

SUPREME COURT OF GEORGIA

Collins v. Billow, 277 Ga. 604

592 S.E.2d 843 (2004) · No. S04A0022 · Decided February 16, 2004

SUMMARY

The Supreme Court of Georgia held that a trial court lacked authority to modify a divorce decree's child-support obligation in a contempt proceeding. Although the \$140-per-week award was improperly entered in the contempt case, it was not void because the court had jurisdiction and the order had not been appealed or set aside within the applicable period. The court therefore reversed the contempt judgment because the wife had paid the amount required by the operative order.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice; Carley, Justice; All other Justices of the Supreme Court of Georgia
JURISDICTION	Georgia
DECIDED	February 16, 2004
DOCKET	S04A0022
DISPOSITION	reversed
PROCEDURAL POSTURE	Wife sought discretionary appellate review of a contempt order holding her in contempt for allegedly underpaying child support. The Supreme Court of Georgia granted the application and reversed.
STANDARD OF REVIEW	Abuse of discretion for the contempt determination; legal questions concerning the trial court's authority to modify a divorce decree in a contempt proceeding were reviewed as matters of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Wife v. Husband

TOPICS

- child support
- contempt
- family law procedure
- appellate procedure
- remedies

PRACTICE AREAS

- family law
- child support
- contempt
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the March 10, 1998 order setting child support at \$140 per week improperly modified the divorce decree in a contempt proceeding.
2. If the \$140 provision was improperly entered, whether the order was void or remained effective because it was not appealed and no motion to set it aside was filed.
3. Whether Wife could be held in contempt for failing to pay more than the \$140 per week required by the unchallenged order.

HOLDINGS

1. A trial court has no authority to modify the terms of a divorce decree in a contempt proceeding. The March 10, 1998 contempt order improperly modified Wife's support obligation by increasing it to \$140 per week rather than merely clarifying the original percentage-based obligation.
2. An erroneous child-support order entered by a court with subject-matter and personal jurisdiction is not void and remains in force unless challenged by direct appeal or a motion to set aside. Because the March 10, 1998 order was not appealed and more than three years passed without a motion to set it aside, Wife's obligation was limited to \$140 per week until properly modified.
3. The trial court abused its discretion by holding Wife in contempt for failing to pay more than \$140 per week because she had paid the amount required by the operative March 10, 1998 order.

KEY QUOTATIONS

“A trial court has no authority to modify the terms of a divorce decree in a contempt proceeding.” (277 Ga. 605)

“a judgment which is erroneous but not void may be attacked only by direct appeal or by motion to set aside the judgment.” (277 Ga. 605-606)

“Because more than three years have passed without the filing of a motion to set aside that order, the March 10, 1998 order is still in force, and Wife's child support obligation is limited to the \$140 per week ordered by that judgment until otherwise modified in a proper proceeding.” (277 Ga. 606)

FACTUAL BACKGROUND

The parties' 1996 divorce decree awarded Husband primary custody of their two children and required Wife to pay 23% of her annual income, or \$115 per week, in child support. During consolidated contempt and modification proceedings in 1998, the trial court entered a \$140-per-week support provision under the contempt case number. Wife paid \$140 weekly thereafter, but Husband later claimed she owed more than \$20,000 under the original percentage-based obligation. The trial court found Wife in contempt and assessed \$17,194 in arrearages, although 23% of her then-current income would have required \$158 per week.

PROCEDURAL HISTORY

The parties were divorced in 1996, with Wife ordered to pay child support equal to 23% of her annual income or \$115 per week. In 1998, during consolidated contempt and modification proceedings, the trial court entered an

order in the contempt case setting support at \$140 per week. In 2001, Husband filed another contempt action claiming Wife owed more than \$20,000 based on the original percentage provision. The trial court found Wife in contempt, ordered her to pay \$17,194 in arrearages, and continued support at \$140 per week; the Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- State of Ga. v. Harrell, 260 Ga. 202, 391 S.E.2d 641 (1990)
- Harper v. Smith, 261 Ga. 286, 404 S.E.2d 120 (1991)
- Yancey v. Mills, 210 Ga. 684, 685(1), 82 S.E.2d 505 (1954)
- Olliff v. Olliff, 234 Ga. 892, 218 S.E.2d 622 (1975)
- Smith v. Smith, 230 Ga. 238, 196 S.E.2d 437 (1973)

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