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Johnson v. 3M Company

United States Court of Appeals, Eleventh Circuit - December 21, 2022 - F.4th - 2022 WL 17828942

Water subscriber brought putative class action against operator of municipal wastewater treatment system and other defendants, asserting claims including nuisance abatement arising from operator allegedly allowing city's domestic water supply to be contaminated with dangerously high levels of toxic chemicals used by local carpet manufacturers.

After removal, the United States District Court for the Northern District of Georgia denied operator's motion to dismiss based on municipal immunity. Operator appealed, and subscriber moved to dismiss appeal.

The Court of Appeals held that:

- As a matter of apparent first impression, under Georgia law, municipal immunity is immunity from suit rather than just a defense to liability;
- Issue of operator's asserted Georgia municipal immunity was separate from merits of subscriber's nuisance abatement claim, supporting finding that denial of motion to dismiss was immediately appealable pursuant to collateral-order doctrine; and
- Under Georgia law, scope of municipal liability for nuisance claims includes personal injuries beyond those tied to the plaintiff's property.

Issue of wastewater-treatment system operator's asserted Georgia municipal immunity was separate from merits of local water subscriber's nuisance abatement claim, supporting finding that denial of operator's motion to dismiss based on such immunity was immediately appealable pursuant to collateral-order doctrine, even if court was required to consider subscriber's factual allegations in resolving the immunity issue, in action arising from alleged contamination of city's domestic water supply with dangerously high levels of toxic chemicals by local carpet manufacturers.

Water subscriber's filing of fourth amended complaint did not divest Court of Appeals of jurisdiction over wastewater-treatment system operator's appeal from district court's denial of operator's motion to dismiss third amended complaint on grounds of Georgia municipal immunity, in subscriber's claim for nuisance abatement arising from alleged contamination of city's water supply, where fourth amended complaint did not change the nuisance abatement allegations on which operator's municipal immunity defense was based.

Under Georgia law, voter-approved amendment of state constitution to constitutionalize common-law doctrine of sovereign immunity, which authorized General Assembly to establish a state court of claims with jurisdiction to try and dispose of cases involving claims for injury or damage against state, preserved the scope of sovereign immunity as it existed at common law and rendered it unmodifiable by the courts.

Under Georgia law, the purported "nuisance exception" to sovereign immunity is not an exception at

all but instead a doctrine that is used to evaluate whether municipal liability may be imposed in a given case.

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