

SUPREME COURT OF GEORGIA

Gillespie v. Gillespie

Gillespie v. Gillespie, 259 Ga. 838 (1990) · No. S90A0182 · Decided February 28, 1990

SUMMARY

****Topics:**** Appeal; Burden of Proof; Transcript Requirement; Presumption of Regularity; Equitable Division of Property; Marital Property; Alimony. ****Holding:**** The Supreme Court of Georgia affirmed the trial court's award of a one-half interest in real estate to the wife. Because the appellant failed to provide a transcript of the final hearing, the court presumed the evidence supported the award as an equitable division of marital property, rather than an erroneous alimony award or division of separate property. The burden is on the appellant to show error affirmatively by the record, and without a transcript, the court presumes the trial court acted correctly.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham
JURISDICTION	Georgia
DECIDED	February 28, 1990
DOCKET	S90A0182
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from trial court judgment awarding one-half interest in real estate to wife.
STANDARD OF REVIEW	The burden is on the party alleging error to show it affirmatively by the record. Without a transcript, the court presumes the evidence supported the trial court's decision.
PRECEDENTIAL VALUE	Published
PARTIES	Gillespie v. Gillespie

TOPICS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in awarding a one-half interest in real estate to the wife, specifically whether the award was alimony (not prayed for) or an equitable division of property (if the property was separate).

HOLDINGS

1. The judgment is affirmed because the appellant failed to provide a transcript of the evidence, and the court presumes the evidence supported the trial court's decision.

KEY QUOTATIONS

“The burden is on the party alleging error to show it affirmatively by the record.” (839)

“Without a transcript of the evidence presented, we will in keeping with very old authority in this state presume in favor of public officers, in the absence of all proof to the contrary, that they discharged their duty in compliance with the law.” (839)

FACTUAL BACKGROUND

In a divorce proceeding, the trial court awarded the wife a one-half interest in certain real estate. The judgment did not specify whether the award was alimony or an equitable division of property. The husband claimed the property was his separate property, while the wife claimed she had paid for a one-half interest. No transcript of the final hearing was provided on appeal.

PROCEDURAL HISTORY

The trial court entered judgment awarding wife a one-half interest in real estate. Appellant moved for new trial, arguing error. The trial court denied the motion. The Supreme Court granted discretionary appeal.

DISPOSITION

affirmed

CASES CITED

- Shepherd v. Shepherd, 225 Ga. 455 (3) (169 SE2d 314) (1969)
- Doe v. Peeples, 1 Ga. 1 (1846)
- Mallory v. Mallory, 240 Ga. 63, 64 (239 SE2d 384) (1977)

OPINION

BENHAM, J.

259 Ga. 838 (1990) 388 S.E.2d 688 GILLESPIE v. GILLESPIE. S90A0182. Supreme Court of Georgia. Decided February 28, 1990. Gregory M. Perry, for appellant. *839 Walter B. Harvey, for appellee. BENHAM, Justice. We granted the application for discretionary appeal in this case to

consider whether the trial court erred in awarding a one-half interest in certain real estate to the wife.

The judgment entered by the trial court did not specify whether the award to appellee of an interest in the real estate was alimony or an equitable division of property. Appellant contends here, as he did at the hearing on his motion for new trial, that the award was erroneous if it was an award of alimony because the petition did not contain a prayer for alimony, and was erroneous if it was an equitable division of the property because the land in question was his separate property.

At the hearing on the motion for new trial, appellant's counsel argued that appellant's testimony would show that the property was his; appellee's counsel stated that appellee had testified at the final hearing that she had paid appellant for a one-half interest in the property.

The trial court noted that it could not remember the evidence, but that it would not have awarded alimony in this case and that it was aware that property which was separate property of one spouse could not be equitably divided. "The burden is on the party alleging error to show it affirmatively by the record. [Cits.]" *Shepherd v. Shepherd*, 225 Ga. 455 (3) (169 SE2d 314) (1969).

It is clear from the foregoing statement of the case that the error appellant urges requires a consideration of the evidence. Unfortunately for appellant, there is no transcript of the final hearing. Without a transcript of the evidence presented, we will in keeping with very old authority in this state presume in favor of public officers, in the absence of all proof to the contrary, that they discharged their duty in compliance with the law.

Doe v. Peeples, 1 Ga. 1 (1846). [Cit.] [*Mallory v. Mallory*, 240 Ga. 63, 64 (239 SE2d 384) (1977).] We presume, therefore, that the evidence supported a finding that the real estate at issue was marital property and that the trial court awarded appellee a one-half interest as an equitable division of property. Judgment affirmed. All the Justices concur.