

COURT OF APPEALS OF THE STATE OF GEORGIA

Erma Jean Williams et al. v. American Homes 4 Rent Properties Eight LLC

No. A16D0190, Court of Appeals of the State of Georgia (January 11, 2016)

SUMMARY

The Georgia Court of Appeals dismissed as untimely a discretionary appeal arising from a dispossessory action. The court held that the appeal was governed by the seven-day filing period for dispossessory judgments under OCGA § 44-7-56, rather than the generally applicable 30-day period for discretionary appeals.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	January 11, 2016
DOCKET	A16D0190
DISPOSITION	dismissed
PROCEDURAL POSTURE	Applicants sought discretionary appellate review of a trial court order in a dispossessory action that compelled payment of rent into the court registry and stated that a writ of possession would issue if the defendants failed to comply.
STANDARD OF REVIEW	The Court of Appeals determined de novo whether the application was filed under the proper appellate procedure and within the applicable statutory deadline.
PRECEDENTIAL VALUE	Published Court of Appeals order; precedential treatment is not otherwise specified in the source text.
PARTIES	Erma Jean Williams et al. v. American Homes 4 Rent Properties Eight LLC

TOPICS

[appellate procedure](#) [landlord tenant](#) [eviction](#) [civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the application for discretionary appeal was governed by the thirty-day deadline for discretionary appeals or the seven-day deadline for appeals from dispossessory judgments.
2. Whether the discretionary appeal application, filed fifteen days after entry of the challenged order, was timely.

HOLDINGS

1. The underlying subject matter of an appeal controls the proper appellate procedure, regardless of the particular relief sought. Because this was a dispossessory matter, the appeal was required to be filed within seven days of entry of the judgment.

KEY QUOTATIONS

“But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure.”

FACTUAL BACKGROUND

In a dispossessory action, the trial court ordered the defendants to pay rent into the court registry and provided that a writ of possession would issue instantaneously if they failed to comply. The defendants challenged that order and asserted that the superior court erred in granting the writ of possession and compelling payment of rent.

PROCEDURAL HISTORY

The trial court granted American Homes 4 Rent Properties Eight LLC's motion to compel payment of rent into the registry on November 30, 2015. The applicants filed a discretionary appeal application on December 15, 2015, fifteen days after entry of the order. The Court of Appeals held that the appeal was subject to the seven-day deadline applicable to appeals from dispossessory judgments and dismissed the application as untimely.

DISPOSITION

dismissed

CASES CITED

- *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994)
- *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA,_____ January 07, 2016
The Court of Appeals hereby passes the following order: A16D0190. ERMA JEAN WILLIAMS et al. v. AMERICAN HOMES 4 RENT PROPERTIES EIGHT LLC. In this dispossessory action, American Homes 4 Rent Properties Eight, LLC filed a motion to compel payment of rent into the registry of the court, which the trial court granted on November 30, 2015.

On December 15, 2015, the applicants filed this application for discretionary appeal, arguing that the superior court erred when it granted a writ of possession and compelled the payment of rent. We lack jurisdiction.

The only order submitted in the application materials is the order granting American Homes 4 Rent's motion to compel payment of rent and providing that a writ of possession would be entered instanter should the defendants fail to comply.

As to that order, the application is untimely. Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994).

OCGA § 44-7-56 provides that an appeal from any dispossessory judgment must be filed within seven days of the date the judgment was entered. See *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999). Here, the application was not filed until 15 days after entry of this order.

Accordingly, this application is untimely, and it is hereby DISMISSED. Court of Appeals of the State of Georgia 01/07/2016 Clerk's Office, Atlanta,_____ I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written., Clerk.