

SUPREME COURT OF GEORGIA

Edge v. Edge

290 Ga. 551 (2012) · Decided February 27, 2012

SUMMARY

The Georgia Supreme Court held that an order setting aside a final order in a child custody case was directly appealable because the case involved visitation, which qualifies as a custody matter. The Court reversed the trial court’s decision to set aside the order under OCGA § 9-11-60(d)(2), concluding that the attorney’s mistake in providing an incorrect address was attributable to the husband and did not constitute an appropriate basis for relief.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice
JURISDICTION	Georgia
DECIDED	February 27, 2012
DISPOSITION	reversed
PROCEDURAL POSTURE	Wife sought discretionary appellate review of the trial court's order setting aside a prior final order concerning custody, visitation, child support, contempt, and attorney fees. The Supreme Court of Georgia granted review to consider both the merits and whether the order was directly appealable as an order in a child custody case.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Marilyn K. Edge v. Mark Anthony Edge

TOPICS

- child custody
- visitation
- appellate jurisdiction
- family law procedure
- civil procedure

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether an order granting a motion to set aside in a case involving custody and visitation is directly appealable under OCGA § 5-6-34 (a) (11), despite the general interlocutory-appeal requirement for

orders setting aside judgments.

2. Whether a party may obtain relief under OCGA § 9-11-60 (d) (2) based on the party's own counsel's failure to include the party's correct address in a motion to withdraw, resulting in lack of notice of a hearing.

HOLDINGS

1. An order granting a motion to set aside in a case involving a ruling on custody or visitation is directly appealable under OCGA § 5-6-34 (a) (11), even though such an order ordinarily leaves the case pending and would require an interlocutory appeal.
2. A party may not rely on the mistake of the party's own counsel as a basis for setting aside a judgment under OCGA § 9-11-60 (d) (2) when the alleged mistake is attributable to counsel acting as the party's representative.

KEY QUOTATIONS

“Additionally, in Todd v. Todd, 287 Ga. 250 (1) (703 SE2d 597) (2010), this Court quoted with approval Taylor v. Curl, 298 Ga. App. 45 (679 SE2d 80) (2009), which held that an order granting temporary custody was not subject to the interlocutory or discretionary appeal requirements, but was instead directly appealable under OCGA § 5-6-34 (a) (11).” (290 Ga. 552)

“To establish mistake, Husband cannot rely on the mistake of his own counsel as if his counsel were acting adversely to him, rather than as his representative before the court.” (290 Ga. 553)

FACTUAL BACKGROUND

Husband and Wife were divorced, and subsequent proceedings addressed child support, custody, visitation, contempt, and attorney fees. While Husband was working in Afghanistan, his attorney filed a motion to withdraw containing an incorrect address, and notice of a later hearing was sent to that incorrect address. Husband did not attend the hearing, after which the trial court entered a final order eliminating his visitation, awarding Wife sole custody, increasing his support obligations, finding him in contempt, and awarding attorney fees. The trial court later set aside the order based solely on the attorney's address error.

PROCEDURAL HISTORY

The parties were divorced in 2007. Husband filed for a downward modification of child support, Wife counterclaimed for an upward modification, and Wife later sought contempt relief. After Husband failed to appear at an October 2009 hearing because he allegedly lacked actual notice, the trial court entered a final order awarding Wife sole custody, eliminating Husband's visitation, increasing child support, finding Husband in contempt, and awarding attorney fees. The trial court later set aside that order under OCGA § 9-11-60 (d) (2), based on Husband's counsel's use of an incorrect address. Wife appealed, and the Supreme Court of Georgia reversed.

DISPOSITION

reversed

CASES CITED

- White v. White, 274 Ga. 884, 561 S.E.2d 801 (2002)
- Todd v. Todd, 287 Ga. 250, 703 S.E.2d 597 (2010)
- Taylor v. Curl, 298 Ga. App. 45, 679 S.E.2d 80 (2009)
- Dennis v. Dennis, 302 Ga. App. 791, 692 S.E.2d 47 (2010)
- Cates v. Jamison, 301 Ga. App. 441 n. 1, 687 S.E.2d 675 (2009)
- Facey v. Facey, 281 Ga. 367, 369 (2), 638 S.E.2d 273 (2006)
- Nodvin v. Nodvin, 235 Ga. 708, 221 S.E.2d 404 (1975)
- Munday v. Munday, 243 Ga. 863, 257 S.E.2d 282 (1979)
- Arnold v. Ga. Dept. of Human Resources, 169 Ga. App. 689, 314 S.E.2d 705 (1984)