

SUPREME COURT OF GEORGIA

Roberts v. Tharp, 286 Ga. 579

690 S.E.2d 404 (2010) · No. S09A1961 · Decided March 1, 2010

SUMMARY

The Supreme Court of Georgia reviewed a juvenile court's child-support and attorney-fee rulings in a post-divorce contempt and custody matter. The court held that the child-support award was invalid because it lacked the written findings required by OCGA § 19-6-15(c)(2), and that the court was required to enforce the parties' contractual attorney-fee provision in their consent order. The judgment was vacated and the case remanded for entry of consistent orders.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Presiding Justice
JURISDICTION	Georgia
DECIDED	March 1, 2010
DOCKET	S09A1961
DISPOSITION	vacated
PROCEDURAL POSTURE	Father appealed from the denial of his motion to set aside the final judgment and motion for new trial after the juvenile court entered child-support, custody, visitation, contempt, and attorney-fee orders. The Supreme Court of Georgia granted Father's application for discretionary appeal.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Gary L. Roberts v. Mary Katherine Tharp

TOPICS

child support family law procedure appellate procedure remedies child custody

PRACTICE AREAS

family law child support appellate procedure remedies

QUESTIONS PRESENTED

1. Whether the juvenile court's child-support orders were legally sufficient when they omitted the written findings required by OCGA § 19-6-15(c)(2), including findings concerning the parents' gross income, the child's health-insurance coverage, and allocation of uninsured health-care expenses.
2. Whether the juvenile court could refuse to enforce the attorney-fee provision in the parties' 2005 consent order after finding Mother in contempt.

HOLDINGS

1. A child-support order entered under the revised OCGA § 19-6-15 guidelines must contain the specific written findings required by OCGA § 19-6-15(c)(2), including the parents' gross income and required findings concerning the child's health-insurance coverage and allocation of uninsured health-care expenses. Because the juvenile court omitted those findings, its child-support award was vacated.
2. When a consent order incorporates the parties' agreement that the party found in contempt will pay the other party's attorney fees, the juvenile court lacks authority to alter that fee arrangement. Because Mother was found in contempt, the order requiring each party to pay its own attorney fees was vacated.

KEY QUOTATIONS

"The guidelines for computing the amount of child support are found in OCGA § 19-6-15 and must be considered by any court setting child support." (690 S.E.2d at 405)

"Those guidelines "are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent."" (690 S.E.2d at 405)

"The juvenile court "was without authority to alter the fee arrangement and thus nullify important provisions of the contract reached by [Father] and [Mother] which had been made a part of [the 2005 consent order]."" (690 S.E.2d at 406)

FACTUAL BACKGROUND

Gary L. Roberts and Mary Katherine Tharp divorced in 1997 and have one child. Their divorce decree contained no child-support award, but a 2005 consent order resolved earlier contempt motions and included an agreement requiring the party found in contempt to pay the other party's attorney fees. In later proceedings, the juvenile court ordered Mother to pay \$200 per month in child support, found Mother in contempt, and nevertheless ordered each party to bear its own attorney fees.

PROCEDURAL HISTORY

The parties were divorced in 1997, and the divorce decree did not award child support. After subsequent contempt proceedings and a 2005 consent order, the parties again filed contempt motions and sought modification of custody and visitation. The superior court transferred the matter to the juvenile court, which ordered Mother to pay \$200 monthly child support, later granted Father's contempt motion, and ordered that each party pay its own attorney fees. The juvenile court denied Father's motion to set aside and motion for new trial, and Father appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the trial court with direction to enter a child-support order consistent with OCGA § 19-6-15, including the required written findings, and to enter an attorney-fee award consistent with the parties' agreement in the 2005 consent order.

CASES CITED

- Esser v. Esser, 277 Ga. 97, 586 S.E.2d 627 (2003)
- Turner v. Turner, 285 Ga. 866, 867(1), 684 S.E.2d 596 (2009)
- Rumley-Miawama v. Miawama, 284 Ga. 811, 812(1), 671 S.E.2d 827 (2009)
- In the Interest of R.F., 295 Ga. App. 739, 742(2), 673 S.E.2d 108 (2009)
- Hamlin v. Ramey, 291 Ga. App. 222, 226(2), 661 S.E.2d 593 (2008)
- Eleazer v. Eleazer, 275 Ga. 482, 483, 569 S.E.2d 521 (2002)
- Cason v. Cason, 281 Ga. 296, 299(3), 637 S.E.2d 716 (2006)
- Haley v. Haley, 282 Ga. 204, 205, 647 S.E.2d 10 (2007)
- Hagstrom v. Hagstrom, 235 Ga. 853, 856, 221 S.E.2d 602 (1976)

OPINION

CARLEY, J.

690 S.E.2d 404 (2010) ROBERTS v. THARP. No. S09A1961. Supreme Court of Georgia. March 1, 2010. Christopher T. Adams, Lawrenceville, for appellant. Jeffrey R. Sliz, Lawrenceville, for appellee. CARLEY, Presiding Justice. Gary L. Roberts (Father) and Mary Katherine Tharp (Mother) were divorced in 1997.

