



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

Please note: *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

Tuesday, February 9, 2016

10:00 A.M. Session

ROSEBURG FOREST PRODUCTS COMPANY ET AL. V. BARNES (S15G1808, S15G1811)

The appeal in this **Dooly County** case stems from a workers' compensation claim filed by Willie Barnes. The company that paid his benefits is appealing a ruling by the Georgia Court of Appeals, which concluded that a two-year statute of limitations and a one-year statute of limitations did not apply in Barnes' case and he was entitled to more benefits.

FACTS: In August 1993, Barnes was working at Georgia-Pacific Corporation's wood processing plant when his leg went through rotten flooring and he landed in an auger, causing an immediate amputation of his left leg below the knee. Georgia Pacific and its workers' compensation servicing agent, CCMSI, accepted Barnes' claim as "catastrophic" and began paying him "temporary total disability" income benefits. Barnes was fitted with a prosthetic leg, and he returned to work at Georgia-Pacific in January 1994, at which time his temporary benefits were replaced with permanent partial disability benefits. Barnes' last permanent disability payment was issued in May 1998 by which time the entire benefit had been paid. He not receive any workers' compensation benefits after that. In 2006, while Barnes was still working at the plant, Georgia-Pacific sold it to Roseburg Forest Products Co. In 2009, Roseburg laid off a number of employees, including Barnes. In 2012, Barnes filed with Georgia-Pacific a claim to

resume temporary total disability benefits. Using 1993 as the date of injury, Barnes claimed he had remained catastrophically injured since 1993 (though he had continued to work with limitations) and that, as a catastrophically injured worker, he was entitled to receive benefits beginning on the date he no longer had a job. He also requested that his legal expenses be paid. Roseburg Forest responded that the two-year statute of limitations under Georgia Code § 34-9-104 had expired. Under the law, not more than two years may have elapsed since the date of the last payment of income benefits. In November 2012, Barnes filed another claim asserting a different theory of recovery. In this one, he alleged an injury date of Sept. 11, 2009, when his job was terminated, as a “fictional new accident” under § 34-9-82. That statute states that the right to compensation shall be filed within one year after the injury. An administrative law judge denied Barnes’ claim as barred by the statute of limitations periods set out in both statutes. The Board of Workers’ Compensation adopted the administrative law judge’s ruling. Barnes then appealed to the superior court, and it too affirmed the Board’s decision. Barnes then appealed to the Georgia Court of Appeals, which reversed the superior court’s ruling, finding that the two-year limitations for seeking additional income benefits based on a change in condition does not apply to catastrophic claims. The appellate court also ruled that Barnes met the one-year statute of limitations under § 34-9-82, which states that if “remedial treatment” for the injury has been provided by the employer, “the claim may be filed within one year after the date of the last remedial treatment furnished by the employer.” The Court of Appeals ruled that Barnes had met the time requirement because he filed his notice of claim within one year of the December 2011 replacement of his prosthetic leg. Roseburg Forest Products Co. now appeals to the state Supreme Court.

ARGUMENTS

(S15G1808): “The Court of Appeals unquestionably erred in finding that the two-year statute of limitations in § 34-9-104 (b) does not apply to catastrophic cases,” the company’s attorneys argue in briefs. They argue the Supreme Court should reverse the ruling.

Barnes’ attorney argues that the Court of Appeals ruling should be upheld, “as a catastrophically-injured worker, who has returned to suitable light-duty for more than two years, is entitled to reinstatement of indemnity benefits in those instances where the employer is no longer willing or able to accommodate the significant limitations associated with that catastrophic injury. Such a ruling is consistent with the 1992 amendments to the Workers’ Compensation Act, as the General Assembly excluded catastrophic claims from the 400-week limitations which applies to all other workers’ compensation claims.”

