

COURT OF APPEALS OF GEORGIA

Armstrong v. Rapson

299 Ga. App. 884 (Ga. Ct. App. 2009) · No. A09A1721 · Decided August 28, 2009

SUMMARY

The Georgia Court of Appeals affirmed the denial of summary judgment in a medical malpractice action involving a sponge allegedly left in a patient during surgery. The court held that the appellants failed to provide portions of the evidence relied upon by the trial court, requiring the appellate court to presume the judgment was correct and affirm.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Blackburn, Presiding Judge; Adams, Judge; Doyle, Judge
JURISDICTION	Georgia
DECIDED	August 28, 2009
DOCKET	A09A1721
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants in a medical-malpractice action appealed the denial of their motion for summary judgment.
STANDARD OF REVIEW	On review of a summary-judgment ruling, the appellate court examines the entire record before the trial court. The party alleging error bears the burden of affirmatively demonstrating it from the record; when evidence necessary to resolve the appeal is omitted, the appellate court assumes the judgment was correct and affirms.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion; precedential.
PARTIES	Ned Armstrong, Orthopaedic Surgery, P.C. v. Rapson

TOPICS

- appellate procedure
- summary judgment
- standard of review
- preservation of error
- medical malpractice

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Medical malpractice
- Torts

QUESTIONS PRESENTED

1. Whether the Court of Appeals could reverse the denial of summary judgment when the appellants omitted from the appellate record evidence on which the trial court relied.
2. Whether the incomplete appellate record required affirmance of the trial court's summary-judgment ruling.

HOLDINGS

1. When an appellant omits from the appellate record evidence necessary to determine the alleged error, the appellate court must assume that the trial court's judgment was correct and affirm.

KEY QUOTATIONS

“When this court reviews the grant of summary judgment, we must look at the entire record before the trial court.” (916)

“It is well established that the burden is on the party alleging error to show it affirmatively by the record and where the proof necessary for determination of the issues on appeal is omitted from the record, an appellate court must assume that the judgment below was correct and affirm.” (916)

“As appellants have omitted from the record some portion of the evidence upon which the state court relied, we must affirm.” (917)

FACTUAL BACKGROUND

This medical-malpractice action arose from a sponge allegedly left in a patient during surgery. Dr. Armstrong and his professional corporation contended that no evidence showed Dr. Armstrong acted negligently. The appellate record omitted several depositions, including an expert nurse's deposition concerning a key medical record, the surgery, and the sponge count.

PROCEDURAL HISTORY

The trial court denied Dr. Ned Armstrong and Orthopaedic Surgery, P.C.'s motion for summary judgment. The defendants appealed, but omitted portions of the evidence relied upon by the trial court from the appellate record. The Court of Appeals affirmed because the incomplete record prevented review of the alleged error.

DISPOSITION

affirmed

CASES CITED

- Bennett v. Exec. Benefits, 210 Ga. App. 429, 436 S.E.2d 544 (1993)
- Advanced Electrical Systems v. Turkin, 288 Ga. App. 799, 799-800, 655 S.E.2d 685 (2007)
- Roach v. Roach, 237 Ga. App. 264, 265, 514 S.E.2d 44 (1999)
- Transport Indem. Co. v. Hartford Ins. Co., 198 Ga. App. 265, 266, 401 S.E.2d 294 (1990)

- Regency Exec. Plaza Unit Owner's Assn. v. Wilmock, Inc., 237 Ga. App. 193, 194-195, 514 S.E.2d 446 (1999)
- Moulton v. Wood, 265 Ga. App. 389, 389-390, 593 S.E.2d 911 (2004)

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