

COURT OF APPEALS OF THE STATE OF GEORGIA

James C. Barnes et al. v. Matthew Scott Harkins et al.

Barnes v. Harkins · No. A17A1643 · Decided June 8, 2017

SUMMARY

The Georgia Court of Appeals dismissed the appeal for lack of jurisdiction. It held that a motion seeking a stay to enforce compliance with OCGA § 8-2-38 was not an application for injunctive relief appealable directly under OCGA § 5-6-34(a)(4), and that the defendants had failed to follow the interlocutory appeal procedure.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	June 8, 2017
DOCKET	A17A1643
DISPOSITION	dismissed
PROCEDURAL POSTURE	Builders appealed from the trial court's denial of their compound motion seeking an injunction, dismissal, and summary judgment. The appeal was initially taken to the Supreme Court of Georgia and transferred to the Court of Appeals.
STANDARD OF REVIEW	The court construed the motion according to its substance rather than its nomenclature and reviewed its own appellate jurisdiction de novo.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	James C. Barnes, Nick Stewart v. Matthew Scott Harkins, Laura X. Harkins

TOPICS

[appellate jurisdiction](#)[interlocutory appeal](#)[injunctions](#)[construction law](#)[statutory interpretation](#)

PRACTICE AREAS

[appellate procedure](#)[civil procedure](#)[construction law](#)

QUESTIONS PRESENTED

1. Whether the denial of the builders' motion seeking enforcement of OCGA § 8-2-38 constituted the denial of an application for an interlocutory injunction permitting a direct appeal under OCGA § 5-6-34(a)(4).
2. Whether the Court of Appeals had jurisdiction when the builders failed to comply with Georgia's interlocutory-appeal procedure.

HOLDINGS

1. A motion that substantively seeks a stay of proceedings to enforce compliance with OCGA § 8-2-38 is not an application for injunctive relief within the meaning of OCGA § 5-6-34(a)(4); therefore, denial of the motion does not authorize a direct appeal under that provision.
2. Because the builders were required to follow the interlocutory-appeal procedure and failed to do so, the failure deprived the Court of Appeals of jurisdiction and required dismissal of the appeal.

KEY QUOTATIONS

“In substance, the Defendants’ motion sought to stay proceedings in order to enforce compliance with OCGA § 8-2-38.” (order)

“The denial of this motion does not constitute the denial of an application for injunctive relief as contemplated by OCGA § 5-6-34 (a) (4) for purposes of seeking a direct appeal.” (order)

“Their failure to do so deprives us of jurisdiction over this appeal, which is hereby DISMISSED.” (order)

FACTUAL BACKGROUND

Homeowners Matthew Scott Harkins and Laura X. Harkins sued builders James C. Barnes and Nick Stewart concerning alleged construction defects. The builders sought to enforce OCGA § 8-2-38 by moving for a stay or injunction, dismissal, and summary judgment, asserting that the homeowners were deemed to have accepted an offer to remedy the defects. The trial court denied the motion.

PROCEDURAL HISTORY

The homeowners sued the builders over construction defects. The builders moved for an injunction, dismissal, and summary judgment, arguing that the homeowners were barred under OCGA § 8-2-38(m) because they had accepted a settlement offer. The trial court denied the motion, addressing the statute-of-limitations issue rather than the application of OCGA § 8-2-38. The builders attempted a direct appeal under OCGA § 5-6-34(a)(4); the Supreme Court transferred the appeal to the Court of Appeals, which dismissed it for failure to use the interlocutory-appeal procedure.

DISPOSITION

dismissed

CASES CITED

- Planet Ins. Co. v. Ferrell, 228 Ga. App. 264, 266 (491 S.E.2d 471) (1997)

- Grange Mut. Cas. Co. v. Riverdale Apartments, Ltd. Partnership, 218 Ga. App. 685, 686 (463 S.E.2d 46) (1995)

OPINION

James C. Barnes v. Matthew Scott Harkins

PER CURIAM.

Court of Appeals of the State of Georgia

ATLANTA, _____

May 23, 2017 The Court of Appeals hereby passes the following order: A17A1643. JAMES C. BARNES et al. v. MATTHEW SCOTT HARKINS et al. Homeowners Matthew Scott Harkins and Laura X. Harkins (“the Plaintiffs”) sued builders James C. Barnes and Nick Stewart (“the Defendants”). The Defendants filed a compound motion seeking an injunction, dismissal of the suit, and summary judgment. The crux of the motion was that the Plaintiffs were barred from pursuing their suit under OCGA § 8-2-38 (m) because they were deemed to have accepted a settlement offer.¹ The trial court denied the motion. Rather than addressing the application of OCGA § 8-2-38, the trial court found that suit was not barred by the statute of limitation.² 1 OCGA § 8-2-38 (m) provides: [a]ny claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within 30 days after receipt of the offer. If no response is served upon the contractor within the 30 day period, then the offer shall be deemed accepted. The remedy for a plaintiff’s failure to comply with OCGA § 8-2-38 is a stay of the proceedings. See OCGA § 8-2-37. 2 The Defendants designated the record to be transmitted on appeal. It is unclear from the limited material they transmitted how the statute of limitation argument was raised before the trial court. The Defendants appealed this ruling to the Supreme Court, arguing that a direct appeal was permitted under OCGA § 5-6-34 (a) (4), which pertains to orders granting or refusing to grant requests for interlocutory injunctions. The Supreme Court transferred the appeal to this Court. We, however, lack jurisdiction. In construing a motion, we look to the substance of the motion rather than its nomenclature. Planet Ins. Co. v. Ferrell, 228 Ga. App. 264, 266 (491 SE2d 471)

(1997). In substance, the Defendants’ motion sought to stay proceedings in order to enforce compliance with OCGA § 8-2-38. The denial of this motion does not constitute the denial of an application for injunctive relief as contemplated by OCGA § 5-6-34 (a) (4) for purposes of seeking a direct appeal. See Grange Mut. Cas. Co. v. Riverdale Apartments, Ltd. Partnership, 218 Ga. App. 685, 686 (463 SE2d 46) (1995) (“The denial of a stay, by its very nature, does not come within the category of cases described in OCGA § 5-6-34 (a) (4).”). Accordingly, in order to appeal, the Defendants were required to comply with the interlocutory appeal procedure. See *id.* Their failure to do so deprives us of jurisdiction over this appeal, which is hereby DISMISSED. Court of Appeals of the State of Georgia Clerk’s Office, Atlanta, _____
05/23/2017 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.

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