(S15G1811): As the U.S. Supreme Court stated in its 1945 decision in *Chase Securities Corp. v. Donaldson*, statutes of limitations are “practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.” “Although the Court of Appeals was concerned that ‘holding [that the statute of limitations did not run on the fictional new accident claim] would be to penalize a claimant for having continued working (with limitations) even though he remained catastrophically injured,’ that concern is misplaced with the claim for the fictional date of accident,” Roseburg Forest’s attorneys argue in this appeal. The statute of limitations for the Sept. 11, 2009 claim “ran not because he returned to work, but because when he stopped working, he failed to timely file a claim. That is true for any claim, regardless of injury.” Courts must look at the statute of limitations “not as a substantive

review of a case, but as a necessary procedural safeguard to ensure the fairness of the entire process,” the attorneys argue. “This process is otherwise available to all who comply with its rules, and must be fair to all the litigants.”

Barnes’ attorney argues the state Supreme Court should uphold the ruling by the Court of Appeals, “as there is no question that Mr. Barnes’ claim, predicated upon a fictional new accident, was ‘filed within one year after the date of the last remedial treatment furnished by the employer,’” as stated in § 34-9-82.

Attorneys for Appellant (Roseburg): Eric Trivett, Danielle Taylor

Attorney for Appellee (Barnes): Michael Rosetti

JACKSON v. SANDERS (S15G1896)

A **DeKalb County** man is appealing a superior court’s award of past due child support and increased child support payments to his ex-wife as well as the dismissal of his petition for modification of custody.

FACTS: Doug Jackson filed a petition asking for more time with his then 11-year-old son. The child’s mother, Lisa Sanders, filed a counterclaim seeking reimbursement for past-due child support. The trial court denied Jackson’s petition and instead ruled in favor of Sanders, awarding her past-due child support from Jackson and increasing his monthly payments to her. Jackson appealed to the Georgia Court of Appeals, arguing, among other things, that the trial court improperly over estimated his annual income when deciding to raise his child support and incorrectly determined that he owed past-due child support. In a split decision, the appellate court ruled that the trial court had correctly found that Jackson failed to provide sufficient reliable evidence of his income. However, the appellate court also ruled that the trial court erred in applying only a 4% incremental increase to calculate his child support obligation, rather than the minimum 10% authorized under Georgia law. Georgia Code section 19-6-15 (f) (4) (B) states that when a parent fails to produce reliable evidence of income, the court may increase that parent’s child support obligation “by an increment of at least 10 percent per year of such parent’s gross income for each year since the final child support order was entered or last modified and shall calculate the basic child support obligation using the increased amount as such parent’s gross income.” Jackson now appeals the Court of Appeals ruling to the Georgia Supreme Court.

ARGUMENTS: Attorneys for Jackson argue that the Court of Appeals incorrectly interpreted the statute. They assert that Jackson presented sufficient evidence of his earnings, including several financial documents, bank account records, and a Domestic Relations Financial Affidavit. They argue that the three judges who dissented in the Court of Appeals decision were correct when they explained that the application of this statute is to be used only when there is no reliable evidence of gross income, which was not the case here, in accordance with Jackson’s assertion that he did, in fact, present reliable evidence. They are asking this Court to remand this case back to the trial court.

Sanders’ attorney argues that while some may view the statute as “draconian,” the legislature clearly intended it to insure that children get adequate child support from both parents and to encourage parents to be truthful about their income with the courts. The attorney argues that while Jackson might have presented some evidence, it was not enough to constitute “reliable” evidence, citing his failure to submit his most recent tax return and his refusal to let his accountant testify. The attorney argues here that the application of the statute was warranted, that

the statute is clearly written in plain language, and that the Georgia Supreme Court should affirm the Court of Appeals' ruling.

Attorneys for Appellant (Jackson): Rebecca Crumrine and Hannibal Heredia of Hedgepeth, Heredia, Crumrine, & Morrison, LLC, Angela Fox and James Summerville of the Summerville Firm, LLC, and Sidney Moore of the Moore Law Firm, P.C.

