

SUPREME COURT OF ILLINOIS

MacKenzie v. MacKenzie

238 Ill. 616 (Ill. 1909) · Decided February 19, 1909

SUMMARY

The Illinois Supreme Court considered whether an Illinois court had subject-matter jurisdiction over a separate-maintenance action brought by a resident wife against her nonresident husband who had allegedly deserted her in Illinois. The court also held that the husband waived personal-jurisdiction objections, at least as to temporary alimony and attorney-fee allowances, by defending against the rule to show cause. The court rejected challenges to the contempt proceedings and affirmed the judgment committing him for failure to pay the temporary allowances.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Scott
JURISDICTION	Illinois
DECIDED	February 19, 1909
DISPOSITION	affirmed
PROCEDURAL POSTURE	David MacKenzie appealed from a judgment of the Branch Appellate Court for the First District affirming a circuit-court order committing him for contempt for failing to pay temporary alimony and a temporary allowance for solicitor's fees in his wife's separate-maintenance proceeding.
STANDARD OF REVIEW	De novo review of legal and jurisdictional issues presented on appeal; the court reviewed the asserted defects in the contempt proceeding and commitment order.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential.
PARTIES	David MacKenzie v. Grace MacKenzie

TOPICS

- family law procedure
- venue
- personal jurisdiction
- contempt
- alimony

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Illinois circuit court had subject-matter jurisdiction over a separate-maintenance suit brought by an Illinois-resident wife against a husband who had abandoned her in Illinois and become a nonresident of the state.
2. Whether David MacKenzie waived personal-jurisdiction objections, at least as to the application for temporary alimony and solicitor's fees, by answering the rule to show cause and filing affidavits directed to the amount of the allowances.
3. Whether the contempt commitment order was legally insufficient because it did not expressly authorize payment to the sheriff or jailer as a means of obtaining release.
4. Whether the defendant's alleged inducement to enter Illinois to negotiate settlement defeated the contempt proceeding absent proof of fraud, artifice, or trick designed to secure his arrest.
5. Whether the affidavit supporting the contempt proceeding was defective because it was sworn before an attorney employed in the appellee's solicitor's office and allegedly made allegations on information and belief.

HOLDINGS

1. Where a husband abandons his wife while they reside in Illinois, removes to another state, and the wife continues to reside in Illinois, the separate-maintenance suit may be brought in any county of Illinois under the provision of the Chancery Act governing suits against nonresident defendants.
2. A defendant waives the question of personal jurisdiction, at least with respect to an application for temporary alimony and solicitor's fees, when he answers the rule to show cause and submits affidavits for the purpose of obtaining a lower allowance.
3. A contempt commitment order is not indefinite, incomplete, or insufficient merely because it directs payment to the complainant, her solicitor of record, or the clerk, without expressly naming the sheriff or jailer as a recipient of payment.
4. A defendant's claim that he was induced to enter Illinois to negotiate settlement does not defeat a contempt proceeding absent proof that he was brought into the state by fraud, artifice, or trick for the purpose of enabling his arrest.
5. The affidavit supporting the contempt proceeding was sufficient where it directly and positively alleged the essential facts that the payment order remained in force and that the required sums were unpaid, even though other allegations were made on information and belief and the affidavit was sworn before an attorney who was not counsel of record.

KEY QUOTATIONS

"This would put a premium upon non-residence and attach a burden to residence, which we do not think the legislature intended."

“The only conclusion that can be drawn from this record is, that these affidavits were filed for the purpose of being considered in the hearing on the rule.”

“The judgment of the Branch Appellate Court will be affirmed.”

FACTUAL BACKGROUND

The parties married in Indiana in 1897 and lived together until September 8, 1901, when David MacKenzie allegedly deserted Grace and their child in Chicago without means of support. Grace remained a resident of Cook County, Illinois, while David became a resident of Idaho. After being personally served while temporarily in Illinois, David failed to pay court-ordered temporary alimony and solicitor's fees totaling \$1,690, resulting in his commitment for contempt.

PROCEDURAL HISTORY

Grace MacKenzie filed a separate-maintenance bill in the Circuit Court of Cook County. David MacKenzie entered a special and limited appearance, challenged jurisdiction, and filed a plea in abatement, which was overruled; he stood by the plea and was defaulted. The circuit court ordered temporary alimony and solicitor's fees, and later committed him for contempt for nonpayment. The Branch Appellate Court for the First District affirmed, and the Illinois Supreme Court affirmed that judgment.

DISPOSITION

affirmed

CASES CITED

- Babbitt v. Babbitt, 69 Ill. 277
- Atkins v. Borstler, 46 Mich. 552
- Nicholes v. People, 165 Ill. 502