

SUPREME COURT OF GEORGIA

Cavender v. Taylor, 285 Ga. 724

681 S.E.2d 139 (2009) · No. No. S09A1012 · Decided June 29, 2009

SUMMARY

The Supreme Court of Georgia affirmed a default judgment quieting title in favor of the Taylors. The court held that Cavender's answer was untimely because filing by mail is not complete upon mailing, and that he failed to satisfy the mandatory conditions for opening the default under OCGA § 9-11-55(b).

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	June 29, 2009
DOCKET	No. S09A1012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cavender appealed the trial court's order granting the Taylors' motion for default judgment in a quiet title action.
STANDARD OF REVIEW	The opinion does not expressly identify a standard of review; it applied the governing statutory requirements for filing an answer and opening default and concluded that the trial court lacked discretion to open the default absent compliance.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	David Cavender v. Laura Taylor, James Taylor

TOPICS

- default judgment
- default
- quiet title
- title disputes
- civil procedure

PRACTICE AREAS

- civil procedure
- real property
- appellate procedure

QUESTIONS PRESENTED

1. Whether an answer mailed within the thirty-day response period is timely when it is filed with the court after that period.
2. Whether the trial court erred by failing to open Cavender's default when he did not satisfy the statutory conditions for opening default.
3. Whether the default judgment properly established that the Taylors acquired a fee simple interest in the property by adverse possession.

HOLDINGS

1. An answer must be filed with the court within thirty days after service of the summons and complaint; mailing the answer within that period does not extend the filing deadline when the answer is not filed with the court until later.
2. The trial court had no discretion to open the default because Cavender did not satisfy the mandatory statutory conditions precedent, including making a sworn showing, offering to plead instant, announcing ready for trial, setting up a meritorious defense, and paying costs.
3. Because the default was properly entered, the material allegations of the complaint were deemed admitted, including the allegations establishing the Taylors' adverse possession under color of title for seven years; the trial court therefore properly held that they acquired a fee simple interest by adverse possession.

KEY QUOTATIONS

“There are four conditions precedent to opening default. The defendant must: (1) make a showing under oath; (2) offer to plead instant; (3) announce ready to proceed with trial, and (4) set up a meritorious defense.”
(681 S.E.2d at 140)

“Compliance with the conditions of OCGA § 9-11-55(b) is mandatory, and in its absence, the trial court has no discretion to open default.” (681 S.E.2d at 140)

FACTUAL BACKGROUND

The Taylors filed a complaint to quiet title to real property in Hall County, Georgia, and served Cavender on July 1, 2008. Cavender filed his answer on August 5, 2008, after the thirty-day period, although he argued that he had mailed it on July 26. The trial court found him in default and ultimately entered judgment that the Taylors acquired a fee simple interest through adverse possession. Cavender did not respond to the motion for default judgment, did not attend the later hearing, and did not move to open the default or pay costs.

PROCEDURAL HISTORY

The Taylors filed a quiet title complaint in the trial court. Cavender was served but filed his answer after the statutory thirty-day period. The trial court entered default, later granted default judgment determining that the Taylors acquired a fee simple interest by prescription, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Hopkins v. Harris, 130 Ga. App. 489, 491, 203 S.E.2d 762 (1973)
- Muscogee Realty Dev. Corp. v. Jefferson Co., 252 Ga. 400, 401, 314 S.E.2d 199 (1984)
- Jesson v. GCH & Assocs., 248 Ga. App. 97, 545 S.E.2d 645 (2001)
- Copeland v. Carter, 247 Ga. 542(1), 277 S.E.2d 500 (1981)

OPINION

THOMPSON, J.

681 S.E.2d 139 (2009) CAVENDER v. TAYLOR et al. No. S09A1012. Supreme Court of Georgia. June 29, 2009. Reconsideration Denied July 28, 2009. *140 David A. Cavender, pro se. Coleman & Chambers, James C. Rogers, Gainesville, for appellees. THOMPSON, Justice. Appellant David Cavender appeals from the trial court's order granting a default judgment in favor of appellees Laura and James Taylor in this quiet title action.

Finding no error, we affirm. The record shows that on June 19, 2008, the Taylors filed a complaint to quiet title of certain real property located in Hall County, Georgia. The complaint was served on Cavender on July 1, 2008, and he filed his answer on August 5, 2008.

On August 21, 2008, the Taylors moved for default judgment based on Cavender's failure to timely file an answer. See OCGA § 9-11-12(a) (defendant shall serve answer within 30 days after service of summons and complaint). Cavender did not respond to the motion for default judgment.

On September 11, 2008, the trial court found Cavender to be in default as a matter of law and entered a default judgment on the issue of whether the Taylors acquired an interest in the property through prescription.

Because of some uncertainty caused by the language of the proposed default judgment order, however, the court denied the motion "as to the issue of exactly what that interest is." After a subsequent hearing, which Cavender did not attend, to determine the exact nature of the Taylors' interest, the court granted the motion for default judgment in its entirety and held that the Taylors acquired a fee simple interest in the property by prescription.

1. Relying on OCGA § 9-11-5(b), which provides that service by mail is complete upon mailing, Cavender argues that his answer was timely filed on July 26, 2008, the date he placed it with the United States mail, and therefore it was error to enter a default judgment.

We disagree. Our statutes provide that an answer shall be filed with the court within 30 days after the service of the summons and complaint. OCGA §§ 9-11-5(d); 9-11-12(a). No provision is made

for extending the time for filing by mail. "Had the legislature intended to say filing by mail was permissible and should date from the date of mailing rather than the date of `filing in the clerk's office' it would have so provided."

Hopkins v. Harris, 130 Ga.App. 489, 491, 203 S.E.2d 762 (1973). 2. Cavender also argues that the trial court erred by failing to open the default. Under OCGA § 9-11-55(b), a prejudgment default may be opened by a court, after payment of costs, for providential cause which prevented filing of the plea, for excusable neglect, or where a judge determines a proper case has been made for the default to be opened.

There are four conditions precedent to opening default. The defendant must: (1) make a showing under oath; (2) offer to plead instant; (3) announce ready to proceed with trial, and (4) set up a meritorious defense. *Id.*; *Muscogee Realty Dev. Corp. v. Jefferson Co.*, 252 Ga. 400, 401, 314 S.E.2d 199 (1984). Compliance with the conditions of OCGA § 9-11-55(b) is mandatory, and in its absence, the trial court has no discretion to open default.

Jesson v. GCH & Assocs., 248 Ga.App. 97, 545 S.E.2d 645 (2001). Here, Cavender did not move the court to open the default, either as a matter of right or before final judgment based on providential cause or excusable neglect, he has not met the four conditions precedent, and he has not paid costs. See OCGA § 9-11-55(a) and (b); *Copeland v. Carter*, 247 Ga. 542(1), 277 S.E.2d 500 (1981) (trial court has no discretion to open default judgment where *141 costs not paid).

Accordingly, the trial court was without discretion to open default. *Id.* The default judgment having been properly entered, all material allegations in the complaint were deemed admitted, including those establishing the Taylors' adverse possession of the property under color of title for seven years, and it was not error for the court to hold that the Taylors acquired a fee simple interest in the property by adverse possession.

See OCGA §§ 44-5-161; 44-5-164; 44-5-172. Judgment affirmed. All the Justices concur.