

SUPREME COURT OF GEORGIA

Spies v. Carpenter

296 Ga. 131 (2014) · No. S14A1565 · Decided November 3, 2014

SUMMARY

The Supreme Court of Georgia held that a trial court may dismiss the child-custody portion of a divorce case under the Uniform Child Custody Jurisdiction and Enforcement Act’s inconvenient-forum provision, but may not dismiss the divorce action on that basis without expressly applying and analyzing the separate forum non conveniens statute. The court affirmed the determination that California was the more appropriate forum for custody proceedings. It reversed the dismissal of the divorce case and affirmed in part and reversed in part.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Thompson, Chief Justice                                                                                                                                                                                                                                             |
| JURISDICTION          | Georgia                                                                                                                                                                                                                                                             |
| DECIDED               | November 3, 2014                                                                                                                                                                                                                                                    |
| DOCKET                | S14A1565                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Husband sought discretionary appellate review of the Fulton County Superior Court's dismissal of his entire divorce petition, including the child-custody claims, on forum non conveniens grounds under the Uniform Child Custody Jurisdiction and Enforcement Act. |
| STANDARD OF REVIEW    | The custody-forum determination was reviewed for abuse of discretion. The legal question whether the trial court could dismiss the divorce action under OCGA § 19-9-67 was reviewed as a question of law.                                                           |
| PRECEDENTIAL VALUE    | Published Georgia Supreme Court opinion; binding precedent in Georgia.                                                                                                                                                                                              |
| PARTIES               | James Spies v. Cynthia Carpenter                                                                                                                                                                                                                                    |

TOPICS

- family law procedure
- divorce
- child custody
- forum non conveniens
- appellate procedure

## PRACTICE AREAS

family law

civil procedure

appellate procedure

constitutional law

## QUESTIONS PRESENTED

1. Whether a Georgia trial court may dismiss an entire divorce petition under OCGA § 19-9-67(a) based on forum non conveniens when the petition includes child-custody claims.
2. Whether the Fulton County Superior Court abused its discretion in determining that California was the more appropriate forum for the child-custody portion of the case.

## HOLDINGS

1. A trial court may dismiss the child-custody portion of a case under the UCCJEA's inconvenient-forum provisions, but it may not use OCGA § 19-9-67 to dismiss the divorce action as well. The trial court therefore erred in dismissing the divorce portion of husband's petition.
2. The trial court's dismissal could not be upheld on the alternative ground that husband failed to satisfy Georgia's six-month residency requirement because the trial court dismissed solely on forum non conveniens grounds and made no residency findings.
3. The trial court did not abuse its discretion in determining that California was the more appropriate forum for the child-custody portion of the case.

## KEY QUOTATIONS

*“Thus, although the trial court was authorized to dismiss the custody portion of husband’s case on the basis of forum non conveniens, OCGA § 19-9-67 (d), it erred in dismissing the divorce case as well.”* (296 Ga. at 133)

*“In light of these factors, it cannot be said the trial court abused its discretion in finding that the custody case could be resolved more expeditiously in California.”* (296 Ga. at 135)

## FACTUAL BACKGROUND

James Spies and Cynthia Carpenter married in California and had two children there. After the family lived in Tennessee and then Georgia, the parties separated; wife returned to California with the children, enrolled them in school there, and obtained a temporary California custody order. Husband, who had relocated to Virginia, filed a Georgia divorce petition while the California legal-separation action was pending.

## PROCEDURAL HISTORY

Wife filed a California legal-separation action and obtained a temporary California custody order. Husband then filed a Georgia divorce petition seeking, among other relief, primary custody. Wife specially appeared and moved to dismiss, asserting that Georgia was an inconvenient forum under OCGA § 19-9-67. The Fulton County Superior Court dismissed the entire case after consulting with the California court. The Supreme Court of Georgia granted discretionary review, affirmed dismissal of the custody portion, and reversed dismissal of the divorce portion.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The divorce portion of husband's petition must not be dismissed under OCGA § 19-9-67. The custody portion may remain dismissed on forum non conveniens grounds. The opinion does not direct a specific further ruling on OCGA § 9-10-31.1 because that statute was not invoked or considered below.

## CASES CITED

- *Holtsclaw v. Holtsclaw*, 269 Ga. 163, 163-165 (496 S.E.2d 262) (1998)
- *Hawthorn Suites Golf Resorts, LLC v. Feneck*, 282 Ga. 554 (651 S.E.2d 664) (2007)
- *Wang v. Liu*, 292 Ga. 568 (1) (740 S.E.2d 136) (2013)
- *Abernathy v. Abernathy*, 267 Ga. 815, 816 (482 S.E.2d 265) (1997)
- *Conrad v. Conrad*, 278 Ga. 107, 108 (597 S.E.2d 369) (2004)
- *Odion v. Odion*, 325 Ga. App. 733, 734-736 (754 S.E.2d 778) (2014)