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GOVERNMENT UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

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At Gardner, Willis, Sweat & Handelman, we offer a wide range of services including Banking; Bankruptcy; Business Law; Construction Law; Employment Law; Estate and Tax Planning; General Litigation and Appeals; Governmental Law; Real Estate; Trucking Litigation, Social Security Disability and Workers' Compensation.

Sherman Willis, our Managing Partner, is available to speak with you about your unique needs in these and other areas. Please call Sherman at 229-883-2441 for a consultation with him, or send an e-mail to him at: sherman.willis@gwsh-law.com

All inquiries are confidential.

SHERMAN v. DEVELOPMENT AUTHORITY OF FULTON COUNTY, et al.
Georgia Court of Appeals • Decided March 7, 2013

Intervention by a Citizen in a Revenue Bond Validation Proceeding

The State of Georgia petitioned the Superior Court of Fulton County for a judgment approving the issuance of taxable revenue bonds by the Fulton County Development Authority and validating the bonds. Sherman, a Fulton County resident, filed a document with the court titled "Notice of Becoming Party to Bond Validation Petition Proceeding" then filed objections to the validation petition. The Development Authority filed a motion to strike the documents filed by Sherman on the grounds that Sherman had not followed the proper procedure to become a party in the case. The Superior Court granted the motion and approved the bonds, prompting Sherman to appeal to the Court of Appeals.

O.C.G.A. §36-82-77(a) specifically allows a citizen to become a party in a bond validation proceeding but does not describe a procedure for doing so. O.C.G.A. §9-11-81 states that the Georgia Civil Practice Act applies to all special statutory proceedings, except those with specific rules that are in conflict with the act, and provides that a Motion to Intervene should be filed with the Court in order to request permission to be added as a party. Simply filing a notice with the Court is not enough to become a party. Because Sherman failed to properly intervene, his notice was dismissed by the Court, meaning he was never a party in the proceeding. For a private citizen to properly become a party in a bond validation proceeding, the citizen must ask the Court for permission to intervene by filing a motion.

GWINNETT COUNTY v. SARGENT, et al.
Georgia Court of Appeals • Decided March 12, 2013

Requirement of Affirmative Act to Increase Local Government Entity's Waiver of Sovereign Immunity Under Voluntary Adoption Exception to Waiver Statute

On March 12, 2013, the Court of Appeals of Georgia decided Gwinnett County v. Sargent, et al. Gwinnett County was sued by the estate of William Sargent after he was killed as a result of a collision between his vehicle and a Gwinnett County police cruiser that was driven negligently by the police officer. The issue on appeal was whether the trial court erred in ruling that by appropriating funds to an automobile liability fund and a risk management fund, Gwinnett County voluntarily adopted a higher waiver of sovereign immunity under O.C.G.A. §36-92-2.

O.C.G.A. §36-92-2 applies to all claims and causes of action arising out of events occurring on or after January 1, 2005 and establishes the maximum amount a local government entity can waive its sovereign immunity in certain situations. The applicable subsection states that "the sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived up to the following limits...$100,000.00 because of bodily injury or death of any one person in any one occurrence." O.C.G.A. §36-92-2(a)(1). The statute provides three (3) options for increasing the amount of a waiver of sovereign immunity, one being if the local government entity voluntarily adopts a higher waiver. The estate argued that by appropriating funds to an automobile liability fund and a risk management fund, Gwinnett County voluntarily adopted a higher waiver of sovereign immunity and was liable for the full amount of the jury verdict, which in this case was $2 million.

The Court of Appeals of Georgia disagreed, finding there was no voluntary adoption of a higher waiver by Gwinnett County. The Court reasoned that a voluntary adoption of a higher waiver requires an affirmative act by the local government entity expressing its intent to adopt a higher waiver, such as the adoption of a resolution or the passing of an ordinance to that effect. Implied waivers of sovereign immunity are not favored in Georgia and local government entities do not waive sovereign immunity in excess of the statute simply by directing money to accounts for the purpose of paying liability claims.

ANDERSON v. TATTNALL COUNTY
Georgia Court of Appeals • Decided November 28, 2012

Immunity from Liability for Providing Emergency Care

Lois Anderson was involved in an accident on January 16, 2010 when she lost control of her vehicle after hitting a tree that had fallen in the road. She initially called a friend and her son to help her, and, when her friend arrived, Anderson ran to the road to meet her. When her son and daughter-in-law arrived at the scene, Anderson told them she was not injured, just "shook up." However, she did complain of head and neck pain. Tattnall County emergency medical technicians ("EMTs") arrived at the scene to find Anderson waiting in her vehicle, which was in a ditch on the side of the road. Because of Anderson's complaints of head and neck pain and the possibility of spinal trauma, the EMTs immobilized Anderson and proceeded to transport her to the hospital. During transport, the ambulance was hit by another driver who failed to yield to the right of way and "Anderson slid forward off of the stretcher and hit her head, which caused her to sustain a large laceration to her scalp." Anderson v. Tattnall Co., 734 S.E.2d 843, 845 (2012). Another ambulance arrived at the scene of Anderson's second accident and took Anderson to the hospital where she was diagnosed with "a laceration on her head, fractured ribs, fractured vertebra, and a collapsed lung." Id. Anderson sued Tattnall County alleging negligence by the EMTs during her transport to the hospital. Tattnall County argued that it was immune from liability pursuant to O.C.G.A. §31-11-8(a), which provides as follows:

> Any person…who is licensed to furnish ambulance service and who in good faith renders **emergency care** to a person who is a victim of an accident or emergency shall not be liable for any civil damages to such victim as a result of any act or omission by such person in rendering such emergency care to such victim.

"Emergency care" has been defined by the Georgia Supreme Court as "the performance of necessary personal services during an unforeseen circumstance that calls for immediate action." Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 753, 251 S.E.2d 250 (1978). Anderson argued that the EMTs did not provide "emergency care" because "her vital signs were stable during transport, and …immediate care was not necessary." Anderson v. Tattnall Co., 734 S.E.2d at 846. The Court of Appeals disagreed with Anderson and found that Tattnall County was entitled to statutory immunity based on the undisputed evidence that the EMTs were providing emergency care to Anderson because of the symptoms she presented and the possibility of internal injuries that required immediate care.

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