The parties have one child, but the divorce decree did not contain any award of child support. Both parties filed motions for contempt in superior court, which were resolved in a consent order entered in 2005. The parties soon filed contempt motions again and also sought modification of custody and *405 visitation. Pursuant to OCGA § 15-11-30.1(b), the superior court transferred the action to the juvenile court for investigation and determination.

Father requested child support in accordance with OCGA § 19-6-15. See OCGA §§ 15-11-28(c) (1), 15-11-30.1(b). In early 2007, the juvenile court entered an interim order resolving some custody and visitation issues, and ordering Mother to begin paying child support in the amount of \$200 per month. Six months later, the juvenile court denied Mother's motion for contempt, granted Father's motion, and reserved the issues of child support and attorney's fees.

In 2008, the juvenile court ordered that "child support shall remain" \$200 per month and that "both parties shall be responsible for their own attorney fees." Father filed a motion to set aside the final judgment and a motion for new trial which were denied on May 20, 2009. Father appeals from that order pursuant to our grant of his application for discretionary appeal.

See OCGA § 15-11-3. 1. Father contends that the juvenile court erred by failing to include in its orders regarding child support the specific provisions required by OCGA § 19-6-15(c)(2), including a determination of the parents' gross income and certain findings regarding the child's health insurance coverage and apportionment of her uninsured health care expenses.

"The guidelines for computing the amount of child support are found in OCGA § 19-6-15 and must be considered by any court setting child support. [Cit.]" *Esser v. Esser*, 277 Ga. 97, 586 S.E.2d 627 (2003). Because the juvenile court's orders in this case were entered after January 1, 2007, the revised child support guidelines in OCGA § 19-6-15 are applicable.

Turner v. Turner, 285 Ga. 866, 867(1), 684 S.E.2d 596 (2009); *Rumley-Miawama v. Miawama*, 284 Ga. 811, 812(1), 671 S.E.2d 827 (2009). Compare *In the Interest of R.F.*, 295 Ga.App. 739, 742(2), 673 S.E.2d 108 (2009). Those guidelines "are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent."

OCGA § 19-6-15(c)(1). OCGA § 19-6-15(c)(2) requires that a child support order contain several specific provisions, including the parents' gross income as determined by the court or the jury... [and] certain findings regarding health insurance coverage for the child and the apportionment of the child's uninsured health care expenses.... *Hamlin v. Ramey*, 291 Ga.App.

222, 226(2), 661 S.E.2d 593 (2008). The juvenile court here awarded child support without making these "required written findings.... Accordingly, the child support award is vacated and the case remanded to the trial court with direction that an order consistent with the requirements of OCGA § 19-6-15 be entered. [Cit.]" *Eleazer v. Eleazer*, 275 Ga. 482, 483, 569 S.E.2d 521 (2002).

Compare *In the Interest of R.F.*, supra at 742(2), (4), 673 S.E.2d 108 (where pre-2007 threshold requirement for modification of child support was not met). 2. Father also contends that the juvenile court erred by refusing to award any attorney's fees to Father pursuant to the following provision of the 2005 consent order: In the event it becomes necessary for either party to initiate a motion for contempt to enforce the terms of this Order, and the Court finds the other party in contempt, then and in that event the party found to be in contempt shall be responsible for payment of the other party's attorney's fees.

In granting Father's motion for contempt, the juvenile court "found [Mother] to be in contempt" of the consent order. "Generally an award of attorney fees is not available unless supported by statute or contract. [Cits.]" *Cason v. Cason*, 281 Ga. 296, 299(3), 637 S.E.2d 716 (2006).

Although OCGA § 19-6-2(a)(1) authorizes a trial court in its discretion to award attorney's fees in a contempt of court action arising out of a divorce case, and OCGA § 9-15-14 authorizes attorney fees upon certain findings of conduct, Father's contention regarding "attorneys fees rests not on [one of those statutes] but rather on the parties' contract. [Cit.]

In this regard, the attorney fee clause in the [consent order] makes no reference to [either statute]." *Haley v. Haley*, 282 Ga. *406 204, 205, 647 S.E.2d 10 (2007). The juvenile court "was without authority to alter the fee arrangement and thus nullify important provisions of the contract reached by [Father] and [Mother] which had been made a part of [the 2005 consent order]."

Hagstrom v. Hagstrom, 235 Ga. 853, 856, 221 S.E.2d 602 (1976). Because the parties agreed that the party found in contempt of the consent order would be responsible for payment of the other party's attorney's fees, the juvenile court's order that both parties would be responsible for their own attorney's fees must also be vacated and the case remanded to the trial court with direction that an award of attorney's fees consistent with the parties' agreement be entered.

Judgment vacated and case remanded with direction. All the Justices concur.