

IN THE SUPREME COURT
STATE OF GEORGIA

CASE NO: S16A0112

COLUMBUS, GEORGIA, et al.,
APPELLANTS,

v.

GREGORY D. COUNTRYMAN, S.R. individually and as Elected Marshal of
Muscogee County, and VIVIAN BISHOP, individually and as Elected Clerk of the
Municipal Court of Columbus, Georgia,

APPELLEES.

**APPELLANTS' RESPONSE TO APPELLEES' MOTION TO DISMISS
APPEAL, OR IN THE ALTERNATIVE TO TRANSFER TO COURT OF
APPEALS**

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ATTORNEYS FOR APPELLANTS

COME NOW, Appellants COLUMBUS, GEORGIA, MAYOR TERESA P. TOMLINSON, CITY MANAGER ISAAH HUGLEY, CITY FINANCE DIRECTOR PAMELA HODGE, CITY ATTORNEY CLIFTON FAY, and COUNCILORS¹, hereinafter referred to collectively as “Appellants”, and file their Brief in response to Marshal Gregory D. Countryman, Sr. and Municipal Court Clerk Vivian C. Bishop’s *Motion to Dismiss Appeal, or in the Alternative to Transfer to Court of Appeals*, respectfully showing the direct appeal has been properly filed.

Appellants filed this direct appeal in the Supreme Court of Georgia due to the equitable nature of the relief requested by Appellees and the denial of sovereign, legislative and official immunity to the Appellants sued in their official and individual capacities.² At the time of the appeal, Appellants had two other cases regarding the Columbus Consolidated Government budget process pending in the Supreme Court.³ However, this appeal jurisdictionally and substantively

¹ The Defendant / Appellant Councilors are Jerry “Pops” Barnes, Glenn Davis, Evelyn Turner-Pugh, Berry “Skip” Henderson, Bruce Huff, Gary Allen, Mimi Woodson, Judy Thomas and Mike Baker.

² The Trial Court granted the motion to dismiss against Plaintiffs only for the injunctive relief pending in the official capacity of Appellants, and denied any other assertion of immunity. This appeal was filed on June 25, 2015, appealing the Order entered June 9, 2015 granting in part and denying in part Appellants’ Motion to Dismiss. That Order was filed by the Clerk of Court on June 15, 2015 and copied to Counsel on June 24, 2015. (R-1-570, 571).

³ *Darr v. Columbus, Georgia, et al, Superior Court of Muscogee County, Civil Action No. SU14CV3437-94*, and *Pierce v. Columbus, Georgia, et al., Superior*

differs from *Darr v. Columbus, Georgia, et al.* and *Pierce v. Columbus, Georgia, et al.* in the type of relief requested. There is no mandamus sought in this case, as this claim was voluntarily withdrawn and dismissed by Appellees shortly before the hearing set by the Trial Court. (R-1-373; R-1-375). While Appellants continue to believe appellate jurisdiction is proper in the Supreme Court, Appellants do not object to a transfer to the Court of Appeals, if the Court so desires.

However, this direct appeal is not subject to dismissal, as it involves directly appealable issues of immunity on the remaining equitable claims filed against Appellants in their official and individual capacities, which go well beyond those described by Plaintiffs in their *Motion to Dismiss Appeal, or in the Alternative to Transfer to Court of Appeals*. This appeal directly questions the Trial Court's failure to address sovereign immunity, legislative immunity, and official immunity, which should have resulted in the dismissal of the entire matter. (R-1-570-71). The Trial Court granted Appellants' Motion to Dismiss, in part, and applied sovereign immunity to dismiss the official capacity injunctive relief claims only. (R-1-570-71). However, no mention was made of legislative or official immunity in the Trial Court's Order. (R-1-570-71). An immediate, direct appeal is appropriate under the collateral order doctrine. Liberty Cnty. School Dist. v. Halliburton, 328

Court of Muscogee County, Civil Action No. SUI4CV3472-94. These cases are distinguishable in that they had mandamus claims pending, which this case does not, and the Plaintiffs in those cases are constitutional officers, which Appellees are not.

Ga.App. 422, 425-426 (2014)(denial of motion to dismiss and rejection of immunity meet criteria established for direct appeal under the collateral order doctrine).

