

COURT OF APPEALS OF GEORGIA

Barker v. Elrod, 291 Ga. App. 871

663 S.E.2d 289 (2008) · No. No. A08A0564 · Decided June 11, 2008

SUMMARY

The Georgia Court of Appeals addressed an appeal arising from an estate dispute. It held that the trial court erred by denying a motion for new trial without the required oral hearing, but affirmed the refusal to reconstruct a trial transcript where the parties had knowingly waived a court reporter. The case was affirmed in part, reversed in part, and remanded for oral argument on the motion for new trial.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Andrews, Judge; Andrews; Ruffin, Presiding Judge; Bernes
JURISDICTION	Georgia
DECIDED	June 11, 2008
DOCKET	No. A08A0564
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The administrator appealed from the denial of his motion for new trial, the entry of a final order in an estate dispute, and the denial of his motion to establish a transcript of the bench trial.
STANDARD OF REVIEW	The superior court is the final arbiter of differences concerning preparation of the appellate record and transcript, and its resolution of conflicts concerning supplementation of the record is not subject to appellate review.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Russell Lee Barker, administrator of the estate of Ester H. Blackburn v. Elrod et al.

TOPICS

- probate procedure
- motion for new trial
- appellate procedure
- preservation of error
- estate litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court violated Uniform Superior Court Rule 6.3 by denying Barker's motion for new trial without conducting the requested oral hearing.
2. Whether the trial court erred by refusing to accept Barker's proposed transcript or reconstruct a transcript from the court's recollection when the parties had consciously elected to proceed without a court reporter.

HOLDINGS

1. When a motion for new trial requests a hearing, the trial court must decide the motion after an oral hearing unless it expressly orders otherwise; summarily denying the motion before the scheduled hearing was error.
2. The trial court did not err in refusing to accept or reconstruct a transcript when the parties knowingly and expressly elected to proceed with the bench trial without a court reporter, thereby waiving the right to have the transcript reconstructed.

KEY QUOTATIONS

"The appellate courts of Georgia have "consistently refused to find that the failure to hold oral argument is harmless error. To hold otherwise 'would not encourage adherence to the Uniform Rules and would render the mandated hearing a hollow right.'"" (663 S.E.2d at 289-90)

FACTUAL BACKGROUND

The case arose from a dispute over the estate of Ester H. Blackburn. The parties proceeded with a bench trial without a court reporter after counsel expressly stated that they did not wish to incur the expense of reporting the trial. When the parties later disagreed about a proposed transcript, Barker sought to have the trial court establish a transcript from recollection.

PROCEDURAL HISTORY

Barker filed a motion for new trial after the trial court entered a final order. Although the motion requested a hearing and a rule nisi set a hearing date, the trial court denied it before the scheduled hearing. Barker also sought to establish a transcript after the bench trial was conducted without a court reporter; the trial court denied that motion. The Court of Appeals remanded for an oral hearing on the motion for new trial but affirmed the ruling concerning the transcript.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for oral argument on Barker's motion for new trial. The ruling denying establishment of a transcript was affirmed.

CASES CITED

- Heston v. Lilly, 242 Ga. App. 902(1), 531 S.E.2d 784 (2000)
- Green v. McCart, 273 Ga. 862, 863(1), 548 S.E.2d 303 (2001)
- Smith v. State, 213 Ga. App. 536, 537(2)-(3), 445 S.E.2d 341 (1994)
- Nixon v. Rosenthal, 214 Ga. App. 446, 447(3), 448 S.E.2d 45 (1994)
- Nobles v. Prevost, 221 Ga. App. 594, 595, 472 S.E.2d 134 (1996)
- Ruffin v. Banks, 249 Ga. App. 297, 299(1), 548 S.E.2d 61 (2001)
- Tow v. Reed, 180 Ga. App. 609, 610, 349 S.E.2d 829 (1986)
- Giffen v. Burrell, 176 Ga. App. 278, 279(1), 335 S.E.2d 616 (1985)
- Lake v. Hicks, 147 Ga. App. 175(1), 248 S.E.2d 236 (1978)

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