

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)