

COURT OF APPEALS OF THE STATE OF GEORGIA

Elizabeth Langley v. Travelers Home and Marine Insurance Company

Langley · No. A21A1393 · Decided June 15, 2021

SUMMARY

The Georgia Court of Appeals dismissed the appeal for lack of jurisdiction. The trial court had dismissed claims against non-party insurers but had not resolved the claims against Apex, had not directed entry of judgment under OCGA § 9-11-54 (b), and the plaintiff had not followed the interlocutory appeal procedures under OCGA § 5-6-34 (b).

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Georgia
DECIDED	June 15, 2021
DOCKET	A21A1393
DISPOSITION	dismissed
PROCEDURAL POSTURE	Direct appeal from an order dismissing claims against nonparty entities and denying the plaintiff's motion to substitute a defendant.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and whether the order was a final appealable judgment.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Elizabeth Langley v. Travelers Home and Marine Insurance Company, Apex Disaster Management, Inc., Geico Insurance Company, Phoenix Insurance Company, Travelers Insurance Company

TOPICS

[appellate jurisdiction](#) [final judgment rule](#) [interlocutory appeal](#) [appellate procedure](#) [breach of contract](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#) [insurance](#) [contracts](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction over a direct appeal from an order resolving claims against fewer than all parties when the trial court did not enter an express determination under OCGA § 9-11-54 (b) and the appellant did not follow the interlocutory appeal procedures of OCGA § 5-6-34 (b).

HOLDINGS

1. An order resolving claims against fewer than all parties is not a final judgment when other claims remain pending, absent an express determination for entry of judgment under OCGA § 9-11-54 (b).
2. An appeal from a nonfinal order must comply with the interlocutory appeal requirements of OCGA § 5-6-34 (b); failure to do so deprives the Court of Appeals of jurisdiction and requires dismissal.

KEY QUOTATIONS

“In such circumstances, there must be an express determination under OCGA § 9-11-54 (b) or there must be compliance with the interlocutory appeal requirements of OCGA § 5-6-34 (b). Where neither of these code sections [is] followed, the appeal is premature and must be dismissed.”

“Plaintiff’s failure to follow the required appellate procedures deprives us of jurisdiction over this appeal, which is hereby DISMISSED.”

FACTUAL BACKGROUND

Langley brought a breach-of-contract action alleging that her insurer mishandled and failed to pay a homeowners insurance claim. Although the complaint named Apex Disaster Management, Inc. and an entity identified as "Travel Insurance thru Geico," service was made or attempted on Geico Insurance Company, Phoenix Insurance Company, and Travelers Insurance Company. Langley conceded that she had misidentified her insurer and sought to substitute another entity as a defendant.

PROCEDURAL HISTORY

Langley filed a breach-of-contract action concerning the handling and nonpayment of a homeowners insurance claim. The trial court dismissed motions filed by entities that were not named defendants and denied Langley's motion to substitute another entity as a defendant. Langley filed a direct appeal, but the Court of Appeals dismissed it for lack of jurisdiction because claims against Apex remained unresolved and the requirements for either a final judgment or an interlocutory appeal were not satisfied.

DISPOSITION

dismissed

CASES CITED

- Johnson v. Hosp. Corp. of America, 192 Ga. App. 628, 629 (385 SE2d 731) (1989)
- Pace Constr. Corp. v. Northpark Assocs., 215 Ga. App. 438, 439-440 (450 SE2d 828) (1994)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA,_____ June 09, 2021 The Court of Appeals hereby passes the following order: A21A1393. ELIZABETH LANGLEY v. TRAVELERS HOME AND MARINE INSURANCE COMPANY et al. Plaintiff Elizabeth Langley filed a breach of contract action, claiming that her insurer mishandled and failed to pay a claim under her homeowners insurance policy.

The only named defendants in the complaint were Apex Disaster Management, Inc. and an entity that Langley identified as “Travel Insurance thru Geico.” But service was made or attempted upon three non-parties – Geico Insurance Company, Phoenix Insurance Company, and Travelers Insurance Company.

The non-parties moved to dismiss, arguing that they were not proper defendants. In response, plaintiff conceded that she had misidentified her insurer, and she moved to substitute another entity as a defendant. The trial court granted the dismissal motions and denied plaintiff’s substitution motion. Plaintiff filed this direct appeal from the trial court’s order.

We, however, lack jurisdiction. OCGA § 5-6-34 (a) (1) generally allows direct appeals from final judgments, that is where the case is no longer pending in the trial court below. “In a case involving multiple parties or multiple claims, a decision adjudicating fewer than all the claims or the rights and liabilities of less than all the parties is not a final judgment.” (Punctuation omitted.)

Johnson v. Hosp. Corp. of America, 192 Ga. App. 628, 629 (385 SE2d 731) (1989). Here, the trial court’s order granted the dismissal motions of the non-parties, but there is no indication in the record that the claims against defendant Apex have been resolved. “In such circumstances, there must be an express determination under OCGA § 9-11-54 (b) or there must be compliance with the interlocutory appeal requirements of OCGA § 5-6-34 (b).

Where neither of these code sections [is] followed, the appeal is premature and must be dismissed.” (Citations and punctuation omitted.) Id. The trial court’s order in this case did not direct the entry of judgment pursuant to OCGA § 9-11-54 (b), and therefore, it is not a final order. And plaintiff failed to follow the interlocutory appeal procedures of OCGA § 5-6-34 (b).

Plaintiff’s failure to follow the required appellate procedures deprives us of jurisdiction over this appeal, which is hereby DISMISSED. See Pace Constr. Corp. v. Northpark Assocs., 215 Ga. App. 438, 439-440 (450 SE2d 828) (1994). Court of Appeals of the State of Georgia Clerk’s Office, Atlanta,_____ 06/09/2021 I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.,
Clerk.

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