

LOUISIANA COURT OF APPEAL, THIRD CIRCUIT

Davis v. Davis

693 So. 2d 214 (3d Cir. 1997) · No. 97-260; 97-261 · Decided April 16, 1997

SUMMARY

The Louisiana Court of Appeal considered whether consolidated appeals from a divorce, custody, child-support, and paternity-disavowal judgment were timely. It dismissed the appeal concerning the divorce, custody, and support issues as untimely under Louisiana Code of Civil Procedure articles 3942 and 3943, while maintaining the timely appeal concerning the exception of prescription in the disavowal action.

CASE DETAILS

COURT	Louisiana Court of Appeal, Third Circuit
WRITING FOR THE COURT	Libabineaux, J.; Amy; Babineaux; Libabineaux; Peters
JURISDICTION	Louisiana
DECIDED	April 16, 1997
DOCKET	97-260; 97-261
DISPOSITION	dismissed
PROCEDURAL POSTURE	The Louisiana Court of Appeal issued a rule to show cause why consolidated appeals from a divorce, custody, child-support, and paternity judgment should not be dismissed as untimely.
STANDARD OF REVIEW	The timeliness of the appeals was reviewed under the mandatory appeal delays in La. Code Civ. P. arts. 3942 and 3943.
PRECEDENTIAL VALUE	published
PARTIES	Todd E. Davis v. Angela Buck Davis

TOPICS

- family law procedure
- divorce
- child custody
- child support
- appellate procedure

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the appeal from the judgment granting a divorce and awarding custody and child support was timely under La. Code Civ. P. arts. 3942 and 3943.
2. Whether the appeal in the disavowal-of-paternity action was timely.

HOLDINGS

1. An appeal from the portions of a judgment granting a divorce or awarding custody and support must be taken within the thirty-day period specified by La. Code Civ. P. arts. 3942 and 3943. Because Todd's appeal was filed outside that period, the appeal in the divorce action was untimely and was dismissed.
2. The appeal in Todd E. Davis v. Angela Buck Davis was timely and was maintained.

KEY QUOTATIONS

“It is clear under La.Code Civ.P. arts. 3942 and 3943, that the portion of the judgment relating to the issues in Angela Buck Davis v. Todd E. Davis, our Docket No. 97-260, were matters which had to be appealed within thirty days.” (215)

FACTUAL BACKGROUND

Angela Buck Davis sued Todd E. Davis for divorce, while Todd filed a separate action seeking disavowal of paternity. After consolidation, the trial court granted the divorce, awarded sole custody of the minor child to Angela, ordered Todd to pay \$350 per month in child support, and maintained Angela's exception of prescription, dismissing the disavowal action. Todd stated that he intended to appeal only the prescription ruling rather than the divorce, custody, and support rulings.

PROCEDURAL HISTORY

Angela Buck Davis filed a divorce action against Todd E. Davis, and Todd filed a disavowal-of-paternity action. The matters were consolidated, and the trial court granted a divorce, awarded Angela sole custody and \$350 per month in child support, maintained Angela's exception of prescription, and dismissed the disavowal action. Todd appealed on December 27, 1996. The court dismissed the divorce-case appeal as untimely but maintained the appeal in the disavowal action as timely.

DISPOSITION

dismissed

OPINION

LIBABINEAUX, J.

LIBABINEAUX, Judge. This court issued a rule to show cause to Todd E. Davis why these consolidated appeals should not be dismissed as untimely pursuant to La.Code Civ.P. arts. 3942 and 3943. In Angela Buck Davis v. Todd E. Davis, our Docket No. 97-260, Angela Buck Davis filed a petition for divorce against her husband, Todd E. Davis.

In *Todd E. Davis v. Angela Buck Davis*, our Docket Number 97-261, Todd E. Davis filed a petition for disavowal of paternity. In Docket Number 97-261, the defendant filed an exception of prescription. On June 6, 1996, the two suits were consolidated.

On November 12, 1996, the trial court rendered judgment granting the parties a divorce, as well as granting sole custody of the minor child to the mother. The exception of prescription filed by Angela B. Davis in the matter styled *Todd E. Davis v. Angela B. Davis* was maintained and the disavowal action was dismissed.

The judgment further ordered child support in the amount of \$350 per month for maintenance and support of the minor child. On December 27, 1996, Todd E. Davis filed a motion for an appeal in the consolidated suits. The two consolidated cases were lodged by this court on March 6, 1997.

On March 10, 1997, this court issued a rule to show cause why the above captioned appeal should not be dismissed as being untimely, pursuant to La.Code Civ.P. arts. 3942 and 3943. La.Code Civ.P. art. 3942 states as follows: Art. 3942. Appeal from judgment granting or refusing annulment or divorce A. An appeal from a judgment granting or refusing an annulment of marriage or a divorce can be taken only within thirty days from the applicable date provided in Article 2087(A)(1)-(3).

B. Such, an appeal shall suspend the execution of the judgment insofar as the judgment relates to the annulment, divorce, or any partition of community property or settlement of claims arising from the matrimonial regime. La.Code Civ.P. art. 3943 states as follows: Art. 3943. Appeal from judgment awarding custody, visitation, or support An appeal from a judgment awarding custody, visitation, or support of a person can be taken only within the delay provided in Article 3942.

Such an appeal shall not suspend execution of the judgment insofar as the judgment relates to custody, visitation, or support. In response to the rule to show cause, Mr. Davis states that his intent was to appeal the granting of the exception of prescription, and not the rulings on divorce, custody, and support. It is clear under La.Code Civ.P. arts. 3942 and 3943, that the portion of the judgment relating to the issues in *Angela Buck Davis v. Todd E. Davis*, our Docket No. 97-260, were matters which had to be appealed within thirty days.

We therefore find the appeal in our Docket Number 97-260 untimely and hereby dismiss the appeal at appellant's cost. The appeal in *Todd E. Davis v. Angela Buck Davis*, our Docket No. 97-261, was filed timely, and is therefore maintained as an appeal.

The appellant record in *Angela Buck Davis v. Todd E. Davis*, our Docket *216No. 97-260, will be retained by the court as an exhibit in appeal number 97-261. APPEAL DISMISSED.