

ALABAMA COURT OF CIVIL APPEALS

Rhodes v. Rhodes

435 So. 2d 110 (Ala. Civ. App. 1983) · Decided June 24, 1983

SUMMARY

The Alabama Court of Civil Appeals affirmed an order changing child custody because the record lacked a reporter’s transcript, a certified statement of the evidence, and an adequate appellant’s brief. The court applied the presumptions favoring the trial court’s judgment after an ore tenus hearing and awarded the appellee \$350 in attorney’s fees on appeal.

CASE DETAILS

COURT	Alabama Court of Civil Appeals
WRITING FOR THE COURT	Wright, Presiding Judge; Bradley, J.; Holmes, J.
JURISDICTION	Alabama
DECIDED	June 24, 1983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order changing custody of a child, arguing that the evidence was insufficient to support the trial court's judgment.
STANDARD OF REVIEW	Judgments entered after an ore tenus hearing are presumed correct. When the appellate record contains no proper record of the testimony and the appellant's brief does not adequately cite authorities and relied-upon portions of the record, the appellate court must presume that the evidence supports the judgment.
PRECEDENTIAL VALUE	published opinion
PARTIES	Father v. Mother

TOPICS

- child custody
- appellate procedure
- standard of review
- attorney fees
- civil procedure

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the appellate court could review the sufficiency of the evidence supporting the custody-change order when the record contained no proper transcript or certified statement of the testimony.
2. Whether the judgment had to be affirmed under the presumption of correctness applicable to ore tenus judgments when the appellant's brief failed to comply with appellate briefing requirements.
3. Whether the appellee was entitled to attorney's fees on appeal.

HOLDINGS

1. When the record contains no proper transcript or certified statement of the testimony, there is no evidence for the appellate court to review.
2. When an appellant fails to provide a proper record of the evidence and fails to support the argument with citations to authorities and the relevant parts of the record, the appellate court must presume that the evidence supports the trial court's judgment.
3. The appellee was entitled to \$350 in attorney's fees on appeal.

KEY QUOTATIONS

“In view of the absence of a record of the testimony and a certification of the testimony by the trial court, there is no evidence for our review.” (435 So. 2d at 110)

“When considered together with the presumption of correctness attending judgments after hearing evidence ore tenus, there is no alternative presented to affirming the judgment of the trial court.” (435 So. 2d at 110)

FACTUAL BACKGROUND

The appeal concerned a trial court order changing custody of a child. The underlying hearing was conducted orally without a reporter, and the parties submitted conflicting statements of the evidence. The record also lacked a record of the trial court's in camera examination of the child and lacked trial-court certification of the testimony.

PROCEDURAL HISTORY

After an ore tenus custody hearing, the trial court entered an order changing custody. No court reporter was present, and the parties submitted conflicting statements of the evidence. Because the record did not comply with Alabama appellate-record and briefing requirements, the Court of Civil Appeals presumed that evidence supported the judgment and affirmed, while awarding the appellee \$350 in attorney's fees on appeal.

DISPOSITION

affirmed

CASES CITED

- Stinnett v. Gilchrist, 419 So. 2d 238 (Ala. Civ. App. 1982)
- Dye v. Dye, 406 So. 2d 420 (Ala. Civ. App. 1981)

OPINION

WRIGHT, J.

WRIGHT, Presiding Judge. This is an appeal from an order changing custody of a child. Father appeals claiming there is insufficient evidence to support the trial court's order. Although the hearing below was oral, there was not a reporter present. Counsel by agreement have each filed their own statement of the evidence.

The statements in some areas conflict. There is no compliance with Rule 10(d), A.R.A.P. Therefore, there is no proper record of testimony before us. There is further little effort to comply with the requirements of Rule 28, A.R.A.P., particularly Rule 28(a)(5). There was an in camera examination of the child of which there is no record.

In view of the absence of a record of the testimony and a certification of the testimony by the trial court, there is no evidence for our review. Without argument with citation of authorities and parts of the record relied on, there is no appellant's brief to consider.

In such situation, it must be presumed that there was evidence presented which supports the judgment of the trial court. *Stinnett v. Gilchrist*, 419 So.2d 238 (Ala.Civ.App.1982). When considered together with the presumption of correctness attending judgments after hearing evidence ore tenus, there is no alternative presented to affirming the judgment of the trial court.

Dye v. Dye, 406 So.2d 420-(Ala.Civ.App.1981). It is therefore so ordered. Appellee's request for attorney's fees on appeal is granted in the sum of \$350. AFFIRMED. BRADLEY and HOLMES, JJ., concur.