This direct appeal is critical to ensure the Appellants are not subjected to litigation for which immunity is available. After the Trial Court's decision on Appellants' Motion to Dismiss, the only claims remaining seek injunctive relief from the Defendants in their individual capacities and declaratory relief related to a budget ordinance and the past decisions of the Defendants in the FY2015 budget process. (R-1-570-571; R-1-273, ¶¶100-104; R-1-273-274, ¶¶105-108). There is a complete absence of any rights upon which equitable relief could be granted, and the full application of sovereign, legislative, and official immunity was required. Appellants are entitled not to stand trial, in equity or otherwise, due to sovereign, legislative and official immunity, and as such this direct appeal is necessary.

The Trial Court erred in denying sovereign immunity to the Appellants on the declaratory judgment claims, since Appellees have failed to show an express right for declaratory relief, and the pleadings improperly seek relief outside the scope of a declaratory judgment. No waiver of sovereign immunity was pled, as required by Georgia law. SJN Props. L.L.C. v. Fulton Cnty. Bd. of Assessors, 296 Ga. 793, 810 (2015) (no blanket waiver of sovereign immunity for declaratory relief exists, and each claim must be authorized by an express statutory provision).

“[S]overeign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.” GA. CONST. Art. 1, §2, ¶IX(e); *see also* O.C.G.A. §36-1-4 (county is entitled to not be liable to suit for any cause of action unless made so by statute). As such, an immediate, direct appeal of the Trial Court’s failure to apply sovereign immunity to dismiss Appellees’ claims for declaratory judgment is necessary and warranted.

Although the Court properly dismissed the official-capacity injunctive relief, it did not consider the nature of the remaining injunctive allegations and the limitations inherent in the official relief sought.⁴ (R-1-571). Legislative immunity is absolute and applies to all decisions and actions taken in the formulation, recommendation and finalization of the CCG budget. Saleem v. Snow, 217 Ga. App. 883, 886 (1995). Appellees made no substantive response to contest the application of legislative immunity, and the Trial Court failed to consider its application to these claims. (R-1-210-225; R-1-571). Budgeting is an inherently legislative function, and legislative immunity provides absolute immunity for actions taken within the “sphere of legislative activity”. Finch v. City of Vernon,

⁴ Neither the Order of the Trial Court, nor the Plaintiffs’ filings demonstrate how the official relief sought could be obtained from the Defendants named in their individual capacities. The relief sought wholly requires the performance of official duties and governmental functions. (R-1-273). This type of relief is impossible for the individual Defendants to perform in their individual capacities.

877 F.2d. 1497, 1505 (11th Cir. 1989), *cited in Woods v. Gamel*, 132, F.3d. 1417, 1419 (11th Cir. 1998). The entire budget process and those participating in it are protected through legislative immunity. *Id*; *see also Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998)(Court confirmed the tasks of introducing and signing of the budget ordinance into law by a mayor were legislative, so that legislative immunity applied) *and Bryant v. Jones*, 575 F.3d. 1281 (11th Cir. 2009)(Court confirmed legislative immunity was available to the executive assistant of the County CEO who was responsible for preparing a budget proposal to be submitted to the county as part of the budget process). The Trial Court erred in not dismissing all claims on the basis of legislative immunity.

Finally, the Trial Court erred in not applying or analyzing official immunity to bar Appellees' claims. Individual Defendants exercised discretion and are entitled to the application of official immunity, which should have been fatal to Appellees' claims for injunctive relief. Official immunity protects employees from individual liability for performing official acts, due to the "recognition of the need of preserving independence of action without deterrence or intimidation by fear of personal liability and vexatious suits." *Gilbert v. Richardson*, 264 Ga. 744, at 750 (1994); *see also Butler v. Carlisle*, 299 Ga. 815 (2009)(Suits against public officials in their individual capacities are barred when they engage in discretionary actions taken without actual malice).

Given the necessity for review of the immunity which should have prevented this litigation from continuing, and the application of the collateral order doctrine allowing the direct appeal of the non-final Order, the Appellants request the Supreme Court consider this appeal or in the alternative transfer it to the Georgia Court of Appeals; thereby denying Appellees' Motion to Dismiss.

Respectfully submitted this 6th day of November, 2015.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Plaintiffs/
Appellees in the foregoing matter a copy of the **APPELLANTS' RESPONSE TO
APPELLEES' MOTION TO DISMISS APPEAL, OR IN THE
ALTERNATIVE TO TRANSFER TO COURT OF APPEALS** through the
electronic service of email, which is the manner of service agreed upon by the
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This 6th day of November, 2015.

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