

COURT OF APPEALS OF THE STATE OF GEORGIA

Shirley Strawberry v. Vistaray USA, Inc.

A22A0751 · No. A22A0751 · Decided January 24, 2022

SUMMARY

The Georgia Court of Appeals dismissed Shirley Strawberry’s appeal from a superior court judgment in a dispossessory proceeding. The court held that Strawberry was required to pursue discretionary review and, alternatively, that her appeal was untimely because it was filed more than seven days after the relevant judgment and writ of possession.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	January 24, 2022
DOCKET	A22A0751
DISPOSITION	dismissed
PROCEDURAL POSTURE	Strawberry appealed to the Georgia Court of Appeals from a superior court judgment dismissing her appeal from a magistrate-court dispossessory default judgment and awarding damages and a writ of possession to Vistaray.
STANDARD OF REVIEW	Jurisdictional review of the appeal; the court independently determined whether Strawberry used the proper appellate procedure and filed a timely notice of appeal.
PRECEDENTIAL VALUE	Published Court of Appeals order; precedential status is not expressly stated in the source text.
PARTIES	Shirley Strawberry v. Vistaray USA, Inc.

TOPICS

- appellate jurisdiction
- appellate procedure
- landlord tenant
- eviction
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Landlord-tenant law
- Eviction and dispossessory proceedings

QUESTIONS PRESENTED

1. Whether the appeal was properly initiated by a notice of appeal or instead required an application for discretionary appeal under OCGA § 5-6-35.
2. Whether the appeal was timely under the seven-day deadline applicable to appeals in dispossessory actions.
3. Whether Vistaray's motions to dismiss based on nonpayment of rent and failure to preserve an issue should be considered after the court determined that it lacked jurisdiction.

HOLDINGS

1. An appeal from a superior court decision reviewing a lower-court decision by certiorari or de novo proceedings must be initiated by an application for discretionary appeal. Because Strawberry filed only a notice of appeal, the Court of Appeals lacked jurisdiction.
2. An appeal in a dispossessory action must be filed within seven days after entry of the judgment. Strawberry's notice of appeal, filed 34 days after the August 6 judgment and 22 days after the August 18 writ of possession, was untimely, independently depriving the Court of Appeals of jurisdiction.

KEY QUOTATIONS

“*Compliance with the discretionary appeals procedure is jurisdictional.*”

FACTUAL BACKGROUND

The proceeding concerned possession of property in a dispossessory action. The magistrate court entered a default judgment against Strawberry, and the superior court later awarded damages and granted Vistaray a writ of possession after Strawberry failed to attend the superior court hearing. The superior court issued the writ of possession on August 18, 2021.

PROCEDURAL HISTORY

The case originated as a dispossessory proceeding in magistrate court, which entered a default judgment against Strawberry. Strawberry appealed to superior court, but failed to attend the superior court hearing. On August 6, 2021, the superior court dismissed her appeal, awarded damages, and granted Vistaray a writ of possession; on August 18, 2021, it issued the writ. Strawberry filed a notice of appeal on September 9, 2021. The Court of Appeals dismissed the appeal for lack of jurisdiction and granted Vistaray's first motion to dismiss while denying its second and third motions as moot.

DISPOSITION

dismissed

CASES CITED

- Bullock v. Sand, 260 Ga. App. 874, 875 (581 SE2d 333) (2003)
- Smoak v. Dept. of Human Resources, 221 Ga. App. 257, 257 (471 SE2d 60) (1996)

- Radio Sandy Springs, Inc. v. Allen Road Joint Venture, 311 Ga. App. 334, 335-336 (715 SE2d 752) (2011)
- Ray M. Wright, Inc. v. Jones, 239 Ga. App. 521, 522-523 (521 SE2d 456) (1999)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ January 24, 2022
The Court of Appeals hereby passes the following order: A22A0751. SHIRLEY STRAWBERRY v. VISTARAY USA, INC. This case began as a dispossessory proceeding in magistrate court against Shirley Strawberry.

The magistrate court entered a default judgment against Strawberry, and she appealed to superior court. The superior court conducted a hearing which Strawberry failed to attend. On August 6, 2021, the superior court dismissed Strawberry's appeal and entered a judgment awarding damages and granting a writ of possession of the subject property to VistaRay, USA, Inc. ("VistaRay").

Then, on August 18, 2021, the superior court issued a writ of possession in the property to VistaRay. Strawberry filed a notice of appeal on September 9, 2021. VistaRay has filed three motions to dismiss the appeal.

In its first motion to dismiss, VistaRay argues that the appeal is untimely. In its second and third motions to dismiss, VistaRay argues that Strawberry failed to pay past due and accruing rent and to preserve the issue raised for appeal.

We lack jurisdiction for two reasons. First, appeals from superior court decisions reviewing lower court decisions by certiorari or de novo proceedings must be initiated by filing an application for discretionary appeal. OCGA § 5-6-35 (a) (1), (b); Bullock v. Sand, 260 Ga. App. 874, 875 (581 SE2d 333) (2003). "Compliance with the discretionary appeals procedure is jurisdictional." Smoak v. Dept. of Human Resources, 221 Ga. App.

257, 257 (471 SE2d 60) (1996). Strawberry's failure to follow the proper procedure deprives us over jurisdiction over this appeal. Second, even if a direct appeal were proper in this case, this appeal is untimely. While a notice of appeal generally may be filed within 30 days of entry of the order sought to be appealed, appeals in dispossessory actions must be filed within 7 days of the date the judgment was entered.

See OCGA § 44-7-56; Radio Sandy Springs, Inc. v. Allen Road Joint Venture, 311 Ga. App. 334, 335-336 (715 SE2d 752) (2011); Ray M. Wright, Inc. v. Jones, 239 Ga. App. 521, 522-523 (521 SE2d 456) (1999). Strawberry's notice of appeal was filed 34 days after the entry of the superior court's August 6 order and 22 days after the superior court's issuance of a writ of possession on August 18.

This Court therefore lacks jurisdiction to consider the appeal. See id. Accordingly, this appeal is hereby DISMISSED, VistaRay's first motion to dismiss is GRANTED, and VistaRay's second and third motions to dismiss are DENIED as MOOT. Court of Appeals of the State of Georgia Clerk's Office, Atlanta,_____ 01/24/2022 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.