Attorney for Appellees (Sanders): Divida Gude of Divida Gude, LLC

DOCTORS HOSPITAL OF AUGUSTA ET AL. V. ALICEA, ADMINISTRATRIX
(S15G1571)

The appeal in this **Richmond County** case stems from a medical malpractice lawsuit brought by a woman against a physician and hospital for violating her grandmother's directive not to perform extreme measures on her when she was in the process of dying. Jacqueline Alicea alleged that Dr. Phillip William Catalano and Doctors Hospital of Augusta, LLC intubated her grandmother and put her on a ventilator, prolonging her life when her condition was terminal. The procedures caused her to suffer, contrary to her grandmother's advance directive and the specific directions of Alicea, who was her grandmother's designated health care agent.

Attorneys for Catalano and Doctors Hospital filed a motion asking the trial judge to grant them "summary judgment," which a judge does only after determining that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of the party requesting it. They argued that under Georgia's Advance Directive Act (Georgia Code § 31-32-10 (a) (2) and (3)), they were immune from liability for intubating the grandmother on March 7, 2012; that they had obtained informed consent from Alicea for a March 5, 2012 surgical procedure they performed on the grandmother; and that they had obtained basic consent for both the March 5 procedure and the March 7 intubation. The trial judge, however, denied summary judgment to the physician and hospital, finding that there were issues of fact that should be decided by a jury. The physician and hospital then appealed that ruling to the Georgia Court of Appeals, which partially upheld the trial court's ruling by denying them summary judgment on their claim that they were shielded from liability and the lawsuit should be dismissed. The physician and hospital now appeal to the state Supreme Court.

ARGUMENTS: "The Court of Appeals does harm to a basic concept of Georgia law, namely that statutory immunity established by the Legislature should serve as a bar to litigation and no heightened level of 'good faith' must be shown by defendants in order for immunity to apply," the attorneys for Catalano and the hospital argue in briefs. "In construing § 31-32-10, the Court of Appeals erred in applying a heightened good faith standard and by failing to apply a subjective standard, which essentially requires that all questions of immunity will be brought before a jury." To facilitate the clear expression of a patient's end-of-life wishes, the General Assembly included an Advanced Directive form in Georgia Code § 31-32-4 which includes straightforward language the patient may choose: "If I need assistance to breathe, I want to have a ventilator used." But the grandmother's Advanced Directive did not contain any of the simple language suggested by the General Assembly, the attorneys argue. "Health care providers are first and foremost tasked with the responsibility of saving lives," they contend. "When a health care agent's directives are unclear, or contradictory within the totality of the consents previously given, the default for providers is to continue treatment and maintain life, as physicians and nurses have 'no right to unilaterally decide to discontinue medical treatment even if, as the

record in this case reflects, the [patient] was terminally ill and in the process of dying.” Alicea herself may have violated her grandmother’s Advanced Directive by failing to make her grandmother a “do not resuscitate” (DNR) patient upon admission, for consenting to a number of procedures, and for failing to withdraw her grandmother from life support. “The Court of Appeals’ interpretation of the requirements for immunity to apply under § 31-32-10 not only contradicts prior analysis of similar immunity statutes, but also places both health care providers and health care agents at risk in making sound and reasoned decisions under an Advanced Directive.” The attorneys urge the state Supreme Court to reverse the appellate court’s decision.

