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MUNICIPAL ORDINANCE - GEORGIA

Bailey v. McIntosh County

Supreme Court of Georgia - September 30, 2025 - S.E.2d - 2025 WL 2790676

County brought action against probate court judge for declaratory judgment and writ of prohibition to stop referendum on repeal of zoning which purportedly increased allowable maximum dwelling size in historic district on Sapelo Island.

The Superior Court concluded that county's exercise of its zoning powers was not subject to referendum process, granted county's petition, and issued writ of prohibition against probate judge, but also enjoined enforcement of ordinance pending appeal. County residents and probate judge appealed, and county appealed injunction.

The Supreme Court held that:

- Absence of ordinance in appellate record did not preclude Supreme Court from considering legal question of whether ordinance was subject to referendum procedures in Home Rule Provision of state constitution;
- Ordinance was subject to referendum under Home Rule Provision;
- Probate judge had authority under Home Rule Provision to consider referendum petition and set special election for referendum; and
- Supreme Court could not take judicial notice of ordinance and its predecessor not in appellate record and thus could not consider county's arguments for reversal of injunction.

Home Rule Provision, not the Zoning Provision, of state constitution provided express grant of legislative power enabling county to exercise its zoning power by ordinance, and, thus, county ordinance which purportedly increased allowable maximum dwelling size in historic district on Sapelo Island was subject to referendum under Home Rule Provision; Home Rule Provision did not prohibit county from exercising zoning power, and treating zoning ordinance as subject to Home Rule power did not diminish extent of zoning power granted to counties under the Zoning Provision or render that provision mere surplusage since power granted by Home Rule Provision encompassed more than enacting zoning ordinances, and power granted by Zoning Provision was broader than merely power to enact zoning ordinances.