

SUPREME COURT OF GEORGIA

American Medical Security Group, Inc. v. Parker, 284 Ga. 102

663 S.E.2d 697 (2008) · No. S07G1388 · Decided July 7, 2008

SUMMARY

The Supreme Court of Georgia held that an order finding a party in wilful contempt for violating a discovery order, while striking the party's answer and entering default judgment as to liability under OCGA § 9-11-37(b)(2)(C), was not directly appealable as a contempt judgment. Because the order was an interlocutory discovery-sanctions order rather than a criminal or civil contempt judgment, the Court affirmed dismissal of the appeal for failure to follow interlocutory-appeal procedures.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Chief Justice; Benham, Justice; Hines, Justice; Carley, Justice
JURISDICTION	Georgia
DECIDED	July 7, 2008
DOCKET	S07G1388
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' dismissal of appellants' direct appeal from a trial court order imposing discovery sanctions, striking their answer, and entering default judgment as to liability.
STANDARD OF REVIEW	The appealability and character of the trial court order were questions of law reviewed by the Supreme Court.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; binding state precedent.
PARTIES	American Medical Security Group, Inc., et al. v. Parker, et al.

TOPICS

- discovery dispute
- sanctions
- default judgment
- contempt
- interlocutory appeal

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Discovery sanctions
- Contempt

QUESTIONS PRESENTED

1. Whether an order finding a wilful violation of a prior discovery order and imposing the sanctions of striking an answer and entering default judgment as to liability is directly appealable as a contempt judgment under OCGA § 5-6-34(a)(2).
2. Whether the trial court's dismissal of the notice of appeal was itself directly appealable or constituted an interlocutory order requiring compliance with OCGA § 5-6-34(b).

HOLDINGS

1. An order imposing discovery sanctions under OCGA § 9-11-37(b)(2)(C) by striking an answer and entering default judgment as to liability is not directly appealable as a contempt judgment under OCGA § 5-6-34(a)(2) when it neither imposes a sanction available for criminal contempt nor attempts to coerce compliance as civil contempt would.
2. Because the underlying October 3 order was an interlocutory discovery-sanctions order and not a directly appealable contempt judgment, the November 2 order dismissing the unauthorized direct appeal was itself interlocutory and could be challenged only through the interlocutory-appeal procedures of OCGA § 5-6-34(b).

KEY QUOTATIONS

“We conclude that such an order is not directly appealable as a contempt judgment under OCGA § 5-6-34(a)(2) where, as in the present case, it does not impose a sanction that is available for criminal contempt and does not attempt to coerce compliance with the prior discovery order as in cases involving civil contempt.” (at 698)

“the appealability of an order is determined, not by its form or the name given to it by the trial court, but rather by its substance and effect.” (at 699)

“For the foregoing reasons, we conclude that the trial court's October 3, 2006, order does not make this appeal a contempt case within the meaning of OCGA § 5-6-34(a)(2), that it was thus not directly appealable, and that, accordingly, the Court of Appeals properly dismissed the appellants' appeal.” (at 701-702)

FACTUAL BACKGROUND

Appellants failed to produce discovery documents required by a prior discovery order for more than eighteen months. The trial court characterized the failure as wilful and flagrant, struck appellants' answer, and entered a default judgment as to liability under OCGA § 9-11-37(b)(2)(C). Although the order referred to wilful contempt, it did not impose a criminal-contempt punishment or seek to coerce future compliance.

PROCEDURAL HISTORY

After appellants failed for more than eighteen months to produce discovery, the trial court found the violation wilful and flagrant, struck appellants' answer, and entered default judgment as to liability under OCGA § 9-11-37(b)(2)(C). Appellants filed a direct appeal. The trial court dismissed the notice of appeal as premature, the Court of Appeals dismissed the appeal for failure to use interlocutory-appeal procedures, and the Supreme Court granted certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- Azar v. Baird, 232 Ga. 81, 82-83, 205 S.E.2d 273 (1974)
- Rolleston v. Cherry, 233 Ga. App. 295, 296, 504 S.E.2d 504 (1998)
- Hamilton Capital Group v. Equifax Credit Information Svcs., 266 Ga. App. 1, 596 S.E.2d 656 (2004)
- First Christ Holiness Church v. Owens Temple First Christ Holiness Church, 282 Ga. 883, 885, 655 S.E.2d 605 (2008)
- Ford v. Ford, 270 Ga. 314, 315-316, 509 S.E.2d 612 (1998)
- Alexander v. DeKalb County, 264 Ga. 362, 364, 444 S.E.2d 743 (1994)
- Carey Canada, Inc. v. Hinely, 257 Ga. 150, 151, 356 S.E.2d 202 (1987)
- Ensley v. Ensley, 239 Ga. 860, 861-862, 238 S.E.2d 920 (1977)
- City of Cumming v. Realty Dev. Corp., 268 Ga. 461, 462, 491 S.E.2d 60 (1997)
- Mathis v. Corrugated Gear, 263 Ga. 419, 422, 435 S.E.2d 209 (1993)
- Cunningham v. Hamilton County, 527 U.S. 198, 207-209, 119 S. Ct. 1915, 144 L. Ed. 2d 184 (1999)
- People ex rel. General Motors Corp. v. Bua, 37 Ill. 2d 180, 226 N.E.2d 6, 12-13 (1967)
- Ford Motor Co. v. Gibson, 283 Ga. 398, 402(2), 659 S.E.2d 346 (2008)
- Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206, 211, 538 S.E.2d 441 (2000)
- Knott v. Knott, 277 Ga. 380, 381, 589 S.E.2d 99 (2003)