

COURT OF APPEALS OF VIRGINIA

Landon T. A. Summers v. Marcia Lee Brown Summers

Summers v. Summers, Record No. 2759-98-4 (Va. Ct. App. June 15, 1999) (unpublished) · No. Record No. 2759-98-4 · Decided June 15, 1999

SUMMARY

The Virginia Court of Appeals summarily affirmed a Fairfax County Circuit Court divorce judgment in an appeal concerning custody, child support, jurisdiction, mediation, due process, equal protection, and alleged civil-rights violations. The court held that several issues were barred by res judicata or had become moot, rejected the remaining arguments, and remanded for determination of the mother's appellate attorney's fees and costs.

CASE DETAILS

COURT	Court of Appeals of Virginia
WRITING FOR THE COURT	Per curiam; Judge Benton; Judge Coleman; Judge Willis
JURISDICTION	Virginia
DECIDED	June 15, 1999
DOCKET	Record No. 2759-98-4
DISPOSITION	affirmed_and_remanded
PROCEDURAL POSTURE	The husband appealed the final decree of divorce entered by the Circuit Court of Fairfax County. The Court of Appeals summarily affirmed the judgment and remanded for determination of the wife's appellate attorney fees and costs.
STANDARD OF REVIEW	The court summarily reviewed the assignments of error under Rule 5A:27 and reviewed the trial court's refusal to refer the matter for mediation for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Landon T. A. Summers v. Marcia Lee Brown Summers

TOPICS

- dissolution of marriage
- child custody
- child support
- appellate procedure
- res judicata

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the husband's challenges to the custody orders were barred by res judicata because the custody issues had been finally decided and previously appealed.
2. Whether entry of a custody order resolving custody before disposition of the remaining divorce issues deprived the circuit court of jurisdiction under Rule 1:1 or Code § 20-103.
3. Whether the circuit court's treatment of the pendente lite child-support order entitled the husband to restitution of support payments.
4. Whether the Court of Appeals and circuit court acted outside their jurisdiction by permitting child-support proceedings during the appeal.
5. Whether the circuit court improperly quashed subpoenas for the children's medical and school records while the custody appeal was pending.
6. Whether denial of mediation violated due process or equal protection or constituted an abuse of discretion.
7. Whether the divorce decree was invalid because it was entered without corroborated testimony or review of a properly filed commissioner's report.
8. Whether the trial court judges and other state agents were liable under the Fourteenth Amendment and 42 U.S.C. § 1983.
9. Whether the wife was entitled to attorney fees and costs incurred in defending the appeal.

HOLDINGS

1. The husband was barred by res judicata from relitigating custody issues that had been finally resolved and previously appealed.
2. Entry of the custody order did not deprive the circuit court of jurisdiction over divorce issues that remained pending and were unaffected by the custody order.
3. The husband was not entitled to restitution of previously paid child support.
4. Once the Court of Appeals acquired jurisdiction over the appeal, it had authority to grant the trial court leave to proceed with child-support matters.
5. The circuit court did not err in quashing the subpoenas because it lacked subject matter jurisdiction while the custody appeal was pending.
6. The denial of mediation did not violate due process or equal protection, and the circuit court did not abuse its discretion in refusing to refer the case for mediation evaluation.
7. Code § 20-103 did not bar the circuit court from entering an order finally resolving custody before deciding the remaining divorce issues.
8. The challenge to the divorce decree based on alleged absence of corroborated testimony or review of a commissioner's report lacked merit.

9. The husband failed to establish any Fourteenth Amendment or 42 U.S.C. § 1983 violation and was not entitled to damages or relief on that theory.
10. The wife was entitled to recover reasonable attorney fees and costs incurred in defending the appeal, with the amount to be determined by the trial court on remand.

KEY QUOTATIONS

"res judicata" "precludes the relitigation of a claim or issue once a final determination on the merits has been reached by a court of competent jurisdiction." (at 3)

"In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter." (at 8)

"He cannot approbate and reprobate--invite error and then take advantage of his own wrong." (at 10)

"A court speaks only through its orders." (at 12)

FACTUAL BACKGROUND

The parties were involved in divorce proceedings involving custody, child support, and equitable distribution. The circuit court entered a custody order on December 18, 1997, later entered a final divorce decree, and subsequently entered a consent decree fixing child support pending a final hearing or material change in circumstances. The husband challenged the sequence and finality of the custody, support, and divorce orders, the denial of mediation and access to records, and alleged constitutional and civil-rights violations.

PROCEDURAL HISTORY

The circuit court entered a custody decree on December 18, 1997, resolving permanent custody issues, and later entered a final decree of divorce on October 27, 1998. The Court of Appeals had previously summarily affirmed the custody ruling, and the Supreme Court of Virginia dismissed the husband's petition for appeal. In this appeal, the husband raised ten due-process, equal-protection, jurisdictional, custody, support, mediation, and civil-rights claims. The Court denied certification, summarily affirmed the divorce judgment, awarded the wife reasonable appellate fees and costs, and remanded solely for their determination.

DISPOSITION

affirmed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Circuit Court of Fairfax County to determine the reasonable attorney fees and costs incurred by Marcia Lee Brown Summers in defending the appeal.

CASES CITED

- Summers v. Summers, No. 2669-97-4 (Va. Ct. App. Nov. 10, 1998)
- Summers v. Summers, No. 990067 (Va. Feb. 17, 1999)
- Summers v. Summers, No. 2826-97-4 (Va. Ct. App. July 6, 1998)
- Commonwealth ex rel. Gray v. Johnson, 7 Va. App. 614, 617-18, 376 S.E.2d 787, 788 (1989)
- Duke v. Duke, 239 Va. 501, 391 S.E.2d 77 (1990)
- Wilson v. Wilson, 25 Va. App. 752, 760, 492 S.E.2d 495, 499 (1997)
- Greene v. Greene, 223 Va. 210, 212, 288 S.E.2d 447, 448 (1982)
- Ellis v. Commonwealth, 227 Va. 419, 423, 317 S.E.2d 479, 481 (1984)
- Frazer v. Frazer, 23 Va. App. 358, 379-80, 477 S.E.2d 290, 300 (1996)
- Erikson v. Erikson, 19 Va. App. 389, 391, 451 S.E.2d 711, 713 (1994)
- Wells v. Wells, 29 Va. App. 82, 509 S.E.2d 549 (1999)
- Nenninger v. Nenninger, 19 Va. App. 696, 454 S.E.2d 45 (1995)
- Polumbo v. Polumbo, 13 Va. App. 306, 307, 411 S.E.2d 229, 229 (1991)
- Southwest Virginia Hospitals, Inc. v. Lipps, 193 Va. 191, 193, 68 S.E.2d 82, 84 (1951)
- Steinberg v. Steinberg, 21 Va. App. 42, 50, 461 S.E.2d 421, 424 (1995)
- Sullivan v. Commonwealth, 157 Va. 867, 878, 161 S.E. 297, 300 (1931)
- Cunningham v. Smith, 205 Va. 205, 208, 135 S.E.2d 770, 773 (1964)
- Hill v. Hill, 227 Va. 569, 578, 318 S.E.2d 292, 297 (1984)
- Kern v. Commonwealth, 2 Va. App. 84, 88, 341 S.E.2d 397, 400 (1986)
- O'Loughlin v. O'Loughlin, 23 Va. App. 690, 479 S.E.2d 98 (1996)