SUPREME COURT OF GEORGIA

Simmons v. Simmons

288 Ga. 670 (2011) · No. S10F1818 · Decided February 28, 2011

SUMMARY

The Supreme Court of Georgia affirmed a divorce decree addressing child support, life insurance, medical expenses, responsibility for a company-owned vehicle, and attorney fees. The court held that the trial court properly included Subchapter S corporation K-1 income and certain employment benefits in gross income for child-support calculations, and it upheld the life-insurance trust requirement and other challenged provisions.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Chief Justice
JURISDICTION	Georgia
DECIDED	February 28, 2011
DOCKET	S10F1818
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband appealed the final judgment and decree of divorce after a bench trial. The Georgia Supreme Court granted discretionary review under the Family Law Pilot Project and affirmed.
STANDARD OF REVIEW	Abuse of discretion for child-support calculations, life-insurance and medical-expense provisions, equitable-division determinations, and attorney-fee awards.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Gregory Simmons v. Kristi Simmons

TOPICS

child support · family law procedure · appellate procedure · statutory interpretation · equitable distribution

PRACTICE AREAS

family law · child support · appellate procedure · equitable distribution

QUESTIONS PRESENTED

1. Whether the trial court properly included Husband's Schedule K-1 income from a closely held Subchapter S corporation in his gross income for child-support purposes.
2. Whether the trial court abused its discretion by averaging three years of K-1 income when calculating gross income.
3. Whether company-paid truck, vehicle, cell-phone, and credit-card benefits were properly treated as fringe benefits and included in gross income.
4. Whether the trial court improperly included or failed to account for company-paid life insurance, medical insurance, retirement contributions, and a tax loan in Husband's gross income.
5. Whether the trial court could require Husband to maintain life insurance exceeding his cumulative child-support obligation and establish a trust for the proceeds without his agreement.
6. Whether the trial court abused its discretion by declining to treat the cost of life insurance as a child-support deviation.
7. Whether the trial court properly allocated the child's medical-insurance premiums and uncovered medical expenses.
8. Whether the decree properly allocated possession and debts associated with the company-owned truck for purposes of equitable division.
9. Whether the trial court properly awarded Wife $15,000 in attorney fees under OCGA § 19-6-2.

HOLDINGS

1. Schedule K-1 income is properly included in a parent's gross income when calculating child support, even when the income is not actually distributed to the parent as cash.
2. The trial court did not abuse its discretion by using a three-year average of Husband's K-1 income.
3. Employer-provided benefits that significantly reduce a parent's personal living expenses are properly treated as fringe benefits and included in gross income for child-support purposes.
4. Husband failed to show that company-paid life and medical insurance, retirement contributions, and the tax loan were included in the gross-income figure, and his challenge to the wage figure presented nothing for review because he supplied the same figure used by the trial court.
5. A trial court may order a parent to maintain life insurance for the benefit of a minor child in an amount exceeding the parent's future child-support obligation and may require that the proceeds be placed in a trust for the child's benefit.
6. The trial court did not abuse its discretion by declining to treat the life-insurance premiums as a child-support deviation when the employer, rather than Husband, paid the premiums.
7. The trial court did not abuse its discretion in allocating the child's medical-insurance and uncovered medical expenses as it did.
8. The trial court did not abuse its discretion by awarding Husband possession of the company-owned truck and assigning him associated debts and expenses for purposes of equitable division.

9. The trial court properly awarded Wife $15,000 in attorney fees under OCGA § 19-6-2 after considering the parties' financial circumstances, and the award was not an abuse of discretion.
10. A parent's agreement is not required before a court imposes a life-insurance provision under OCGA § 19-6-34.

KEY QUOTATIONS

> *"The statute does not limit the value of any such insurance to the future child support obligation of the parent. The amount is within the trial court's discretion, and we cannot say that the trial court abused its discretion here."* (459-460)

> *"To the extent that Mongerson v. Mongerson, 285 Ga. 554(1), 678 S.E.2d 891 (2009) can be read to require that the affected parent agree to the imposition of such a life insurance provision, id. at n. 2, it is hereby disapproved."* (461)

FACTUAL BACKGROUND

The parties had been married for sixteen years and had one minor child. Husband was employed by and owned approximately 23 percent of a closely held Subchapter S corporation, which reported income to him through Schedule K-1, and the company provided various benefits, including use of a truck, vehicle expenses, a cell phone, and credit-card expenses. The trial court included the K-1 income and qualifying fringe benefits in Husband's gross income for child-support purposes, ordered life insurance and a trust for the child's benefit, allocated certain medical expenses and truck-related obligations, and awarded Wife $15,000 in attorney fees.

PROCEDURAL HISTORY

Wife filed for divorce after sixteen years of marriage. Following a bench trial, the trial court entered a final judgment addressing child support, life insurance, medical expenses, a company-owned truck, and attorney fees. Husband challenged those provisions, and the Supreme Court of Georgia affirmed after granting discretionary review.

DISPOSITION

affirmed

CASES CITED

- Wright v. Wright, 277 Ga. 133, 587 S.E.2d 600 (2003)
- Trawick Constr. Co. v. Georgia Dept. of Revenue, 286 Ga. 597, 690 S.E.2d 601 (2010)
- Appling v. Tatum, 295 Ga. App. 78(2), 670 S.E.2d 795 (2008)
- Wier v. Wier, 287 Ga. 443(2), 696 S.E.2d 658 (2010)
- Henry v. Beacham, 301 Ga. App. 160(2)(a), 686 S.E.2d 892 (2009)
- Mongerson v. Mongerson, 285 Ga. 554(7), 678 S.E.2d 891 (2009)
- Leggette v. Leggette, 284 Ga. 432(2), 668 S.E.2d 251 (2008)