SUPREME COURT OF GEORGIA
Case No. S25M0216

October 7, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STATE OF GEORGIA v. SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE et al.

The State of Georgia's Emergency Petition for Supersedeas seeking a stay of the order of the Superior Court of Fulton County in the above-styled action is hereby GRANTED with respect to OCGA § 16-12-141, except as to OCGA § 16-12-141 (f).

The State of Georgia's Emergency Petition for Supersedeas seeking a stay of the order of the Superior Court of Fulton County in the above-styled action is hereby GRANTED with respect to OCGA § 31-9B-3 (a).

To the extent the State also seeks an "administrative stay," that motion is dismissed as moot.

This order shall take effect as of 5:00 p.m. on October 7, 2024.

All the Justices concur, except Ellington, J., who concurs in part and dissents in part. Peterson, P.J., disqualified, and Pinson, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

ELLINGTON, Justice, concurring in part and dissenting in part.

The trial court in this case exercised its jurisdiction under Title 9 of the Georgia Code to issue a judgment declaring that Section 4 of the "LIFE Act," 2019 Ga. Laws Act 234 (H.B. 481), which amended OCGA § 16-12-141, is unconstitutional (and that Section 11, which amended OCGA § 31-9B-3 fails without Section 4). See OCGA § 9-4-1 et seq. And the trial court exercised its jurisdiction to award to the petitioners such relief as the pleadings and evidence showed them to be entitled, specifically, an injunction prohibiting enforcement of those unconstitutional laws by the State or any of its agents. See OCGA § 9-4-3; *James B. Beam Distilling Co. v. State*, 263 Ga. 609, 613 (5) (437 SE2d 782) (1993) ("[A] petition may be filed seeking a judgment declaring a statute or ordinance unconstitutional and praying for an injunction against the enforcement of the questioned law.").

The State has filed a notice of appeal from the trial court's judgment, as it is entitled to do, and, as provided by law, the trial court will transmit the necessary parts of the record, and the appeal

will be docketed in this Court. In the normal course, we will be deciding the merits of the State's claims of error after briefing, oral argument, and due deliberation under our Constitution, the Appellate Practice Act, and other applicable legal authority – and relatively expeditiously, given the constraints of Georgia's two-term rule. See Ga. Const. of 1983, Art. VI, Sec. IX, Par. II ("The Supreme Court and the Court of Appeals shall dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term."); OCGA § 15-2-4 (b) (terms of court of the Supreme Court of Georgia). To the extent the State prevails on appeal, all or parts of the trial court's judgment may be reversed, and the injunction may be lifted.

The State's emergency petition for supersedeas seeks to have the injunction issued by the trial court lifted immediately. Generally, the filing of a notice of appeal in an injunction case does not serve as a supersedeas. See OCGA § 9-11-62 (a); *Brown v. Spann*, 271 Ga. 495, 495 (520 SE2d 909) (1999). In the case of an order granting an injunction, the General Assembly has provided that

such orders "shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal" unless "otherwise ordered by the [trial] court," which, "in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." OCGA § 9-11-62 (a), (c). See *Green Bull Georgia Partners, LLC v. Register*, 301 Ga. 472, 473 (801 SE2d 843) (2017) ("Although the appellate courts also have the authority to grant a stay or injunction pending appeal, an application for such relief ordinarily ought to be directed in the first instance to the trial court.").

It makes sense that the General Assembly committed this discretion to the trial court in the first instance, since such an order granting an injunction with immediate effect on its face represents a determination, after weighing evidence regarding the parties' competing interests and claims of impending harm, that the enjoined action (in this case, enforcement of specific statutory provisions) should not occur unless and until the injunction is

subsequently modified or lifted. In its emergency motion, the State concluded its argument with, "[a]s in 'most cases,' a stay pending resolution of this appeal is appropriate[,]" citing *Green Bull*, 301 Ga. at 475. The State conveniently ignores the fact that *Green Bull* concerned an appeal from a trial court order granting an injunction pending appeal under OCGA § 9-11-62, the procedure the State seeks to sidestep here. Contrary to the State's position, our decision in *Green Bull* actually highlights the importance of the trial court's discretion in this arena: in that case, the trial court initially and provisionally determined that an interlocutory injunction pending final judgment from a pending foreclosure might be appropriate; after further proceedings, the trial court decided that an injunction was not appropriate; and the trial court then determined under OCGA § 9-11-62 that "the case [was] close enough to warrant an injunction pending appeal[.]" Id. Nothing in the trial court's order in this case suggests a view that it was a close call whether to grant the plaintiffs' requested relief.

In its motion, the State fails to show any reason for urgency that goes beyond their underlying arguments in favor of allowing the State to prevent women from deciding whether to terminate a pregnancy after embryonic cardiac activity can be detected and before a fetus is viable. The fact that the plaintiffs faced a heavy burden in establishing that Section 4 violates the Georgia Constitution is no sound reason to grant the State's motion for a stay, given that the only court of competent jurisdiction to issue a ruling on this issue thus far determined that the plaintiffs have *carried* that burden. The parties' competing arguments about the harm flowing from either the enforcement or the non-enforcement of the statutory provisions at issue will form the crux of the appeal to come and should not be predetermined in the State's favor before the appeal is even docketed.

Cautious of usurping the authority of the General Assembly to establish trial court and appellate procedure, including provisions regarding when a notice of appeal acts as supersedeas (see OCGA §§ 5-6-45; 5-6-46; 9-11-62), we routinely deny requests for supersedeas

that is otherwise prohibited by law, just as we tend to affirm trial court rulings regarding injunctions pending appeal, as we did in *Green Bull*. We should deny the State's request now. The injunction at issue here concerns much more than a discrete legal dispute between particular parties. Fundamentally, the State should not be in the business of enforcing laws that have been determined to violate fundamental rights guaranteed to millions of individuals under the Georgia Constitution. The "status quo" that should be maintained is the state of the law before the challenged laws took effect. Accordingly, I dissent from the instant order, in part, to the extent it grants a stay of the injunction against enforcement of OCGA § 16-12-141, as amended by Section 4 of the 2019 LIFE Act, and of OCGA § 31-9B-3 (a), as amended by Section 11 of the Act, except that I concur to the extent the order declines to stay enforcement of OCGA § 16-12-141 (f), as amended by Section 4 of the Act.