Alicea’s attorneys argue the Court of Appeals correctly interpreted the immunity provisions of § 31-32-10 to apply only where a health care provider acted, or failed to act, in “good faith” in relying on the directions of the health care agent. In this case, the evidence shows the physician and hospital staff did not rely on the directions of Alicea. The trial court properly denied summary judgment because genuine issues of fact exist regarding whether the doctor and hospital acted in good faith reliance on Alicea’s directions, and the case should be decided by a jury. “This is a case about a woman and her family who thoughtfully considered the difficult choices which might accompany a person’s last days and who made deliberate and careful plans about how those decisions would be made,” Alicea’s attorneys argue in briefs. “In order to assure that her wishes were honored, she authorized her health care agent to act in her place and stead. Those deliberate and careful choices, together with the directions of her health care agent, were nullified and ignored by the reckless actions of these Appellants, who did not think enough of [the grandmother] to take the time to read her directive or to take reasonable steps to ensure her health care agent’s directions were honored.” “Any incentive to execute an advance directive is lost if patients have no remedy against health care providers who not only deviate from the standard of care but also refuse, in bad faith, to honor their end of life health care decisions.” The hospital and doctor did not qualify for immunity “*as a matter of law*,” under § 31-32-10, the attorneys argue. “Unless health care providers are accountable for exercising good faith reliance on a patient’s directives, health care providers will enjoy *carte blanche* to ignore the advance directives of their patients and their agents and the public policy favoring these directives will be undermined,” Alicea’s attorneys argue, requesting that this court uphold the Court of Appeals decision.

Attorneys for Appellant (Doctors): Kevin Race, David Johnson, Brett Tarver

Attorneys for Appellee (Alicea): Harry Revell, Kenneth Connor, Camille Godwin

PATTERSON v. THE STATE (S15G1303)

A man from **Whitfield County** is appealing his convictions for aggravated assault and simple assault for driving his van into his girlfriend’s son, pinning him against a mobile home.

FACTS: On Nov. 1, 2011, Ricky Eugene Patterson drove home to the trailer where he lived with Wanda Bartley. Bartley’s adult son, Nathaniel Silvers, was also at the trailer when Patterson arrived, sitting by a fire outside the home and drinking beer. Patterson and Bartley almost immediately began arguing about Silvers being there, and Patterson went into the home, took a roast out of the oven and threw it out the back door. He also threw a cell phone through a glass gun cabinet. Bartley and her son urged Patterson to leave. Patterson went outside and got into his van and at the moment Silvers walked off the porch, Patterson shifted the van into low gear, revved the engine, and drove rapidly and directly toward the end of the mobile home and

Silvers. The van struck Silvers and pinned him to the side of the trailer, resulting in internal injuries that required him to stay in the hospital for three days. Patterson was charged with four counts of aggravated assault, two counts of aggravated battery, and one count of disorderly conduct. At trial, the court denied Patterson's request that jurors be instructed that simple assault, reckless conduct, and reckless driving were available for their consideration as "lesser included" – or less serious – offenses than the aggravated assault charge. The judge stated she was not inclined to give the instruction about any lesser included offense because Patterson also requested a jury charge regarding his defense throughout trial that the incident had been an accident.

The jury convicted Patterson of the lesser included offense of simple assault as to two of the aggravated assault charges, acquitted him of the third count of aggravated assault, and convicted him of the fourth count of aggravated assault. This fourth count charged that Patterson had committed aggravated assault by placing another in reasonable apprehension of immediately receiving a violent injury with an object which, when used offensively against a person, is likely to and actually does result in serious bodily injury. Patterson was sentenced to 20 years in prison. On appeal, the Georgia Court of Appeals affirmed his convictions. Patterson is now appealing the Court of Appeals ruling to the state Supreme Court. In granting Patterson's petition for writ of certiorari (asking the Supreme Court to review the lower appellate court's ruling), the Court is asking the parties to answer these questions:

- 1) Did the Court of Appeals err when it concluded that simple assault under Georgia Code Section 16-5-20 (a) (2) requires no specific intent to cause injury or apprehension of injury?
- 2) If so, did the Court of Appeals err when it held that the trial court properly refused to charge the jury in this case on reckless conduct and reckless driving as lesser included offenses of aggravated assault?

