

SUPREME COURT OF GEORGIA

Searcy v. Searcy, 280 Ga. 311

627 S.E.2d 572 (2006) · No. Nos. S05A1816, S05A1819 · Decided March 13, 2006

SUMMARY

The Supreme Court of Georgia held that a spouse's vested interest in deceased parents' estates may be awarded as alimony. However, the court ruled that the estates' co-executors were improperly joined as defendants because there was no evidence of commingled marital assets or fraud requiring their participation. The judgment was affirmed in part and reversed in part, making the venue issue unnecessary to decide.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	March 13, 2006
DOCKET	Nos. S05A1816, S05A1819
DISPOSITION	other
PROCEDURAL POSTURE	Two petitions for interlocutory review in a divorce action challenged the trial court's rulings that a portion of the husband's inheritance interests could be awarded as alimony, that the estates' co-executors could be joined as defendants, and that venue was proper.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Floyd Searcy, Jr., William Searcy et al. v. Gloria Searcy

TOPICS

- divorce
- alimony
- joinder
- venue
- family law procedure

PRACTICE AREAS

- family law
- divorce
- alimony
- civil procedure
- probate

QUESTIONS PRESENTED

1. Whether a deceased parent's estate interest held by a spouse may itself be awarded as alimony, rather than merely considered as evidence in determining an alimony award.
2. Whether the estates' co-executors were proper third-party defendants in the divorce action under Georgia joinder principles.
3. Whether venue was proper as to the co-executors.

HOLDINGS

1. A spouse's legally protected and assignable property interest in a deceased parent's estate may be awarded in whole or in part as alimony.
2. The co-executors were not proper parties to the divorce action because the record showed no marital property in the estates, no commingling of marital assets, and no alleged fraud requiring their presence to resolve the spouses' marital claims.

KEY QUOTATIONS

"It is, nonetheless, recognized as a 'legally protected interest,' [Cit.] and is subject to assignment. [Cit.]"
(280 Ga. at 312)

"The absence of the Co-executors from this litigation would not render the relief afforded the wife partial or hollow because she would obtain an interest as full and complete as that presently held by Husband." (280 Ga. at 313)

FACTUAL BACKGROUND

Gloria Searcy sought alimony from Floyd Searcy, asserting that his one-third undivided interests in the undistributed estates of his deceased parents constituted a majority of his assets. The parents' wills awarded Floyd one-third of each estate, although the estates remained subject to the executors' duties to pay debts and distribute the property. The trial court found no evidence that marital property was held in the estates or that Floyd had commingled marital assets with estate property.

PROCEDURAL HISTORY

In Gloria Searcy's divorce action against Floyd Searcy, the trial court sua sponte joined the husband's two brothers, acting as co-executors of the estates of the husband's deceased parents. The trial court ruled that the husband's undivided interests in the estates could potentially be awarded as alimony and that joinder and venue were proper. The Supreme Court of Georgia granted interlocutory review, affirmed the alimony ruling, reversed the joinder ruling, and declined to reach venue because joinder was improper.

DISPOSITION

other

CASES CITED

- *Baldree v. Baldree*, 251 Ga. 481, 306 S.E.2d 654 (1983)

- Meeks v. Kirkland, 228 Ga. 607, 187 S.E.2d 296 (1972)
- Moore v. Moore, 255 Ga. 308, 336 S.E.2d 804 (1985)
- Sanders v. Hepp, 190 Ga. 18, 8 S.E.2d 87 (1940)
- Halleman v. Halleman, 65 Ga. 476 (1880)
- Spain v. Spain, 203 Ga. 411, 47 S.E.2d 279 (1948)
- Gardner v. Gardner, 276 Ga. 189, 576 S.E.2d 857 (2003)
- Brown v. Brown, 271 Ga. 887, 525 S.E.2d 359 (2000)
- Roberts v. Roberts, 226 Ga. 203, 173 S.E.2d 675 (1970)
- Natpar Corp. v. E.T. Kassinger, Inc., 258 Ga. 102, 365 S.E.2d 442 (1988)

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