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**Courthouse shooting suit for judge's widow clears first hurdle**

*Judge rejects Fulton claim that workers' compensation law trumps suit.*

By Greg Land, Staff Reporter

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The widow of slain Judge Rowland W. Barnes has cleared a first hurdle in her suit to collect damages from the Fulton County sheriff and eight other employees she blames for allowing the Fulton County Courthouse shootings to occur 11 months ago.

A judge last week rejected arguments by Fulton County lawyers representing Sheriff Myron Freeman and the others that the sheriff and Barnes were "co-employees" and that state worker compensation laws barred her claims of gross negligence in providing courthouse security.

The decision is important to Barnes' widow, Claudia Barnes, because had the county prevailed, she would have been entitled only to a maximum of \$125,000 and \$7,200 in funeral costs.

Fulton County Attorney Overtis Hicks Brantley said she had not reviewed the ruling in detail, "but I suspect that we'll probably seek permission to file an appeal," she said. "It's an important question ... and once it's resolved, we will proceed."

Barnes was one of three killed at the courthouse last March 11, when police say rape defendant Brian G. Nichols disarmed the deputy guarding him and stole her pistol. He is now faces trial for murdering Barnes, court reporter Julie Ann Brandau and Fulton sheriff's deputy Hoyt Teasley at the courthouse and David Wilhelm, a U.S. customs agent, before surrendering to police the next day.

The case, Barnes v. Freeman, 05-A-40186-2, was filed in DeKalb County State Court. Judge J. Antonio DelCampo dismissed Fulton County's arguments that the Georgia Workers' Compensation Act, which prohibits employees from suing their employers or co-workers, applied to Barnes and Freeman. The county had argued that, because both Freeman and Barnes were covered under the county's pension plan, they were both county employees, and that Claudia Barnes' negligence suit was barred under the Workers' Compensation Act's "exclusive remedy" doctrine.

But DelCampo found that Superior Court judges are designated as state officials in the Georgia Constitution, and that the state and Fulton's own rules allow judges to join the county's pension plan even though they are not county employees.

"[A] thorough review of the law suggests that, on the day of his death, Judge Barnes was an employee only of the State," wrote DelCampo, "and that the Defendant was an employee only of the County, for workers' compensation purposes."

DelCampo added that even if Barnes and Freeman had been deemed co-employees, Freeman could be held liable because the sheriff "owed a fiduciary or 'unique' duty to the injured party."

"It is difficult to imagine a more important, compelling, and unique duty than that owed by a county sheriff to protect the Superior Court judges sitting in his county."

R. Adams Malone, representing Claudia Barnes along with his father, Thomas W. Malone and Atlanta attorney G. Brian Spears, said their client is "very pleased that the case can go forward, and not be swept under the rug."

Malone said that before the ruling came down, the plaintiff's team and the county's attorneys agreed not to oppose any petition for immediate review following the judge's decision. "But we're confident," he added, "that Judge DelCampo's decision is 100 percent correct, and whether he grants a petition for review or not, we will go forward."

DelCampo's ruling could affect suits by the families of other victims.

A suit by Brandau's estate turns on whether Brandau was an independent contractor or a county employee.

An attorney for the Brandau estate, Jeffrey R. Harris of Atlanta's Harris, Penn & Lowry, said that while the workers' compensation issue did not apply to his case. "The thing that does apply is that the sheriff does have special fiduciary duty to the people in his courtrooms. If that applies to judges, it certainly applies to court reporters."

James E. Voyles of Kennesaw's Voyles Milhollin represents Teasley's widow, Deborah Teasley, in an action he expects to file soon. Voyles has taken the position that a sheriff is neither an employee nor employer, and that the workers' compensation law doesn't apply to the case.

"We are pleased that the court realized that there is a professional responsibility between the sheriff and a co-worker" beyond the reach of the exclusive remedy claims of the Workers' Compensation Act, he said.

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