

SUPREME COURT OF GEORGIA

Wright v. Young

297 Ga. 683 (2015) · No. S15A0896 · Decided September 14, 2015

SUMMARY

The Supreme Court of Georgia considered whether an incarcerated divorce litigant was entitled to notice of the final divorce decree before seeking to set it aside. Because the record did not establish whether notice was provided and the trial court made no findings on that issue, the court vacated the denial of the motion and remanded for findings and further proceedings.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice
JURISDICTION	Georgia
DECIDED	September 14, 2015
DOCKET	S15A0896
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the denial of a motion to vacate and set aside a final divorce decree based on the appellant's alleged lack of notice.
STANDARD OF REVIEW	The appellate court reviewed the denial of the motion to set aside and required a remand because the trial court failed to make necessary findings regarding notice.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Willie Wright v. Kenya Young

TOPICS

- family law procedure
- divorce
- appellate procedure
- remedies

PRACTICE AREAS

- family law
- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the notice requirement in OCGA § 15-6-21 (c), as applied to final judgments, was waived because Wright failed to file responsive pleadings.
2. Whether the trial court could deny Wright's motion to set aside the divorce decree without making findings as to whether notice of the decree had been provided.
3. What relief was required depending on whether the trial court gave notice of the final decree.

HOLDINGS

1. The notice requirement in OCGA § 15-6-21 (c) applies to final judgments as well as decisions on motions, and the requirement is waived only when the losing party has failed to file any responsive pleadings. Because Wright filed an answer to the divorce complaint, he did not waive notice.
2. When the record does not establish whether the trial court notified the losing party of the final judgment and the trial court makes no findings on that issue, the order denying the motion to set aside must be vacated and the case remanded for findings.
3. If the trial court finds that notice was not given, it must grant the motion to set aside, re-enter the final judgment, and allow the losing party 30 days from re-entry to seek appellate review. If the court finds that notice was given, it should deny the motion to set aside.

KEY QUOTATIONS

“the issue is not whether the losing party had knowledge that judgment was entered, but rather whether the duty imposed on the court in OCGA § 15-6-21(c) was carried out.”

“OCGA § 15-6-21 (c) only requires that the trial court give notice to the losing party. If the trial court has in fact given notice, then a motion to set aside may be properly denied whether or not the losing party actually received the notice.”

FACTUAL BACKGROUND

The parties' marriage was dissolved by a final divorce decree entered on October 26, 2010. Wright, who was incarcerated and proceeding pro se, alleged that he never received notice of the decree and first learned of it in October 2014 after inquiring with the trial court clerk. Although Wright had filed an answer to the divorce complaint, the record did not establish whether the trial court notified him of the final decree.

PROCEDURAL HISTORY

The trial court entered a final order and decree dissolving the parties' marriage on October 26, 2010. Wright alleged that he did not receive notice of the decree and moved to set it aside after learning of it in October 2014. The trial court denied the motion without making findings regarding whether notice had been provided. The Supreme Court of Georgia granted discretionary review, vacated the order, and remanded for factual findings concerning notice.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must determine whether it gave Wright notice of the final divorce decree. If notice was not given, the court must grant the motion to set aside, re-enter the final judgment, and allow Wright 30 days from the re-entry date to seek appellate review. If notice was given, the court should deny the motion to set aside.

CASES CITED

- *Cambron v. Canal Insurance Co.*, 246 Ga. 147, 269 S.E.2d 426 (1980)
- *Morgan v. Starks*, 214 Ga. App. 265, 447 S.E.2d 426 (1994)
- *Ellis v. Ellis*, 286 Ga. 625, 690 S.E.2d 155 (2010)
- *Pierce v. State*, 289 Ga. 893, 717 S.E.2d 202 (2011)
- *Woods v. Savannah Restaurant Corp.*, 267 Ga. App. 387, 599 S.E.2d 338 (2004)
- *Kendall v. Peach State Machinery, Inc.*, 215 Ga. App. 633, 451 S.E.2d 810 (1994)
- *C&R Financial Lenders, LLC v. State Bank & Trust Co.*, 320 Ga. App. 600, 740 S.E.2d 371 (2013)

OPINION

BENHAM, J.

