
IMMUNITY . - GEORGIA

Gatto v. City of Statesboro

Court of Appeals of Georgia - October 21, 2019 - S.E.2d - 2019 WL 5304500

Parents, as personal representatives of the estate of their son, filed a negligence and wrongful death complaint against city and city clerk after son died following an altercation with a bouncer at a bar.

City's insurer filed a motion to intervene. The trial court granted city and city clerk summary judgment, and denied insurer's motion to intervene. Parents and insurer appealed.

The Court of Appeals held that:

- The doctrine of sovereign immunity applied to nuisance claim filed by parents;
- City's purchase of liability insurance did not waive defense of sovereign immunity; and
- The trial court erred in sua sponte granting summary judgment to city clerk on the ground of sovereign immunity.

The doctrine of sovereign immunity applied to nuisance claim filed by parents, as personal representative of the estate of son, who died following an altercation with a bouncer at bar, against city and city clerk, in action alleging city created a nuisance by renewing business and alcohol licenses of bars despite knowledge of repeated criminal activity at bars; there was no "nuisance exception" to sovereign immunity.

City's purchase of liability insurance did not waive defense of sovereign immunity, in negligence and wrongful death lawsuit filed by parents after son died following an altercation with bouncer at bar; the liability insurance policy expressly declined to cover occurrences when sovereign immunity applied, and the actions challenged in lawsuit involved a governmental function to which sovereign immunity applied.

The trial court erred in sua sponte granting summary judgment to city clerk on the ground of sovereign immunity, in negligence and wrongful death lawsuit filed by parents after son died following an altercation with bouncer at bar; city clerk never moved for summary judgment on the ground of sovereign immunity, and thus parents were not given adequate notice and an opportunity to be heard on the issue of whether sovereign immunity applied to parents' claims against city clerk.

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