

SUPREME COURT OF GEORGIA

Shepherd v. Shepherd, 225 Ga. 455

169 S.E.2d 314 (1969) · No. 25247 · Decided July 10, 1969

SUMMARY

The Supreme Court of Georgia considered an appeal from orders denying a motion to vacate and finding the husband in contempt for failing to pay attorney's fees in a divorce, alimony, and child custody case. The court denied dismissal, held that challenges to earlier temporary alimony and contempt orders were untimely, concluded that the record supported the trial court's rulings, and affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Mobley, Justice
JURISDICTION	Georgia
DECIDED	July 10, 1969
DOCKET	25247
DISPOSITION	affirmed
PROCEDURAL POSTURE	The husband appealed from two May 2, 1969, orders denying his motion to vacate prior temporary alimony and property orders and finding him in contempt for failure to pay attorney's fees. The wife moved to dismiss the appeal.
STANDARD OF REVIEW	An appellant bears the burden of affirmatively showing error in the record. When the record does not establish the alleged error, the appellate court presumes that the trial court acted correctly.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia
PARTIES	Charles Richard Shepherd v. Jana Lou Clanton Butler Shepherd

TOPICS

- family law procedure
- appellate procedure
- divorce
- alimony
- contempt

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure
- contempt
- service of process

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed because the notice of appeal did not accurately identify the May 2, 1969, orders being challenged.
2. Whether the husband's challenges to the December 19, 1968, temporary alimony, property, and contempt orders were timely.
3. Whether the record established that the December 19 orders were entered without adequate notice to the husband.
4. Whether service of the contempt citation on the husband's attorneys by mail and personal service on the husband sufficiently complied with the governing service statute.

HOLDINGS

1. The appeal was not subject to dismissal because the notice of appeal and enumeration of errors, considered together, showed that the husband appealed from both May 2, 1969, orders.
2. The challenges to the December 19, 1968, orders were untimely because those temporary alimony and contempt orders were directly appealable and the time for appealing them had expired before the May 8, 1969, notice of appeal was filed.
3. The trial court's orders were upheld because the husband failed to provide a transcript or other affirmative record evidence establishing that the December 19 orders were entered without due notice.
4. Service was legally sufficient under the circumstances because the citation and order were mailed to the husband's attorneys and the husband was personally served before the May 2 contempt order.

KEY QUOTATIONS

“The burden is on the party alleging error to show it affirmatively by the record.” (225 Ga. 457)

“Under the circumstances of this case, as they appear from the record, we cannot say that there was not sufficient compliance with the law in regard to service.” (225 Ga. 458)

FACTUAL BACKGROUND

The trial court entered temporary orders requiring the husband to deliver specified personal property to the wife and pay \$1,000 in attorney's fees. The husband later moved to vacate those orders, claiming that he and his attorneys lacked notice that attorney's fees and personal property would be considered at the hearing. The trial court denied the motion and held the husband in contempt for failing to pay the attorney's fees. The contempt citation was mailed to the husband's attorneys and personally served on the husband before the contempt order was entered.

PROCEDURAL HISTORY

In a divorce, alimony, and child-custody proceeding, the trial court entered temporary orders on December 19, 1968, awarding the wife specified personal property and \$1,000 in attorney's fees and ordering the husband's arrest for contempt. On May 2, 1969, the court denied the husband's motion to vacate those orders and found

him in contempt for failure to pay the attorney's fees. The husband appealed, and the Supreme Court of Georgia denied the motion to dismiss and affirmed.

DISPOSITION

affirmed

CASES CITED

- Richmond Hosiery Mills v. Hayes, 146 Ga. 240 (2) (91 S.E. 54)
- Campbell v. Powell, 206 Ga. 768 (3) (58 S.E.2d 829)

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