

SUPREME COURT OF GEORGIA

Ellis v. Ellis, 286 Ga. 625

690 S.E.2d 155 (2010) · No. S09F1798 · Decided February 1, 2010

SUMMARY

The Georgia Supreme Court affirmed a divorce judgment entered on the pleadings after the wife failed to file responsive pleadings. The court held that her failure waived notice of the final hearing under OCGA § 9-11-5(a), and distinguished cases involving express assurances of notice or extraordinary efforts to proceed without an opposing party. Three justices dissented, concluding that the property division lacked sufficient evidentiary support and that the proceedings were fundamentally unfair.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice; All other participating Justices
JURISDICTION	Georgia
DECIDED	February 1, 2010
DOCKET	S09F1798
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wife appealed the denial of her motion for new trial after the superior court entered a final divorce judgment on the pleadings without conducting an evidentiary hearing or providing notice of the final hearing.
STANDARD OF REVIEW	The appellate court does not reweigh evidence, make credibility determinations, or create assumptions to support a holding; it reviews the trial court's ruling on the asserted notice issue and defers to supported factual findings.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bonnie Lou Ellis v. Otis Dan Ellis

TOPICS

divorce family law procedure motion for new trial motion for judgment on the pleadings
appellate procedure

PRACTICE AREAS

family law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether a divorce defendant who files no responsive pleadings waives notice of the final hearing under OCGA § 9-11-5(a).
2. Whether alleged assurances or agreements by opposing counsel required notice despite the statutory waiver.
3. Whether the trial court could enter a judgment on the pleadings without an evidentiary hearing based on verified pleadings, affidavits, or other permitted materials.

HOLDINGS

1. A defendant in a divorce action who fails to file responsive or defensive pleadings waives notice of the time and place of the final hearing and entry of judgment under OCGA § 9-11-5(a).
2. The alleged agreement by Husband's former counsel to provide notice did not require reversal because no similar assurance was made by the trial court, Wife was represented by counsel, and the circumstances did not fall within the exceptions recognized in *Anderson*, *Green*, or related cases.
3. The majority held that the trial court had an evidentiary basis for its ruling because the record included Husband's verified complaint, Domestic Relations Financial Affidavit, motion for final judgment, and other materials, and Wife did not challenge the sufficiency of the evidence on appeal.

KEY QUOTATIONS

“When a defendant in a divorce action fails to file defensive pleadings, the divorce is, by definition, uncontested. Failure to file defensive pleadings constitutes waiver of notice of the hearing on the final decree.” (286 Ga. 626)

“As [Wife] was represented, [Husband's] counsel could rely upon [Wife's] counsel to properly consider and advise [Wife] on such matters as the effect of not filing responsive pleadings.” (286 Ga. 627)

FACTUAL BACKGROUND

Husband filed for divorce, and Wife acknowledged service but never filed defensive or responsive pleadings, even after retaining counsel. Husband's counsel initially provided notice of a final hearing that was later continued, and Wife's counsel alleged that counsel agreed to provide notice of any rescheduled hearing. A successor attorney for Husband moved for a final judgment on the pleadings without an evidentiary hearing, and the trial court granted the motion. The majority concluded that Wife's failure to file responsive pleadings waived notice and that the judgment was supported by verified pleadings and related materials.

PROCEDURAL HISTORY

Husband filed a divorce complaint in June 2008. Wife acknowledged service but filed no responsive pleading, although she later retained counsel. The trial court granted Husband's motion for a final judgment of divorce on

the pleadings, and it denied Wife's motion for new trial based on lack of notice. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Hardwick v. Hardwick, 245 Ga. 570, 266 S.E.2d 184 (1980)
- Anderson v. Anderson, 264 Ga. 88, 441 S.E.2d 240 (1994)
- Green v. Green, 263 Ga. 551, 437 S.E.2d 457 (1993)
- Lucas v. Lucas, 273 Ga. 240, 539 S.E.2d 807 (2000)
- Crenshaw v. Crenshaw, 267 Ga. 20, 471 S.E.2d 845 (1996)
- James v. James, 275 Ga. 165, 562 S.E.2d 506 (2002)
- Youmans v. Youmans, 247 Ga. 529, 276 S.E.2d 837 (1981)
- Harris v. Harris, 228 Ga. 562, 187 S.E.2d 139 (1972)
- Wood v. Wood, 283 Ga. 8, 655 S.E.2d 611 (2008)
- Traditional Properties, Inc. v. Performance Food Group of Georgia, LLC, 291 Ga. App. 442, 662 S.E.2d 250 (2008)
- Jolley v. Jolley, 216 Ga. 51, 114 S.E.2d 534 (1960)
- Stokes v. Stokes, 246 Ga. 765, 273 S.E.2d 169 (1981)
- Melcher v. Melcher, 274 Ga. 711, 559 S.E.2d 468 (2002)
- In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999)