

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)