

COURT OF APPEALS OF THE STATE OF GEORGIA

Hilda Hutchinson et al. v. Anneewakee Trails Homeowners Association, Inc.

Hutchinson · No. A22D0038; A22D0043 · Decided October 8, 2021

SUMMARY

The Georgia Court of Appeals dismissed two discretionary applications arising from the denial of defendants' motion to vacate an order allowing service by publication. The court held that because the case remained pending below, the defendants were required to comply with the interlocutory appeal requirements, including obtaining a certificate of immediate review under OCGA § 5-6-34 (b).

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	October 8, 2021
DOCKET	A22D0038; A22D0043
DISPOSITION	dismissed
PROCEDURAL POSTURE	The trial court granted the plaintiff's motion for service by publication and denied defendants Hilda Hutchinson and Mia Hutchinson's motion to vacate that order. Defendants sought discretionary appellate review of the denial.
STANDARD OF REVIEW	The Court of Appeals reviewed its jurisdiction to entertain applications for discretionary review of an interlocutory order.
PRECEDENTIAL VALUE	Published Court of Appeals opinion; precedential value not otherwise specified in the source.
PARTIES	Hilda Hutchinson, Mia Hutchinson v. Anneewakee Trails Homeowners Association, Inc.

TOPICS

interlocutory appeal

appellate jurisdiction

appellate procedure

service of process

PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction to review the interlocutory order denying the defendants' motion to vacate the order allowing service by publication when the defendants had not obtained and provided a certificate of immediate review.
2. Whether the discretionary-appeal statute excused compliance with the interlocutory-appeal requirements of OCGA § 5-6-34 (b).

HOLDINGS

1. Because the underlying case remained pending, the defendants were required to comply with the interlocutory-appeal requirements, including obtaining and providing a certificate of immediate review from the trial court. Their failure to do so deprived the Court of Appeals of jurisdiction.
2. The discretionary-appeal statute does not excuse a party seeking review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b).

KEY QUOTATIONS

"We lack jurisdiction because the case remains pending below."

"In addition, the discretionary appeal statute does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b)."

"Accordingly, these discretionary applications are hereby DISMISSED."

FACTUAL BACKGROUND

The plaintiff obtained an order authorizing service by publication in a civil action. Defendants Hilda Hutchinson and Mia Hutchinson moved to vacate that order, but the trial court denied their motion. The defendants then filed two applications for discretionary review while the underlying case remained pending.

PROCEDURAL HISTORY

After the trial court authorized service by publication, the defendants moved to vacate the authorization. The trial court denied that motion. The defendants filed two discretionary-review applications, which the Court of Appeals dismissed because the case remained pending and the defendants had not complied with the interlocutory-appeal requirement of obtaining and providing a certificate of immediate review.

DISPOSITION

dismissed

CASES CITED

- Boyd v. State, 191 Ga. App. 435, 435 (383 S.E.2d 906) (1989)
- Bailey v. Bailey, 266 Ga. 832, 833 (471 S.E.2d 213) (1996)

OPINION

Hilda Hutchinson v. Anneewakee Trails Homeowners Association, Inc.

PER CURIAM.

Court of Appeals of the State of Georgia

ATLANTA, _____

September 21, 2021 The Court of Appeals hereby passes the following order:

A22D0038. HILDA HUTCHINSON et al. v. ANNEEWAKEE TRAILS

HOMEOWNERS ASSOCIATION, INC.

A22D0043. HILDA HUTCHINSON et al. v. ANNEEWAKEE TRAILS

HOMEOWNERS ASSOCIATION, INC. In this civil case, the trial court granted the motion for service by publication filed by the plaintiff. The defendants, Hilda Hutchinson and Mia Hutchinson, filed a motion to vacate the order allowing service by publication. The trial court denied the motion to vacate, and the defendants filed these two applications for discretionary review.¹ We lack jurisdiction because the case remains pending below. Given the pendency of the case, the defendants were required to comply with the interlocutory appeal requirements, which include obtaining and providing a certificate of immediate review from the trial court, in order to appeal the trial court's order denying the motion to vacate. See OCGA § 5-6-34 (b); *Boyd v. State*, 191 Ga. App. 435, 435 (383 SE2d 906) (1989). In addition, the discretionary appeal statute does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996). ¹ The applications are virtually identical, with the exception of additional exhibits filed in Case No. A22D0043. Accordingly, these discretionary applications are hereby DISMISSED. Court of Appeals of the State of Georgia Clerk's Office, Atlanta, _____ 09/21/2021 I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written. , Clerk.