

October 7, 2013

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***Rutter v. Rutter******Supreme Court Rules That O.C.G.A. § 16–11–62(2)(C), The Curtilage Exception to Unlawful Video Surveillance, Is Not Valid Law***

In *Rutter v. Rutter*, S12G1915 (Oct. 7, 2013), the Supreme Court of Georgia granted certiorari to determine which of two pieces of legislation, House Bill 1576 (Ga.L.2000, p. 491, § 1) or Senate Bill 316 (Ga.L.2000, p. 875, § 2), each constituting an alternative version of O.C.G.A. § 16–11–62(2), survived to become law. O.C.G.A. § 16–11–62(2) makes it unlawful for any person “to observe, photograph, or record the activities of another which occur in any private place and out of public view” without consent. The legislative record showed that House Bill 1576 was approved by the Governor on April 20, 2000, and became effective the same day. It amended O.C.G.A. § 16–11–62(2) by adding subparagraph (2)(C) providing that it is not unlawful “[t]o use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are within the curtilage of the residence of the person using such device.” This subparagraph became known as the curtilage exception.

Senate Bill 316 was approved on April 27, 2000, and was effective on July 1, 2000. Senate Bill 316 amended O.C.G.A. § 16–11–62 by “striking” that Code section and “inserting in its place a new Code section.” The “new Code section” set forth in the Senate Bill contained the language of subsection (2). However, it did not contain a subparagraph (2)(C), nor did it contain a provision with a curtilage exception similar to subparagraph (2)(C).

The issue arose in a divorce case when Mrs. Rutter surreptitiously installed several video surveillance devices in the marital home. Prior to trial, her husband moved to exclude any video recordings derived from the use of the surveillance devices because they were made in violation of O.C.G.A. § 16–11–62(2). The trial court denied the motion to exclude, relying upon the curtilage exception set forth in O.C.G.A. § 16–11–62(2)(C), but certified its ruling for immediate review. The Court of Appeals granted Mr. Rutter’s application for interlocutory review and affirmed, holding subparagraph (2)(C), set forth in House Bill 1576, survived the subsequent enactment and approval of Senate Bill 316. In so doing, the Court of Appeals reasoned that the two pieces of legislation were not repugnant. *Rutter v. Rutter*, 316 Ga.App. 894 (2012).

The Supreme Court reversed. The Court noted that repeals by implication are not favored by law, and, inasmuch as both pieces of legislation were passed in the same session, the Court must presume that they were imbued with the same spirit and actuated by the same policy, and they should be construed together as parts of the same act. This is because it is the duty of courts, whenever possible, to construe acts passed by the same legislature, and approved at the same time, so as to make both valid and binding, and to give effect to all the terms of both, so as to make them capable of enforcement.



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Here, however, the Court found that the clear language of the legislative acts were in irreconcilable conflict. Under the earlier House Bill, one who surreptitiously records the activities of another within the curtilage of his or her home has done nothing unlawful because subparagraph (2)(C) creates an exception to the general prohibition set forth in O.C.G.A. § 16-11-62; under the subsequent Senate Bill, the same conduct is deemed unlawful. Thus, the two statutes pertaining to the same conduct could not reasonably stand together. Therefore, the Court held, subparagraph (2)(C) did not survive the subsequent enactment of Senate Bill 316 and the Court of Appeals erred in ruling otherwise.