

COURT OF APPEALS OF THE STATE OF GEORGIA

Sara D. Murray et al. v. Federal National Mortgage Association

Murray v. Federal National Mortgage Association · No. A15D0054 · Decided October 17, 2014

SUMMARY

The Georgia Court of Appeals dismissed for lack of jurisdiction an application for discretionary appeal arising from a dispossessory proceeding. The court held that the application was untimely because OCGA § 44-7-56 required an appeal from the dispossessory ruling to be filed within seven days, while the applicants filed 14 days after the order.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	October 17, 2014
DOCKET	A15D0054
DISPOSITION	dismissed
PROCEDURAL POSTURE	Applicants sought discretionary appellate review of a superior court order in a dispossessory proceeding.
STANDARD OF REVIEW	The court determined appellate jurisdiction and timeliness based on the applicable statutory appellate procedure.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Sara D. Murray, John Fisher, others v. Federal National Mortgage Association

TOPICS

- appellate procedure
- appellate jurisdiction
- eviction
- landlord tenant
- civil procedure

PRACTICE AREAS

- appellate procedure
- landlord-tenant law
- real estate

QUESTIONS PRESENTED

1. Whether the discretionary appeal application was timely when the underlying case was a dispossessory proceeding subject to the seven-day appeal period in OCGA § 44-7-56.

2. Whether the Court of Appeals had jurisdiction to consider an application filed 14 days after entry of the challenged dispossession order.

HOLDINGS

1. The underlying subject matter of an appeal controls the proper appellate procedure and applicable filing deadline, rather than the particular relief sought.
2. The application was untimely because it was filed 14 days after entry of the order sought to be appealed, exceeding the seven-day period applicable to dispossession proceedings.

KEY QUOTATIONS

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

“The application is thus untimely, and this application is hereby DISMISSED for lack of jurisdiction.”

FACTUAL BACKGROUND

Federal National Mortgage Association brought a dispossession action against Sara D. Murray and others. The magistrate court ruled for the plaintiff and issued a writ of possession, and the superior court likewise ruled for the plaintiff and issued a writ of possession. Murray and John Fisher filed a discretionary appeal application 14 days after the superior court order they sought to appeal.

PROCEDURAL HISTORY

Federal National Mortgage Association initiated a dispossession proceeding in magistrate court against Sara Murray and others and obtained a judgment and writ of possession. Murray and John Fisher appealed to superior court, which also ruled for the plaintiff and issued a writ of possession. After the superior court dismissed the purported appeal and reissued the writ of possession, Murray and Fisher filed a discretionary appeal application 14 days after entry of the challenged order. The Court of Appeals dismissed the application as untimely and for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- *Rebich v. Miles*, 264 Ga. 467, 467-468, 448 S.E.2d 192 (1994)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ October 09, 2014
The Court of Appeals hereby passes the following order: A15D0054. SARA D. MURRAY et al. v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION. This case began in magistrate court as a dispossessory proceeding brought by plaintiff Federal National Mortgage Association against Sara Murray and others.

The magistrate court found in favor of the plaintiff and issued a writ of possession. Murray and John Fisher appealed to superior court, which also found in favor of the plaintiff and issued a writ of possession.¹ Murray and Fisher purported to file a notice of appeal to this Court.² On August 28, 2014, the superior court entered an order dismissing the appeal and reissuing its writ of possession.

On September 11, 2014, Murray and Fisher filed this application for discretionary appeal. Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure.

See *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994). The underlying subject matter of this discretionary application is a dispossessory judgment. OCGA § 44-7-56, which governs dispossessory actions, requires that an appeal from a dispossessory ruling be filed within seven days of the date judgment was entered.

Here, however, Murray and Fisher filed their application 1 The applicants have not included a copy of this order with the materials submitted. 2 Pursuant to OCGA § 5-6-35 (a) (1), an application for discretionary appeal is required to appeal from such an order. for discretionary appeal 14 days after entry of the order they seek to appeal.

The application is thus untimely, and this application is hereby DISMISSED for lack of jurisdiction. Court of Appeals of the State of Georgia 10/09/2014 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.