

COURT OF APPEALS OF THE STATE OF GEORGIA

Paul Sauer v. Pa Lex Glen, LLC

Sauer v. Pa Lex Glen · No. A16A0412 · Decided May 11, 2016

SUMMARY

The Georgia Court of Appeals remanded the case to the trial court because the trial transcript was omitted from the appellate record and was necessary to review Sauer’s enumerations of error. The court directed that, after completion of the record or an order stating it could not be completed, Sauer would have 30 days to refile his notice of appeal.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	May 11, 2016
DOCKET	A16A0412
DISPOSITION	remanded
PROCEDURAL POSTURE	Sauer appealed from a trial-court proceeding, but the appellate record transmitted to the Court of Appeals omitted the trial transcript required to review his enumerations of error.
PRECEDENTIAL VALUE	Published
PARTIES	Paul Sauer v. Pa Lex Glen, LLC

TOPICS

- appellate procedure
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be remanded for completion of the appellate record when the trial transcript necessary to review the enumerations of error was omitted.

HOLDINGS

1. When the record transmitted on appeal omits a trial transcript necessary to review the appellant's enumerations of error, the appellate court may remand the case to the trial court to complete the record and require the appellant to refile the notice of appeal after the record is completed or the trial court determines that it cannot be completed.

KEY QUOTATIONS

“At any stage of the proceedings, . . . the court shall by order, either with or without motion, . . . require that additional portions of the record or transcript of proceedings be sent up, or require that a complete transcript of evidence and proceedings be prepared and sent up, or take any other action to perfect the appeal and record so that the appellate court can and will pass upon the appeal and not dismiss it.” (footnote 1)

FACTUAL BACKGROUND

Sauer's notice of appeal instructed the trial-court clerk not to omit anything from the appellate record. The trial court transmitted thirteen volumes of records, but the trial transcript was not included. Because Sauer's enumerations of error required review of the transcript, the Court of Appeals could not decide the appeal on the incomplete record.

PROCEDURAL HISTORY

Sauer filed his notice of appeal on September 9, 2015, and timely filed his appellate brief after receiving one extension. Although he requested a second extension to allow preparation of the trial transcript and his brief, the Court of Appeals denied that motion as moot after the brief was filed. The trial court transmitted thirteen volumes of records but omitted the trial transcript, so the Court of Appeals remanded the case for completion of the record and directed Sauer to refile his notice of appeal after the trial court determined that the record was complete or could not be completed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court to complete the record. After the completed transcript was filed with the trial court and the trial court entered an order stating that the record was complete or could not be completed, Sauer was allowed 30 days from that order to refile his notice of appeal. Upon refiling, the complete record and transcript were to be transmitted to the Court of Appeals for redocketing.

CASES CITED

- Galardi v. Steele-Inman, 259 Ga. App. 249-50, 576 S.E.2d 555 (2002)

OPINION

Paul Sauer v. Pa Lex Glen, LLC

PER CURIAM.

Court of Appeals of the State of Georgia

ATLANTA, _____

May 04, 2016 The Court of Appeals hereby passes the following order: A16A0412. SAUER v. PALEX GLEN, LLC. Paul Sauer filed his notice of appeal on September 9, 2015. Sauer moved for an extension of time to file his appellate brief on November 12, 2015, which this court granted, giving him until December 7, 2015. On December 4, Sauer moved for a second extension of 90 days to allow the court reporter time to prepare and file the trial transcript, and for Sauer to prepare and file his brief. This court did not enter an order on Sauer's second motion for an extension prior to the deadline for Sauer to file his brief. Sauer filed his brief on the December 7th deadline. Thereafter, this court entered an order denying his second motion for an extension as moot because Sauer had already filed his brief. Sauer's notice of appeal instructed the clerk of the trial court not to "omit anything from the record on appeal." The trial court sent up thirteen volumes of records, but the trial transcript was omitted. The nature of Sauer's enumerations of error require review of the trial transcript. Accordingly, it is hereby ordered that the case be REMANDED to the trial court for completion of the record. Once the completed transcript is on file with the trial court and the trial court has entered an order stating that the record is complete or that it cannot be completed, Sauer shall have 30 days from the date of the mandated order to refile his notice of appeal; and upon the filing of such notice of appeal the case with the complete record and transcript shall be transmitted to this Court for redocketing.¹ Court of Appeals of the State of Georgia 05/04/2016 Clerk's Office, Atlanta, _____ 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. 1 See Galardi v. Steele-Inman, 259 Ga. App. 249-50 (576 SE2d 555) (2002); OCGA § 5-6-48(d) (pertinently providing that "[a]t any stage of the proceedings, . . . the court shall by order, either with or without motion, . . . require that additional portions of the record or transcript of proceedings be sent up, or require that a complete transcript of evidence and proceedings be prepared and sent up, or take any other action to perfect the appeal and record so that the appellate court can and will pass upon the appeal and not dismiss it."); 1983 Ga. Const., Art. VI, § 1, Par. IV.