ARGUMENTS: Patterson's attorneys argue that a specific intent requirement should be used when interpreting Georgia Code Section 16-5-20 (a) (2), because without such a requirement, the statute is overly broad. Among other things, they argue that in 1968, when the current language of the statute was adopted, the legislature's intent was to codify an assault concept that traditionally required proof of an intent to cause apprehension. They also believe that the Court of Appeals should have ruled that the trial court erred in not instructing the jury on reckless conduct and reckless driving. Therefore, they are asking the Supreme Court to reverse the Court of Appeals ruling.

Attorneys for the State are asking this court to uphold both the trial court's convictions and the Court of Appeals ruling. They argue that the legislature created two types of assault – one that focuses on the assailant's mindset and requires that the assault was committed with the intent of injuring the victim; and the other focusing on the victim's thinking and requiring that the act placed the victim in "apprehension of immediately receiving a violent injury." The Court of Appeals did not err in ruling that an "apprehension" type assault, which was the type about which the judge instructed jurors, did not require a specific intent given that this principle has been well-settled in Georgia for the last 45 years, the State argues. Attorneys for the State also argue that it was not necessary to charge jurors on reckless conduct and reckless driving because they were not lesser included offenses of the type of aggravated assault for which Patterson was convicted. While these offenses may constitute a lesser included offense of an "intent to injure"

aggravated assault charge, the fourth count of aggravated assault charged an “apprehension” assault, and thus was focused on the state of mind of the victim, Silvers, rather than on Patterson’s intent.

Attorneys for Appellant (Patterson): Michael McCarthy and G. Brandon Sparks of the Public Defender’s Office

Attorneys for Appellees (State): Herbert Poston, District Attorney, Susan Franklin, Asst. D.A., and Benjamin Kenemer, Asst. D.A. of the Conasauga Judicial Circuit District Attorney’s Office

2:00 P.M. Session

MURPHY v. THE STATE (S16A0150)

A Clayton County woman is appealing her convictions stemming from a 2007 hotel fire which killed five people, including two children.

FACTS: On June 5, 2007, Sheree Dionne Murphy got into an argument with a drug dealer who lived in a Clayton County Budget Inn when he refused to give her drugs without payment. The next morning, Murphy poured accelerant on an old stack of mattresses under the stairwell in the back of the building directly under the drug dealer’s room, and set it on fire. The only surviving victim from a different room housing a family of six, was a 14-year old girl, who suffered severe burns to her face, hands, shoulders, and leg. Several witnesses testified seeing Murphy standing on the sidewalk and curb in front of the building adjacent to the hotel, watching the building burn. After a jury trial, Murphy was convicted of five counts of felony murder, one count of aggravated battery, arson in the first degree, and cruelty to a child. The judge sentenced her to five consecutive life prisons sentences. Murphy now appeals to the state Supreme Court.

ARGUMENTS: Attorneys for Murphy argue, among other things, that the guilty verdicts were a result of extra-judicial information that was improperly introduced to the deliberating jurors. They also resulted from an outside influence that caused a deliberating juror to violate her juror oath and surrender her vote for acquittal. They argue that an experiment conducted by a juror to prove that Murphy’s testimony was not credible swayed some of the jurors’ votes. Also at issue is the fact that one juror asked to be excused, but was forced to continue. After sentencing, Murphy’s attorney learned that the juror had asked to be excused due to a sick child at home, and when she was not excused, she felt coerced into sacrificing her vote of not guilty. They also argue that the State failed to produce critical scientific evidence to Murphy and that her right to be present at all critical stages of the trial had been denied. For these reasons, they are asking for a new trial to remedy the errors.

Attorneys for the State are asking this Court to affirm Murphy’s convictions. They argue that Murphy has only shown a speculation of juror misconduct, and that actual misconduct has not been proven. Therefore, remanding the case due to mere speculation would not be proper. The State also argues that it did not knowingly, intelligently, and in bad faith, fail to provide critical scientific evidence to Murphy and that her attorneys have failed to demonstrate how that failure prejudiced the trial. They also contend that Murphy’s right to be present was not violated. For these reasons, the State argues that the trial court did not abuse its discretion, and Murphy’s convictions should therefore be affirmed.

