

SUPREME COURT OF GEORGIA

Jones-Shaw v. Shaw

291 Ga. 252 (2012) · Decided June 18, 2012

SUMMARY

The Georgia Supreme Court affirmed a divorce judgment declining to equitably divide a closely held nonprofit corporation because the wife failed to provide evidence establishing the corporation’s value at the time of marriage and divorce or showing marital appreciation attributable to spousal efforts. The court also upheld the denial of attorney fees, finding that the wife did not pursue her motion to compel discovery and had not shown a financial disparity warranting an award.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice
JURISDICTION	Georgia
DECIDED	June 18, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wife obtained discretionary appellate review of a final judgment and decree of divorce after a bench trial in which the superior court declined to treat a closely held nonprofit corporation as a marital asset and denied attorney fees.
STANDARD OF REVIEW	Whether property can legally constitute a marital asset is a question of law; whether a particular item is a marital asset is generally a question of fact for the trier of fact. The Supreme Court reviewed the superior court's factual determinations for abuse of discretion and deferred to its assessment of the evidence and witness credibility. Awards of attorney fees in divorce actions are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Felicia Jones-Shaw v. James W. Shaw, Jr.

TOPICS

- equitable distribution
- divorce
- attorney fees
- appellate procedure
- discovery dispute

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wife established that Georgia Tarheel Sports, Inc. or any appreciation in its value was a marital asset subject to equitable division.
2. Whether the superior court erred by denying Wife attorney fees for Husband's alleged discovery noncompliance or based on an alleged disparity in the parties' financial circumstances.

HOLDINGS

1. A premarital business may be subject to equitable division to the extent it appreciates during the marriage through either spouse's efforts, but the party seeking division must provide evidence of the asset's value at the time of marriage and at the time of divorce. Because Wife provided no evidence from which a meaningful baseline valuation or appreciation could be determined, the superior court properly declined to treat GTS as subject to equitable division.
2. Wife was not entitled to attorney fees or expenses under OCGA § 9-11-37 (a) (4) because she did not pursue her motion to compel discovery and instead obtained the documents from third parties.
3. Wife's claim for attorney fees based on Husband's allegedly superior financial circumstances was abandoned because it was unsupported by argument or citation of authority; in any event, the financial affidavits did not show a disparity, and no abuse of discretion was shown in denying fees.

KEY QUOTATIONS

“And, in order for a trial court to determine that an asset appreciated in value during a marriage, there must be evidence of the value of the asset at the time of the marriage and its value at the time of the divorce.” (253)

“Thus, the key factors are the increase in value, if any, of the asset during the course of the marriage and that any gain be the result of spousal effort, either separately or in conjunction with the other spouse.” (253)

“The finder of fact is the final arbiter of the weight of the evidence and the credibility of witnesses.” (254)

FACTUAL BACKGROUND

The parties married on July 7, 2009, and lived together as husband and wife for approximately sixteen months before separating. Before the marriage, Husband had started, but not incorporated, Georgia Tarheel Sports, Inc., a closely held nonprofit corporation that sponsored children's sports tournaments. Wife sought an equitable division of GTS and testified about its revenues, but presented no evidence of its value immediately before the marriage or at the time of divorce; Husband disputed Wife's account of GTS's income and expenses. Wife also sought attorney fees based on alleged discovery misconduct and an alleged disparity in the parties' finances.

PROCEDURAL HISTORY

Wife filed an action for separate maintenance, which became a divorce action after Husband filed a counterclaim for divorce. Following a bench trial, the superior court found that Wife had not established that Georgia Tarheel Sports, Inc. was subject to equitable division or had appreciated through her efforts, denied the parties' additional

claims, and denied attorney fees. The Supreme Court of Georgia granted Wife's application for discretionary appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Bass v. Bass, 264 Ga. 506, 507 (448 S.E.2d 366) (1994)
- Miller v. Miller, 288 Ga. 274 (705 S.E.2d 839) (2010)
- Wright v. Wright, 277 Ga. 133, 134 (1) (587 S.E.2d 600) (2003)
- Armour v. Holcombe, 288 Ga. 50, 51-52 (1) (701 S.E.2d 169) (2010)
- Turner v. Trammel, 285 Ga. 847, 848 (684 S.E.2d 623) (2009)
- Ruffin v. State, 283 Ga. 87, 88 (4) (656 S.E.2d 140) (2008)
- Weaver v. Weaver, 263 Ga. 56 (428 S.E.2d 79) (1993)