

SUPREME COURT OF GEORGIA

Wall v. Thurman, 283 Ga. 533

661 S.E.2d 549 (2008) · No. Nos. S08A0549, S08A0550 · Decided May 19, 2008

SUMMARY

The Supreme Court of Georgia considered two appeals arising from Marshall Wall's action against magistrate Judge James Thurman. The court held that Wall's voluntary dismissal was ineffective because the trial court had already communicated its decision on the merits, but reversed attorney-fee awards entered without adequate notice and hearing, the restrictions on counsel's practice of law, and the sealing of the record. The court affirmed the denial of the motion to recuse in Case No. S08A0549 and reversed the attorney-fee amount order in Case No. S08A0550.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Chief Justice
JURISDICTION	Georgia
DECIDED	May 19, 2008
DOCKET	Nos. S08A0549, S08A0550
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The appellants appealed orders of the Lee County Superior Court denying recusal, dismissing Wall's action, awarding attorney fees against Finkelstein, restricting Finkelstein's ability to practice law, sealing the record, and setting the amount of attorney fees.
STANDARD OF REVIEW	The opinion applies de novo legal analysis to the trial court's authority, statutory and procedural requirements for attorney-fee awards, sealing of court records, and recusal procedure.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Marshall Wall, James Finkelstein v. James Thurman

TOPICS

[civil procedure](#) [attorney fees](#) [appellate procedure](#) [mootness](#) [remedies](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wall's voluntary dismissal was effective after the trial court had communicated its decision on the merits.
2. Whether the trial court had authority to restrict Finkelstein's ability to practice law.
3. Whether attorney fees under OCGA § 9-15-14(b) could be awarded without notice and a hearing on liability.
4. Whether the trial court erred by sealing the record without a hearing and findings balancing privacy interests against the public's interest in access.
5. Whether the motion to recuse was timely and required referral to another judge for a hearing.

HOLDINGS

1. A voluntary dismissal under OCGA § 9-11-41(a) is ineffective when the trial court has already announced or communicated its decision on the merits of the action.
2. The trial court erred by restricting Finkelstein's ability to practice law because attorney discipline is within the exclusive jurisdiction of the Supreme Court of Georgia, except for the trial court's limited authority to disbar an attorney under the applicable bar rule.
3. Before awarding attorney fees under OCGA § 9-15-14(b), the court must provide notice that such an award is under consideration and a hearing or other opportunity to challenge whether fees are warranted.
4. A superior court may restrict or prohibit access to court records only after complying with Uniform Superior Court Rules 21.1 and 21.2, including a hearing and findings balancing the relevant privacy interests against the public's interest in access.
5. The trial court did not err by refusing to refer the motion to recuse because the motion was untimely, the asserted delay was not supported by good cause, and the affidavit did not allege bias from an extra-judicial source.

KEY QUOTATIONS

"The principle at the foundation of these decisions is that after a party has taken the chances of litigation and knows what is the actual result reached in the suit by the tribunal which is to pass upon it, he can not, by exercising his right of voluntary dismissal, deprive the opposite party of the victory thus gained." (661 S.E.2d at 550-551)

"Before attorney fees may be awarded against a party under OCGA § 9-15-14(b), the party must be given notice that an award of attorney fees under that Code section is under consideration so that he or she has "an opportunity to challenge the basis on which the fees are assessed."" (661 S.E.2d at 551)

FACTUAL BACKGROUND

Wall sued Magistrate Judge James Thurman, alleging constitutional violations during a warrant-application hearing and asserting that bond conditions exceeded Thurman's jurisdiction. Before Wall filed a voluntary dismissal, the trial court communicated its decision to dismiss the action and award attorney fees. The trial court later restricted Wall's counsel's ability to practice law, awarded attorney fees without prior notice and a hearing on liability, sealed the record without the required hearing and findings, and denied a motion to recuse.

PROCEDURAL HISTORY

Wall filed an action in December 2006 against Magistrate Judge James Thurman. Although Wall filed a voluntary dismissal on May 17, 2007, the trial court had previously communicated its decision to dismiss the action and award attorney fees. The trial court thereafter entered orders addressing dismissal, attorney fees, attorney-practice restrictions, sealing of the record, and recusal. In Case No. S08A0549, the Supreme Court of Georgia affirmed in part and reversed in part; in Case No. S08A0550, it reversed the order setting the amount of attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In Case No. S08A0549, the judgment is affirmed in part and reversed in part, including reversal of the attorney-practice restrictions, attorney-fee award, and sealing order as specified in the opinion. In Case No. S08A0550, the order setting the amount of attorney fees is reversed. The trial court must comply with the required notice and hearing procedures before determining attorney-fee liability and with the required hearing and findings procedures before sealing court records.

CASES CITED

- *Woelper v. Piedmont Cotton Mills*, 266 Ga. 472, 474, 467 S.E.2d 517 (1996)
- *Guillebeau v. Yeargin*, 254 Ga. 490, 492, 330 S.E.2d 585 (1985)
- *Groves v. Groves*, 250 Ga. 459, 298 S.E.2d 506 (1983)
- *Peoples Bank of Talbotton v. Exchange Bank of Macon*, 119 Ga. 366, 368, 46 S.E. 416 (1904)
- *Meister v. Brock*, 268 Ga. App. 849, 849-850, 602 S.E.2d 867 (2004)
- *Stevens v. Thomas*, 257 Ga. 645, 648, 361 S.E.2d 800 (1987)
- *Williams v. Cooper*, 280 Ga. 145, 146-147, 625 S.E.2d 754 (2006)
- *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 6, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986)
- *In re Motion of the Atlanta-Journal-Constitution*, 271 Ga. 436, 437-438, 519 S.E.2d 909 (1999)
- *Kappelmeier v. Winegarden*, 279 Ga. 874, 621 S.E.2d 452 (2005)
- *Birt v. State*, 256 Ga. 483, 484, 350 S.E.2d 241 (1986)
- *Echols v. Echols*, 281 Ga. 546, 546-548, 640 S.E.2d 257 (2007)
- *Turner v. State*, 280 Ga. 174, 175, 626 S.E.2d 86 (2006)

