

United States Court of Appeals,
Eleventh Circuit.

No. 95-8084.

David Keith POGUE; Denise Pogue, Plaintiffs-Appellants,

v.

OGLETHORPE POWER CORP.; Rome Employment Services, Inc.,
Defendants-Appellees.

Jan. 8, 1997.

Appeal from the United States District Court for the Northern
District of Georgia (No. 4:93-00258-CV-HLM); Harold L. Murphy,
Judge.

Before CARNES, Circuit Judge, HILL and KRAVITCH, Senior Circuit
Judges.

PER CURIAM:

David and Denise Pogue brought this negligence action against
Oglethorpe Power Corporation ("Oglethorpe") and Rome Employment
Services, Inc. ("RES") after David Pogue was seriously injured
while working on a construction site. After the district court
granted summary judgment in favor of the defendants, the Pogues
appealed that decision with respect to Oglethorpe, but abandoned
their claim against RES. Having substantial doubt about the proper
resolution of the state law issue presented by the case, we
certified the following question to the Georgia Supreme Court:

Is a "premise owner" entitled to the statutory tort immunity
provided by O.C.G.A. § 34-9-11 if the premise owner has
purchased a "wrap-up" insurance policy to provide workers'
compensation insurance coverage for all on-site contractors
and subcontractors?

Pogue v. Oglethorpe Power Corp., 82 F.3d 1012, 1017 (11th
Cir.1996).

In a thorough opinion, the Georgia Supreme Court has answered

the certified question in the negative. *Pogue v. Oglethorpe Power Corp.*, 477 S.E.2d 107 (Ga.1996). In light of that opinion, we REVERSE the grant of summary judgment in favor of Oglethorpe, and we reiterate our prior decision affirming the grant of summary judgment in favor of RES. We REMAND the case for further proceedings consistent with Georgia law as illuminated by the Georgia Supreme Court's answer to our certified question.