IN THE SUPREME COURT STATE OF GEORGIA

GEORGIACARRY.ORG, INC.,
JAMES CHRENCIK
MICHAEL NYDEN
And
JEFFREY HUONG,
Appellants

v.

CITY OF ATLANTA
CITY OF ROSWELL
And
CITY OF SANDY SPRINGS
Appellees

No. S08A1911

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

Brief of Appellee City of Atlanta, Georgia

Dennis M. Young
Georgia Bar No. 781744
Thomas Mondelli
Georgia Bar No. 141543
Attorneys for Appellees
City of Atlanta
68 Mitchell Street
Suite 4100
Atlanta, GA 30303
September 4, 2008

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., JAMES CHRENCIK, MICHAEL NYDEN, and JEFFREY HUONG,	)	
APPELLANTS,	)	**CASE NO. S08A1911**
v.	)	
CITY OF ATLANTA, GEORGIA, CITY OF ROSWELL, GEORGIA, and CITY OF SANDY SPRINGS, GEORGIA,	)	
APPELLEES	)	

STATEMENT OF JURISDICTION

The City of Atlanta asserts that the Court of Appeals has jurisdiction of this appeal. Appellants' contend that this Court has jurisdiction as this is "a case in equity and...involves questions of the constitutionality of statutes and ordinances." (Appellants' Brief, p. 1). However, Appellants' actually are appealing the grant and denial of summary judgment to parties by the Superior Court of Fulton County. Therefore, the appeal is one of law, not equity. *Vactas Group, Inc. v. Homeside Lending, Inc.*, 281 Ga. 50 (2006). Furthermore, the trial court's rulings on summary judgment do not address

any constitutional issues. As such, jurisdiction is proper with the Georgia Court of Appeals and not the Georgia Supreme Court.

PROCEDURAL SUMMARY

Appellants filed suit on August 16, 2007 in the Superior Court of Fulton County. All defendants answered the lawsuit. Appellants filed a motion for summary judgment against the City of Atlanta, the City of Roswell, and the City of Sandy Springs. Roswell and Sandy Springs also filed cross-motions for summary judgment against Appellants. The trial court heard argument on all motions on May 9, 2008. At that time, the trial court granted Appellants' motion against the City of Atlanta and denied Appeallants' motion against Roswell and Sandy Springs as moot. The trial court granted Roswell and Sandy Springs' cross-motions for summary judgment.

In the trial court's order granting summary judgment against the City of Atlanta, the court handwrote that the order was to be considered a final order pursuant to O.C.G.A. 9-11-54(b). Appellants filed their notice of appeal on May 19, 2008.

FACTUAL SUMMARY

Appellants are a gun advocacy group and its constituent members. Appellants filed suit against Fulton County, Georgia, the City of Atlanta, the

City of East Point, the City of Milton, the City of Roswell, the City of Sandy Springs, and the City of Union City alleging that each municipalities ordinances restricting the carrying of firearms in municipal parks was *ultra vires* and preempted by the State of Georgia Constitution. Over time, individual municipalities changed or withdrew the pertinent ordinances, until only the Cities of Atlanta, Roswell, and Sandy Springs remained. Roswell and Sandy Springs amended their ordinances to conform to state statutes and argued that Appellants' lawsuit was moot. The City of Atlanta did not change its ordinances, and summary judgment was entered in favor of Appellants.

ARGUMENT AND CITATION OF AUTHORITY

I. STANDARD OF REVIEW

Appellants' only contention involving the City of Atlanta is that the trial court erred in entering the order granting summary judgment as a final order pursuant to O.C.G.A. § 9-11-54(b). Appellants' argument revolves around a handwritten addition to the order, written by the Court designating the order as a "final order." Appellants are not contesting the legal basis for summary judgment, but the trial court's handwritten addition to the order. The handwritten order constitutes a finding of fact by the trial court.

Therefore, the proper standard of review is the clearly erroneous standard. *City of McDonough v. Tusk Partners*, 268 Ga. 693, 696 (1997).

II. THE TRIAL COURT'S ORDER DID NOT PREVENT APPELLANTS FROM LITIGATING THEIR REMAINING CLAIMS

The City of Atlanta agrees that Appellants' remaining claims should be litigated in the Superior Court of Fulton County. The City of Atlanta however maintains that the trial court itself did not err in designating its previous Order as a Final Order. O.C.G.A. § 9-11-54(b) permits the courts to "direct the entry of a final judgment as to one or more **but fewer than all the claims or parties**" in multi-party or multiple claim suits. (Emphasis added). The trial court's May 19, 2008 Order explicitly states that it grants summary judgment to Appellants against the City of Atlanta and enjoins enforcement of City of Atlanta Ordinance § 110-66. The Order makes no mention of Appellants' 14th claims, or any other cause of action. Therefore, the trial court's handwritten notation, designating the Order as a Final Order pertains only to the claims raised in Appellants' motion for summary judgment.

Appellants' contention that the trial court's Final Order was improper is simply not supported by a plain reading of the pleadings in this case. Appellants' motion for summary judgment did not raise their 14th

amendment claims; therefore the Order did not address them. The trial court properly exercised its discretion is designating its Order as a Final Order for the limited issues heard on summary judgment. "When a judgment is susceptible of two meanings, one of which would render it legal and the other illegal, the court should give it that construction, if reasonably possible, which would render it legal." *Adams v. Gwinnett Commercial Bank*, 140 Ga. App. 233, 233-34 (1976) (citing *Byrd v. Goodman*, 195 Ga. 621 (1943)). The City of Atlanta maintains that the trial court's Final Order was not improper and that Appellants' remaining claims await adjudication. The only delay in engaging in discovery and litigation has been Appellants' appeal of this matter. Therefore, the trial court entering a Final Order in this case was not clearly erroneous.

CONCLUSION

For the foregoing reasons, Appellees request this case be remanded to the Superior Court of Fulton County without any finding of error on the part of the trial court.

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., JAMES CHRENCIK, MICHAEL NYDEN, and JEFFREY HUONG,	)	
APPELLANTS,	)	**CASE NO. S08A1911**
v.	)	
CITY OF ATLANTA, GEORGIA, CITY OF ROSWELL, GEORGIA, and CITY OF SANDY SPRINGS, GEORGIA,	)	
APPELLEES	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **BRIEF OF APPELLEE CITY OF ATLANTA, GEORGIA** has been served upon counsel for Appellants and counsel for the co-Appellees by mailing a copy of said Brief, postage prepaid, by United States Mail, addressed as follows:

John R. Monroe, Esq.
9640 Coleman Road
Roswell, Georgia 30075

Wendell K. Willard, Esq.
City Attorney for Sandy Springs
Two Ravinia Drive, Suite 1630
Atlanta, Georgia 30346