Attorneys for Appellant (Murphy): Brian Steel of The Steel Law Firm, P.C., Emily Gilbert of Georgia Capital Defender’s Office, and Priya Laxhi

Attorneys for Appellee (State): Tracy Lawson, District Attorney, Kathryn Powers, Exec. Chief Asst. D.A., Elizabeth Baker, Dep. Chief Asst. D.A. of the Clayton County District Attorney's Office, and Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Ar. Asst. A.G., and Matthew Crowder, Asst. A.G. of the Attorney General's Office

REED V. MCCONATHY (S16A0326)

The appeal in this **Catoosa County** case stems from a dispute between a mother and her daughter over property they own in Ringgold, GA.

FACTS: In May 2004, as part of her estate planning, Gail Levi Reed conveyed through a warranty deed to her daughter, Kimberly Hicks McConathy, one-half interest in property located on Battlefield Parkway. The deed was entitled, "Warranty Deed with Right of Survivorship, and stated that it conveyed the property to the "Grantees for and during their natural lives, with the remainder over upon the death of either of them, to the survivor of them." On Oct. 23, 2007, Reed transferred her interest in the property to someone named Patricia Page via a "quitclaim deed." That deed was then filed with the Catoosa County Superior Court. The following day, on Oct. 24, 2007, Page signed a quitclaim deed transferring her interest in the property back to Reed. On Aug. 27, 2014, Reed filed in court an application to partition the property. When McConathy was made aware of her mother's actions, she filed a motion asking the court to dismiss the application/petition. Claiming her mother had quitclaimed her interest to Page in an attempt to extinguish her daughter's right of survivorship, McConathy argued that under Georgia Code § 44-6-160, partitioning can only be done when the property involves "tenants in common," not "joint tenants with right of survivorship." The daughter attached to her Motion to Dismiss a copy of the 2004 Warranty Deed with Right of Survivorship. Reed responded to the Motion to Dismiss, arguing that under Georgia Code § 44-6-190, the joint tenancy with right of survivorship was severed by the "lifetime transfer" of Reed's interest in the property to Page, as recorded in the Clerk's office Of Catoosa County Superior Court. In August 2015, the Catoosa County Superior Court ruled in McConathy's favor and dismissed her mother's petition to partition the property.

ARGUMENTS: Reed's attorney argues that the trial court erred in granting McConathy's Motion to Dismiss on the grounds that Reed's lifetime transfer of all her interest in the property to Patricia Page severed Reed's and McConathy's status as joint tenants with right of survivorship based on § 44-6-190. That law states that a joint tenancy with right of survivorship "may be severed as to the interest of any owner by the recording of an instrument which results in his or her lifetime transfer of all or part of his or her interest..." Reed argues this court should reverse the trial court's dismissal of her petition as she "desires her day in court on her petition for equitable partitioning and accounting of a valuable tract of commercial property in which Appellee [i.e. her daughter] has made no contribution."

McConathy's attorney argues the trial court ruled correctly in dismissing her mother's petition to partition the property. For one thing, § 44-6-190 does not apply to the current situation, as the parties are currently sharing a "life estate." "The life estates will end upon the death of either of them," the attorney argues in briefs. Second, Reed's actions in quitclaiming her interest in the property to Page for all of one day did not constitute a "lifetime transfer" that would be severed based on § 44-6-190. Under the law, "no severance of a right of survivorship shall occur unless 'all persons owning joint tenant interests in a property join in the same

recorded lifetime transfer,” the attorney contends. Finally, McConathy argues that her mother “committed fraud as a matter of law, thus is not entitled to a severance.”

Attorney for Appellant (Reed): Robert McCurry

Attorney for Appellee (McConathy): Lawrence Stagg