

COURT OF APPEALS OF THE STATE OF GEORGIA

Tunde Akethomas v. Ayotunde Akethomas

Akethomas · No. A23E0036 · Decided March 2, 2023

SUMMARY

The Court of Appeals of Georgia grants Tunde Akethomas's motion for an extension of time to file an application for discretionary appeal in an underlying divorce proceeding. Applying Court of Appeals Rule 16(c) and OCGA § 5-6-35(d), the court limits the extension to 30 days and sets April 10, 2023, as the filing deadline.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	March 2, 2023
DOCKET	A23E0036
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff in an underlying divorce proceeding sought an extension of time to file an application for discretionary appeal from an order denying his motion for new trial.
PRECEDENTIAL VALUE	Published court order; no reporter citation appears in the source.
PARTIES	Tunde Akethomas v. Ayotunde Akethomas

TOPICS

appellate procedure family law procedure divorce motion for new trial

PRACTICE AREAS

Appellate procedure Family law

QUESTIONS PRESENTED

- Whether the Court of Appeals could grant a 45-day extension of time to file an application for discretionary appeal.
- What length of extension the Court of Appeals could grant under Court of Appeals Rule 16(c) and OCGA § 5-6-35(d).

HOLDINGS

1. The Court of Appeals may grant an extension of time to file an application for discretionary appeal only up to the time otherwise allowed for filing the application; because OCGA § 5-6-35(d) allows 30 days from entry of the order, the requested 45-day extension could not be granted.

KEY QUOTATIONS

“Pursuant to Court of Appeals Rule 16 (c), an extension of time to file an application for discretionary appeal must “not exceed the time otherwise allowed for the filing of an application.””

“Under OCGA § 5-6-35 (d), an application for discretionary appeal “shall be filed with the clerk of . . . the Court of Appeals within 30 days of the entry of the order””

FACTUAL BACKGROUND

Tunde Akethomas was the plaintiff in an underlying divorce proceeding. After the trial court denied his motion for new trial on February 7, 2023, he sought additional time to review transcripts and other materials before filing an application for discretionary appeal. He requested a 45-day extension, but the Court of Appeals determined that the governing law allowed an extension of no more than 30 days.

PROCEDURAL HISTORY

The trial court denied Tunde Akethomas's motion for new trial on February 7, 2023. He then moved in the Georgia Court of Appeals for a 45-day extension of time to file an application for discretionary appeal. The Court of Appeals granted an extension, but limited it to 30 days, through April 10, 2023.

DISPOSITION

other

OPINION

Tunde Akethomas v. Ayotunde Akethomas

PER CURIAM.

Court of Appeals of the State of Georgia

ATLANTA, _____

March 02, 2023 The Court of Appeals hereby passes the following order: A23E0036. TUNDE AKETHOMAS v. AYOTUNDE AKETHOMAS. Tunde Akethomas, the plaintiff in the above styled case, has filed an emergency motion seeking an extension of time to file an application for discretionary appeal from the trial court’s February 7, 2023 order denying the plaintiff’s motion for new trial in this underlying divorce proceeding. In the motion, the plaintiff requests a 45-day extension of time to review the transcripts and other case materials from the proceedings below. Pursuant to Court of Appeals Rule 16 (c), an extension of time to file an application for discretionary appeal must “not exceed the time otherwise allowed for the filing of an application.”

Under OCGA § 5-6-35 (d), an application for discretionary appeal “shall be filed with the clerk of . . . the Court of Appeals within 30 days of the entry of the order” Because the time allowed for the filing of an application for discretionary appeal is only 30 days from the date of entry of the order, this Court may grant an extension of time for only 30 days, as opposed to the plaintiff’s 45-day request. Therefore, the plaintiff’s motion for an extension of time to file an application for discretionary appeal is GRANTED, but only until April 10, 2023. Court of Appeals of the State of Georgia Clerk’s Office, Atlanta,_____ 03/02/2023 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.