In the Supreme Court of Georgia Decided: September 14, 2015 S15A0896. *WRIGHT v. YOUNG*. BENHAM, Justice. This appeal arises from the trial court's denial of appellant Willie Wright's motion to vacate and set aside the October 26, 2010 final order and decree of divorce dissolving his marriage to appellee Kenya Young.¹ According to appellant, who is incarcerated and acting pro se in this appeal, he never received notice of the final divorce decree.

Appellant avers he first learned of the final divorce decree on October 2, 2014, in response to a September 2014 inquiry he made to the clerk of the trial court about the status of the divorce proceedings. Upon learning of the final divorce decree, appellant filed a motion to set aside on October 23, 2014. Without making any findings as to notice, the trial court denied the motion on November 6, 2014.

¹ We granted appellant's discretionary application for review (Case. No. S15D0485) on December 22, 2014. OCGA § 15-6-21 (c)² provides in pertinent part: [I]t shall be the duty of the judge to file his or her decision with the clerk of the court in which the cases are pending and to notify the attorney or attorneys of the losing party of his or her decision.

Said notice shall not be required if such notice has been waived pursuant to subsection (a) of Code Section 9-11-5. Although OCGA § 15-6-21 refers to notice for decisions made on motions, its logic also applies to final judgments. See *Cambron v. Canal*, 246 Ga. 147 (1) (269 SE2d 426) (1980); *Morgan v. Starks*, 214 Ga. App. 265, 266 (447 SE2d 426) (1994).

The only circumstance in which the notice requirement is waived under OCGA § 15-6-21 (c) is when the losing party has failed to file any responsive pleadings in the case. See OCGA § 9-11-5 (a); *Ellis v. Ellis*, 286 Ga. 625, 626 (690 SE2d 155) (2010). Since the record shows that appellant filed an answer to the complaint for divorce, appellant did not waive notice.

The record does not show, however, whether the trial court notified appellant of the final decree of divorce. In addition, when it denied the motion to set aside the divorce decree, the trial court did not make any findings on the issue of notice.

In such circumstances, the appellate courts have held that the 2 Chapter 6 of Title 15 of the Georgia Code concerns the obligations of Georgia's superior courts. 2 order denying the losing party's motion to set aside must be vacated and the case remanded so that the trial court may make findings on the issue of whether notice was provided. See *Pierce v. State*, 289 Ga. 893 (2) (717 SE2d 202) (2011); *Woods v. Savannah Restaurant Corporation*, 267 Ga. App.

387, 388 (599 SE2d 338) (2004). "[T]he issue is not whether the losing party had knowledge that judgment was entered, but rather whether the duty imposed on the court in OCGA § 15-6- 21(c) was carried out." *Kendall v. Peach State Machinery, Inc.*, 215 Ga. App. 633 (2) (451 SE2d 810) (1994) (physical precedent only). If on remand the trial court finds notice was not given, then the trial court must grant the motion to set aside the final judgment, re-enter the final judgment, and allow the losing party 30 days from the re-entry date to seek appellate review.

Id. at 634; *Woods v. Savannah Restaurant Corporation*, *supra*, 267 Ga. App. at 388. See also *Cambron v. Canal Insurance Company*, *supra*, 246 Ga. at 148-149. If the trial court finds that notice was given, then the motion to set aside should be denied. 3 See *id.* at 149;3 *C&R Financial Lenders, LLC v. State Bank & Trust Company*, 320 Ga. App. 600 (2) (740 SE2d 371) (2013).

Judgment vacated and case remanded. All the Justices concur. 3 To the extent that *Cambron v. Canal Insurance Company*, *supra*, 246 Ga. at 149, states that notice must be sent and received in order to deny a motion to set aside in these circumstances, it is disapproved. OCGA § 15-6-21 (c) only requires that the trial court give notice to the losing party. If the trial court has in fact given notice, then a motion to set aside may be properly denied whether or not the losing party actually received the notice.