell's Revised Ordinance Also is Preempted

Roswell makes essentially the same argument it made in the trial court: The case is moot because Roswell amended its ordinance. This would be a viable argument if Roswell had ***repealed*** its ordinance, as was done in every case Roswell cites to support its position. The problem with Roswell's position, however, is that Roswell did not repeal its ordinance. Roswell ***amended*** its ordinance with new

language that also is preempted. As noted in Appellants' initial Brief, the two cities' language is essentially the same.

Roswell also fails to address, when discussing its revised language, that the new language still appears in an ordinance that begins with the phrase, "The following activities are prohibited in all City of Roswell public parks including the Roswell Trail System: …" The ordinance then contains a laundry list of prohibited activities, one of which is the prohibition against carrying a firearm to a public gathering. No distinction is made among any of the activities (e.g., some being activities for which violations can be prosecuted and some not). The inescapable conclusion is that all activities, including carrying a firearm to a public gathering, can be prosecuted as ordinance violations.

Roswell attempts to justify its odd inclusion in a parks ordinance language pertaining to public gatherings because, Roswell claims (incorrectly), baseball, softball, and football fields (and adjacent spectator stands) are "public gathering ***place[s].***" Roswell misunderstands O.C.G.A. § 16-11-127 and its attendant jurisprudence. O.C.G.A. § 16-11-127 includes "athletic events" in the definition of public gatherings. The athletic fields and spectator stands in Roswell's parks are not, categorically, "public gatherings." They only are public gatherings when an

"athletic ***event***" is taking place. They are just part of a city park at all other times. This Court has determined previously that the emphasis is on the "gathering" and not the "place," belying Roswell's use of the phrase "public gathering ***place***." *State v. Burns,* 200 Ga. App. 16, 17 (1991) ("[T]he focus is not on the "place" but on the "gathering" of people…. [T]he court did not err in dismissing the accusation because appellee's possession of a weapon and mere presence in a public place did not constitute a violation of O.C.G.A. § 16-11-127.")

Roswell's justification is spurious. To break it down, Roswell's claim is that it includes, in a list of activities prohibited in parks, a "notice" that Roswell enforces the state public gathering law because there are athletic events in parks and athletic events are public gatherings. No where in its Code of Ordinances does Roswell purport to put anyone on notice that it enforces the public gathering law in any other place in the City (churches, publicly owned an operated buildings, restaurants that sell alcohol, etc.). It is difficult to take Roswell's claim seriously when Roswell so blatantly is attempting to continue to regulate the carrying of firearms in its parks, despite the fact that Roswell is preempted from regulating the carrying of firearms "in any manner."

Conclusion

The trial court incorrectly precluded Appellants from receiving (or even arguing for) the remaining remedies they seek against the City of Atlanta. The trial court also incorrectly, and against the great weight of the evidence (including the admission *sub judicio* of Sandy Springs' counsel), concluded that Sandy Springs' revised ordinance was not a "violation" ordinance. Finally, the trial court incorrectly concluded that Roswell's nearly identical ordinance was not a "violation" ordinance. For these reasons, the judgment against Atlanta must be reversed to the extent it was made a final judgment and the judgments in favor of Roswell and Sandy Springs must be reversed.

Dated October 16, 2008

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Certificate of Service

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