

COURT OF APPEALS OF THE STATE OF GEORGIA

Cornelius Todd v. U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust

Todd · No. A21A0905 · Decided March 16, 2021

SUMMARY

The Georgia Court of Appeals dismissed Cornelius Todd’s appeal from a superior court order in a dispossessory proceeding. The court held that the order was not a final judgment because the action remained pending, and Todd had failed to follow 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	March 16, 2021
DOCKET	A21A0905
DISPOSITION	dismissed
PROCEDURAL POSTURE	Todd appealed a superior court order in a dispossessory proceeding. The appellee moved to dismiss for lack of appellate jurisdiction because the order was not final and Todd had not followed the interlocutory appeal procedures.
STANDARD OF REVIEW	Whether the Court of Appeals has appellate jurisdiction is a legal question reviewed under the applicable statutory appellate-jurisdiction requirements.
PRECEDENTIAL VALUE	published
PARTIES	Cornelius Todd v. U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust

TOPICS

[interlocutory appeal](#)[appellate jurisdiction](#)[eviction](#)[landlord tenant](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court's Order Regarding Eviction was a final judgment permitting a direct appeal.
2. Whether Todd was required to comply with Georgia's interlocutory appeal procedures before seeking appellate review.
3. Whether the failure to follow those procedures deprived the Court of Appeals of jurisdiction.

HOLDINGS

1. A direct appeal was unavailable because the Order Regarding Eviction did not resolve the action and the case remained pending in the superior court.
2. Because the order was interlocutory, Todd was required to comply with OCGA § 5-6-34 (b) to obtain appellate review.
3. Todd's failure to comply with the interlocutory appeal procedures deprived the Court of Appeals of jurisdiction.

KEY QUOTATIONS

“As a general rule, a right of direct appeal lies from a final judgment; that is, where the case is no longer pending below.”

“His failure to do so deprives us of jurisdiction over this appeal.”

FACTUAL BACKGROUND

The case is a dispossessory proceeding involving an Order Regarding Eviction entered by the superior court. The order did not resolve the action, which remained pending below; the record also did not show that the trial court had ruled on the appellee's later application for a writ of possession.

PROCEDURAL HISTORY

The dispossessory proceeding began in magistrate court, and the parties consented to transfer it to superior court. The superior court entered an Order Regarding Eviction on September 11, 2020, but the action remained pending. Todd filed a direct notice of appeal without obtaining the required authorization for an interlocutory appeal, and the Court of Appeals granted the motion to dismiss for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Pace Constr. Corp. v. Northpark Assoc., 215 Ga. App. 438, 439 (450 SE2d 828) (1994)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA,_____ February 26, 2021
The Court of Appeals hereby passes the following order: A21A0905. CORNELIUS TODD v. U.S. BANK TRUST, N. A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST. This dispossessory proceeding originated in magistrate court, and the parties consented to the transfer of the case to superior court.

On September 11, 2020, the superior court entered its “Order Regarding Eviction,” but noted that evictions were temporarily halted by an order of the Centers for Disease Control. Defendant Cornelius Todd, represented by attorney Grady Roberts,¹ filed a notice of appeal from the superior court’s order. Plaintiff U.S. Bank Trust filed a motion to dismiss the appeal for lack of jurisdiction.

As a general rule, a right of direct appeal lies from a final judgment; that is, where the case is no longer pending below. See OCGA § 5-6-34 (a) (1). Here, the “Order Regarding Eviction” did not resolve the action, which remains pending in the superior court.² Accordingly, Todd was required to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) in order to obtain appellate review.

See *Pace Constr. Corp. v. Northpark Assoc.*, 215 Ga. App. 438, 439 (450 SE2d 828) (1994). His failure to do so deprives us of jurisdiction over this appeal. Accordingly, U.S. Bank Trust’s motion to dismiss is hereby GRANTED, and this appeal is 1 On February 15, 2017, this Court issued an order revoking attorney Grady Alexander Roberts’s permission to practice law before the Court of Appeals.

2 U.S. Bank Trust filed its application for a writ of possession on January 21, 2021, but the record on appeal contains no indication that trial court has ruled on the application. DISMISSED. Court of Appeals of the State of Georgia Clerk’s Office, Atlanta,_____ 02/26/2021 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.